**20:06:21:55.  Standards for benefit triggers.** Long-term care policies must comply with the following standards for benefit triggers:

 (1)  A long-term care policy may require a recommendation by a physician that the services are necessary because of illness, injury, or infirmity, but may not condition benefits on medical necessity. If a long-term care policy provides for medical necessity as an additional mechanism to qualify for benefits, the policy may condition benefits for that additional benefit trigger based on medical necessity;

 (2)  Long-term care insurance policies must condition the payment of benefits on an assessment of the insured's ability to perform activities of daily living or on cognitive impairment. Activities of daily living included in a policy must include at least the six activities of daily living listed in subdivision 20:06:21:01(1) and as defined in § 20:06:21:01. Insurers may use activities of daily living to trigger covered benefits in addition to those contained in subdivision 20:06:21:01(1) if they are consistent with or no more restrictive than those contained in subdivision (1) of this section and this subdivision. A determination of impairment may not be more restrictive than requiring either a deficiency in the ability to perform three of the activities of daily living or the presence of cognitive impairment;

 (3)  An insurer may use additional provisions to determine when benefits are payable under a policy or certificate; however, the provisions may not restrict and may not be in lieu of the requirements contained in subdivisions (1) and (2) of this section;

 (4)  For purposes of this section, the determination of a deficiency may not be more restrictive than requiring the hands-on assistance of another person to perform the prescribed activities of daily living, or, if the deficiency is due to the presence of a cognitive impairment, needing the supervision or verbal cueing by another person to protect the insured or others;

 (5)  Assessments of activities of daily living and cognitive impairment must be performed by appropriately credentialed, experienced, trained professionals, such as physicians, registered nurses, or licensed social workers; and

 (6)  Long-term care insurance policies which condition the payment of benefits on an assessment of the insured's ability to perform activities of daily living or on cognitive impairment must include a clear and understandable description of the method for resolving grievances of the insured, including the process for appealing and resolving benefit determinations.

 **Source:** 23 SDR 55, effective October 20, 1996.

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

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