**20:06:21:53.05.  Suitability -- Overinsurance.** A long-term care insurance policy issued to an individual who already possesses insurance substantially covering the same risk and paying for the same coverage may be deemed to be overinsurance by the director. The issuance of a long-term care policy or certificate to an applicant who has long-term coverage in force and does not intend to replace the current coverage does not per se constitute overinsurance. Overinsurance does not exist unless the benefits of the policies and/or certificates when combined exceed the insured's present or reasonably expected future long-term care needs. In making a determination of whether overinsurance exists, the director shall take into consideration the carrier's overinsurance standards and whether the existing contract does or does not have a cost of living adjustment feature. If the director determines that overinsurance exists, the duplicating insurer must adjust the dates of coverage for any period of time in which overinsurance resulted to remove the duplication and refund or credit premiums toward future coverage accordingly as the duplicating insurer is liable for a full refund less benefits paid. The duplicating policy is void as of the date of issue until such time as the prior coverage terminated. The provisions of this section do not apply to life insurance policies that accelerate benefits for long-term care.

 **Source:** 31 SDR 214, effective July 6, 2005.

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

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