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Bulletin 08-10

DATE: October 27, 2008
TO: Long Term Care Insurers
FROM: Merle Scheiber, Director
SUBJECT: Long Term Care Daily Benefit Rule

It has come to the Division's attention that some carriers have decided to comply with ARSD 20:06:21:79 by setting an absolute minimum of \$100 per day for nursing home coverage. While this is permitted under the rules, it is unclear if those setting an absolute minimum for daily benefits are aware of the flexibility in this rule. Here is the text of the rule:

20:06:21:79. Long-term care -- Minimum benefit requirements. *Any long-term care policy, certificate, or contract issued in this state must contain at least one year of nursing facility coverage. A daily benefit of not less than \$100 per day must be included in the policy, certificate, or contract unless one of the following are met:*

(1) *A suitability form is completed showing that a lesser amount per day is suitable for the applicant and both of the following:*

(a) *The commissions paid to the agent are renewal commissions only; and*

(b) *The applicant acknowledges in writing that the applicant understands the daily benefits are less than the minimum otherwise required and are not sufficient to fund the per day costs in nursing homes based upon current data available;*

(2) *The agent has submitted the suitability form and accompanying documentation to the division and the division determines that the benefits as applied for are suitable;*

(3) *If the policy, certificate, or contract is issued with at least \$100 per day in daily benefits and the insured requests to decrease the daily benefit below \$100 per day, the suitability forms and disclosure required by subdivision (1) are provided to the insured;*

(4) A new policy, certificate, or contract with a daily benefit of less than \$100 per day when combined with any existing long-term care coverage, the combined total of the daily benefits equals or exceeds \$100. All long-term care policies in force covering the insured must be considered in determining whether the benefit meets the \$100 per day minimum standard; or

(5) Except for policies subject to § 58-17B-2(4)(d), the long-term care policy is a group plan for which an employer or labor union contributes part or all of the premium for the long-term care policy.

A policy, certificate, or contract issued with a minimum of \$100 per day or issued in compliance with subdivisions one through five may be issued as a long-term care partnership policy.

The rule does provide for treating a policy with less than \$100 per day as an unsuitable sale thereby triggering the limitation to renewal commissions and the suitability notices, but this is applicable to subdivision (1) only. If any of the other subdivisions of the rule apply (ARSD 20:06:21:79 (2) through (5) inclusive), the agent may receive a full first year commission and no additional suitability requirements are applicable.

Of particular note is ARSD 20:06:21:79(4), which may become more prevalent for persons considering adding long term care benefits that are partnership qualified. As long as the new policy when combined with the daily benefit of any existing long term care coverage (multiple policies may be used), equals or exceeds \$100 per day, that policy can be issued without any requirements for commission limitation or any additional suitability procedures.

Anyone with questions is encouraged to contact the Division of Insurance at 605.773.3563 or use our website at <http://www.state.sd.us/insurance>.