

**Kansas Administrative Regulations
Agency 40. Insurance Department
Article 4. Accident and Health Insurance**

40-4-37. Long-term care insurance; application; definitions.

(a) These regulations shall apply to individual or group long-term care insurance policies, subscriber contracts, endorsements, and riders delivered or issued for delivery in this state by the following:

- (1) Insurance companies;
- (2) fraternal benefit societies;
- (3) nonprofit hospital and medical service corporations; and
- (4) health maintenance organizations.

(b) A policy, rider, or endorsement shall not be advertised, described, solicited, or issued for delivery in this state as long-term care insurance unless it conforms to the requirements of these regulations.

(c) As used in these regulations, these terms shall have the following meanings:

(1) "Long-term care insurance," "group long-term care insurance," "commissioner," "applicant," "certificate," and "policy" shall have the meanings set forth in K.S.A. 40-2227, and amendments thereto.

(2) "Medicare" means programs established by the "health insurance for the aged act," Title XVIII of the social security amendments of 1965, as then constituted or later amended.

(3) "Nursing facility" means a home, residence, or institution, other than a hospital, that is primarily engaged in providing nursing care and related services on an inpatient basis under a license issued by the appropriate licensing agency. A nursing facility may be a freestanding facility, including the following:

- (A) Nursing facility;
- (B) skilled nursing home;
- (C) intermediate nursing care home;
- (D) assisted living facility; and
- (E) residential health care facility.

Each definition of a nursing facility shall adhere to the above definition unless otherwise approved by the commissioner of insurance.

(4) No insurance carrier shall define "mental or nervous disorder" more restrictively than any of the following:

(A) Neurosis;

(B) psychoneurosis;

(C) psychopathy;

(D) psychosis; or

(E) any mental or emotional disease or disorder. However, no policy, contract, or rider shall exclude or limit benefits on the basis of organic brain disease, including Alzheimer's disease or senile dementia.

(5) The insurer may define "nurse" so that the description is restricted to a certain type of nurse, whether a registered graduate professional nurse, a licensed practical nurse, or a licensed vocational nurse. If the words "nurse," "trained nurse," or "registered nurse" are used without specific instruction, then the insurer shall recognize the services of any individual who qualified under this terminology in accordance with the applicable statutes or administrative regulations of the licensing or registry board of the state.

(6) The insurer may include the words "duly qualified physician" or "duly licensed physician" in its definition of "physician." An insurer using these terms shall recognize and accept, to the extent of its obligation under the contract, all providers of medical care and treatment when these services are within the scope of the provider's licensed authority and are provided pursuant to applicable laws.

(7) "Sickness" shall include an illness or disease of an insured person that first manifests itself after the effective date of insurance and while the insurance is in force. A definition of sickness may provide for a waiting period which shall not exceed 30 days after the effective date of the coverage of the insured person. The definition may be further modified to exclude illnesses or diseases for which benefits are provided under any workers' compensation, occupational disease, employer's liability, or similar law.

(8) "Guaranteed renewable" means both of the following:

(A) The insured may continue the long-term care insurance in force by the timely payment of premiums; and

(B) the insurer shall not unilaterally make any change in any provision of the policy or rider while the insurance is in force and shall not decline to renew the policy. However, the insurer may revise the rates on a class basis.

(9) "Noncancellable" means that the insured may continue the long-term care insurance in force by timely paying premiums during which period the insurer shall not unilaterally make any change in any provision of the insurance or in the premium rate.

(10) "Lapse" means termination of a policy due to the policyholder's failure to pay the premium within the time required.

(11)(A) "Exceptional increase" means only an increase filed by an insurer as exceptional for which the commissioner determines that the need for the premium rate increase is justified due to changes in laws or regulations applicable to long-term care coverage in this state, or due to increased and unexpected utilization that affects the majority of insurers of similar products.

(B) Exceptional increases shall be subject to the following:

(i) Except as provided in K.A.R. 40-4-37t, exceptional increases shall be subject to the same requirements as those for other premium rate schedule increases.

(ii) A review by an independent actuary or a professional actuarial body of the basis for a request that an increase be considered an exceptional increase may be requested by the commissioner.

(iii) Potential offsets to higher claim costs shall also be determined by the commissioner in determining that the necessary basis for an exceptional increase exists.

(12) "Incidental," as used in K.A.R. 40-4-37t(j), means that the value of the long-term care benefits provided is less than 10 percent of the total value of the benefits provided over the life of the policy. These values shall be measured from the date of issue.

(13) "Qualified actuary" means a member in good standing of the American academy of actuaries.

(14) "Similar policy forms" means all of the long-term care insurance policies and certificates issued by an insurer in the same long-term care benefit classification as the policy form being considered. Certificates of groups that meet the definition in K.S.A. 40-2227(e), and amendments thereto, shall not be considered similar to certificates or policies otherwise issued as long-term care insurance, but shall be considered similar to other comparable certificates with the same long term care benefits classifications. For purposes of determining similar policy forms, long-term care benefit classifications shall be defined as follows:

(A) Institutional long-term care benefits only;

(B) noninstitutional long-term care benefits only; or

(C) comprehensive long-term care benefits.

(d) K.A.R. 40-4-37a, 40-4-37f, and 40-4-37i shall not apply to group long-term care insurance policies issued to an employer-employee group.

(Authorized by K.S.A. 40-103, K.S.A. 40-2228; implementing K.S.A. 40-2228; effective, T-89-9, March 18, 1988; effective Sept. 12, 1988; amended Jan. 6, 1992; amended Jan. 4, 1993; amended Feb. 9, 1996; amended May 31, 2002.)