**20:06:21:20.  Lapse or termination notice required.** An individual long-term care policy or certificate may not be issued until the insurer has received from the applicant either a written designation of at least one 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 may designate at least one person who is to receive the notice of termination, in addition to the insured. Designation does not constitute acceptance by the third party of any liability for services provided to the insured.

The form used for the written designation must provide space clearly designated for listing at least one person. The designation shall include each person's full name and home address.

If an applicant 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 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 30 days after a premium is due and unpaid. I elect NOT to designate any person to receive such a notice."

The insurer shall notify the insured of the right to change the written designation at least once every two years.

When soliciting a long-term care insurance application an agent must affirmatively offer lapse designation as provided for by this section and may not encourage or influence an applicant not to designate another person to receive notice of lapse or termination. An agent will be presumed to either have not offered or to have encouraged or influenced a person not to designate another person for lapse designation if at least one-half of the applications for that agent submitted during any year's period of time fail to list a lapse or termination designee. This presumption may be rebutted by a preponderance of evidence showing that the agent both offered the lapse designation and did not encourage or influence the person not to designate another person for notice of lapse or termination.

**Source:** 22 SDR 97, effective December 18, 1995; 34 SDR 88, effective September 10, 2007.

**General Authority:** SDCL 58-17B-4.

**Law Implemented:** SDCL 58-17B-5.