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TITLE 28

INSURANCE

PART 1

TEXAS DEPARTMENT OF INSURANCE

CHAPTER 3

LIFE, ACCIDENT, AND HEALTH INSURANCE AND ANNUITIES

SUBCHAPTER Y

STANDARDS FOR LONG-TERM CARE INSURANCE, NON-PARTNERSHIP AND PARTNERSHIP LONG-TERM CARE INSURANCE COVERAGE UNDER INDIVIDUAL AND GROUP POLICIES AND ANNUITY CONTRACTS, AND LIFE INSURANCE POLICIES THAT PROVIDE LONG-TERM CARE BENEFITS WITHIN THE POLICY

DIVISION 1

GENERAL PROVISIONS

RULE §3.3804

Definitions

[Historical](#)[Texas Register](#)

(a) Except as otherwise provided by law or this subchapter, no long-term care insurance policy, certificate, group hospital service corporation subscriber contract, rider attached to a life insurance policy or certificate or annuity contract or certificate may be delivered or issued for delivery in this state, unless it complies with, and contains definitions in conformance with, this subchapter.

(b) The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Activities of daily living--Bathing, continence, dressing, eating, toileting and transferring, as those terms are defined in this subsection.

(2) Acute condition--The individual's medical condition is medically unstable. Such an individual requires frequent monitoring by medical professionals, such as physicians and registered nurses, in order to maintain his or her health status.

(3) Adult Day Care--A social and health-related services program 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) Adult Day Care Facility--Provider of Adult Day Care services, operated pursuant to the provisions of the Human Resources Code, Chapter 103 (concerning licensing and quality of care requirements in the provision of adult day care).

(5) Applicant--The person who seeks to contract for benefits or services, in the instance of an individual long-term care insurance policy; or the proposed certificate holder or enrollee, in the instance of a group long-term care insurance policy.

(6) Attained age rating--A schedule of premiums starting from the issue date which increases with age at least one percent per year prior to age 50, and at least three percent per year beyond age 50.

(7) 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.

(8) Care--Terms referring to care, such as "home health care," "intermediate care," "maintenance or personal care," "skilled nursing care," and other services, shall be defined in relation to the level of skill required, the nature of the care, and the setting in which the care must be delivered.

(9) Certificate--Any certificate issued under a group long-term care insurance policy, which certificate has been delivered or issued for delivery in this state. For purposes of these sections, the term:

(A) Also includes any evidence of coverage issued pursuant to a group health maintenance organization contract for long-term care health coverage.

(B) Does not include certificates that are delivered or issued for delivery in this state under a single employer or labor union group policy that is delivered or issued for delivery outside this state.

(10) 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).

(11) Dressing--Putting on and taking off all items of clothing and any necessary braces, fasteners or artificial limbs.

(12) 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.

(13) Exceptional premium rate increases--Increases filed by an insurer as exceptional and for which the department determines the need for the premium rate increase is justified:

(A) due to changes in laws or regulations applicable to long-term care coverage in this state; or

(B) due to increased and unexpected utilization that affects the majority of insurers of similar long term care products.

(14) Group long-term care insurance--A long-term care insurance policy or certificate of group long-term care insurance that is delivered or issued for delivery in this state and issued to an eligible group as defined by the Insurance Code Chapter 1251 Subchapter B (relating to Group Accident Health Insurance: Eligible Policyholders) but subject to the exemptions in the Insurance Code §1651.002 (relating to Exemptions), or a long-term care rider issued to an eligible group as defined by the Insurance Code §1131.002 (relating to Certain Group Life Insurance Authorized).

(15) Home health agency--A business which provides home health service and is licensed by the Texas Health and Human Services Commission.

(16) Home health care services--Medical or nonmedical services provided to ill, disabled or infirm persons in their residences. Such services may include homemaker services, assistance with activities of daily living, respite care services, case management services, and maintenance or personal care services.

(17) Level premium long-term care policy--A non-cancellable long-term care policy.

(18) Long-term care benefit classifications--Institutional long-term care benefits only, non-institutional long-term care benefits only, or comprehensive long-term care benefits.

(19) Long-term care benefit plan--An insurance policy or group certificate, or rider to the policy or certificate, or evidence of coverage issued by a health maintenance organization subject to the Texas Health Maintenance Organization Act (Insurance Code Chapter 843) that is advertised or marketed as providing, or offered or designed to provide, coverage for not less than 12 consecutive months for each covered individual on an expense-incurred, indemnity, prepaid, or other basis for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance or personal care services provided in a setting other than an acute care unit of a hospital. Pursuant to the Insurance Code §1651.003(b), the term includes a plan or rider, other than a group or individual annuity or life insurance policy, that provides for payment of benefits based on cognitive impairment or for the loss of functional capacity. The term does not include an insurance policy, group certificate, or evidence of coverage that is offered primarily to provide Medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income protection coverage, accident-only coverage, specified disease or specified accident coverage, or limited benefit health coverage or basic or single health care services. With regard to life insurance, this term does not include life insurance policies:

(A) that accelerate the death benefit specifically for one or more of the qualifying events of terminal illness, medical conditions requiring extraordinary medical intervention or permanent institutional confinement; and

(B) that provide the option of a lump-sum payment for those benefits; and

(C) where neither the benefits nor the eligibility for the benefits is conditioned upon the receipt of long-term care.

(20) Long-term care insurance--

(A) Any insurance policy, group certificate, rider to such policy or certificate, or evidence of coverage that is advertised, marketed, offered, or designed to provide coverage for not less than 12 consecutive months for each covered person on an expense-incurred, indemnity, prepaid, per diem or other basis for one or more necessary or medically necessary services of the following types, administered in a setting other than an acute care unit of a hospital: diagnostic, preventive, therapeutic, curing, treating, mitigating, rehabilitative, maintenance, or personal care. The term includes riders for group and individual annuities and life insurance policies that provide long-term care insurance. The term also includes a policy, certificate, or rider that provides for payment of benefits based upon cognitive impairment or the loss of functional capacity. The term shall also include qualified long-term care insurance contracts.

Long-term care insurance may be issued by insurers; fraternal benefit societies; nonprofit health, hospital, and medical service corporations; prepaid health plans; and health maintenance organizations or any similar organization to the extent they are otherwise authorized to issue life or health insurance.

(B) The term "long-term care insurance" shall not include any insurance policy, group certificate, subscriber contract, or evidence of coverage that is offered primarily to provide basic Medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income or asset-related protection coverage, accident only coverage, specified disease or specified accident coverage, or limited benefit health coverage.

(C) With regard to life insurance, this term does not include life insurance policies:

(i) that accelerate the death benefit specifically for one or more of the qualifying events of terminal illness, medical conditions requiring extraordinary medical intervention or permanent institutional confinement; and

(ii) that provide the option of a lump-sum payment for those benefits; and

(iii) where neither the benefits nor the eligibility for the benefits is conditioned upon the receipt of long-term care.

(D) Notwithstanding any other provision of this subchapter, any product advertised, marketed or offered as long-term care insurance shall be subject to the provisions of this subchapter.

(21) Long-term care partnership insurance policy--A long-term care insurance policy and/or certificate established under the Human Resources Code Chapter 32 Subchapter C and that meets the requirements of the Federal Deficit Reduction Act of 2005, Pub. L. No. 109-171 and Chapter 1651 Subchapter C of the Insurance Code. This term does not include a life insurance policy or annuity contract that provides long-term care benefits by rider.

(22) Maintenance or Personal Care Services--Any care the primary purpose of which is the provision of needed assistance under §3.3818 of this subchapter (relating to Standards for Eligibility for Benefits), including the protection from threats to health and safety due to impairment of cognitive ability.

(23) 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.

(24) Mental or Nervous Disorder--A neurosis, psychoneurosis, psychopathy, psychosis, or mental or emotional disease or disorder of any kind.

(25) Policy--Any policy, contract, subscriber agreement, rider, or endorsement, delivered or issued for delivery in this state by an insurer, fraternal benefit society, nonprofit group hospital

service corporation, or health maintenance organization subject to the Texas Health Maintenance Organization Act Insurance Code Chapter 843.

(26) Preexisting Condition--A condition for which medical advice was given or treatment was recommended by, or received from, a physician within six months before the effective date of coverage.

(27) Qualified actuary--An actuary who is a member of either the Society of Actuaries or the American Academy of Actuaries.

(28) Qualified long-term care insurance contract--A long-term care insurance contract meeting the requirements as contained in Internal Revenue Code of 1986, §7702B(b).

(29) Qualified long-term care services--As the term is defined in Internal Revenue Code of 1986, §7702B(c).

(30) Similar policy forms--All of the long-term care insurance policies and certificates issued by an insurer in the same long-term care benefit classification as the policy form being considered. Those certificates issued or delivered pursuant to one or more employers or labor union organizations, or to a trust or to the trustees of a fund established by one or more employers or labor organizations, or a combination thereof, for employees or former employees or a combination thereof or for members or former members or a combination thereof, of the labor organizations, are not considered similar to certificates or policies otherwise issued as long-term care insurance, but are similar to other comparable certificates with the same long-term care benefit classifications.

(31) Toileting--Getting to and from the toilet, getting on and off the toilet, and performing associated personal hygiene.

(32) Transferring--Sufficient mobility to move into or out of a bed, chair or wheelchair or to move from place to place, either via walking, a wheelchair or other means.

Source Note: The provisions of this §3.3804 adopted to be effective February 15, 1990, 15 TexReg 544; amended to be effective July 20, 1992, 17 TexReg 4769; amended to be effective May 8, 1997, 22 TexReg 3786; amended to be effective January 6, 2002, 26 TexReg 10886; amended to be effective February 2, 2009, 34 TexReg 599

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