

Personal Advantage  
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## **What to Do if an Insurance Company Tries to Rescind Your Policy**

**In their efforts to cut costs, insurance companies are increasingly likely to cancel your policy when you file a claim - rather than pay out - especially if the coverage is for a large sum.**

The practice by insurance companies, known as rescission, has become a major problem for consumers, particularly in the areas of health, life, disability and malpractice insurance. Although the insurer who cancels under those circumstances must refund the premiums paid over the lifetime of the policy, the consumer is left without insurance and will find that it's harder to get a new policy.

How rescission works:

Although a policy is a contract, an insurance company can legally cancel the policy if it finds that a policyholder lied or failed to disclose pertinent information before the agreement was signed.

That can include nondisclosure of a driving violation on an auto-insurance policy, a medical condition on a health, life or disability policy, or pending litigation on a malpractice insurance policy.

Insurers are supposed to "underwrite" or investigate policies at the time of the application to determine if the consumer is qualified. But in practice, most insurers have approved policies and accepted policyholders' premiums - and checked medical and other records only when a claim was filed. This practice is called "post-claims underwriting."

Now, the insurer is more likely to go back and look for any flaw in the original application and contract so it can cancel the policy. It can search at any time through confidential materials such as computerized data and various medical records. The policyholder granted the insurer permission to do this when he/she signed the application.

Trap: By studying these records, an insurer may learn about conditions or medical treatments that you disclosed to your doctors or lawyers but did not mention on your insurance policy application.

Reducing the odds:

Self-defense: Don't misrepresent facts on insurance applications. If you smoke, for example, don't claim you're a nonsmoker in order to qualify for a lower premium. An insurance company can rescind your life or health insurance policy even if the reason you're filing a claim has nothing to do with smoking.

Self-defense: Make sure your agent writes down your answers. In the event of an oversight or dispute, agents often side with the insurer. Telling the insurance company, "I told the agent when we met that I had high blood pressure" is not a strong defense, since it will only pit your word against his/hers.

Self-defense: Beware of vague questions. Some insurance applications purposefully ask broad questions and/or use open-ended words to provide insurers with loopholes in the future.

Examples: "Have you ever had...?" "List all doctors you have ever seen, and what for." Solution: Ask your agent to be specific by asking him/her questions such as, "What does the insurer mean by a back disorder?"

Self-defense: Read your application before signing it. This is especially important if an agent has read you the questions. Insurance applications can be very detailed. In addition, agents frequently read questions fast, paraphrase or simply check off boxes.

Self-defense: If you have group coverage through your employer, make sure you are actually eligible. Many employers withhold or collect premiums for medical insurance from part-time employees. But employees who work less than 30 hours a week are often ineligible for group coverage. As a result, your company's insurer may cancel your policy when you file a claim, especially if it's a large one.

Self-defense: Consider going back to clean up your application. Since you would be correcting your application and not filing a claim, it is likely that the insurer would just take down the information.

Caution: If you failed to disclose a significant condition, such as a chronic back problem, your insurer may send you a rider excluding coverage for the problem.

Fighting back:

If your policy is canceled and you believe the grounds for the rescission are baseless, fight to keep your insurance. Here's what you can do:

Know your rights. Courts nationwide have ruled that insurers cannot use trivial or immaterial nondisclosures to rescind policies. There are no grounds for rescission if...

The insurer would have issued the insurance policy even if the condition were disclosed.

The applicant had no present knowledge of a condition or failed to appreciate the significance of an incorrect or incomplete response.

Example I: Several years before applying for life insurance, a man was told that his blood pressure was running a little high. His doctor didn't prescribe any particular treatment and he forgot about it. Because he wasn't treated for the problem at the time, his insurer would not be able to rescind the policy based on this nondisclosure, even if the man later died of a heart attack.

Example II: A young, divorced working mother in California who recently filed a claim for breast-cancer treatment was told that her policy was being rescinded because she had failed disclose that she had a "nervous disease or disorder." The insurance company discovered that several years earlier, she and her ex-husband had visited a psychologist for marital counseling.

The court found the insurer had acted in bad faith by contriving a groundless rescission and awarded the woman's medical bills paid, plus \$500,000 in damages.

Write to the insurance company immediately, contesting the rescission. Explain why you believe any alleged nondisclosure was insignificant or overlooked. Often, resistance on the part of the policyholder is all that is required for an insurer to reverse its decision.