**20:06:21:49.  Incontestability period.** The following incontestability periods must be complied with for long-term care policies:

 (1)  For a policy or certificate that has been in force for less than six months, an insurer may rescind a long-term care insurance policy or certificate or deny an otherwise valid long-term care insurance claim upon a showing of misrepresentation that is material to the acceptance for coverage;

 (2)  For a policy or certificate that has been in force for at least six months but less than two years, an insurer may rescind a long-term care insurance policy or certificate or deny an otherwise valid long-term care insurance claim upon a showing of misrepresentation that is both material to the acceptance for coverage and which pertains to the condition for which benefits are sought;

 (3)  After a policy or certificate has been in force for two years, it is not contestable upon the grounds of misrepresentation alone; the policy or certificate may be contested only upon a showing that the insured knowingly and intentionally misrepresented relevant facts relating to the insured's health;

 (4)  A long-term care insurance policy or certificate may be field-issued if the compensation to the field issuer is not based on the number of policies or certificates issued. For purposes of this section, field-issued means a policy or certificate issued by an agent or a third-party administrator pursuant to the underwriting authority granted to the agent or third party administrator by an insurer and using the insurer's underwriting guidelines;

 (5)  If an insurer has paid benefits under the long-term care insurance policy or certificate, the benefit payments may not be recovered by the insurer if the policy or certificate is rescinded.

 **Source:** 23 SDR 55, effective October 20, 1996; 33 SDR 230, effective July 2, 2007.

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

 **Law Implemented:** SDCL 58-17B-4.