

New Hampshire Supreme Court Invalidates Long-Term Care Rate Caps

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The New Hampshire Supreme Court recently determined that regulations limiting premium rate increases for long-term care insurance policies exceeded the state insurance commissioner's rulemaking authority and were therefore invalid.

The decision arose from Genworth's challenge to New Hampshire's amended regulations for long-term care insurance policies, which capped premium rate increases based on an insured's attained age and barred the insurance commissioner from approving any requested increase above the stated caps. Genworth argued that the regulations exceeded the commissioner's statutory authority to "issue reasonable rules to promote premium adequacy and to protect the policyholder in the event of substantial rate increases," and did just the opposite. The trial court ruled in favor of the insurance department and Genworth appealed.

The New Hampshire Supreme Court, however, sided with Genworth. The court explained that "an insurer's ability to cover costs depends, at least in part, on its ability to increase rates when its actuarial assumptions prove flawed." The amended regulations, however, did not afford the commissioner the discretion to approve rate increases that exceeded the caps, nor did they contain any exception to exceed the caps to avoid premium inadequacy. The court also observed that the premium cap rates failed to protect policyholders "in the event of" substantial rate increases because the commissioner could not approve any substantial rate increase in the first place.

The decision is an important victory for insurers issuing long-term care insurance policies in New Hampshire in their efforts to maintain premium adequacy. While it does not prevent the commissioner from promulgating new premium cap regulations that comport with the court's analysis, it may allow the commissioner to consider rate increase regulations that account for the inherent difficulties insurers face in predicting costs for long-term care insurance policies.

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