

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE  
OFFICE OF THE MONTANA STATE AUDITOR

In the matter of the adoption of New ) NOTICE OF ADOPTION AND  
Rules I through IV and the ) AMENDMENT  
amendment of ARM 6.6.3101, )  
6.6.3102, 6.6.3103, 6.6.3104, )  
6.6.3109, 6.6.3109A, 6.6.3114, )  
6.6.3117, 6.6.3118, 6.6.3119, )  
6.6.3120, 6.6.3121, 6.6.3122, and )  
6.6.3129, pertaining to long-term care )  
insurance )

TO: All Concerned Persons

1. On November 2, 2018, the Commissioner of Securities and Insurance, Montana State Auditor (CSI), published MAR Notice No. 6-245 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 2120 of the 2018 Montana Administrative Register, Issue Number 21.

2. On December 19, 2018, a public hearing was held to consider the proposed adoption and amendment of the above-stated rules. The American Council of Life Insurers (ACLI), American Health Insurance Plans (AHIP), and Blue Cross and Blue Shield of Montana (BCBSMT) appeared at the hearing and submitted written comments. No other comments were received.

3. The CSI has adopted the following new rule as proposed: New Rule I (6.6.3123).

4. The CSI amends ARM 6.6.3101, 6.6.3102, 6.6.3103, 6.6.3104, 6.6.3109, 6.6.3109A, 6.6.3114, 6.6.3117, 6.6.3118, 6.6.3119, 6.6.3121, 6.6.3122, and 6.6.3129, as proposed.

5. The CSI has adopted the following new rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

NEW RULE II (6.6.3130) APPEALING AN INSURER'S DETERMINATION THAT THE BENEFIT TRIGGER IS NOT MET (1) through (7) remain as proposed.

(8) The requirements of this rule apply to a benefit trigger request made on or after ~~January 1, 2019~~ January 1, 2020, under a long-term care insurance policy.

AUTH: 33-1-313, 33-22-1121, MCA  
IMP: 33-18-201, 33-22-1102, 33-22-1121, 33-22-1124, 33-22-1125, MCA

NEW RULE III (6.6.3131) LONG-TERM CARE INDEPENDENT REVIEW ORGANIZATIONS (1) through (1)(d) remain as proposed.

- (e) the organization will be approved or certified by ~~Montana~~ the commissioner before conducting such reviews;
- (f) through (2)(b) remain as proposed.
- (c) report annually to the commissioner, by June 1 (or other annual date set by the commissioner), in the aggregate and for each long-term care insurer all of the following:
  - (i) the total number of requests received for independent review of long-term care benefit trigger decisions;
  - (ii) the total number of reviews conducted and the resolution of such reviews (i.e., the number of reviews which upheld or overturned the long-term care insurer's determination that the benefit trigger was not met);
  - (iii) the number of reviews withdrawn prior to review; and
  - (iv) the percentage of reviews conducted within the prescribed timeframe set forth in [New Rule II];
- (d) through (4) remain as proposed.

AUTH: 33-1-313, 33-22-1121, MCA

IMP: 33-18-201, 33-22-1102, 33-22-1121, 33-22-1124, 33-22-1125, MCA

6. Based on the comments received, the CSI does not adopt New Rule IV.

7. Based on the comments received, the CSI adopts the following amended rule as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined.

6.6.3120 ADOPTION OF FORMS (1) and (1)(a) remain as proposed.

(b) LTC Form B Long-Term Care Insurance  
Personal Worksheet

LTC FORM B

### **Long-Term Care Insurance Personal Worksheet**

This worksheet will help you understand some important information about this type of insurance. Montana law requires companies issuing this [policy][certificate][rider] to **give** you some important facts about premiums and premium increases and to **ask** you some important questions to help you and the company decide if you should buy this [policy][certificate][rider]. Long-term care insurance can be expensive and it may not be right for everyone.

#### **Premium Information**

Policy Form Numbers

**The premium for the coverage you are considering will be \$[ ] per [insert payment interval] or a total of \$[ ] per year**[a one-time single premium of \$[ ]].

**The premium quoted in this worksheet is not guaranteed and may change during the underwriting process and in the future while this [policy][certificate][rider] is in force.**

**Type of Policy & The Company's Right to Increase Premiums on the Coverage You Choose:**

[Noncancellable – The company cannot increase your premiums on this [policy][certificate][rider].]

[Guaranteed renewable – The company can increase your premiums on this [policy][certificate][rider] in the future if it increases the premiums for all [policies][certificates][riders] like yours in Montana.]

[Paid-up – This [policy][certificate][rider] will be paid-up after you have paid all of the premiums specified in your [policy][certificate][rider].]

**Premium Increase History**

[Name of company] has sold long-term care insurance since [year] and has sold this [policy][certificate][rider] since [year]. [The company has never raised its premiums for any long-term care [policy][certificate][rider] it has sold in this state or any other state.]

[The company has not increased its premiums for this [policy][certificate][rider] or similar [policies][certificates][riders] in this state or any other state in the last 10 years.]

[The company has increased its premiums on this [policy][certificate][rider] or similar [policies][certificates][riders] in the last 10 years. Following is a summary of the increases.]

[Over the past 10 years, the company has increased premiums on this [policy][certificate][rider] or similar [policies][certificates][riders] by \_\_%. A summary of the premium increases in the last 10 years is attached to this worksheet.]

**Questions Related to Your Income**

You do not have to answer the following questions. They are intended to make sure you have thought about how you'll pay premiums and the cost of care your insurance does not cover. If you do not want to answer these questions, you should understand that the company might refuse to insure you.

**What resources will you use to pay your premium?**

- Current income from employment
- Current income from investments
- Other current income
- Savings
- Sell investments
- Sell other assets
- Money from my family
- Other: \_\_\_\_\_

**Could you afford to keep this [policy][certificate][rider] if your spouse or partner dies first?**

- Yes
- No
- Had not thought about it
- Do not know
- Does not apply

**[What would you do if the premiums went up, for example, by 50%?**

- Pay the higher premium
- Call the company/producer
- Reduce benefits
- Drop the [policy][certificate][rider]
- Do not know

**What is your household annual income from all sources?** (check one)

- [Under \$10,000]
- [\$10,000-20,000]
- [\$20,000-30,000]
- [\$30,000-50,000]
- [Over \$50,000]

**Do you expect your income to change over the next 10 years?** (check one)

- No change
- Yes, expect increase
- Yes, expect Decrease

**If you plan to pay premiums from your income, have you thought about how a change in your income would affect your ability to continue to pay the premium?**

- Yes
- No
- Do not know

**Will you buy inflation protection:** (check one)  Yes  No

*Inflation may increase the cost of long-term care in the future.*

**If you do not buy inflation protection, how will you pay for the difference between future costs and your daily benefit amount?**

- From my Income
- From my Savings
- From my investments
- Sell other assets
- Money from my family
- Other: \_\_\_\_\_

The national average annual cost of care in [insert year] was [insert \$ amount], but this figure varies across the country. In ten years the national average annual cost would be about [insert \$ amount] if costs increase 5% annually.

**What [elimination period][waiting period][cash deductible] are you considering?** [Number of days \_\_\_\_\_ in [elimination period][waiting period]

Approximate cost of care for this period: \$\_\_\_\_\_.

(\$xxx per day times the number of days in [elimination period][waiting period], where "xxx" represents the most recent estimate of the national daily average cost of long-term care)]

[Cash deductible \$\_\_\_\_\_]

**How are you planning to pay for your care during the [elimination period][waiting period][deductible period]?** (check all that apply)

- From my Income
- From my savings/investments
- My family will pay

**Questions Related to Your Savings and Investments**

**Not counting your home, about how much are all of your assets (your savings and investments) worth?** (check one)

- [Under \$20,000]
- [\$20,000-\$30,000]
- [\$30,000-\$50,000]
- [Over \$50,000]



(c) through (h) remain as proposed.

8. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT NO. 1: The ACLI, AHIP, and BCBSMT filed comments on proposed New Rule I, and oppose adoption of the new rule. First, they state that any new rule affecting premium rate increases should only apply to new policies issued after the effective date of the new rule; and that retrospective application of the new rule is not appropriate for insurance products that are guaranteed renewable. Next, the commenters contend that New Rule I (referred to as the "If-Knew" or "Phantom Premium" method or approach) is not an appropriate or reasonable approach to limit an insurer's ability to recoup past losses. They state that the proposed new rule would not allow recovery of adverse premium assumptions, applied to premiums that have already been paid; claiming that this method incorrectly classifies "future losses" as "past losses." Next they point to a paper released by the NAIC "LTC Pricing Subgroup" that supports a different ratemaking methodology, the "Prospective Present Value" (PPV) approach. They claim that the PPV approach allows a rate increase to reflect only future adverse experience and that past losses are borne by the insurer; and PPV is based on sound actuarial principles. Last, they cite to an "Issue Brief" published by the American Academy of Actuaries, which discusses the authors concerns with the Rule I method (referred to as the "Phantom Premium" methodology), which also notes that "it would be inappropriate to use the 'Phantom Premium' methodology alone; which is also noted by the LTC Pricing Subgroup paper. The Academy Issue Brief concludes that application of the Phantom Premium method could have severe financial implications for insurers.

RESPONSE NO. 1: The CSI has carefully considered the comments but does not agree with the arguments against New Rule I as proposed. Current ARM 6.6.3112 applies to all policies, except for the limited exemption in ARM 6.6.3112(2). In the interests of protecting policyholders, and consistent with the state policies expressed in 33-22-1102 and 33-22-1121, MCA; the CSI finds that this new rule should apply to all long term care policies, regardless of the date issued. CSI's legal authority for rate regulation allows it to establish loss ratio standards (e.g., ARM 6.6.3112) and to protect policyholders from substantial rate increases, 33-22-1121(1), MCA. The statutory policies also establish the CSI's authority to promote the public interest and the availability of long term care insurance, in setting standards for long term care insurance premiums. 33-22-1102, MCA. The method adopted in New Rule I is consistent with these state standards and policies, and is also based on sound actuarial science and principles. There is no universal national consensus on the appropriate or best methodology to analyze long term care premium rate increase requests. Many insurers in this industry used incorrect actuarial assumptions in the past, to calculate premium rates. Nothing in the law requires the adoption of the PPV method, or any other particular method that would guarantee, implicitly or explicitly, the recovery of alleged "losses" for erroneous past actuarial estimates. The PPV method, by allowing changes in pricing assumptions, could result in

excessive rate increases, which policyholders would have to bear. The NAIC Pricing Subgroup paper and the American Academy of Actuaries Issue Brief are not dispositive or controlling. There are many divergent opinions in this area, and not all actuaries agree on a common method. Different states have used different methods. A few states are currently using the New Rule I "If-Knew" method. The CSI concludes that New Rule I is in the public interest, and adopts it as proposed.

COMMENT NO. 2: The ACLI comments that one sentence in the proposed amendment to the Disclosure Statement in ARM 6.6.3120(1)(b) is not appropriate because it does not apply to all types of long-term care insurance, and has been deleted from the National Association of Insurance Commissioners (NAIC) Model Regulation 641. The sentence reads: "I understand that the rates for this policy may increase in the future." BCBSMT echoes this comment.

RESPONSE NO. 2: CSI agrees that not all policies are subject to rate increases. The NAIC Model Regulation recognizes this, but still contains a notice requirement for potential increases. NAIC Model Regulation 641, Section 9.B.1. (2017). However, other provisions of the Form recognize and notify consumers that rates could increase for some types of policies. Therefore the one sentence in the Disclosure statement will be deleted in the final rule.

COMMENT NO. 3: BCBSMT comments that proposed New Rules II and III, regarding appeals of benefit trigger determinations for long term care insurance are proposed to be effective for benefit trigger requests on or after January 1, 2019; and notes that the CSI has not yet approved of independent review organizations. BCBSMT suggests that the effective date for this new rule be January 1, 2020, to allow lead time for compliance and approval of independent review organizations.

RESPONSE NO. 3: The CSI agrees that significant lead time is appropriate; and adopts an effective date of January 1, 2020 in (8) of New Rule II. New Rule III, regarding commission approval of long term care independent review organizations, will be effective July 1, 2019, to allow time for implementation of this rule before New Rule II goes into effect. The CSI also amends (2)(c) of New Rule III, to allow flexibility in setting the annual report date.

COMMENT NO. 4: BCBSMT comments that New Rule III(1)(e) should state that the independent review organization should be "the commissioner" instead of "Montana."

RESPONSE NO. 4: CSI agrees and amends New Rule III(1)(e) accordingly, which is consistent with New Rule III(1).

COMMENT NO. 5: ACLI, AHIP, and BCBSMT comment on proposed New Rule IV, regarding producer compensation. They believe that regulation of producer compensation for long-term care insurance is only appropriate if there is evidence of abuse in the marketplace. They comment that the NAIC Model Regulation is "optional" and allege that it has not been adopted in other states. They also state

that selling long term care insurance requires professional training, and adequate compensation is necessary to secure well-trained producers. They are concerned about the limitations on compensation, especially in the first year. They are also concerned about the limits on compensation for replacement policy sales, which may limit consumer's information or choices.

RESPONSE NO. 5: This rule language is from the NAIC Model Regulation 641, but was adopted as "Optional." The fact that the NAIC regulation is "Optional" and may not have been adopted by other states is not legally dispositive. However, the CSI has considered the comments and decided not adopt this rule at this time, but may reconsider it in the future.

COMMENT NO. 6: The commenters request that rules "which relate to disclosure" have an effective date of at least 12 months in the future.

RESPONSE NO. 6: The CSI agrees that some of the rules should have an effective date of January 1, 2020, to provide some lead time for preparation and compliance.

9. The following new rules and amended rules are effective the day after this notice is published: New Rule I (6.6.3123), and ARM 6.6.3101, 6.6.3102, 6.6.3103, 6.6.3104, 6.6.3109, 6.6.3117, 6.6.3119, 6.6.3122, and 6.6.3129.

10. The following new rules and amended rules will be effective January 1, 2020: New Rule II (6.6.3130); and ARM 6.6.3109A, 6.6.3114, 6.6.3118, 6.6.3120, and 6.6.3121.

11. The following new rule will be effective July 1, 2019: New Rule III (6.6.3131).

/s/ Ivan C. Evilsizer  
Ivan C. Evilsizer  
Rule Reviewer

/s/ Kristin Hansen  
Kristin Hansen  
Chief Counsel

Certified to the Secretary of State January 15, 2019.