



ADMINISTRATIVE RULES OF MONTANA



6.6.3104A UNINTENTIONAL LAPSE

- (1) Each issuer offering long-term care insurance shall, as a protection against unintentional lapse, comply with the following:
 - (a) No individual long-term care policy or certificate shall 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. The applicant has the right to designate at least one person who is to receive the notice of termination, in addition to the insured. Designation shall not constitute acceptance of any liability on the third party for services provided to the insured. The form used for the written designation must provide space clearly designated for listing at least one person. The designation shall include each person's full name and home address. In the case of an applicant who elects not to designate an additional person, the waiver shall 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 or certificate for nonpayment of premium. I understand that notice will not be given until 30 days after a premium is due and unpaid. I elect NOT to designate a person to receive this notice." The issuer shall notify the insured of the right to change this written designation, no less often than once every two years.
 - (b) When the policyholder or certificateholder pays the premium for a long-term care insurance policy or certificate through a payroll or pension deduction plan, the requirements contained in (1)(a) need not be met until 60 days after the policyholder or certificateholder is no longer on such a payment plan. The application or enrollment form for such policies or certificates shall clearly indicate the payment plan selected by the applicant.
 - (c) No individual long-term care policy or certificate shall lapse or be terminated for nonpayment of premium unless the issuer, at least 30 days before the effective date of the lapse or termination, has given notice to the insured and to those persons designated pursuant to (1)(a) at the address provided by the insured for purposes of receiving notice of lapse or termination. Notice shall only be effective if it is mailed via:
 - (i) certified mail, or the issuer obtains a certificate of mailing by the United States Postal Service;
 - (ii) a commercial delivery service, and the issuer obtains at the time of mailing a written receipt from the service showing the date of mailing, the number of items mailed, and

the name and address of the insured and those persons designated pursuant to (1)(a) to whom the notice was mailed; or

- (iii) first-class United States mail, and the issuer obtains at the time of mailing a written receipt from the United States Postal Service showing the date of mailing, the number of items mailed, and the name and address of the insured and those persons designated pursuant to (1)(a) to whom the notice was mailed.
 - (d) There is a presumption that notice is delivered five days after the date of mailing, as evidenced in the written receipt obtained by the insurer pursuant to (1)(c). The insurer shall retain any and all evidence of mailing the notice, including the list of recipients, as applicable, and a copy of the notice, for at least three years following the date of notice. Notice may not be given until 30 days after a premium is due and unpaid.
- (2) In addition to the requirement in (1), a long-term care insurance policy or certificate shall include a provision that provides for reinstatement of coverage, in the event of lapse if the issuer is provided proof that the policyholder or certificateholder was cognitively impaired or had a loss of functional capacity before the grace period contained in the policy or certificate expired. This option shall be available to the insured if requested within five months after termination and shall allow for the collection of past due premium, where appropriate. The standard of proof of cognitive impairment or loss of functional capacity shall not be more stringent than the benefit eligibility criteria on cognitive impairment or the loss of functional capacity contained in the policy and certificate.

Authorizing statute(s): 33-1-313, 33-22-1121, MCA

Implementing statute(s): 33-22-1113, MCA

History: NEW, 1998 MAR p. 3271, Eff. 12/18/98; AMD, 2008 MAR p. 615, Eff. 10/1/08; AMD, 2015 MAR p. 1046, Eff. 1/30/16.