**20:06:21:01.  Definitions.** Terms used in this chapter mean:

(1)  "Activities of daily living," bathing, dressing, eating, maintaining continence, toileting, and transferring;

(2)  "Acute condition," a medically unstable condition that requires frequent monitoring of an individual by medical professionals, such as physicians and registered nurses;

(3)  "Adult day care," a program of social and health-related services provided for six or more individuals during the day in a community group setting for the purpose of supporting frail, impaired elderly or other adults with disabilities who can benefit from care in a group setting outside the home;

(4)  "Bathing," washing oneself by sponge bath or in a tub or shower, including the task of getting into or out of the tub or shower;

(5)  "Chronically ill individual," any individual who has been certified by a licensed health care practitioner as:

(a)  Being unable to perform (without substantial assistance from another individual) at least two activities of daily living for a period of at least 90 days due to a loss of functional capacity; or

(b)  Requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment.

The term, chronically ill individual, does not include an individual otherwise meeting these requirements unless within the preceding twelve-month period a licensed health care practitioner has certified that the individual meets these requirements;

(6)  "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 awareness of safety;

(7)  "Continence," the ability to maintain control of bowel or bladder function or, when unable to maintain control of bowel or bladder function, the ability to perform associated personal hygiene, including caring for a catheter or colostomy bag;

(8)  "Dressing," putting on and taking off all items of clothing and any necessary braces, fasteners, or artificial limbs;

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

(10)  "Exceptional increase," only those increases filed by an insurer as exceptional for which the director determines the need for the premium rate increase is justified:

(a)  Due to changes in laws or rules 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 products;

(11)  "Hands-on assistance," the physical assistance, minimal, moderate, or maximal, without which the individual would not be able to perform the activities of daily living;

(12)  "Home health care services," medical and nonmedical services provided to ill, disabled, or infirm persons in their residences, including homemaker services, as defined in § 67:40:07:01, assistance with activities of daily living, and respite care services;

(13)  "Incidental," as used in § 20:06:21:67, the value of the long-term care benefits provided is less than ten 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;

(14)  "Independent review organization," an organization that conducts independent reviews of long-term care benefit trigger decisions;

(15)  "Licensed health care practitioner," a physician, as defined in Section 1861(r)(1) of the Social Security Act, if approved by the director, a registered professional nurse, licensed social worker, or other individual who meets requirements prescribed by the Secretary of the Treasury;

(16)  "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;

(17)  "Long-term care partnership policy," a long-term care insurance policy, which is designed to meet the requirements for asset disregard, as referenced in the state plan amendment effective July 1, 2007, under Medical Assistance and which meets the requirements of SDCL chapter 58-17B and this chapter, and which includes inflation protection consistent with the provisions of § 20:06:21:76;

(18)  "Maintenance or personal care services," any care the primary purpose of which is the provision of needed assistance with any of the disabilities as a result of which the individual is a chronically ill individual (including the protection from threats to health and safety due to severe cognitive impairment);

(19)  "Medicare," the federal program of health insurance for older persons provided under Title XVIII of the Social Security Amendments of 1965 and as amended through December 31, 1991, which is The Health Insurance for the Aged Act, amended (Title I, Part I of Pub. L. No. 89-97);

(20)  "Mental or nervous disorder," a neurosis, psychoneurosis, psychopathy, psychosis, or mental or emotional disease or disorder;

(21)  "Personal care," the provision of hands-on service to assist an individual with activities of daily living;

(22)  "Qualified actuary," a member in good standing of the American Academy of Actuaries;

(23)  "Qualified long-term care insurance contract" or "federally tax-qualified long-term care insurance contract":

(a)  An individual or group insurance contract that meets the requirements of Section 7702B(b) of the Internal Revenue Code of 1986, as amended as of January 1, 2002, as follows:

(i)    The only insurance protection provided under the contract is coverage of qualified long-term care services. A contract does not fail to satisfy the requirements of this subparagraph by reason of payments being made on a per diem or other periodic basis without regard to the expenses incurred during the period to which the payments relate;

(ii)   The contract does not pay or reimburse expenses incurred for services or items to the extent that the expenses are reimbursable under Title XVIII of the Social Security Act, as amended as of January 1, 2002, or would be so reimbursable but for the application of a deductible or coinsurance amount. The requirements of this subparagraph do not apply to expenses that are reimbursable under Title XVIII of the Social Security Act only as a secondary payor. A contract does not fail to satisfy the requirements of this subparagraph by reason of payments being made on a per diem or other periodic basis without regard to the expenses incurred during the period to which the payments relate;

(iii)  The contract is guaranteed renewable, within the meaning of section 7702B(b)(1)(C) of the Internal Revenue Code of 1986, as amended as of January 1, 2002;

(iv)  The contract does not provide for a cash surrender value or other money that can be paid, assigned, pledged as collateral for a loan, or borrowed except as provided in subsection 20:06:21:01(22)(v);

(v)   All refunds of premiums, and all policyholder dividends or similar amounts, under the contract are to be applied as a reduction in future premiums or to increase future benefits, except that a refund on the event of death of the insured or a complete surrender or cancellation of the contract cannot exceed the aggregate premiums paid under the contract; and

(vi)  The contract meets the consumer protection provisions set forth in Section 7702B(g) of the Internal Revenue Code of 1986, as amended as of January 1, 2002; or

(b)  The portion of a life insurance contract that provides long-term care insurance coverage by rider or as part of the contract and that satisfies the requirements of Sections 7702(B)(b) and (e) of the Internal Revenue Code of 1986, as amended as of January 1, 2002;

(24)  "Qualified long-term care services," services that meet the requirements of Section 7702(c)(1) of the Internal Revenue Code of 1986, as amended as of January 1, 2002, 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;

(25)  "Respite care services," care given to provide temporary relief for primary care given to a dependent person;

(26)  "Severe cognitive impairment," a loss or deterioration in intellectual capacity that is comparable to, and includes, Alzheimer's disease and similar forms of irreversible dementia, and is measured by clinical evidence and standardized tests that reliably measure impairment of an individual in the following areas:

(a)  Short-term or long-term memory;

(b)  Orientation as to people, places, or time; and

(c)  Deductive or abstract reasoning;

(27)  "Toileting," getting to and from the toilet, getting on and off the toilet, and performing associated personal hygiene;

(28)  "Transferring," moving into or out of a bed, chair, or wheelchair.

**Source:** 16 SDR 208, effective June 3, 1990; 22 SDR 97, effective December 18, 1995; 28 SDR 157, effective May 19, 2002; 31 SDR 21, effective August 23, 2004; 33 SDR 230, effective July 2, 2007; 34 SDR 88, effective September 10, 2007; 36 SDR 209, effective July 1, 2010.

**General Authority:** SDCL 58-4-1, 58-17B-4, 58-17B-15.

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