**20:06:21:58.  Nonforfeiture benefit requirement.**

(1)  This section does not apply to life insurance policies or riders containing accelerated long-term care benefits.

(2)  To comply with the requirement to offer a nonforfeiture benefit pursuant to the provisions of § 20:06:21:57:

(a)  A policy or certificate offered with nonforfeiture benefits shall have coverage elements, eligibility, benefit triggers, and benefit length that are the same as coverage to be issued without nonforfeiture benefits. The nonforfeiture benefit included in the offer shall be the benefit described in subdivision (5) of this section; and

(b)  The offer must be in writing if the nonforfeiture benefit is not otherwise described in the Outline of Coverage or other materials given to the prospective policyholder;

(3)  If the offer required to be made under § 20:06:21:57 is rejected, the insurer shall provide the contingent benefit upon lapse described in this section. Even if this offer is accepted for a policy with a fixed or limited premium paying period, the contingent benefit on lapse in subdivision (4)(d) still applies;

(4)(a)  After rejection of the offer required under § 20:06:21:57, for individual and group policies without nonforfeiture benefits issued after May 19, 2002, the insurer shall provide a contingent benefit upon lapse;

(b)  In the event a group policyholder elects to make the nonforfeiture benefit an option to the certificateholder, a certificate must provide either the nonforfeiture benefit or the contingent benefit upon lapse;

(c)  The contingent benefit on lapse is triggered every time an insurer increases the premium rates to a level which results in a cumulative increase of the annual premium equal to or exceeding the percentage of the insured's initial annual premium set forth below based on the insured's issue age, and the policy or certificate lapses within 120 days of the due date of the premium so increased. Unless otherwise required, policyholders shall be notified at least 30 days prior to the due date of the premium reflecting the rate increase.

|  |  |
| --- | --- |
| Triggers for a Substantial Premium Increase | |
|  | Percent Increase Over |
| Issue Age | Initial Premium |
|  |  |
| 29 and under | 200% |
| 30-34 | 190% |
| 35-39 | 170% |
| 40-44 | 150% |
| 45-49 | 130% |
| 50-54 | 110% |
| 55-59 | 90% |
| 60 | 70% |
| 61 | 66% |
| 62 | 62% |
| 63 | 58% |
| 64 | 54% |
| 65 | 50% |
| 66 | 48% |
| 67 | 46% |
| 68 | 44% |
| 69 | 42% |
| 70 | 40% |
| 71 | 38% |
| 72 | 36% |
| 73 | 34% |
| 74 | 32% |
| 75 | 30% |
| 76 | 28% |
| 77 | 26% |
| 78 | 24% |
| 79 | 22% |
| 80 | 20% |
| 81 | 19% |
| 82 | 18% |
| 83 | 17% |
| 84 | 16% |
| 85 | 15% |
| 86 | 14% |
| 87 | 13% |
| 88 | 12% |
| 89 | 11% |
| 90 and over | 10% |

(d)  A contingent benefit on lapse is also triggered for policies with a fixed or limited premium paying period every time an insurer increases the premium rates to a level that results in a cumulative increase of the annual premium equal to or exceeding the percentage of the insured's initial annual premium set forth below based on the insurer's issue age, and the policy or certificate lapses within 120 days of the due date of the premium so increased, and the ratio in subdivision (4)(f)(ii) is 40 percent or more. Unless otherwise required, policyholders shall be notified at least 30 days prior to the due date of the premium reflecting the rate increase.

|  |  |
| --- | --- |
| Triggers for a Substantial Premium Increase | |
|  | Percent Increase |
| Issue Age | Over Initial Premium |
|  |  |
| Under 65 | 50% |
| 65-80 | 30% |
| Over 80 | 10% |

This provision is in addition to the contingent benefit lapse provided by subdivision (4)(c) and if both are triggered, the benefit provided shall be at the option of the insured;

(e)  On or before the effective date of a substantial premium increase as defined in subdivision (4)(c) of this section, the insurer shall:

(i)    Offer to reduce policy benefits provided by the current coverage consistent with the requirements of § 20:06:21:86 so that required premium payments are not increased;

(ii)   Offer to convert the coverage to a paid-up status with a shortened benefit period in accordance with the terms of subdivision (5) of this section. This option may be elected at any time during the 120-day period referenced in subdivision (4)(c) of this section; and

(iii)  Notify the policyholder or certificateholder that a default or lapse at any time during the 120-day period referenced in subdivision (4)(c) of this section is deemed to be the election of the offer to convert in subdivision (4)(d)(ii) of this section unless the automatic option in subdivision (4)(f)(iii) applies;

(f)  On or before the effective date of a substantial premium increase as defined in subdivision (4)(d), the insurer shall;

(i)    Offer to reduce policy benefits provided by the current coverage consistent with the requirements of § 20:06:21:86 so that required premium payments are not increased;

(ii)   Offer to convert the coverage to a paid-up status where the amount payable for each benefit is 90 percent of the amount payable in effect immediately prior to lapse times the ratio of the number of completed months of paid premiums divided by the number of months in the premium paying period. This option may be elected at any time during the 120-day period referenced in subdivision (4)(d); and

(iii)  Notify the policyholder or certificateholder that a default or lapse at any time during the 120-day period referenced in subdivision (4)(d) shall be deemed to be the election of the offer to convert in subdivision (4)(f)(ii) if the ratio is 40 percent or more;

(g)  For any long-term care policy issued in this state, in the event the policy or certificate was issued at least twenty (20) years prior to the effective date of the increase, a value of 0% shall be used in place of all values in the above table, and values above 100% in the table in subdivision (4)(c) shall be reduced to 100%;

(5)  Benefits continued as nonforfeiture benefits, including contingent benefits upon lapse in accordance with subdivision (4)(c) but not subdivision (4)(d) of this section, are described in this subdivision:

(a)  For purposes of subdivision (5), attained age rating is defined as a schedule of premiums starting from the issue date which increases age at least one percent per year prior to age 50, and at least three percent per year beyond age 50;

(b)  For purposes of subdivision (5), the nonforfeiture benefit shall be of a shortened benefit period providing paid-up long-term care insurance coverage after lapse. The same benefits (amounts and frequency in effect at the time of lapse but not increased thereafter) will be payable for a qualifying claim, but the lifetime maximum dollars or days of benefits shall be determined as specified in subdivision (5)(c) of this section;

(c)  The standard nonforfeiture credit will be equal to 100 percent of the sum of all premiums paid, including the premiums paid prior to any changes in benefits. The insurer may offer additional shortened benefit period options, as long as the benefits for each duration equal or exceed the standard nonforfeiture credit for that duration. However, the minimum nonforfeiture credit may not be less than 30 times the daily nursing home benefit at the time of lapse. In either event, the calculation of the nonforfeiture credit is subject to the limitation of subdivision (6) of this section;

(d)  (i)    The nonforfeiture benefit shall begin not later than the end of the third year following the policy or certificate issue date. The contingent benefit upon lapse shall be effective during the first three years as well as thereafter;

(ii)  Notwithstanding subdivision (5)(d)(i) of this section, for a nonforfeiture benefit shall begin on the earlier of:

(1)  The end of the tenth year following the policy or certificate issue date; or

(2)  The end of the second year following the date the policy or certificate is no longer subject to attained age rating;

(e)  Nonforfeiture credits may be used for all care and services qualifying for benefits under the terms of the policy or certificate, up to the limits specified in the policy or certificate;

(6)  All benefits paid by the insurer while the policy or certificate is in premium paying status and in the paid up status will not exceed the maximum benefits which would be payable if the policy or certificate had remained in premium paying status;

(7)  There may be no difference in the minimum nonforfeiture benefits as required under this section for group and individual policies;

(8)  The requirements set forth in this section shall become effective 12 months after adoption of this provision and shall apply as follows:

(a)  Except as provided in subdivisions (8)(b) and (8)(c) of this section, the provisions of this section apply to any long-term care policy issued in this state on or after the effective date of this amended regulation;

(b)  For certificates issued on or after May 19, 2002, pursuant to a group long-term care insurance policy as defined in SDCL 58-17B-2(4)(a), which policy was in force at the time this amended regulation became effective, the provisions of this section shall not apply;

(c)  The provisions of subdivision (3) relative to acceptance of an offer and subdivisions (4)(d) and (4)(f) apply to any long-term care insurance policy or certificate issued in this state after December 31, 2007, except for new certificates on a group policy as defined in subdivision (5)(a), for which the provisions apply after June 30, 2008;

(9)  Premiums charged for a policy or certificate containing nonforfeiture benefits or a contingent benefit on lapse are subject to the loss ratio requirements of § 20:06:21:05 or §§ 20:06:21:63 to 20:06:21:68, inclusive, whichever is applicable, treating the policy as a whole;

(10)  To determine whether contingent nonforfeiture upon lapse provisions are triggered pursuat to subdivision (4)(c) or subdivision (4)(d), a replacing insurer that purchased or otherwise assumed a block or blocks of long-term care insurance policies from another insurer shall calculate the percentage increase based on the initial annual premium paid by the insured when the policy was first purchased from the original insurer;

(11)  A nonforfeiture benefit for qualified long-term care insurance contracts that are level premium contracts shall be offered that meets the following requirements:

(a)  The nonforfeiture provision shall be appropriately captioned;

(b)  The nonforfeiture provision shall provide a benefit available in the event of a default in the payment of any premiums and shall state that the amount of the benefit may be adjusted subsequent to being initially granted only as necessary to reflect changes in claims, persistency, and interest as reflected in changes in rates for premium paying contracts approved by the director for the same contract form; and

(c)  The nonforfeiture provision shall provide at least one of the following:

(i)    Reduced paid-up insurance;

(ii)   Extended term insurance;

(iii)  Shortened benefit period; or

(iv)  Other similar offerings approved by the director.

**Source:** 28 SDR 157, effective May 19, 2002; 30 SDR 39, effective September 28, 2003; 33 SDR 230, effective July 2, 2007; 44 SDR 184, effective June 25, 2018.

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

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