

# DEPARTMENT OF REGULATORY AGENCIES

## DIVISION OF INSURANCE

### 3 CCR 702-4

#### LIFE, ACCIDENT AND HEALTH

##### Proposed New Regulation 4-4-4

##### CONCERNING LONG-TERM CARE PARTNERSHIP PROGRAM

Section 1	Authority
Section 2	Scope and Purpose
Section 3	Applicability
Section 4	Definitions
Section 5	Policy Requirements
Section 6	Exchange Requirements
Section 7	Producer Requirements
Section 8	Insurer Requirements
Section 9	Incorporation by Reference
Section 10	Severability
Section 11	Enforcement
Section 12	Effective Date
Section 13	History
Appendix A	Important Notice Regarding Long-Term Care Partnership Status
Appendix B	QP Checklist (Long-Term Care Partnership) and Certification

##### **Section 1 Authority**

This regulation is promulgated and adopted by the Commissioner of Insurance under the authority of § 10-1-109, C.R.S. and Department of Health Care Policy and Financing under the authority of § 25.5-1-303, C.R.S.

##### **Section 2 Scope and Purpose**

The purpose of this regulation is to implement rules and assist in the development of the Colorado Long-Term Care Partnership (LTCP) Program in Colorado.

##### **Section 3 Applicability**

This regulation applies to the Colorado Long-Term Care Partnership (LTCP) Program including certificates issued under a group insurance contract; all producers soliciting such policies in Colorado and to all insurers issuing Colorado LTCP policies. Compliance with this regulation for such policies and parties is in addition to compliance with § 10-19-101, C.R.S. et al, Colorado Regulations 4-4-1 and 4-2-3.

##### **Section 4 Definitions**

- A. “Long-Term Care Partnership Policy” (LTCP Policy) means a long-term care insurance policy that meets all of the requirements of Section 5 of this regulation.
- B. “Inflation protection benefit” means a feature that increases benefits annually, and which meets or exceeds the following criteria:
  - 1. Under the age of 61, a minimum of 5% annual compounded interest or Consumer Price Index (CPI) computed annually. Guaranteed/future purchase option is not acceptable.
  - 2. For ages 61 through 75, a minimum of one or more of the following:
    - a. 3% compounded annually;
    - b. 5% simple interest;
    - c. CPI computed annually; or
    - d. 5% compounded with 2X maximum (5% compounded until the daily benefit is doubled). Guaranteed/future purchase option is not acceptable.
  - 3. Over age 75, inflation protection is optional.
  - 4. A step down provision is not acceptable, that is, where inflation protection decreases by age.
  - 5. Effective January 1, 2010, additional inflation provisions may be offered, if approved by the Colorado Division of Insurance and the Department of Health Care Policy and Financing.
- C. “Consumer price index” (CPI) means the consumer price index for all urban customers, U.S. city average, and all items, as determined by the Bureau of Labor Statistics of the United States Department of Labor.
- D. “Federal Long-Term Care Partnership Program” means the Long-Term Care Partnership Program as authorized under the Deficit Reduction Act of 2005, (Section 6021), which amended Section 1917(b) of the Federal Social Security Act to provide for Long-Term Care Insurance Partnership Programs.
- E. “Secretary” means the Secretary of the United States Department of Health and Human Services.
- F. “Commissioner” means the Colorado Commissioner of Insurance.

**Section 5 Policy Requirements**

Any Long-Term Care Partnership Policy shall meet or exceed all of the following:

- A. The policy meets all the applicable requirements of this regulation, Colorado Regulation 4-4-1 and § 10-19-101 C.R.S. et al;
- B. The policy includes an inflation protection benefit as defined in Section 4 of this regulation;
- C. The insured was a resident of Colorado when coverage first became effective under this policy; and
- D. The policy is a qualified long-term care insurance policy as defined in § 7702B (b) of the Internal Revenue Code (IRS) of 1986 and was issued no earlier than January 1, 2008.

#### **Section 6 Exchange Requirements**

- A. A non-partnership long-term care policy may be exchanged for a LTCP Policy. The LTCP Policy is treated as a newly issued policy and thus is eligible for partnership status. Be advised that if an exchange occurs, the new LTCP Policy may be subject to underwriting criteria and the premium for the policy may be increased as opposed to the previously issued long-term care policy. Additionally, it is the insurer's decision whether an exchange is possible.
- B. The addition of a rider or endorsement, for the purpose of meeting LTCP requirements, for a policy issued prior to the effective date of the LTCP Program, may be treated as giving rise to an exchange. The earliest date that the endorsement or rider can be added is January 1, 2008, which is the effective date of the Colorado LTCP Program.

#### **Section 7 Producer Requirements**

Every producer shall have completed the training required by § 10-19-113.6, C.R.S., prior to soliciting LTCP Policies. Proof of such training and demonstration of evidence of an understanding of such policies and how they relate to other public and private coverage of long-term care must be provided to each insurer for which the producer solicits LTCP Policies.

#### **Section 8 Insurer Requirements**

- A. Each insurer shall establish and maintain procedures that assure that producers soliciting the insurer's LTCP Policies are in compliance with § 10-19-113.6, C.R.S., Section 7 of this regulation and the training required by Colorado Regulation 4-4-1. The procedures and records of the insurer shall be made available to the Commissioner upon request by the Commissioner.
- B. Each insurer shall establish and maintain procedures assuring that each LTCP Policy issued or issued for delivery in Colorado shall be accompanied by the "Important Notice Regarding Your Policy's Long-Term Care Partnership Status" (Notice), attached as Appendix A to this regulation, which explains the benefits associated with a LTCP Policy and indicates that, at the time the policy is issued, the policy is intended to be a LTCP Policy. In the case of a group insurance contract, such Notice must be provided to the insured under a certificate upon the issuance of the certificate. In determining whether to provide this Notice with respect to a policy, the issuer of the policy may rely upon a

statement by the policyholder, certificate holder or insured that the insured is a resident of Colorado.

- C. Each insurer shall submit a "QP Checklist," attached as Appendix B to this regulation, a Certification Form (Form Health) and a Listing of Forms, identifying each policy form intended for use as a LTCP Policy and certifying such form's compliance with Colorado law and this regulation. An insurer may submit supplemental Issuer Certification Forms to identify and certify additional policy forms that are intended for use as a LTCP Policy. If there is a change made by the Secretary, pursuant to Section 1917(b)(5)(C) of the Social Security Act (42 U.S.C. 1396p(b)(5)(C)), Colorado Regulation 4-4-1 and or this regulation, then appropriate modifications will be made to the Issuer Certification Form to reflect the new requirements.
- D. Pursuant to Section 1917(b)(1)(C)(iii)(VI) and (v) of the Social Security Act (42 U.S.C. 1396p(b)(1)(C)(iii)(VI) and (v), respectively), issuers of LTCP Policies must provide regular reports to the Secretary in accordance with any regulations of the Secretary. As described above, LTCP Policies that cover more than one insured are treated as separate LTCP Policies, each of which covers a single insured. Thus, the reporting requirements described herein shall apply with respect to each such separate LTCP Policy.
- E. The following forms shall also be submitted for each LTCP Policy: Long-Term Care Insurance Personal Worksheet, Things You Should Know Before You Buy Long-Term Care Insurance (brochure), Long-Term Care Insurance Suitability Letter, Long-Term Care Insurance Potential Rate Increase Disclosure Form, Notice(s) to Applicant Regarding Replacement, and Long-Term Care Insurance Outline of Coverage. These forms can be found in Regulation 4-4-1.

## **Section 9      Incorporation by Reference**

The relevant portions of the Deficit Reduction Act (DRA) of 2005, (Section 6021), § 7702B(b) of the Internal Revenue Code (IRS) of 1986, and Section 1917(b)(5)(A)(B)(iii)(C) of the Social Security Act (42 U.S.C. 1396p(b)(5) (A)(B)(iii)(C)) are incorporated by reference. This rule does not cover amendments to the Deficit Reduction Act (DRA) of 2005, (Section 6021), § 7702B(b) of the Internal Revenue Code (IRS) of 1986, and Section 1917(b)(5)(A)(B)(iii)(C) of the Social Security Act (42 U.S.C. 1396p(b)(5) (A)(B)(iii)(C)) that were promulgated later than the effective date of this rule. A copy of the relevant portions of the Deficit Reduction Act (DRA) of 2005, (Section 6021), § 7702B(b) of the Internal Revenue Code (IRS) of 1986, and Section 1917(b)(5)(A)(B)(iii)(C) of the Social Security Act (42 U.S.C. 1396p(b)(5) (A)(B)(iii)(C)) may be examined at any state publications depository library. For additional information regarding how relevant portions of the DRA can be obtained or examined contact the Rates and Forms Supervisor, Colorado Division of Insurance, 1560 Broadway, Suite 850, Denver, CO 80202.

## **Section 10      Severability**

If any provision of this regulation or application of it to any person or circumstance is for any reason held to be invalid, the remainder of this regulation shall not be affected.

**Section 11      Enforcement**

Noncompliance with this regulation may result, after proper notice and hearing, in the imposition of any of the sanctions made available in the Colorado statutes pertaining to the business of insurance or other laws which include the imposition of fines, issuance of cease and desist orders, and/or suspensions or revocations of licenses. Among others, the penalties provided for in §10-3-1108, C.R.S. may be applied.

**Section 12      Effective Date**

This regulation shall be effective January 1, 2010.

**Section 13      History**

New Colorado Regulation 4-4-4

## **IMPORTANT NOTICE REGARDING YOUR POLICY'S LONG-TERM CARE PARTNERSHIP STATUS**

(Please keep this Notice with Your Policy or Certificate)

The Colorado Long-Term Care Partnership Program is a partnership between Colorado and private insurers of long-term care insurance policies. The Colorado Long-Term Care Partnership Program became effective on January 1, 2008 and is provided in accordance with the Deficit Reduction Act of 2005 (P.L. 109-171).

**Notice of Partnership Policy Status.** Your long-term care insurance policy is intended to qualify as a Partnership Policy under the Colorado Long-Term Care Partnership Program as of your policy's effective date.

**Medicaid Asset Protection and Estate Recovery Provided.** Long-term care insurance is an important tool that helps individuals prepare for future long-term care needs. Partnership Policies provide an additional level of protection. In particular, such policies permit individuals to protect assets from spend-down requirements under the state's Medicaid program if assistance under this program is ever needed and they otherwise qualify for Medicaid.

Specifically, the asset eligibility and recovery provisions of the Medicaid program of Colorado are applied by disregarding an amount of assets which is equal to the amount of insurance benefits you have received from your Partnership Policy. For example, if you receive \$200,000 in insurance benefits from your Partnership Policy, you generally would be able to retain \$200,000 of assets above and beyond the amount of assets normally permitted for Medicaid eligibility. Likewise, Medicaid would disregard up to \$200,000 of the same assets in your estate at the time of your death which can then be passed on to your chosen beneficiaries.

Other Medicaid eligibility requirements regarding disability determination, assets and income must be met. Medicaid eligibility requirements may vary from one state to another and may change over time.

**Additional Consumer Protections.** In addition to providing Medicaid asset protection, your Partnership Policy has other important features. Under the rules governing The Colorado Long-Term Care Partnership Program, your Partnership Policy must be a qualified long-term care insurance contract under federal tax law, and as such the insurance benefits you receive from the policy generally will be subject to beneficial income tax treatment. (Please note that a policy can be a qualified long-term care insurance contract under federal tax law, with the same beneficial income tax treatment, even if it is not a Partnership Policy.) In order to qualify for the Partnership Program, Colorado requires a minimum purchase of inflation protection, which varies by age of purchase:

- For individuals under the age of 61, the policy must provide a minimum of 5% annual compound inflation protection or compound inflation protection that is based upon changes in the Consumer Price Index (CPI) computed annually. Guaranteed/future purchase option is not acceptable.
- For individuals ages 61 through 75, the policy must include one of the following inflation protection options: (a) 3% compounded annually, (b) 5% simple interest, (c) CPI computed annually, or (d) 5% compounded with 2X maximum (5% compounded until the daily benefit is doubled). Guaranteed/future purchase option is not acceptable.
- For individuals over age 75, inflation protection is optional.

A step down provision is not acceptable, where inflation protection decreases by age.

Effective January 1, 2010, additional inflation protection provisions may be offered, if approved by the Colorado Division of Insurance and the Department of Health Care Policy and Financing.

**What Could Disqualify Your Policy as a Partnership Policy?** If you make any changes to your policy or certificate, such changes could affect whether your policy or certificate continues to qualify as a Partnership Policy. Before you make any changes, you should consult with the issuer of your policy to determine the effect of a proposed change. In addition, if you move to a state that does not maintain a Partnership Program or does not recognize your policy as a Partnership Policy, you would not receive Medicaid asset protection in that state. Also, changes in federal or state law could affect the Medicaid asset protection available with respect to your Partnership Policy.

**Additional Information.** Should you have questions regarding the Colorado Long-Term Care Insurance Partnership Program policy you are considering purchasing or have purchased or questions about long-term care insurance in general, please contact the Colorado Division of Insurance at 303-894-7499 or 1-800-930-3745.

If you have general questions about Colorado's Long-Term Care Partnership Program and how it works with Colorado's Medicaid laws, please contact the Colorado Department of Health Care Policy and Financing which administers the Medicaid program at 303-866-3513 or 800-221-3943 or your local county department of health/social services. **This form and all benefit statements received should be kept with your policy.**

**Appendix B**

**QP CHECKLIST (LONG-TERM CARE PARTNERSHIP PROGRAM)**

Under Section 1917(b)(5)(B)(iii) of the Social Security Act (42 U.S.C. 1396p(b)(5)(B)(iii)), the Insurance Commissioner of a state implementing a Long-Term Care Partnership Program may certify that long-term care insurance policies (including certificates issued under a group insurance contract) covered under the Long-Term Care Partnership Program meet certain consumer protection requirements, and policies so certified are deemed to satisfy such requirements. These consumer protection requirements are set forth in Section 1917(b)(5)(A) of the Social Security Act (42 U.S.C. 1396p(b)(5)(A)) and principally include certain specified provisions of the Long-Term Care Insurance Model Regulation and Long-Term Care Insurance Model Act promulgated by the National Association of Insurance Commissioners (as adopted as of October 2000) (referred to herein as the “2000 Model Regulation” and “2000 Model Act”, respectively).

In order to provide the Colorado Insurance Commissioner with information necessary to provide a certification for policies, the QP Checklist will need to be submitted with respect to policy forms that may be covered under the Colorado Long-Term Care Partnership Program. The actual policy forms will need to be submitted with the QP checklist.

An insurance company may request certification of policies from time to time and, accordingly, may submit this QP checklist with the policy forms, e.g., as it introduces new long-term care partnership insurance policy forms for issuance.

**I. GENERAL INFORMATION**

A. Name of Issuer		Telephone Number	
Address	City	State	Zip Code
B. Name of an Employee of Issuer Who Will be the Contact Person for Information Relating to this Form		Telephone Number	
Address	City	State	Zip Code
Email Address (if available)			

C. Policy Form Number(s) (or other identifying information such as certificate series) and edition date for policies covered by this DP checklist:

Policy Information	Date

Specimen copies of each of the above policy forms, including any riders and endorsements, shall be provided with the checklist.

**II. APPLICABLE PROVISIONS OF THE 2000 MODEL REGULATION AND 2000 MODEL ACT**

Please answer each of the questions below with respect to the policy forms identified in Section I.C above. For purposes of answering the questions below, any provision of the 2000 Model Regulation or 2000 Model Act listed below shall be treated as including any other provision of the 2000 Model Regulation or 2000 Model Act necessary to implement the provision.

Are the following requirements of the 2000 Model Regulation met with respect to all policies (including certificates issued under a group insurance contract) intended to be covered under the Qualified Partnership Program plan, policy or certificate that are issued on each of the policy forms identified in Section I.C above?

		Yes	No	NA
A.	Colo Reg 4-4-1 Section 6A (relating to guaranteed renewal or noncancellability).			
B.	Colo Reg 4-4-1, Section 6B (relating to prohibitions on limitations and exclusions) other than paragraph Colo Reg 4-4-1, Section 6 B 7 thereof.			
C.	Colo Reg 4-4-1, Section 6C (relating to extension of benefits).			
D.	Colo Reg 4-4-1, Section 6D (relating to continuation or conversion of coverage).			
E.	Colo Reg 4-4-1, Section 6E (relating to discontinuance and replacement of policies).			
F.	Colo Reg 4-4-1, Section 7 (relating to unintentional lapse).			
G.	Colo Reg 4-4-1, Section 8 (relating to required disclosure provisions),			
H.	Colo Reg 4-4-1, Section 9 (relating to required disclosure of rating practices to consumer).			
I.	Colo Reg 4-4-1, Section 11 (relating to prohibitions against post-claims underwriting).			
J.	Colo Reg 4-4-1, Section 12 (relating to minimum standards).			
K.	Colo Reg 4-4-1, Section 13 (relating to application forms and replacement coverage).			
L.	Colo Reg 4-4-1, Section 14 (relating to reporting requirements).			
M.	Colo Reg 4-4-1, Section 20 (relating to filing requirements for advertising).			
N.	Colo Reg 4-4-1, Section 21 (relating to standards for marketing), including inaccurate completion of medical histories, other than subsection 3(a), (f) and (i).			
O.	Colo Reg 4-4-1, Section 22 (relating to suitability).			
P.	Colo Reg 4-4-1, Section 23 (relating to prohibition against preexisting conditions and probationary periods in replacement policies or certificates).			
Q.	Colo Reg 4-4-1, Section 29C relating to contingent nonforfeiture benefits, if the policyholder declines the offer of nonforfeiture provision described in section 7702B(g)(4) of the Internal Revenue Code of 1986 (26 U.S.C. 7702B(g)(4)).			

R.	Colo Reg 4-4-1, Section 24 (relating to standard format outline of coverage).			
S.	Colo Reg 4-4-1, Section 25 (relating to requirement to deliver shoppers guide).			
T.	Colo Reg 4-4-1, Section 8M (relating to requirements for certificates under group plans).			
U.	Colo Reg 4-4-4, Inflation protection meets the requirements in Section 4B.			

Are the following requirements of the 2000 Model Act met with respect to all policies (including certificates issued under a group insurance contract) intended to be covered under the Qualified Partnership Program plan, policy or certificate that are issued on each of the policy forms identified in section I.C. above?

		Yes	No	NA
A.	CRS 10-19-108 (relating to preexisting conditions).			
B.	CRS 10-19-109 (relating to prior hospitalization).			
C.	CRS 10-19-113.4(3) relating to contingent nonforfeiture benefits.			
D.	CRS 10-19-111 (relating to right to return).			
E.	CRS 10-19-112(1) (relating to outline of coverage).			
F.	CRS 10-19-112(7) (relating to policy summary).			
G.	CRS 10-19-112(8) (relating to monthly reports on accelerated death benefits).			
H.	CRS 10-19-113.3 (relating to incontestability period).			

In order for a policy to be covered under the Colorado Long-Term Care Partnership Program, the answers to all questions above should be "yes" (or "N/A" where all requirements with respect to a provision above are not applicable). If answers differ between policy forms (e.g., a requirement would be answered "Yes" for one form and "N/A" for another), you should use separate Issuer Certification Forms for such policies.

### III. CERTIFICATION

I hereby certify that the answers, accompanying documents, and other information set forth herein are, to the best of my knowledge and belief, true, correct, and complete.

Name of Officer of the Issuer	Title	
Signature	Date	