

NOTICE OF INTENT

**Department of Insurance
Office of the Commissioner**

**REGULATION 46 – Long-Term Care Insurance
(LAC 37:XIII.Chapter 19)**

The Department of Insurance, pursuant to the authority of the Louisiana Insurance Code, R.S. 22:1 et seq., and in accordance with the Administrative Procedure Act, R.S. 49:950, et seq., hereby gives notice of its intent to amend LAC 37:XIII.1907.

The purpose of LAC 37:XIII.1901 et seq. (Regulation 46 – Long-Term Care Insurance) is to implement the long-term care insurance provisions of the Louisiana Insurance Code, La. R.S. 22:1181 - 1191. In July 2017, the Department of Insurance amended LAC 37:XIII.1901 et seq. to adopt changes made to date to the National Association of Insurance Commissioners' long-term care insurance model regulation, to adopt model regulation definitions, to make necessary technical amendments and redesignations to existing sections of LAC 37:XIII.1901 et seq. to accommodate the model regulation, and to make other technical amendments.

As published in July 2017, LAC 37:XIII.1907, as amended, contains a duplicate definition. The amendments intended to change the name of the definition for "*Skilled Nursing Care, Intermediate Care, Personal Care, Home Care and other services*" to "*Skilled Nursing Care, Personal Care, Home Care, Specialized Care, Assisted Living Care, and Other Services*". This change in the definition name reflected a change in terms used throughout the amended regulation. The amended regulation, as published, included the same definition twice: one with the amended name and one with the former name. LAC 37:XIII.1907 is being amended to delete the duplicated definition with the former and now obsolete definition name.

**Title 37
INSURANCE
PART XIII. Regulations**

Chapter 19. Regulation 46 – Long-Term Care Insurance

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§1907. Policy Definitions

A. ...

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Skilled Nursing Care, Intermediate Care, Personal Care, Home Care and other services –
Repealed

* * *

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1186(A), 22:1186(E), 22:1188(C), 22:1189, and 22:1190.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 19:1153 (September 1993), amended LR 23:976 (August 1997, LR 43:1394 (July 2017) (effective January 1, 2018), amended LR:

...

long-term care insurance shall have the meanings set forth in R.S. 22:1184. In addition, the following definitions will apply.

Benefit Trigger—for the purposes of independent review, a contractual provision in the insured's policy of long-term care insurance conditioning the payment of benefits on a determination of the insured's ability to perform activities of daily living and on cognitive impairment. For purposes of a tax-qualified long-term care insurance contract, as defined in section 7702B of the *Internal Revenue Code* of 1986, as amended, "benefit trigger" shall include a determination by a licensed health care practitioner that an insured is a chronically ill individual.

Exceptional Increase—

a. only those increases filed by an insurer as exceptional for which the commissioner determines the need for the premium rate increase is justified:

i. due to changes in laws or regulations applicable to long-term care coverage in this state; or

ii. due to increased and unexpected utilization that affects the majority of insurers of similar products;

b. except as provided in §1937, exceptional increases are subject to the same requirements as other premium rate schedule increases;

c. the commissioner may request a review by an independent actuary or a professional actuarial body of the basis for a request that an increase be considered an exceptional increase;

d. the commissioner, in determining that the necessary basis for an exceptional increase exists, shall also determine any potential offsets to higher claims costs.

Incidental (as used in §1937.J)—that the value of the long-term care benefits provided is less than 10 percent of the total value of the benefits provided over the life of the policy. These values shall be measured as of the date of issue.

Independent Review Organization—an organization that conducts independent reviews of long-term care benefit trigger decisions.

Licensed Health Care Professional—an individual qualified by education and experience in an appropriate field, to determine, by record review, an insured's actual functional or cognitive impairment.

Qualified Actuary—a member in good standing of the American Academy of Actuaries.

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. Certificates of groups that meet the definition in R.S. 22:1184(4)(a) 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. For

purposes of determining similar policy forms, long-term care benefit classifications are defined as follows: institutional long-term care benefits only, non-institutional long-term care benefits only, or comprehensive long-term care benefits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1186(A), 22:1186(E), 22:1188(C), 22:1189, and 22:1190.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 19:1153 (September 1993), amended LR 23:975 (August 1997), LR 31:462 (February 2005), LR 43:1394 (July 2017) (effective January 1, 2018).

§1907. Policy Definitions

A. 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 and the definitions satisfy the following requirements.

Activities of Daily Living—at least bathing, continence, dressing, eating, toileting, and transferring.

Acute Condition—that 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 or her health status.

Adult Day Care—a program for six or more individuals, of social and health-related services provided during the day in a community group setting for the purpose of supporting adults who are frail, impaired and elderly, or have other disabilities and who can benefit from care in a group setting outside the home.

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.

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.

Continence—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).

Dressing—putting on and taking off all items of clothing and any necessary braces, fasteners, or artificial limbs.

Eating—feeding oneself by getting food into the body from a receptacle (such as a plate, cup, or table) or by feeding tube or intravenously.

Hands-On Assistance—physical assistance (minimal, moderate, or maximal) without which the individual would not be able to perform the activity of daily living.

Home Health Care Services—medical and nonmedical services provided in their residences to persons who are ill, have a disability, or have an infirmity. Such services may include homemaker services, assistance with activities of daily living, and respite care services.

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.

Mental or Nervous Disorder—shall not be defined to include more than neurosis, psychoneurosis, psychopathy, psychosis, or mental or emotional disease or disorder.

Personal Care—the provision of hands-on services to assist an individual with activities of daily living.

~~*Skilled Nursing Care, Intermediate Care, Personal Care, Home 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 care must be delivered.*~~

Skilled Nursing Care, Personal Care, Home Care, Specialized Care, Assisted Living 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 care must be delivered.

Toileting—getting to and from the toilet, getting on and off the toilet, and performing associated personal hygiene.

Transferring—moving into or out of a bed, chair, or wheelchair.

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*—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.

B. All providers of services including, but not limited to, skilled nursing facility, extended care facility, convalescent nursing home, personal care facility, specialized care providers, assisted living facility, and home care agency shall be defined in relation to the services and facilities required to be available and the licensure, certification, registration, or degree status of those providing or supervising the services. When the definition requires that the provider be appropriately licensed, certified, or registered, it shall also state what requirements a provider must meet in lieu of licensure, certification, or registration when the state in which the service is to be furnished does not require a provider of these services to be licensed, certified, registered, or when the state licenses, certifies, or registers the provider of services under another name.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1186(A), 22:1186(E), 22:1188(C), 22:1189, and 22:1190.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 19:1153 (September 1993), amended LR 23:976 (August 1997), LR 43:1394 (July 2017) (effective January 1, 2018).

§1909. Policy Practices and Provisions

A. *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 §1913 of this regulation.

1. A policy issued to an individual shall not contain renewal provisions other than guaranteed renewable or noncancellable.

2. 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.

3. 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. The term *level premium* may only be used when the insurer does not have the right to change the premium.

5. In addition to the other requirements of §1909.A, a qualified long-term insurance contract shall be guaranteed renewable, within the meaning of Section 7702B(b)(1)(C) of the Internal Revenue Code of 1986, as amended.

B. *Limitations and Exclusions*. A policy may not be delivered or issued for delivery in this state as long-term care insurance if such policy limits or excludes coverage by type of illness, treatment, medical condition, or accident, except as follows:

1. preexisting conditions or diseases;
2. mental or nervous disorders; however, this shall not permit exclusion or limitation of benefits on the basis of Alzheimer's Disease;
3. alcoholism and drug addiction;
4. illness, treatment, or medical condition arising out of:
 - a. war or act of war (whether declared or undeclared);
 - b. participation in a felony, riot, or insurrection;
 - c. service in the armed forces or units auxiliary thereto;
 - d. suicide (sane or insane), attempted suicide, or intentionally self-inflicted injury; or
 - e. aviation (this exclusion applies only to non-fare paying passengers);
5. 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'

Public Comments

All interested persons are invited to submit written comments on the proposed regulation. Such comments must be received no later than December 20, 2018, by 4:30 p.m. and should be addressed to Lynette Roberson, Louisiana Department of Insurance, and may be mailed to P.O. Box 94214, Baton Rouge, LA 70804-9214, faxed to (225) 342-1632, or emailed to lynette.roberson@ldi.la.gov. If comments are to be shipped or hand-delivered, please deliver to Poydras Building, 1702 North 3rd Street, Baton Rouge, LA 70802.

James J. Donelon

Commissioner of Insurance

