**20:06:21:66.  Premium rate schedule increases -- Adverse lapsation.**

 (1)  For a rate increase filing that meets the following criteria, the director shall review, for all policies included in the filing, the projected lapse rates and past lapse rates during the 12 months following each increase to determine if significant adverse lapsation has occurred or is anticipated:

 (a)  The rate increase is not the first rate increase requested for the specific policy form or forms;

 (b)  The rate increase is not an exceptional increase; and

 (c)  The majority of the policies or certificates to which the increase is applicable are eligible for the contingent benefit upon lapse;

 (2)  In the event significant adverse lapsation has occurred, is anticipated in the filing, or is evidenced in the actual results as presented in the updated projections provided by the insurer following the requested rate increase, the director may determine that a rate spiral exists. Following the determination that a rate spiral exists, the director may require the insurer to offer, without underwriting, to all in force insureds subject to the rate increase the option to replace existing coverage with one or more reasonably comparable products being offered by the insurer or its affiliates:

 (a)  The offer shall:

 (i)   Be subject to the approval of the director;

 (ii)  Be based on actuarially sound principles, but not be based on attained age; and

 (iii) Provide that maximum benefits under any new policy accepted by an insured shall be reduced by comparable benefits already paid under the existing policy;

 (b)  The insurer shall maintain the experience of all the replacement insureds separate from the experience of insureds originally issued the policy forms. In the event of a request for a rate increase on the policy form, the rate increase shall be limited to the lesser of:

 (i)   The maximum rate increase determined based on the combined experience; and

 (ii)  The maximum rate increase determined based only on the experience of the insureds originally issued the form plus ten percent;

 (3)  If the director determines that the insurer has exhibited a persistent practice of filing inadequate initial premium rates for long-term care insurance, the director may, in addition to the provisions of subdivisions (1) and (2) of this section, prohibit the insurer from either of the following:

 (a)  Filing and marketing comparable coverage for a period of up to five years; or

 (b)  Offering all other similar coverages and limiting marketing of new applications to the products subject to recent premium rate schedule increases.

 **Source:** 28 SDR 157, effective May 19, 2002.

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

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