



PROPOSED RULE MAKING

CR-102 (June 2012)

(Implements RCW 34.05.320)

Do **NOT** use for expedited rule making

Agency: Office of the Insurance Commissioner

- Preproposal Statement of Inquiry was filed as WSR 14-02-074
 Expedited Rule Making--Proposed notice was filed as WSR _____; or
 Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

- Original Notice
 Supplemental Notice to WSR

Continuance of WSR _____

Title of rule and other identifying information: Long-term care policy unintentional lapse notices

Insurance Commissioner Matter No. R 2013-29

Hearing location(s):

Office of the Insurance Commissioner
5000 Capitol Blvd
Tumwater, WA 98504

Date: Dec. 6, 2016 Time: 11:00 a.m.

Submit written comments to:

Name: Jim Freeburg
Address: PO Box 40260
Olympia, WA 98504
e-mail rulescoordinator@oic.wa.gov
Fax: 360-586-3109 by (date) Dec. 6, 2016 _____

Assistance for persons with disabilities:
Contact: Lorie Villaflores by Dec 2, 2016

TTY (360) 586-0241 or (360) 725-7087

Date of intended adoption: Dec 7, 2016
(Note: This is **NOT** the **effective** date)

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

Under this rule making the Commissioner will consider amendments to existing rules to require issuers of long-term care policies to provide notification to insureds and their designees about important details of the unintentional lapse protections of their long-term care policies.

Reasons supporting proposal:

Consumers and their designees should be made aware of a lapse in coverage because of non-payment. Consumers with long term care insurance may be vulnerable to a lapse due to dementia. Issuers must make a significant effort to notify consumers and their designees when a lapse occurs.

Statutory authority for adoption:

RCW 48.02.060, 48.83.170, and 48.84.030

Statute being implemented: RCW 48.83.170

Is rule necessary because of a:

- Federal Law? Yes No
 Federal Court Decision? Yes No
 State Court Decision? Yes No
 If yes, CITATION:

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: November 02, 2016

TIME: 10:47 AM

WSR 16-22-090

DATE

November 2, 2016

NAME (type or print)

Mike Kreidler

SIGNATURE

TITLE

Insurance Commissioner

(COMPLETE REVERSE SIDE)

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:
None

Name of proponent: (person or organization) Mike Kreidler, Insurance Commissioner

- Private
 Public
 Governmental

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting..... Jim Freeburg	PO Box 40260, Olympia WA 98504	(360) 725-7170
Implementation.... Doug Hartz	PO Box 40255, Olympia WA 98504	(360) 725-7214
Enforcement..... AnnaLisa Gellermann	PO Box 40255, Olympia WA 98504	(360) 725-7037

Has a small business economic impact statement been prepared under chapter 19.85 RCW or has a school district fiscal impact statement been prepared under section 1, chapter 210, Laws of 2012?

Yes. Attach copy of small business economic impact statement or school district fiscal impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

phone () _____

fax () _____

e-mail _____

No. Explain why no statement was prepared.

The long term care insurance issuers that must comply with the rule are not small businesses, pursuant to chapter 19.85 RCW.

Is a cost-benefit analysis required under RCW 34.05.328?

Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name: Jim Freeburg

Address: PO Box 40260, Olympia WA 98504

phone (360) 725-7170 _____

fax () _____

e-mail jimf@oic.wa.gov

No: Please explain:

WAC 284-54-253 Unintentional lapse. The purpose of this section is to protect insureds from unintentional lapse by establishing standards for notification of a designee to receive notice of lapse for nonpayment of premiums at least thirty days prior to the termination of coverage and to provide for a limited right to reinstatement of coverage unintentionally lapsed by a person with a cognitive impairment or loss of functional capacity. These are minimum standards and do not prevent an insurer from including benefits more favorable to the insured. This section applies to every insurer providing long-term care coverage to a resident of this state, which coverage is issued for delivery or renewed on or after January 1, 1996, through December 31, 2008.

(1) Every insurer shall permit an insured to designate at least one additional person to receive notice of lapse or termination for nonpayment of premium, if the premium is not paid on or before its due date. The designation shall include the designee's full name and home address.

(a) The notice shall provide that the contract or certificate will not lapse until at least thirty days after the issuer sends the notice (~~(is mailed)~~) to the insured's designee.

(i) Issuers must be able to show:

(A) Proof that they produced the notice;

(B) Proof that they sent the notice;

(C) The name and address of the person or persons to whom they sent the notice. The address may consist of either:

(I) A physical mailing address; or

(II) An electronic mailing address for delivery by electronic means under the requirements of RCW 48.185.005.

(D) The date that they sent the notice.

(ii) Upon request of the commissioner, to verify that they sent the notice, issuers must be able to provide:

(A) An attestation from the person who sent the notice or supervised sending the notice; or

(B) Proof of sending the notice, which may consist of, but is not limited to:

(I) Proof of sending the notice by certified mail, or by obtaining a certificate of mailing from the United States Postal Service;

(II) Proof of sending the notice by a commercial delivery service, if at the time of mailing the issuer obtains a written receipt or confirmation from the service showing the date the issuer mailed the item, the number of items the issuer mailed, and the name and address of the insured and the lapse designee, if the insured has named a lapse designee for the policy;

(III) Proof of sending the notice by first class United States mail, postage prepaid. If an issuer uses this option, the issuer must obtain a written receipt or confirmation at the time of mailing from the United States Postal Service showing the date the issuer mailed the item, the number of items the issuer mailed, and the name and address of the insured and the lapse designee, if the insured has named a lapse designee on the policy; or

(IV) Proof of delivery by electronic means under the requirements of RCW 48.185.005.

(iii) If the insured has an insurance producer of record, then the issuer must also provide notice to the insured's producer of record within seventy-two hours after the issuer sends the notice to the insured and to the lapse designee, if the insured has named a lapse designee for the policy. In sending this notice, issuers must comply with the mailing requirements in (a)(ii) of this subsection.

(iv) An issuer may not give notice until thirty days after a premium is due and unpaid. Notice is deemed to have been given as of five days after the date that the issuer sent the notice.

(v) Upon the request of the office of the insurance commissioner, issuers must be able to demonstrate that they use due diligence to attempt to locate policyholders or named lapse designees when they receive notification of nondelivery of lapse notices.

(b) Where a policyholder or certificate holder pays premium through a payroll or pension deduction plan, the insurer shall permit the insured to designate a person to receive notice of lapse or termination for nonpayment of premium within sixty days after the insured is no longer on such a premium payment plan. The application or enrollment form for contracts or certificates where premium will be paid through a payroll or pension deduction plan shall clearly indicate the payment plan selected by the applicant.

(c) The insurer shall offer (~~each insured~~) in writing an opportunity to each insured to change the lapse designee, or update the information concerning the lapse designee, no less frequently than once (~~in every twenty-four months~~) a year.

(i) Issuers must print this notice in not less than twelve point type either:

(A) On the front side of the first page of the billing statement;
or

(B) On a separate document that is not printed on the billing statement.

(ii) If the insured has named a lapse designee for the account, then the issuer must print on the notice the name and contact information that the issuer has on record for the lapse designee.

(2) Every insurer shall provide a limited right to reinstate coverage in the event of lapse or termination for nonpayment of premium, if the insurer is provided proof of the insured's cognitive impairment or loss of functional capacity and reinstatement is requested within the five months after the policy lapsed or terminated due to nonpayment of premium.

(a) The standard of proof of cognitive impairment or loss of functional capacity shall be no more restrictive than the benefit eligibility criteria for cognitive impairment or loss of functional capacity contained in the contract or certificate.

(b) Current good health of the insured shall not be required for reinstatement if the request otherwise meets the requirements of this section.

(3) An insurer shall permit an insured to waive (~~his or her~~) the right to designate an additional person to receive notice of lapse or termination for nonpayment of premium.

(a) The waiver shall be in writing, and shall be dated and signed by the applicant or insured.

(b) No less frequently than once in every twenty-four months, the insured shall be permitted to revoke this waiver and to name a designee.

(4) Designation by the insured to receive notice of lapse or termination for nonpayment of premium does not constitute acceptance of

any liability on the part of the designee for services provided to the insured or applicant.

WAC 284-83-025 Unintentional lapse. As a protection against unintentional lapse, each issuer offering long-term care insurance must comply with all of the following:

(1)(a) Notice before lapse or termination. No individual long-term care policy or certificate may be issued until the issuer has received from the applicant either a written designation of at least one person in addition to the applicant (~~(who is)~~) to receive notice of lapse or termination of the policy or certificate for nonpayment of premium, or a written waiver dated and signed by the applicant electing not to designate additional persons to receive notice.

(i) The applicant has the right to designate at least one person (~~(who is)~~) to receive the notice of termination, in addition to the insured.

(ii) Designation does not constitute acceptance of any liability on the third party for services provided to the insured.

(iii) The form used for the written designation must provide space clearly designated for listing at least one person.

(iv) The designation must include each person's full name and home address.

(v) If the applicant elects not to designate an additional person, the waiver must state: "Protection against unintended lapse. I understand that I have the right to designate at least one person other than myself to receive notice of lapse or termination of this long-term care insurance policy for nonpayment of premium. I understand that notice will not be given until thirty days after a premium is due and unpaid. I elect NOT to designate a person to receive this notice."

(vi) No less frequently than once every (~~(two))~~) year(~~(s)~~) the issuer must notify the insured of the right to change this written designation or to add a lapse designee, if the insured has not already designated a lapse designee.

(A) Issuers must print this notice in not less than twelve point type either:

(I) On the front side of the first page of the billing statement;
or

(II) On a separate document that is not printed on the billing statement.

(B) If the insured has named a lapse designee for the account, then the issuer must print on the notice the name and contact information that the issuer has on record for the lapse designee.

(b) When the policyholder or certificate holder pays premium for a long-term care insurance policy or certificate through a payroll or pension deduction plan, the requirements contained in (a) of this subsection need not be met until sixty days after the policyholder or certificate holder is no longer on the payment plan. The application or enrollment form for such policies or certificates must clearly show the payment plan selected by the applicant.

(c) Lapse or termination for nonpayment of premium. No individual long-term care policy or certificate shall lapse or be terminated for nonpayment of premium unless the issuer, at least thirty days before the effective date of the lapse or termination, has given notice to the insured and to those persons designated pursuant to (a) of this subsection, at the address provided by the insured for purposes of receiving notice of lapse or termination. (~~(Notice must be given by~~

~~first class United States mail, postage prepaid, and notice may not be given until thirty days after a premium is due and unpaid. Notice is deemed to have been given as of five days after the date of mailing.)~~)

(i) Issuers must be able to show:

(A) Proof that they produced the notice;

(B) Proof that they sent the notice;

(C) The name and address of the person or persons to whom they sent the notice. The address may consist of either:

(I) A physical mailing address; or

(II) An electronic mailing address for delivery by electronic means under the requirements of RCW 48.185.005;

(D) The date that they sent the notice.

(ii) Upon request of the commissioner, to verify that they sent the notice, issuers must be able to provide:

(A) An attestation from the person who sent the notice or supervised sending the notice; or

(B) Proof of sending the notice, which may consist of, but is not limited to:

(I) Proof of sending the notice by certified mail, or by obtaining a certificate of mailing from the United States Postal Service;

(II) Proof of sending the notice by a commercial delivery service, if at the time of mailing the issuer obtains a written receipt or a confirmation from the service showing the date the issuer mailed the item, the number of items the issuer mailed, and the name and address of the insured and the lapse designee, if the insured has named a lapse designee for the policy;

(III) Proof of sending the notice by first class United States mail, postage prepaid. If an issuer uses this option, the issuer must obtain a written receipt or confirmation at the time of mailing from the United States Postal Service showing the date the issuer mailed the item, the number of items the issuer mailed, and the name and address of the insured and the lapse designee, if the insured has named a lapse designee on the policy; or

(IV) Proof of delivery by electronic means under the requirements of RCW 48.185.005.

(iii) If the insured has an insurance producer of record, then the issuer must also provide notice to the insured's producer of record within seventy-two hours after the issuer sends the notice to the insured and to the lapse designee, if the insured has named a lapse designee for the policy. In sending this notice, issuers must comply with the mailing requirements in (c)(ii) of this subsection.

(iv) An issuer may not give notice until thirty days after a premium is due and unpaid. Notice is deemed to have been given as of five business days after the date that the issuer sent the notice.

(v) Upon the request of the office of the insurance commissioner, issuers must be able to demonstrate that they use due diligence to attempt to locate policyholders or named lapse designees when they receive notification of nondelivery of lapse notices.

(2) Reinstatement. In addition to the requirements in subsection (1) of this section, a long-term care insurance policy or certificate must include a provision that provides for reinstatement of coverage in the event of lapse if the issuer (~~is provided proof~~) receives proof, as per the standards stated in (b) of this subsection, that the policyholder or certificate holder was cognitively impaired or had a loss of functional capacity before the policy's grace period (~~contained in the policy~~) expired.

(a) Reinstatement must be available to the insured if requested within five months after lapse (~~and may allow for the collection of past due premium, where appropriate~~). When appropriate, issuers may collect past due premiums as part of the reinstatement process as set forth in the policy or certificate.

(b) The standard of proof of cognitive impairment or loss of functional capacity must not be more stringent than the benefit eligibility criteria for cognitive impairment or the loss of functional capacity contained in the policy or certificate.