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**IDAPA 18  
TITLE 01  
Chapter 60**

**18.01.60 - LONG-TERM CARE INSURANCE MINIMUM STANDARDS**

**000. LEGAL AUTHORITY.**

This rule is issued pursuant to the authority vested in the director under Chapters 2 and 46, Title 41, Idaho Code and Chapter 52, Title 67, Idaho Code. (4-5-00)

**001. TITLE AND SCOPE.**

**01. Title.** This rule shall be cited in full as Idaho Department of Insurance Rule, IDAPA 18.01.60, rule to implement the "Long-Term Care Insurance Minimum Standards". (4-5-00)

**02. Purpose.** The purpose of this rule is to promote the public interest, to promote the availability of long-term care insurance coverage, to protect applicants for long-term care insurance, as defined, from unfair or deceptive sales or enrollment practices, to facilitate public understanding and comparison of long-term care insurance coverages, and to facilitate flexibility and innovation in the development of long-term care insurance. (4-5-00)

**03. Scope And Applicability.** Except as otherwise specifically provided, this rule applies to all long-term care insurance policies including qualified long-term care insurance contracts and life insurance policies that accelerate benefits for long-term care delivered or issued for delivery in this state on or after the effective date by Insurers, Fraternal Benefit Societies, Managed Care Organizations and all similar organizations; certain provisions of this rule apply only to qualified long-term care insurance. (4-5-00)

**002. WRITTEN INTERPRETATIONS.**

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements which pertain to the interpretation of the rules of the chapter, or to the documentation of compliance with the rules of this chapter. These documents will be available for public inspection and copying at cost in the main office and each regional or district office of this agency. (4-5-00)

**003. ADMINISTRATIVE APPEALS.**

There is no appeal to the Attorney General from application of this Rule. All such appeals must be instituted by written demand for a hearing before the Director of Insurance, Section 41-232, Idaho Code. Further appeal from the Director's decision can be taken to district court, pursuant to Section 67-5270, Idaho Code. (4-5-00)

**004. DEFINITIONS.**

For the purpose of this rule, no long-term care insurance policy delivered or issued for delivery in this state shall use the terms set forth below, unless the terms are defined in the policy. In relation to the Qualified Long-Term Care plans, such definitions must satisfy definitions as amended by the U.S. Treasury Department and the following requirements: (4-5-00)

**01. Activities Of Daily Living.** At least bathing, continence, dressing, eating, toileting, and transferring. (4-5-00)

**02. Acute Condition.** The individual is medically unstable. Such an individual requires frequent monitoring by medical professionals, such as physicians and registered nurses, in order to maintain his health status. (4-5-00)

**03. Adult Day Care.** A program for six (6) or more individuals, of social and health-related services provided during the day in a community group setting for the purpose of supporting frail, impaired elderly or other disabled adults who can benefit from care in a group setting outside the home. (4-5-00)

**04. Bathing.** Washing oneself by sponge bath; or in either a tub or shower, including the task of getting into or out of the tub or shower. (4-5-00)

**05. Cognitive Impairment.** A deficiency in a person's short or long-term memory, orientation as to

person, place and time, deductive or abstract reasoning, or judgment as it relates to safety awareness. (4-5-00)

**06. Contenance.** The ability to maintain control of bowel and bladder function; or, when unable to maintain control of bowel or bladder function, the ability to perform associated personal hygiene (including caring for catheter or colostomy bag). (4-5-00)

**07. Dressing.** Putting on and taking off all items of clothing and any necessary braces, fasteners, or artificial limbs. (4-5-00)

**08. Eating.** Feeding oneself by getting food into the body from a receptacle (such as a plate, cup, or table) or by a feeding tube or intravenously. (4-5-00)

**09. Hands-On Assistance.** Physical assistance (minimal, moderate, or maximal) without which the individual would not be able to perform the activity of daily living. (4-5-00)

**10. Home Health Care Services.** Medical and non-medical services, provided to ill, disabled, or infirm persons in their residences. Such services may include homemaker services, assistance with activities of daily living, and respite care services. (4-5-00)

**11. Medicare.** "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constituted or Later Amended," or "Title I, Part I of Public Law 89-97, as Enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof," or words of similar import. (4-5-00)

**12. Mental Or Nervous Disorder.** Shall not be defined to include more than neurosis, psychoneurosis, psychopathy, psychosis, or mental or emotional disease or disorder. (4-5-00)

**13. Personal Care.** The provision of hands-on services to assist an individual with activities of daily living. (4-5-00)

**14. Skilled Nursing Care, Intermediate Care, Personal Care, Home Care, And Other Services.** Defined in relation to the level of skill required, the nature of the care and the setting in which care must be delivered. (4-5-00)

**15. Toileting.** Getting to and from the toilet, getting on and off the toilet, and performing associated personal hygiene. (4-5-00)

**16. Transferring.** Moving into or out of a bed, chair, or wheelchair. (4-5-00)

**17. All Providers Of Services.** Including but not limited to Skilled Nursing Facility, Extended Care Facility, Intermediate Care Facility, Convalescent Nursing Home, Personal Care Facility, and Home Care Agency. Such services shall be defined in relation to the services and facilities required to be available and the licensure or degree status of those providing or supervising the services. The definition may require that the provider be appropriately licensed or certified. (4-5-00)

**005. POLICY PRACTICES AND PROVISIONS.**

**01. Renewability.** The terms "guaranteed renewable" and "noncancellable" shall not be used in any individual long-term care insurance policy without further explanatory language in accordance with the disclosure requirements of Section 009 of this rule. (4-5-00)

a. A policy issued to an individual shall not contain renewal provisions other than "guaranteed renewable" or "noncancellable". (4-5-00)

b. The term "guaranteed renewable" may be used only when the insured has the right to continue the long-term care insurance in force by the timely payment of premiums and when the insurer has no unilateral right to make any change in any provision of the policy or rider while the insurance is in force, and cannot decline to renew,

except that rates may be revised by the insurer on a class basis. (4-5-00)

c. The term "noncancellable" may be used only when the insured has the right to continue the long-term care insurance in force by the timely payment of premiums during which period the insurer has no right to unilaterally make any change in any provision of the insurance or in the premium rate. (4-5-00)

d. In addition to the other requirements of Subsection 005.01, a qualified long-term care insurance contract shall be guaranteed renewable, within the meaning of Section 7702B(b)(1)(C) of the Internal Revenue Code of 1986 as amended. (4-5-00)

**02. Limitations And Exclusions.** A policy may not be delivered or issued for delivery in this state as long-term care insurance if the policy limits or excludes coverage by type of illness, treatment, medical condition or accident, except as follows: (4-5-00)

a. Preexisting conditions or diseases; (4-5-00)

b. Mental or nervous disorders; however, this shall not permit exclusion or limitation of benefits on the basis of Alzheimer's Disease; (4-5-00)

c. Alcoholism and drug addiction; (4-5-00)

d. Illness, treatment, or medical condition arising out of: (4-5-00)

i. War or act of war (whether declared or undeclared); (4-5-00)

ii. Participation in a felony, riot, or insurrection; (4-5-00)

iii. Service in the armed forces or units auxiliary thereto; (4-5-00)

iv. Suicide (sane or insane), attempted suicide, or intentionally self-inflicted injury; or (4-5-00)

v. Aviation (this exclusion applies only to non-fare-paying passengers). (4-5-00)

e. Treatment provided in a government facility (unless otherwise required by law), services for which benefits are available under Medicare or other governmental program (except Medicaid), any state or federal workers' compensation, employer's liability or occupational disease law, or any motor vehicle no-fault law, services provided by a member of the covered person's immediate family, and services for which no charge is normally made in the absence of insurance; (4-5-00)

f. Expenses for services or items available or paid under another long-term care insurance or health insurance policy; or (4-5-00)

g. In the case of a qualified long-term care insurance contract, expenses for services or items to the extent that the expenses are reimbursable under Title XVIII of the Social Security Act or would be so reimbursable but for the application of a deductible or coinsurance amount. (4-5-00)

h. Subsection 005.02 is not intended to prohibit exclusions and limitations by type of provider or territorial limitations. (4-5-00)

**03. Extension Of Benefits.** Termination of long-term care insurance shall be without prejudice to any benefits payable for institutionalization if the institutionalization began while the long-term care insurance was in force and continues without interruption after termination. The extension of benefits beyond the period the long-term care insurance was in force may be limited to the duration of the benefit period, if any, or to payment of the maximum benefits and may be subject to any policy waiting period, and all other applicable provisions of the policy. (4-5-00)

**04. Continuation Or Conversion.** (4-5-00)

a. Group long-term care insurance issued in this state on or after the effective date of Section 005 shall provide covered individuals with a basis for continuation or conversion of coverage. (4-5-00)

b. For the purposes of Section 005, "a basis for continuation of coverage" means a policy provision that maintains coverage under the existing group policy when the coverage would otherwise terminate and which is subject only to the continued timely payment of premium when due. Group policies that restrict provision of benefits and services to, or contain incentives to use certain providers or facilities, may provide continuation benefits that are substantially equivalent to the benefits of the existing group policy. The director shall make a determination as to the substantial equivalency of benefits, and in doing so, shall take into consideration the differences between managed care and non-managed care plans, including, but not limited to, provider system arrangements, service availability, benefit levels and administrative complexity. (4-5-00)

c. For the purposes of Section 005, "a basis for conversion of coverage" means a policy provision that an individual whose coverage under the group policy would otherwise terminate or has been terminated for any reason, including discontinuance of the group policy in its entirety or with respect to an insured class, and who has been continuously insured under the group policy (and any group policy which it replaced) for at least six (6) months immediately prior to termination, shall be entitled to the issuance of a converted policy by the insurer under whose group policy he or she is covered, without evidence of insurability. (4-5-00)

d. For the purposes of Section 005, "converted policy" means an individual policy of long-term care insurance providing benefits identical to or benefits determined by the director to be substantially equivalent to or in excess of those provided under the group policy from which conversion is made. Where the group policy from which conversion is made restricts provision of benefits and services to, or contains incentives to use certain providers or facilities, the director, in making a determination as to the substantial equivalency of benefits, shall take into consideration the differences between managed care and non-managed care plans, including, but not limited to, provider system arrangements, service availability, benefit levels and administrative complexity. (4-5-00)

e. Written application for the converted policy shall be made and the first premium due, if any, shall be paid as directed by the insurer not later than thirty-one (31) days after termination of coverage under the group policy. The converted policy shall be issued effective on the day following the termination of coverage under the group policy and shall be renewable annually. (4-5-00)

f. Unless the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy from which conversion is made. Where the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy replaced. (4-5-00)

g. Continuation of coverage or issuance of a converted policy shall be mandatory, except where: (4-5-00)

i. Termination of group coverage resulted from an individual's failure to make any required payment of premium or contribution when due; or (4-5-00)

ii. The terminating coverage is replaced not later than thirty-one (31) days after termination, by group coverage effective on the day following the termination of coverage: (4-5-00)

(1) Providing benefits identical to or benefits determined by the director to be substantially equivalent to or in excess of those provided by the terminating coverage; and (4-5-00)

(2) The premium for which is calculated in a manner consistent with the requirements of Subsection 005.06. (4-5-00)

h. Notwithstanding any other provision of Section 005, a converted policy issued to an individual who at the time of conversion is covered by another long-term care insurance policy that provides benefits on the basis of incurred expenses, may contain a provision that results in a reduction of benefits payable if the benefits provided under the additional coverage, together with the full benefits provided by the converted policy, would result in

payment of more than one hundred percent (100%) of incurred expenses. The provision shall only be included in the converted policy if the converted policy also provides for a premium decrease or refund which reflects the reduction in benefits payable. (4-5-00)

i. The converted policy may provide that the benefits payable under the converted policy, together with the benefits payable under the group policy from which conversion is made, shall not exceed those that would have been payable had the individual's coverage under the group policy remained in force and effect. (4-5-00)

j. Notwithstanding any other provision of Section 005, an insured individual whose eligibility for group long-term care coverage is based upon his relationship to another person shall be entitled to continuation of coverage under the group policy upon termination of the qualifying relationship by death or dissolution of marriage. (4-5-00)

k. For the purposes of Section 005 a "managed-care plan" is a health care or assisted living arrangement designed to coordinate patient care or control costs through utilization review, case management or use of specific provider networks. (4-5-00)

**05. Discontinuance And Replacement.** If a group long-term care policy is replaced by another group long-term care policy issued to the same policyholder, the succeeding insurer shall offer coverage to all persons covered under the previous group policy on its date of termination. Coverage provided or offered to individuals by the insurer and premiums charged to persons under the new group policy: (4-5-00)

a. Shall not result in an exclusion for preexisting conditions that would have been covered under the group policy being replaced; and (4-5-00)

b. Shall not vary or otherwise depend on the individual's health or disability status, claim experience or use of long-term care services. (4-5-00)

**06. Premium Changes.** (4-5-00)

a. The premium charged to an insured shall not increase due to either: (4-5-00)

i. The increasing age of the insured at ages beyond sixty-five (65); or (4-5-00)

ii. The duration the insured has been covered under the policy. (4-5-00)

b. The purchase of additional coverage shall not be considered a premium rate increase, but for purposes of the calculation required under Section 024, the portion of the premium attributable to the additional coverage shall be added to and considered part of the initial annual premium. (4-5-00)

c. A reduction in benefits shall not be considered a premium change, but for purpose of the calculation required under Section 024, the initial annual premium shall be based on the reduced benefits. (4-5-00)

**07. Electronic Enrollment For Group Policies.** (4-5-00)

a. In the case of a group defined in Section 41-4603(4)(a), Idaho Code, any requirement that a signature of an insured be obtained by an agent or insurer shall be deemed satisfied if: (4-5-00)

i. The consent is obtained by telephonic or electronic enrollment by the group policyholder or insurer. A verification of enrollment information shall be provided to the enrollee; (4-5-00)

ii. The telephonic or electronic enrollment provides necessary and reasonable safeguards to assure the accuracy, retention, and prompt retrieval of records; and (4-5-00)

iii. The telephonic or electronic enrollment provides necessary and reasonable safeguards to assure that the confidentiality of individually identifiable information, "privileged information," is maintained. (4-5-00)

b. The insurer shall make available, upon request of the director, records that will demonstrate the insurer's ability to confirm enrollment and coverage amounts. (4-5-00)

**006. -- 007. (RESERVED).**

**008. UNINTENTIONAL LAPSE.**

**01. Notice Before Lapse Or Termination.** Each insurer offering long-term care insurance shall, as a protection against unintentional lapse, comply with the following: (4-5-00)

a. No individual long-term care policy or certificate shall be issued until the insurer has received from the applicant either a written designation of at least one (1) person, in addition to the applicant, who is to receive notice of lapse or termination of the policy or certificate for nonpayment of premium, or a written waiver dated and signed by the applicant electing not to designate additional persons to receive notice. The applicant has the right to designate at least one (1) person who is to receive the notice of termination, in addition to the insured. Designation shall not constitute acceptance of any liability on the third party for services provided to the insured. The form used for the written designation must provide space clearly designated for listing at least one (1) person. The designation shall include each person's full name and home address. In the case of an applicant who elects not to designate an additional person, the waiver shall state: "Protection against unintended lapse. I understand that I have the right to designate at least one (1) person other than myself to receive notice of lapse or termination of this long-term care insurance policy for nonpayment of premium. I understand that notice will not be given until thirty (30) days after a premium is due and unpaid. I elect NOT to designate a person to receive this notice". The insurer shall notify the insured of the right to change this written designation, no less often than once every two (2) years. (4-5-00)

b. When the policyholder or certificate holder pays premium for a long-term care insurance policy or certificate through a payroll or pension deduction plan, the requirements contained in Subsection 008.01.a. need not be met until sixty (60) days after the policyholder or certificate holder is no longer on such a payment plan. The application or enrollment form for such policies or certificates shall clearly indicate the payment plan selected by the applicant. (4-5-00)

c. Lapse or termination for nonpayment of premium. No individual long-term care policy or certificate shall lapse or be terminated for nonpayment of premium unless the insurer, at least thirty (30) days before the effective date of the lapse or termination, has given notice to the insured and to those persons designated pursuant to Subsection 008.01.a., at the address provided by the insured for purposes of receiving notice of lapse or termination. Notice shall be given by first class United States mail, postage prepaid; and notice may not be given until thirty (30) days after a premium is due and unpaid. Notice shall be deemed to have been given as of five (5) days after the date of mailing. (4-5-00)

**02. Reinstatement.** In addition to the requirement in Subsection 008.01, a long-term care insurance policy or certificate shall include a provision that provides for reinstatement of coverage, in the event of lapse if the insurer is provided proof that the policyholder or certificate holder was cognitively impaired or had a loss of functional capacity before the grace period contained in the policy expired. This option shall be available to the insured if requested within five (5) months after termination and shall allow for the collection of past due premium, where appropriate. The standard of proof of cognitive impairment or loss of functional capacity shall not be more stringent than the benefit eligibility criteria on cognitive impairment or the loss of functional capacity contained in the policy and certificate. (4-5-00)

**009. REQUIRED DISCLOSURE PROVISIONS.**

**01. Renewability.** Individual long-term care insurance policies shall contain a renewability provision. The provision shall be appropriately captioned, shall appear on the first page of the policy, and shall clearly state the duration, where limited, of renewability and the duration of the term of coverage for which the policy is issued and for which it may be renewed. This provision shall not apply to policies that do not contain a renewability provision, and under which the right to nonrenew is reserved solely to the policyholder. (4-5-00)

**02. Riders And Endorsements.** Except for riders or endorsements by which the insurer effectuates a request made in writing by the insured under an individual long-term care insurance policy, all riders or endorsements

added to an individual long-term care insurance policy after date of issue or at reinstatement or renewal that reduce or eliminate benefits or coverage in the policy shall require signed acceptance by the individual insured. After the date of policy issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term must be agreed to in writing signed by the insured, except if the increased benefits or coverage are required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, the premium charge shall be set forth in the policy, rider or endorsement. (4-5-00)

**03. Payment Of Benefits.** A long-term care insurance policy that provides for the payment of benefits based on standards described as "usual and customary," "reasonable and customary," or words of similar import shall include a definition of these terms and an explanation of the terms in its accompanying outline of coverage. (4-5-00)

**04. Limitations.** If a long-term care insurance policy or certificate contains any limitations with respect to preexisting conditions, the limitations shall appear as a separate paragraph of the policy or certificate and shall be labeled as "Preexisting Condition Limitations". (4-5-00)

**05. Other Limitations Or Conditions On Eligibility For Benefits.** A long-term care insurance policy or certificate containing any limitations or conditions for eligibility other than those prohibited in this rule shall set forth a description of the limitations or conditions, including any required number of days of confinement, in a separate paragraph of the policy or certificate and shall label such paragraph "Limitations or Conditions on Eligibility for Benefits". (4-5-00)

**06. Disclosure Of Tax Consequences.** With regard to life insurance policies that provide an accelerated benefit for long-term care, a disclosure statement is required at the time of application for the policy or rider and at the time the accelerated benefit payment request is submitted that receipt of these accelerated benefits may be taxable, and that assistance should be sought from a personal tax advisor. The disclosure statement shall be prominently displayed on the first page of the policy or rider and any other related documents. Subsection 009.06 shall not apply to qualified long-term care insurance contracts. (4-5-00)

**07. Benefit Triggers.** Activities of daily living and cognitive impairment shall be used to measure an insured's need for long-term care and shall be described in the policy or certificate in a separate paragraph and shall be labeled "Eligibility for the Payment of Benefits". Any additional benefit triggers shall also be explained. If these triggers differ for different benefits, explanation of the trigger shall accompany each benefit description. If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this too shall be specified. (4-5-00)

**08. Qualified Contracts.** A qualified long-term care insurance contract shall include a disclosure statement in the policy and in the outline of coverage as contained in Section 027 that the policy is intended to be a qualified long-term care insurance contract. (4-5-00)

**09. Non-Qualified Contracts.** A non-qualified long-term care insurance contract shall include a disclosure statement in the policy and in the outline of coverage as contained in Section 027 that the policy is not intended to be a qualified long-term care insurance contract. (4-5-00)

**010. PROHIBITION AGAINST POST-CLAIMS UNDERWRITING.**

**01. Health Conditions.** All applications for long-term care insurance policies or certificates except those that are guaranteed issue shall contain clear and unambiguous questions designed to ascertain the health condition of the applicant. (4-5-00)

**02. Medication.** If an application for long-term care insurance contains a question that asks whether the applicant has had medication prescribed by a physician, it must also ask the applicant to list the medication that has been prescribed. If the medications listed in the application were known by the insurer, or should have been known at the time of application, to be directly related to a medical condition for which coverage would otherwise be denied, then the policy or certificate shall not be rescinded for that condition. (4-5-00)

**03. Non-Guaranteed Issue.** Except for policies or certificates which are guaranteed issue: (4-5-00)

a. The following language shall be set out conspicuously and in close conjunction with the applicant's signature block on an application for a long-term care insurance policy or certificate: Caution: If your answers on this application are incorrect or untrue, (company) has the right to deny benefits or rescind your policy. (4-5-00)

b. The following language, or language substantially similar to the following, shall be set out conspicuously on the long-term care insurance policy or certificate at the time of delivery: Caution: The issuance of this long-term care insurance (policy) (certificate) is based upon your responses to the questions on your application. A copy of your (application) (enrollment form) (is enclosed) (was retained by you when you applied). If your answers are incorrect or untrue, the company has the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the company at this address: (insert address) (4-5-00)

c. Prior to issuance of a long-term care policy or certificate to an applicant age eighty (80) or older, the insurer shall obtain one (1) of the following: (4-5-00)

- i. A report of a physical examination; (4-5-00)
- ii. An assessment of functional capacity; (4-5-00)
- iii. An attending physician's statement; or (4-5-00)
- iv. Copies of medical records. (4-5-00)

**04. Delivery Of Application Or Enrollment And Form.** A copy of the completed application or enrollment form (whichever is applicable) shall be delivered to the insured no later than at the time of delivery of the policy or certificate unless it was retained by the applicant at the time of application. (4-5-00)

**05. Record Of Rescissions.** Every insurer or other entity selling or issuing long-term care insurance benefits shall maintain a record of all policy or certificate rescissions, both state and countrywide, except those that the insured voluntarily effectuated and shall annually furnish this information to the insurance director in the format prescribed by the National Association of Insurance Commissioners in Appendix A. The notice required in Subsection 010.05 shall be provided in substantially the following format based on the NAIC Model Regulation which includes Appendixes A, B, C, and D, and all other outlines of coverage and specific plan designs. For Website, go to Idaho Department of Insurance Home page, [www.doi.state.id.us](http://www.doi.state.id.us), select SHIBA (Senior Health Insurance Benefits Advisors) under Consumer Assistance link, see attachments to the NAIC Model Regulation implementing the Long-Term Care Insurance Minimum Standards. To obtain a copy of the required illustrations based on the NAIC Model Regulation, contact SHIBA at the Idaho Department of Insurance (208) 334-4250. (4-5-00)

**011. MINIMUM STANDARDS FOR HOME HEALTH AND COMMUNITY CARE BENEFITS IN LONG-TERM CARE INSURANCE POLICIES.**

**01. Limitations Or Exclusions.** A long-term care insurance policy or certificate shall not, if it provides benefits for home health care or community care services, limit or exclude benefits: (4-5-00)

- a. By requiring that the insured or claimant would need care in a skilled nursing facility if home health care services were not provided; (4-5-00)
- b. By requiring that the insured or claimant first or simultaneously receive nursing or therapeutic services, or both, in a home, community, or institutional setting before home health care services are covered; (4-5-00)
- c. By limiting eligible services to services provided by registered nurses or licensed practical nurses; (4-5-00)
- d. By requiring that a nurse or therapist provide services covered by the policy that can be provided by a home health aide, or other licensed or certified home care worker acting within the scope of his or her licensure or

- certification; (4-5-00)
- e. By excluding coverage for personal care services provided by a home health aide; (4-5-00)
  - f. By requiring that the provision of home health care services be at a level of certification or licensure greater than that required by the eligible service; (4-5-00)
  - g. By requiring that the insured or claimant have an acute condition before home health care services are covered; (4-5-00)
  - h. By limiting benefits to services provided by Medicare-certified agencies or providers; or (4-5-00)
  - i. By excluding coverage for adult day care services. (4-5-00)

**02. Coverage Equivalency.** A long-term care insurance policy or certificate, if it provides for home health or community care services, shall provide total home health or community care coverage that is a dollar amount equivalent to at least one-half (1/2) of one (1) year's coverage available for nursing home benefits under the policy or certificate, at the time covered home health or community care services are being received. This requirement shall not apply to policies or certificates issued to residents of continuing care retirement communities. (4-5-00)

**03. Maximum Coverage.** Home health care coverage may be applied to the non-home health care benefits provided in the policy or certificate when determining maximum coverage under the terms of the policy or certificate. (4-5-00)

**012. REQUIREMENT TO OFFER INFLATION PROTECTION.**

**01. Inflation Protection Offer.** No insurer may offer a long-term care insurance policy unless the insurer also offers to the policyholder in addition to any other inflation protection the option to purchase a policy that provides for benefit levels to increase with benefit maximums or reasonable durations which are meaningful to account for reasonably anticipated increases in the costs of long-term care services covered by the policy. Insurers must offer to each policyholder, at the time of purchase, the option to purchase a policy with an inflation protection feature no less favorable than one (1) of the following: (4-5-00)

- a. Increases benefit levels annually in a manner so that the increases are compounded annually at a rate not less than five percent (5%); (4-5-00)
- b. Guarantees the insured individual the right to periodically increase benefit levels without providing evidence of insurability or health status as long as the option for the previous period has not been declined. The amount of the additional benefit shall be no less than the difference between the existing policy benefit and that benefit compounded annually at a rate of at least five percent (5%) for the period beginning with the purchase of the existing benefit and extending until the year in which the offer is made; or (4-5-00)
- c. Covers a specified percentage of actual or reasonable charges and does not include a maximum specified indemnity amount or limit. (4-5-00)

**02. Group Offer.** Where the policy is issued to a group, the required offer in Subsection 012.01 shall be made to the group policyholder; except, if the policy is issued to a group defined in Section 41-4603(4)(d), Idaho Code, other than to a continuing care retirement community, the offering shall be made to each proposed certificate holder. (4-5-00)

**03. Requirements For Life Insurance Policies.** The offer in Subsection 012.01 above shall not be required of life insurance policies or riders containing accelerated long-term care benefits. (4-5-00)

**04. Outline Of Coverage.** Insurers shall include the following information in or with the outline of coverage: (4-5-00)

a. A graphic comparison of the benefit levels of a policy that increases benefits over the policy period with a policy that does not increase benefits. The graphic comparison shall show benefit levels over at least a twenty (20) year period. (4-5-00)

b. Any expected premium increases or additional premiums to pay for automatic or optional benefit increases. (4-5-00)

c. An insurer may use a reasonable hypothetical, or a graphic demonstration, for the purposes of this disclosure. (4-5-00)

**05. Continuation Of Inflation Protection.** Inflation protection benefit increases under a policy which contains these benefits shall continue without regard to an insured's age, claim status or claim history, or the length of time the person has been insured under the policy. (4-5-00)

**06. Premium Disclosures.** An offer of inflation protection that provides for automatic benefit increases shall include an offer of a premium which the insurer expects to remain constant. The offer shall disclose in a conspicuous manner that the premium may change in the future unless the premium is guaranteed to remain constant. (4-5-00)

**07. Rejection Of Offer.** Inflation protection as provided in Subsection 012.01 shall be included in a long-term care insurance policy unless an insurer obtains a rejection of inflation protection signed by the policyholder as required in Subsection 012.07. The rejection may be either in the application or on a separate form. The rejection shall be considered a part of the application and shall state: I have reviewed the outline of coverage and the graphs that compare the benefits and premiums of this policy with and without inflation protection. Specifically, I have reviewed Plans \_\_\_\_\_, and I reject inflation protection (signature line: \_\_\_\_\_). (4-5-00)

**013. REQUIREMENTS FOR APPLICATION FORMS AND REPLACEMENT COVERAGE.**

**01. Application Forms.** Application forms shall include the following questions designed to elicit information as to whether, as of the date of the application, the applicant has another long-term care insurance policy or certificate in force or whether a long-term care policy or certificate is intended to replace any other accident and sickness or long-term care policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and agent, except where the coverage is sold without an agent, containing the questions may be used. With regard to a replacement policy issued to a group defined by Section 41-4603(a), Idaho Code, the following questions may be modified only to the extent necessary to elicit information about health or long-term care insurance policies other than the group policy being replaced, provided that the certificate holder has been notified of the replacement. (4-5-00)

a. Do you have another long-term care insurance policy or certificate in force (including insurance, Fraternal Benefit Societies, Managed Care Organization) or other similar organizations? (4-5-00)

b. Did you have another long-term care insurance policy or certificate in force during the last twelve (12) months? (4-5-00)

i. If so, with which company? (4-5-00)

ii. If that policy lapsed, when did it lapse? (4-5-00)

c. Are you covered by Medicaid? (4-5-00)

d. Do you intend to replace any of your medical or health insurance coverage with this policy (certificate)? (4-5-00)

**02. Other Policy Disclosures.** Agents shall list any other health insurance policies they have sold to the applicant. (4-5-00)

- a. List policies sold that are still in force. (4-5-00)
- b. List policies sold in the past five (5) years that are no longer in force. (4-5-00)

**03. Solicitations Other Than Direct Response.** Upon determining that a sale will involve replacement, an insurer, other than an insurer using direct response solicitation methods, or its agent shall furnish the applicant, prior to issuance or delivery of the individual long-term care insurance policy, a notice regarding replacement of accident and sickness or long-term care coverage. One (1) copy of the notice shall be retained by the applicant and an additional copy signed by the applicant shall be retained by the insurer. The required notice shall be in a form based on the NAIC Model Regulation, which form can be obtained from the Idaho Department of Insurance Home page, [www.doi.state.id.us](http://www.doi.state.id.us), select SHIBA (Senior Health Insurance Benefits Advisors) under Consumer Assistance link, see attachments to the NAIC Model Regulation implementing the Long-Term Care Insurance Minimum Standards. To obtain a copy of the required illustrations based on the NAIC Model Regulation, contact SHIBA at the Idaho Department of Insurance (208) 334-4250. (4-5-00)

**04. Direct Response Solicitations.** Insurers using direct response solicitation methods shall deliver a notice regarding replacement of accident and sickness or long-term care coverage to the applicant upon issuance of the policy. The required notice shall be in a form based on the NAIC Model Regulation, which form can be obtained from the Idaho Department of Insurance Home page, [www.doi.state.id.us](http://www.doi.state.id.us), select SHIBA (Senior Health Insurance Benefits Advisors) under Consumer Assistance link, see attachments to the NAIC Model Regulation implementing the Long-Term Care Insurance Minimum Standards. To obtain a copy of the required illustrations based on the NAIC Model Regulation, contact SHIBA at the Idaho Department of Insurance (208) 334-4250. (4-5-00)

**05. Notice Of Replacement.** Where replacement is intended, the replacing insurer shall notify, in writing, the existing insurer of the proposed replacement. The existing policy shall be identified by the insurer, name of the insured and policy number or address including zip code. Notice shall be made within five (5) working days from the date the application is received by the insurer or the date the policy is issued, whichever is sooner. (4-5-00)

**06. Life Insurance Policy Replacement.** Life insurance policies that accelerate benefits for long-term care shall be deemed to require compliance with Section 013 if the policy being replaced is a long-term care insurance policy. If the policy being replaced is a life insurance policy, the insurer shall comply with the replacement requirements of IDAPA 18.01.41, "Replacement of Life Insurance and Annuities". If a life insurance policy that accelerates benefits for long-term care is replaced by another such policy, the replacing insurer shall comply with both the long-term care and the life insurance replacement requirements. (4-5-00)

#### **014. REPORTING REQUIREMENTS.**

**01. Maintenance Of Agent Records.** Every insurer shall maintain records for each agent of that agent's amount of replacement sales as a percent of the agent's total annual sales and the amount of lapses of long-term care insurance policies sold by the agent as a percent of the agent's total annual sales. (4-5-00)

**02. Agents Experiencing Lapses And Replacements.** Every insurer shall report annually by June 30 the ten percent (10%) of its agents with the greatest percentages of lapses and replacements as measured by Subsection 014.01. (4-5-00)

**03. Purpose Of Reports.** Reported replacement and lapse rates do not alone constitute a violation of insurance laws or necessarily imply wrongdoing. The reports are for the purpose of reviewing more closely agent activities regarding the sale of long-term care insurance. (4-5-00)

**04. Lapsed Policies.** Every insurer shall report annually by June 30 the number of lapsed policies as a percent of its total annual sales and as a percent of its total number of policies in force as of the end of the preceding calendar year. (4-5-00)

**05. Replacement Policies.** Every insurer shall report annually by June 30 the number of replacement policies sold as a percent of its total annual sales and as a percent of its total number of policies in force as of the preceding calendar year. (4-5-00)

**06. Claims Denied.** Every insurer shall report annually by June 30, for qualified long-term care insurance contracts, the number of claims denied for each class of business, expressed as a percentage of claims denied, other than claims denied for failure to meet the waiting period or because of an applicable preexisting condition. (4-5-00)

**07. Policies And Reports.** For purposes of Section 014, "policy" shall mean only long-term care insurance and "report" means on a statewide basis. (4-5-00)

- a. Policy means only long-term care insurance; (4-5-00)
- b. Claim means any request for payment of benefits under a policy regardless of whether the benefit claimed is covered under the policy or any terms or conditions of the policy have been met; (4-5-00)
- c. Denied means the insurer refused to pay a claim for any reason; and (4-5-00)
- d. Report means on a statewide basis. (4-5-00)

**08. Filing.** Reports required under Section 014 shall be filed with the Director. (4-5-00)

**015. LICENSING.**

No agent is authorized to market, sell, solicit, or otherwise contact a person for the purpose of marketing long-term care insurance unless the agent has demonstrated his knowledge of long-term care insurance and the appropriateness of such insurance by passing a test required by this state and maintaining appropriate licenses. (4-5-00)

**016. DISCRETIONARY POWERS OF DIRECTOR.**

The director may upon written request and after an administrative hearing, issue an order to modify or suspend a specific provision or provisions of this rule with respect to a specific long-term care insurance policy or certificate upon a written finding that: (4-5-00)

**01. General Requirement.** The modification or suspension would be in the best interest of the insureds; the purposes to be achieved could not be effectively or efficiently achieved without the modification or suspension; and the modification or suspension is necessary to the development of an innovative and reasonable approach for insuring long-term care; or (4-5-00)

**02. Residential Care Community.** The policy or certificate is to be issued to residents of a life care or continuing care retirement community or some other residential community for the elderly and the modification or suspension is reasonably related to the special needs or nature of such a community; or (4-5-00)

**03. Other Insurance Products.** The modification or suspension is necessary to permit long-term care insurance to be sold as part of, or in conjunction with, another insurance product. (4-5-00)

**017. RESERVE STANDARDS.**

**01. Acceleration Of Benefits Under Life Policies.** When long-term care benefits are provided through the acceleration of benefits under group or individual life policies or riders to such policies, policy reserves for the benefits shall be determined in accordance with Section 41-612, Idaho Code, Standard Valuation Law – Life Insurance. Claim reserves shall also be established in the case when the policy or rider is in claim status. (4-5-00)

**02. Decrement Models.** Reserves for policies and riders subject to Subsection 017.01 should be based on the multiple decrement model utilizing all relevant decrements except for voluntary termination rates. Single decrement approximations are acceptable if the calculation produces essentially similar reserves, if the reserve is clearly more conservative, or if the reserve is immaterial. The calculations may take into account the reduction in life insurance benefits due to the payment of long-term care benefits. However, in no event shall the reserves for the long-term care benefit and the life insurance benefit be less than the reserves for the life insurance benefit assuming no long-term care benefit. (4-5-00)

**03. Considerations Impacting Projected Claim Costs.** Any applicable valuation morbidity table

shall be certified as appropriate as a statutory valuation table by a member of the American Academy of Actuaries. In the development and calculation of reserves for policies and riders subject to Subsection 017.01, due regard shall be given to the applicable policy provisions, marketing methods, administrative procedures and all other considerations which have an impact on projected claim costs, including, but not limited to, the following: (4-5-00)

- a. Definition of insured events; (4-5-00)
- b. Covered long-term care facilities; (4-5-00)
- c. Existence of home convalescence care coverage; (4-5-00)
- d. Definition of facilities; (4-5-00)
- e. Existence or absence of barriers to eligibility; (4-5-00)
- f. Premium waiver provision; (4-5-00)
- g. Renewability; (4-5-00)
- h. Ability to raise premiums; (4-5-00)
- i. Marketing method; (4-5-00)
- j. Underwriting procedures; (4-5-00)
- k. Claims adjustment procedures; (4-5-00)
- l. Waiting period; (4-5-00)
- m. Maximum benefit; (4-5-00)
- n. Availability of eligible facilities; (4-5-00)
- o. Margins in claim costs; (4-5-00)
- p. Optional nature of benefit; (4-5-00)
- q. Delay in eligibility for benefit; (4-5-00)
- r. Inflation protection provisions; and (4-5-00)
- s. Guaranteed insurability option. (4-5-00)

**04. Benefits Not Covered In Subsection 017.01.** When long-term care benefits are provided other than as in Subsection 017.01 above, reserves shall be determined in accordance with Section 41-608, Idaho Code, "Reserve for Disability Insurance". (4-5-00)

**018. LOSS RATIO.**

**01. Expected Loss Ratios.** Benefits under long-term care insurance policies shall be deemed reasonable in relation to premiums provided the expected loss ratio is at least sixty percent (60%), calculated in a manner which provides for adequate reserving of the long-term care insurance risk. In evaluating the expected loss ratio, due consideration shall be given to all relevant factors, including: (4-5-00)

- a. Statistical credibility of incurred claims experience and earned premiums; (4-5-00)
- b. The period for which rates are computed to provide coverage; (4-5-00)

- c. Experienced and projected trends; (4-5-00)
- d. Concentration of experience within early policy duration; (4-5-00)
- e. Expected claim fluctuation; (4-5-00)
- f. Experience refunds, adjustments or dividends; (4-5-00)
- g. Renewability features; (4-5-00)
- h. All appropriate expense factors; (4-5-00)
- i. Interest; (4-5-00)
- j. Experimental nature of the coverage; (4-5-00)
- k. Policy reserves; (4-5-00)
- l. Mix of business by risk classification; and (4-5-00)
- m. Product features such as long elimination periods, high deductibles and high maximum limits. (4-5-00)

**02. Policies That Accelerate Benefits.** Subsection 018.01 shall not apply to life insurance policies that accelerate benefits for long-term care. A life insurance policy that funds long-term care benefits entirely by accelerating the death benefit is considered to provide reasonable benefits in relation to premiums paid, if the policy complies with all of the following provisions: (4-5-00)

a. The interest credited internally to determine cash value accumulations, including long-term care, if any, are guaranteed not to be less than the minimum guaranteed interest rate for cash value accumulations without long-term care set forth in the policy; (4-5-00)

b. The portion of the policy that provides life insurance benefits meets the nonforfeiture requirements of Section 41-1927, Idaho Code, Standard Nonforfeiture Law – Life Insurance. (4-5-00)

c. The policy meets the disclosure requirements of Sections 41-4605(9), 41-4605(10), and 41-4605(11), Idaho Code. (4-5-00)

d. An actuarial memorandum is filed with the insurance department that includes: (4-5-00)

i. A description of the basis on which the long-term care rates were determined; (4-5-00)

ii. A description of the basis for the reserves; (4-5-00)

iii. A summary of the type of policy, benefits, renewability, general marketing method, and limits on ages of issuance; (4-5-00)

iv. A description and a table of each actuarial assumption used. For expenses, an insurer must include percent of premium dollars per policy and dollars per unit of benefits, if any; (4-5-00)

v. A description and a table of the anticipated policy reserves and additional reserves to be held in each future year for active lives; (4-5-00)

vi. The estimated average annual premium per policy and the average issue age; (4-5-00)

vii. A statement as to whether underwriting is performed at the time of application. The statement shall

indicate whether underwriting is used and, if used, the statement shall include a description of the type or types of underwriting used, such as medical underwriting or functional assessment underwriting. Concerning a group policy, the statement shall indicate whether the enrollee or any dependent will be underwritten and when underwriting occurs; and (4-5-00)

viii. A description of the effect of the long-term care policy provision on the required premiums, nonforfeiture values and reserves on the underlying life insurance policy, both for active lives and those in long-term care claim status. (4-5-00)

**019. FILING REQUIREMENT.**

Prior to an insurer or similar organization offering group long-term care insurance to a resident of this state pursuant to Section 41-4604, Idaho Code, Extraterritorial Jurisdiction – Group Long-Term Care Insurance, it shall file with the director evidence that the group policy or certificate thereunder has been approved by a state having statutory or regulatory long-term care insurance requirements substantially similar to those adopted in this state. (4-5-00)

**020. FILING REQUIREMENTS FOR ADVERTISING.**

**01. Filing And Retention.** Every Insurer, Fraternal Benefit Society, Managed Care Organization, or other similar organization providing long-term care insurance or benefits in this state shall provide a copy of any long-term care insurance advertisement intended for use in this state whether through written, radio, or television medium to the Director of Insurance of this state for review and approval by the Director. In addition, all advertisements shall be retained by the insurer or other entity for at least five (5) years from the date the advertisement was first used; or until the filing of the next regular report of examination of the insurer, whichever is the longer period of time. (4-5-00)

**02. Exemptions.** The director may exempt from these requirements any advertising form or material when, in the director's opinion, this requirement may not be reasonably applied. (4-5-00)

**021. STANDARDS FOR MARKETING.**

**01. General Provisions.** Every Insurer, Fraternal Benefit Society, Managed Care Organization or other similar organization marketing long-term care insurance coverage in this state, directly or through its agents, shall: (4-5-00)

a. Establish marketing procedures to assure that any comparison of policies by its agents will be fair and accurate. (4-5-00)

b. Establish marketing procedures to assure excessive insurance is not sold or issued. (4-5-00)

c. Display prominently by type, stamp or other appropriate means, on the first page of the outline of coverage and policy the following: "Notice to buyer: This policy may not cover all of the costs associated with long-term care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all policy limitations". (4-5-00)

d. Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for long-term care insurance already has accident and sickness or long-term care insurance and the types and amounts of any such insurance, except that in the case of qualified long-term care insurance contracts, an inquiry into whether a prospective applicant or enrollee for long-term care insurance has accident and sickness insurance is not required. (4-5-00)

e. Every insurer or entity marketing long-term care insurance shall establish auditable procedures for verifying compliance with Subsection 021.01. (4-5-00)

f. If the state in which the policy or certificate is to be delivered or issued for delivery has a senior insurance counseling program approved by the director, the insurer shall, at solicitation, provide written notice to the prospective policyholder and certificate holder that the program is available and the name, address and telephone number of the program. (4-5-00)

g. For long-term care insurance policies and certificates, use the terms "noncancellable" or "level premium" only when the policy or certificate conforms to Subsection 005.01.c. of this rule. (4-5-00)

**02. Prohibited Practices.** In addition to the practices prohibited in Chapter 13, Idaho Code, Trade Practices and Frauds, the following acts and practices are prohibited: (4-5-00)

a. **Twisting.** Knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on or convert any insurance policy, or to take out a policy of insurance with another insurer. (4-5-00)

b. **High pressure tactics.** Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance. (4-5-00)

c. **Cold lead advertising.** Making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company. (4-5-00)

d. **Misrepresentation.** Misrepresenting a material fact in selling or offering to sell a long-term care insurance policy. (4-5-00)

**03. Associations.** With respect to the obligations set forth in Subsection 021.03, the primary responsibility of an association, as defined in Section 41-4603(4)(b), Idaho Code, when endorsing or selling long-term care insurance shall be to educate its members concerning long-term care issues in general so that its members can make informed decisions. Associations shall provide objective information regarding long-term care insurance policies or certificates endorsed or sold by such associations to ensure that members of such associations receive a balanced and complete explanation of the features in the policies or certificates that are being endorsed or sold. Subsection 021.03 shall not apply to qualified long-term care insurance contracts. (4-5-00)

a. The insurer shall file with the insurance department the following material: (4-5-00)

i. The policy and certificate; (4-5-00)

ii. A corresponding outline of coverage; and (4-5-00)

iii. All advertisements to be utilized. (4-5-00)

b. The association shall disclose in any long-term care insurance solicitation: (4-5-00)

i. The specific nature and amount of the compensation arrangements (including all fees, commissions, administrative fees and other forms of financial support) that the association receives from endorsement or sale of the policy or certificate to its members; and (4-5-00)

ii. A brief description of the process under which the policies and the insurer issuing the policies were selected. (4-5-00)

c. If the association and the insurer have interlocking directorates or trustee arrangements, the association shall disclose that fact to its members. (4-5-00)

d. The board of directors of associations selling or endorsing long-term care insurance policies or certificates shall review and approve the insurance policies as well as the compensation arrangements made with the insurer. (4-5-00)

e. The association shall also: (4-5-00)

- i. At the time of the association's decision to endorse, engage the services of a person with expertise in long-term care insurance not affiliated with the insurer to conduct an examination of the policies, including its benefits, features, and rates, and update the examination thereafter in the event of material change; (4-5-00)
- ii. Actively monitor the marketing efforts of the insurer and its agents; and (4-5-00)
- iii. Review and approve all marketing materials or other insurance communications used to promote sales or sent to members regarding the policies or certificates. (4-5-00)
- iv. Subsections 021.03.e.i. and 021.03.e.iii. shall not apply to qualified long-term care insurance contracts. (4-5-00)
- f. No group long-term care insurance policy or certificate may be issued to an association unless the insurer files with the state insurance department the information required in Subsection 021.03. (4-5-00)
- g. The insurer shall not issue a long-term care policy or certificate to an association or continue to market such a policy or certificate unless the insurer certifies annually that the association has complied with the requirements set forth in Section 021. (4-5-00)
- h. Failure to comply with the filing and certification requirements of Section 021 constitutes an unfair trade practice in violation of Chapter 13, Idaho Code, Trade Practices and Frauds. (4-5-00)

**022. SUITABILITY.**

**01. Life Insurance Policies That Accelerate Benefits.** Section 022 shall not apply to life insurance policies that accelerate benefits for long-term care. (4-5-00)

**02. General Provisions.** Every Insurer, Fraternal Benefit Society, Managed Care Organization or other similar organization marketing long-term care insurance (the "issuer") shall: (4-5-00)

- a. Develop and use suitability standards to determine whether the purchase or replacement of long-term care insurance is appropriate for the needs of the applicant; (4-5-00)
- b. Train its agents in the use of its suitability standards; and (4-5-00)
- c. Maintain a copy of its suitability standards and make them available for inspection upon request by the director. (4-5-00)

**03. Determination Of Standards.** To determine whether the applicant meets the standards developed by the issuer; (4-5-00)

- a. The agent and issuer shall develop procedures that take the following into consideration: (4-5-00)
  - i. The ability to pay for the proposed coverage and other pertinent financial information related to the purchase of the coverage; (4-5-00)
  - ii. The applicant's goals or needs with respect to long-term care and the advantages and disadvantages of insurance to meet these goals or needs; and (4-5-00)
  - iii. The values, benefits, and costs of the applicant's existing insurance, if any, when compared to the values, benefits and costs of the recommended purchase or replacement. (4-5-00)

b. The issuer and an agent, if involved, shall make reasonable efforts to obtain the information set out in Subsection 022.03.a. The efforts shall include presentation to the applicant, at or prior to application, the "Long-Term Care Insurance Personal Worksheet". The personal worksheet used by the issuer shall contain, at a minimum, the information in the format contained in the NAIC Model Regulations in Appendix B, in not less than twelve (12) point type. The issuer may request the applicant to provide additional information to comply with its suitability

standards. A copy of the issuer's personal worksheet shall be filed with the director. (4-5-00)

i. Copies of NAIC Model Regulations for Long-Term Care Insurance Minimum Standards Appendixes B, C, and D can be found at the Idaho Department of Insurance Home page, [www.doi.state.id.us](http://www.doi.state.id.us), select SHIBA (Senior Health Insurance Benefits Advisors) under Consumer Assistance link, see attachments to the NAIC Model Regulation implementing the Long-Term Care Insurance Minimum Standards. To obtain a copy of the required illustrations based on the NAIC Model Regulation, contact SHIBA at the Idaho Department of Insurance (208) 334-4250. (4-5-00)

c. A completed personal worksheet shall be returned to the issuer prior to the issuer's consideration of the applicant for coverage, except the personal worksheet need not be returned for sales of employer group long-term care insurance to employees and their spouses. (4-5-00)

d. The sale or dissemination outside the company or agency by the issuer or agent of information obtained through the personal worksheet in the NAIC Model Regulations, Appendix B is prohibited. (4-5-00)

**04. Appropriateness.** The issuer shall use the suitability standards it has developed pursuant to Section 022 in determining whether issuing long-term care insurance coverage to an applicant is appropriate. (4-5-00)

**05. Use Of Standards.** Agents shall use the suitability standards developed by the issuer in marketing long-term care insurance. (4-5-00)

**06. Disclosure Form.** At the same time as the personal worksheet is provided to the applicant, the disclosure form entitled "Things You Should Know Before You Buy Long-Term Care Insurance" shall be provided. The form shall be in the format contained in the NAIC Model Regulations, Appendix C, in not less than twelve (12) point type. (4-5-00)

**07. Rejection And Alternatives.** If the issuer determines that the applicant does not meet its financial suitability standards, or if the applicant has declined to provide the information, the issuer may reject the application. In the alternative, the issuer shall send the applicant a letter similar to the NAIC Model Regulations, Appendix D. However, if the applicant has declined to provide financial information, the issuer may use some other method to verify the applicant's intent. Either the applicant's returned letter or a record of the alternative method of verification shall be made part of the applicant's file. (4-5-00)

**08. Reporting.** The issuer shall report annually to the director the total number of applications received from residents of this state, the number of those who declined to provide information on the personal worksheet, the number of applicants who did not meet the suitability standards, and the number of those who chose to confirm after receiving a suitability letter. (4-5-00)

**023. PROHIBITION AGAINST PREEXISTING CONDITIONS AND PROBATIONARY PERIODS IN REPLACEMENT POLICIES OR CERTIFICATES.**

If a long-term care insurance policy or certificate replaces another long-term care policy or certificate, the replacing insurer shall waive any time periods applicable to preexisting conditions and probationary periods in the new long-term care policy for similar benefits to the extent that similar exclusions have been satisfied under the original policy. (4-5-00)

**024. NONFORFEITURE BENEFIT REQUIREMENT.**

**01. Life Insurance Policies That Accelerate Benefits.** Section 024 does not apply to life insurance policies or riders containing accelerated long-term care benefits. (4-5-00)

**02. Nonforfeiture Benefits.** To comply with the requirement to offer a nonforfeiture benefit pursuant to the provisions of Section 41-4607, Idaho Code, every Insurer, Fraternal Benefit Society, Managed Care Organization, or other similar organization marketing long-term care insurance coverage in this state shall satisfy the following: (4-5-00)

a. A policy or certificate offered with nonforfeiture benefits shall have coverage elements, eligibility, benefit triggers and benefit length that are the same as coverage to be issued without nonforfeiture benefits. The

nonforfeiture benefit included in the offer shall be the benefit described in Subsection 024.04.d. (4-5-00)

b. The offer shall be in writing if the nonforfeiture benefit is not otherwise described in the Outline of Coverage or other materials given to the prospective policyholder. (4-5-00)

**03. Contingent Benefit.** If the offer required to be made under Section 41-4607, Idaho Code, is rejected, the insurer shall provide the contingent benefit upon lapse described in Section 024. (4-5-00)

**04. Rejection Of Offer.** After rejection of the offer required under Section 41-4607, Idaho Code, as it pertains to nonforfeiture benefits, for individual and group policies without nonforfeiture benefits issued after the effective date of Section 024, the insurer shall provide a contingent benefit upon lapse. (4-5-00)

a. In the event a group policyholder elects to make the nonforfeiture benefit an option to the certificate holder, a certificate shall provide either the nonforfeiture benefit or the contingent benefit upon lapse. (4-5-00)

b. The contingent benefit on lapse shall be triggered every time an insurer increases the premium rates to a level which results in a cumulative increase of the annual premium equal to or exceeding the percentage of the insured's initial annual premium set forth within Subsection 024.04 based on the insured's issue age, and the policy or certificate lapses within one hundred twenty (120) days of the due date of the premium so increased. Unless otherwise required, policyholders shall be notified at least thirty (30) days prior to the due date of the premium reflecting the rate increase. (4-5-00)

**Table: Issue Age - Percent Increase Over Initial Premium**

Issue Age	Percent Increase Over Initial Premium
29 and under	200%
30-34	190%
35-39	170%
40-44	150%
45-49	130%
50-54	110%
55-59	90%
60	70%
61	66%
62	62%
63	58%
64	54%
65	50%
66	48%
67	46%
68	44%
69	42%
70	40%
71	38%

Issue Age	Percent Increase Over Initial Premium
72	36%
73	34%
74	32%
75	30%
76	28%
77	26%
78	24%
79	22%
80	20%
81	19%
82	18%
83	17%
84	16%
85	15%
86	14%
87	13%
88	12%
89	11%
90 and over	10%

(4-5-00)

c. On or before the effective date of a substantial premium increase as defined in Subsection 024.04.b., the insurer shall: (4-5-00)

i. Offer to reduce policy benefits provided by the current coverage without the requirement of additional underwriting so that required premium payments are not increased; (4-5-00)

ii. Offer to convert the coverage to a paid-up status with a shortened benefit period in accordance with the terms of Subsection 024.04.d. This option may be elected at any time during the one hundred twenty (120) day period referenced in Subsection 024.04.b.; and (4-5-00)

iii. Notify the policyholder or certificate holder that a default or lapse at any time during the one hundred twenty (120) day period referenced in Subsection 024.04.b. shall be deemed to be the election of the offer to convert in Subsection 024.04.c.ii. (4-5-00)

d. Benefits continued as nonforfeiture benefits, including contingent benefits upon lapse, are described in Subsection 024.04.d.: (4-5-00)

i. For purposes of this Subsection 024.04.d., attained age rating is defined as a schedule of premiums

starting from the issue date which increases age at least one percent (1%) per year prior to age fifty (50), and at least three percent (3%) per year beyond age fifty (50); (4-5-00)

ii. For purposes of Subsection 024.04.d., the nonforfeiture benefit shall be of a shortened benefit period providing paid-up long-term care insurance coverage after lapse. The same benefits (amounts and frequency in effect at the time of lapse but not increased thereafter) will be payable for a qualifying claim, but the lifetime maximum dollars or days of benefits shall be determined as specified in Subsection 024.04.d.iii.; (4-5-00)

iii. The standard nonforfeiture credit will be equal to one hundred percent (100%) of the sum of all premiums paid, including the premiums paid prior to any changes in benefits. The insurer may offer additional shortened benefit period options, as long as the benefits for each duration equal or exceed the standard nonforfeiture credit for that duration. However, the minimum nonforfeiture credit shall not be less than thirty (30) times the daily nursing home benefit at the time of lapse. In either event, the calculation of the nonforfeiture credit is subject to the limitation of Subsection 024.04.e.; (4-5-00)

iv. The nonforfeiture benefit and the contingent benefit upon lapse shall begin not later than the end of the third year following the policy or certificate issue date; (4-5-00)

v. Notwithstanding Subsection 024.04.d.iv. except that for a policy or certificate with a contingent benefit upon lapse or a policy or certificate with attained age rating, the nonforfeiture benefit shall begin on the earlier of: (4-5-00)

(1) The end of the tenth year following the policy or certificate issue date; or (4-5-00)

(2) The end of the second year following the date the policy or certificate is no longer subject to attained age rating. (4-5-00)

vi. Nonforfeiture credits may be used for all care and services qualifying for benefits under the terms of the policy or certificate, up to the limits specified in the policy or certificate. (4-5-00)

e. All benefits paid by the insurer while the policy or certificate is in premium paying status and in the paid-up status will not exceed the maximum benefits which would be payable if the policy or certificate had remained in premium paying status. (4-5-00)

f. There shall be no difference in the minimum nonforfeiture benefits as required under Section 024 for group and individual policies. (4-5-00)

g. The requirements set forth in Section 024 shall become effective twelve (12) months after adoption of this provision and shall apply as follows: (4-5-00)

i. Except as provided in Subsection 024.04.g.ii., the provisions of Section 024 apply to any long-term care policy issued in this state on or after the effective date of this rule. (4-5-00)

ii. For certificates issued on or after the effective date of this Section 024, under a group long-term care insurance policy as defined in Section 41-4603(4)(a), Idaho Code, which policy was in force at the time this rule became effective, the provisions of Section 024 shall not apply. (4-5-00)

h. Premiums charged for a policy or certificate containing nonforfeiture benefits or a contingent benefit on lapse shall be subject to the loss ratio requirements of Section 018 treating the policy as a whole. (4-5-00)

i. To determine whether contingent nonforfeiture upon lapse provisions are triggered under Subsection 024.04.b., a replacing insurer that purchased or otherwise assumed a block or blocks of long-term care insurance policies from another insurer shall calculate the percentage increase based on the initial annual premium paid by the insured when the policy was first purchased from the original insurer. (4-5-00)

j. Nonforfeiture benefits for qualified long-term care insurance contracts that are level premium

contracts shall meet the following requirements: (4-5-00)

- i. The nonforfeiture provision shall be appropriately captioned; (4-5-00)
- ii. The nonforfeiture provision shall provide a benefit available in the event of a default on the payment of any premiums and shall state that the amount of the benefit may be adjusted subsequent to being initially granted only as necessary to reflect changes in claims, persistency and interest as reflected in changes in rates for premium paying contracts approved by the Secretary of the Treasury for the same contract form; and (4-5-00)
- iii. The nonforfeiture provision shall provide at least one (1) of the following: (4-5-00)
  - (1) Reduced paid-up insurance; (4-5-00)
  - (2) Extended term insurance; (4-5-00)
  - (3) Shortened benefit period; or (4-5-00)
  - (4) Other similar offerings approved by the Director. (4-5-00)

**025. STANDARDS FOR BENEFIT TRIGGERS.**

**01. Conditions Of Benefits Payment.** A long-term care insurance policy shall condition the payment of benefits on a determination of the insured's ability to perform activities of daily living and on cognitive impairment. Eligibility for the payment of benefits shall not be more restrictive than requiring either a deficiency in the ability to perform not more than three (3) of the activities of daily living or the presence of cognitive impairment. (4-5-00)

**02. Activities Of Daily Living.** Insurers may use activities of daily living to trigger covered benefits in addition to those contained in Subsection 025.02 as long as they are defined in the policy. Activities of daily living shall include at least the following as defined in Section 004 and in the policy. (4-5-00)

- a. Bathing; (4-5-00)
- b. Continence; (4-5-00)
- c. Dressing; (4-5-00)
- d. Eating; (4-5-00)
- e. Toileting; and (4-5-00)
- f. Transferring. (4-5-00)

**03. Additional Provisions.** An insurer may use additional provisions for the determination of when benefits are payable under a policy or certificate; however the provisions shall not restrict, and are not in lieu of, the requirements contained in Subsections 025.01 and 025.02. (4-5-00)

**04. Determinations Of Deficiency.** For purposes of Section 025 the determination of a deficiency shall not be more restrictive than: (4-5-00)

- a. Requiring the hands-on assistance of another person to perform the prescribed activities of daily living; or (4-5-00)
- b. If the deficiency is due to the presence of a cognitive impairment, supervision or verbal cueing by another person is needed in order to protect the insured or others. (4-5-00)

**05. Assessments.** Assessments of activities of daily living and cognitive impairment shall be

performed by licensed or certified professionals, such as physicians, nurses or social workers. (4-5-00)

**06. Appeals.** Long-term care insurance policies shall include a clear description of the process for appealing and resolving benefit determinations. (4-5-00)

**07. Effective Date.** The requirements set forth in Section 025 shall be effective within twelve (12) months of the effective date of the rule and shall apply as follows: (4-5-00)

a. Except as provided in Subsection 025.07.b. the provisions of Section 025 apply to a long-term care policy issued in this state on or after the effective date of the rule. (4-5-00)

b. For certificates issued on or after the effective date of Section 025, under a group long-term care insurance policy as defined in Section 41-4603(4)(a), Idaho Code, that was in force at the time this rule became effective, the provisions of Section 025 shall not apply. (4-5-00)

**026. ADDITIONAL STANDARDS FOR BENEFIT TRIGGERS FOR QUALIFIED LONG-TERM CARE INSURANCE CONTRACTS.**

**01. Definitions.** For purposes of Section 026 the following definitions apply: (4-5-00)

a. Qualified long-term care services means services that meet the requirements of Section 7702B(b) of the Internal Revenue Code of 1986, as amended, as follows: necessary diagnostic, preventive, therapeutic, curative, treatment, mitigation, and rehabilitative services and maintenance or personal care services which are required by a chronically ill individual, and are provided pursuant to a plan of care prescribed by a licensed health care practitioner. (4-5-00)

b. Chronically ill individual has the meaning prescribed for this term by Section 7702B(c)(2) of the Internal Revenue Code of 1986, as amended. Under this provision, a chronically ill individual means any individual who has been certified by a licensed health care practitioner as: (4-5-00)

i. Being unable to perform (without substantial assistance from another individual) at least two (2) activities of daily living for a period of at least ninety (90) days due to a loss of functional capacity; or (4-5-00)

ii. Requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment. (4-5-00)

c. The term chronically ill individual shall not include an individual otherwise meeting these requirements unless within the preceding twelve (12) month period a licensed health care practitioner has certified that the individual meets these requirements. (4-5-00)

d. Licensed health care practitioner means a physician, as defined in Section 1861(R)(1) of the Social Security Act, and a registered professional nurse, licensed social worker, or other individual who meets requirements prescribed by the Secretary of the Treasury. (4-5-00)

e. Maintenance or personal care services means any care, the primary purpose of which is the provision of needed assistance with any of the disabilities, the existence of which leads to the conclusion that the individual is a chronically ill individual (including the protection from threats to health and safety due to severe cognitive impairment). (4-5-00)

**02. The Chronically Ill.** A qualified long-term care insurance contract shall pay for qualified long-term care services received by a chronically ill individual provided pursuant to a plan of care prescribed by a licensed health care practitioner. (4-5-00)

**03. Payments And Conditions.** A qualified long-term care insurance contract shall condition the payment of benefits on a determination of the insured's inability to perform activities of daily living for an expected period of at least ninety (90) days due to a loss of functional capacity; or to severe cognitive impairment, as described

in Subsection 026.06.b. (and as described under regulations or other guidance developed by the Secretary of the Treasury). An insured will be considered to have met a condition of payment if, within the preceding twelve (12) month period, a licensed health care practitioner has certified that the insured has met the requirements and the provider has prescribed the qualified long-term care insurance services pursuant to a plan of care. (4-5-00)

**04. Certifications By Professionals.** Certifications regarding activities of daily living and cognitive impairment required pursuant to Subsection 026.03 shall be performed by licensed or certified professionals, such as physicians, registered professional nurses, licensed social workers, or other individuals who meet requirements prescribed by the Secretary of the Treasury. (4-5-00)

**05. Certifications By Carrier.** Certification required pursuant to Subsection 026.03 may be performed by the carrier as is reasonably necessary with respect to a specific claim, except that when a licensed health care practitioner has certified that an insured is unable to perform activities of daily living for an expected period of at least ninety (90) days due to a loss of functional capacity and the insured is in claim status, the certification may not be rescinded and additional certifications may not be performed until after the expiration of the ninety (90) day period. (4-5-00)

**06. Standards.** For the purposes of Section 026, determinations of functional capacity and severe cognitive impairment shall be based on the following standards: (4-5-00)

a. For loss of functional capacity, requiring the substantial assistance of another person to perform the prescribed activities of daily living; or (4-5-00)

b. For severe cognitive impairment, requiring substantial supervision by another person to protect the insured from threats to health and safety. (4-5-00)

**07. Appeals.** Qualified long-term care contracts shall include a clear description of the process for appealing and resolving benefit determinations. (4-5-00)

**027. STANDARD FORMAT OUTLINE OF COVERAGE.**

Section 027 of the rule implements, interprets and makes specific, the provisions of Section 41-4605(7)(a), Idaho Code, in prescribing a standard format and the content of an outline of coverage. (4-5-00)

**01. Format.** The outline of coverage shall be a freestanding document, using no smaller than ten (10) point type. Text that is capitalized or underscored in the standard format outline of coverage may be emphasized by other means that provide prominence equivalent to the capitalization or underscoring. (4-5-00)

**02. Content.** The outline of coverage shall contain no material of an advertising nature. (4-5-00)

**03. Standard Form.** Use of the text and sequence of text of the standard format outline of coverage is mandatory, unless otherwise specifically indicated. Format for outline of coverage may be found on the Idaho Department of Insurance Home Page website, [www.doi.state.id.us](http://www.doi.state.id.us), select SHIBA (Senior Health Insurance Benefits Advisors) under Consumer Assistance link, see attachments to the NAIC Model Regulation implementing the Long-Term Care Insurance Minimum Standards. (4-5-00)

**028. REQUIREMENT TO DELIVER SHOPPER'S GUIDE.**

**01. Approved Format.** A long-term care insurance shopper's guide in the format developed by the National Association of Insurance Commissioners, or a guide developed or approved by the director, shall be provided to all prospective applicants of a long-term care insurance policy or certificate. (4-5-00)

a. In the case of agent solicitations, an agent must deliver the shopper's guide prior to the presentation of an application or enrollment form. (4-5-00)

b. In the case of direct response solicitations, the shopper's guide must be presented in conjunction

with any application or enrollment form. (4-5-00)

**02. Exceptions.** Life insurance policies or riders containing accelerated long-term care benefits are not required to furnish the above-referenced guide, but shall furnish the policy summary required under Section 41-4605(9), Idaho Code, Disclosure and Performance Standards for Long-Term Care Insurance. (4-5-00)

**029. PENALTIES.**

In addition to any other penalties provided by the laws of this state any insurer and any agent found to have violated any requirement of this state relating to the rule of long-term care insurance or the marketing of such insurance shall be subject to a fine of up to three (3) times the amount of any commissions paid for each policy involved in the violation or up to ten thousand dollars (\$10,000), whichever is greater. (4-5-00)

**030. -- 999. (RESERVED).**

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