

Chapter 284-85 WAC

LONG-TERM CARE PARTNERSHIP

WAC

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WAC 284-85-005 Purpose and authority. This chapter is adopted pursuant to RCW 48.85.030 and 48.85.040. The purpose of this chapter is to effectuate chapter 48.85 RCW, the Washington Long-Term Care Partnership Act. Pursuant to RCW 48.85.030, this chapter establishes minimum standards and disclosure requirements to be met by insurers, health care service contractors, health maintenance organizations, and fraternal benefit societies with respect to long-term care partnership insurance and long-term care partnership policies, contracts and certificates. In addition, pursuant to RCW 48.85.040, this chapter sets standards and criteria for a consumer education program developed in cooperation with the state department of social and health services and members of the long-term care insurance industry. This program shall be designed to educate consumers as to the need for long-term care, the availability of long-term care insurance, and the availability and eligibility requirements of the asset protection program provided by chapter 48.85 RCW.

Recognizing that the persons most likely to purchase long-term care partnership coverage are particularly sensitive to rate and premium increases, the goals of this chapter are: To ensure that long-term care partnership policies provide value to insureds both when issued and at time of claim; to encourage a competitive marketplace, stable premiums, and low-lapse rates; and to foster a long-term commitment to long-term care partnership coverage in this state by issuers of the coverage.

[Statutory Authority: RCW 48.02.060, 48.17.150, 48.20.450, 48.85.030 and 48.85.040. 96-17-029 (Matter No. R 95-16), § 284-85-005, filed 8/13/96, effective 9/13/96.]

WAC 284-85-010 Applicability and scope. (1) This chapter applies to all long-term care insurance policies, contracts, certificates, riders, and endorsements delivered or issued for delivery to a resident of this state or that provide

coverage to a resident of this state, that claim to provide asset protection under the Washington Long-Term Care Partnership Act, chapter 48.85 RCW.

(2) This chapter shall not apply to medicare supplement policies regulated under chapter 48.66 RCW and chapter 284-55 or 284-66 WAC; policies or contracts between a continuing care retirement community and its residents; or to long-term care insurance policies that do not claim to provide asset protection under chapter 48.85 RCW.

(3) Policies claiming to provide asset protection under the Washington Long-Term Care Partnership Act that do not meet the requirements of this chapter may not be issued or delivered in this state.

[Statutory Authority: RCW 48.02.060, 48.17.150, 48.20.450, 48.85.030 and 48.85.040. 96-17-029 (Matter No. R 95-16), § 284-85-010, filed 8/13/96, effective 9/13/96.]

WAC 284-85-015 Standards for definitions used in this chapter and chapter 48.85 RCW. The following definitions are applicable to long-term care partnership policies, contracts, certificates, riders, and endorsements and the implementation of chapter 48.85 RCW. No contract may be advertised, solicited, or issued for delivery in this state as a long-term care partnership contract which uses definitions more restrictive or less favorable to an insured than the following:

(1) "Adult day health care" means a program of community-based social and health-related services provided during the day in a community group setting for the purpose of supporting frail, impaired elderly or other disabled adults who can benefit from care in a group setting outside the individual's home.

(2) "Advertising" is defined and described at RCW 48.30.040, 48.30.050, 48.30.080, 48.30.090 and WAC 284-50-030, 284-50-050, 284-50-060, 284-50-070, 284-50-080, 284-50-090, 284-50-100, 284-50-110, 284-50-120, 284-50-130, 284-50-140, 284-50-150, 284-50-160, 284-50-170, 284-50-180, 284-50-190 and 284-50-200. These standards are specifically incorporated in this chapter and shall apply to all long-term care contracts issued pursuant to this chapter and chapter 48.85 RCW.

(3) "Alternative plan of care" means a plan of health care or other care which provides a benefit to an insured and meets the standards of WAC 284-85-030(4).

(4) "Case manager" or "case coordinator" means an individual qualified by training or experience to coordinate the overall medical, personal, and social service needs of the long-term care patient. Such coordination activities shall include but are not limited to: Assessing the individual's condition to determine what services and resources are necessary and by whom they might most appropriately be delivered; coordination of elements of a treatment or care plan and referral to the appropriate medical or social services person-

nel or agency; control coordination of patient services and continued monitoring of the patient to assess progress and assure that services are delivered. Such activities shall be conducted in consultation with the insured's attending physician or other primary care provider.

(5) "Case management services" includes, but is not limited to, a comprehensive individualized face-to-face assessment conducted in the insured's place of residence which takes an all-inclusive look at the patient's total needs and resources, and links the patient to a full range of appropriate services using all available funding sources. The assessment is reevaluated at least once every six months. When desired by the insured and when it is determined to be necessary by the case manager, case management services shall include coordination of appropriate services and ongoing monitoring of the delivery of such services. For purposes of this chapter, case management services may, but need not, include deductibles or coinsurance provisions.

(6) "Contract" means long-term care partnership coverage, regardless of the kind of issuer, unless the context clearly indicates otherwise. The term specifically includes any policy, contract, certificate, rider, or endorsement delivered, issued for delivery, or that provides coverage to a resident of this state, if that contract claims to provide asset protection under the Washington Long-Term Care Partnership Act, chapter 48.85 RCW.

(7) "Direct response issuer" means an issuer who, as to a particular contract, is transacting insurance directly with a potential insured without solicitation by, or the intervention of, a licensed insurance agent.

(8) "Estate recovery" refers to the federal and state estate recovery program which requires recovery by the state from the insured's estate after the death of the insured, certain costs of services paid by the state during the lifetime of the insured (see: Chapter 43.20B RCW and chapter 388-527 WAC). The rules of the federal and state estate recovery program change from time to time; the rules in effect at the date of the insured's death will govern the estate recovery process.

(9) "Gatekeeper provision" has the meaning of WAC 284-54-160.

(10) "Guaranteed renewable" means that renewal of a contract may not be declined by an issuer for any reason except for nonpayment of premium; but the insurer may revise rates on a class basis with the prior written agreement of the commissioner.

(11) "Home and community-based care" means services including, but not limited to:

- (a) Home delivered nursing services or therapy;
- (b) Custodial or personal care;
- (c) Day care;
- (d) Home and chore aid services;
- (e) Nutritional services, both in-home and in a communal dining setting;
- (f) Respite care;
- (g) Adult day health care services;
- (h) Community residential services, including but not limited to adult family homes, boarding homes, adult residential care, enhanced adult residential care, and assisted living; or
- (i) Other similar services furnished in a home-like or residential setting.

Such services shall be provided at all levels of care from skilled care to custodial or personal care.

(12) "Institutional care" means care provided in a hospital, nursing home, or other facility certified or licensed by the state primarily affording diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services. Such facility provides twenty-four-hour nursing services on its premises or in facilities available to the institution on a formal prearranged basis.

(13) "Insured" means any beneficiary of a long-term care partnership contract, regardless of the type of issuer.

(14) "Issuer" means any entity that delivers, issues for delivery, or provides coverage to, a resident of this state, any contract that claims to provide asset protection under the Washington Long-Term Care Partnership Act, chapter 48.85 RCW. Issuer as used in this chapter specifically includes insurance companies, fraternal benefit societies, health care service contractors, and health maintenance organizations.

(15) "Long-term care contract" means a contract that is primarily advertised, marketed, or designed to provide coverage for or resulting from long-term care services over a prolonged period of time. Services provided may range from direct skilled medical care performed by trained medical professionals as prescribed by a physician or other primary care provider, or a qualified case manager, in consultation with the patient's attending physician or rehabilitative services or assistance with the basic necessary functions of daily living for people who have lost some or complete capacity to function on their own. This term also includes a contract that provides for payment of benefits based upon cognitive impairment or loss of functional capacity without regard to receipt of specific services.

(16) "Long-term care partnership contract" means a contract of long-term care insurance that claims to provide asset protection under the Washington Long-Term Care Partnership Act, chapter 48.85 RCW to a resident of this state.

(17) "Medicaid eligibility" means that an insured has exhausted the benefits of his or her long-term care partnership contract and it has been determined, in accordance with medicaid rules, that the insured is eligible for a medicaid program as determined by the state department of social and health services, or as provided in chapters 388-505 through 388-519 WAC.

(18) "Plan of care" means a written, individualized plan of services approved by the case manager that specifies the type, frequency, and providers of all formal and informal long-term care services required for the insured. Changes in the plan of care shall be documented to show alterations which have been agreed to and are required by a change in the situation or condition of the insured.

(19) "Premium" is defined and described at RCW 48.18.-170, 48.18.180, and WAC 284-54-020(8).

[Statutory Authority: RCW 48.02.060, 48.17.150, 48.20.450, 48.85.030 and 48.85.040. 96-17-029 (Matter No. R 95-16), § 284-85-015, filed 8/13/96, effective 9/13/96.]

WAC 284-85-030 Minimum standards for long-term care partnership policies. No long-term care partnership contract may be advertised, solicited, issued for delivery, or provide coverage to a resident of this state if it does not meet the following standards and the standards of chapter 48.85

RCW. These are minimum standards and do not preclude the inclusion of other provisions or benefits which are not inconsistent with these standards. Long-term care partnership contracts that provide for payment of benefits based on cognitive impairment or loss of functional capacity without regard to receipt of specific services are subject to the standards only of subsections (1), (2), (3), (5), and (6) of this section.

(1) Every long-term care partnership contract shall meet the standards for long-term care policies or contracts in chapters 48.84 and 48.85 RCW and chapter 284-54 WAC, unless specifically provided otherwise.

(2) All long-term care partnership contracts shall provide benefits for nursing home or institutional care.

(a) If the contract provides coverage for only nursing home or institutional care, that fact shall be prominently displayed on the first page of the contract form. Coverage in such policies shall include benefits for care received in alternative types of facilities or institutions if care is provided at a place where the patient incurs room and board charges.

(b) Pursuant to RCW 48.85.030, a long-term care partnership policy that provides coverage for only nursing home or institutional care benefits, shall provide for the written rejection of coverage or eligibility of coverage for home and community-based services as part of the application. A copy of the written rejection shall be made a part of the contract.

(3) Except upon the written rejection of the applicant or insured, every long-term care partnership contract shall include coverage for home and community-based services.

(4) Every long-term care partnership contract shall provide for an alternative plan of care benefit.

(a) This benefit shall be unstructured to allow for flexibility, to include coverage for types of care that might develop after the issue date of the insured's contract, and to allow for different levels of care with no requirement for prior confinement.

(b) This benefit shall not be designed or advertised as a substitute for home or community-based care.

(c) For example, this benefit might include, but need not be limited to, coverage for the following: Care provided in licensed or certified Alzheimer's centers, assisted living facilities, congregate care facilities, or similar arrangements, home-delivered meals or in-home safety devices. An issuer may limit such options by imposing a condition that such care be in a facility regulated by the state only if such class of facility is subject to state regulation.

(d) The alternate plan of care shall be agreeable to the insured's primary care giver, the issuer, and the insured, and shall be part of a plan of care developed by or with the assistance of health care professionals.

(5) Every long-term care partnership contract issued to an applicant age seventy-nine or younger shall provide inflation protection that automatically increases at a rate of no less than five percent annual percentage rate (APR). Inflation protection benefit increases shall continue without regard to an insured's age, claim status or claim history, or the length of time the insured has been insured under the contract.

(6) Every long-term care partnership contract shall provide benefits designed to provide coverage for an extended period of time.

(7) If nonforfeiture benefits are included, such benefits shall not be based on return of premium. All nonforfeiture

(9/4/97)

benefits shall be consistent with asset protection purpose of long-term care partnership program, as determined by the commissioner.

[Statutory Authority: RCW 48.02.060, 48.17.150, 48.20.450, 48.85.030 and 48.85.040. 96-17-029 (Matter No. R 95-16), § 284-85-030, filed 8/13/96, effective 9/13/96.]

WAC 284-85-040 Standards related to rates. In order to assure stability of premiums and rates for long-term care partnership contracts, rates shall be designed to remain level over the life of the policy and shall be based on the insured's age at the time of application. Every rate filing of an issuer shall be accompanied by a detailed explanation of how the issuer intends to comply with this section.

(1) Requests for rate increases must be actuarially supported to the satisfaction of the commissioner.

(2) All long-term care partnership contracts of an issuer shall be pooled together for purposes of rate making and may be pooled with the experience of long-term care contracts issued pursuant to chapter 48.84. RCW. Any pooling arrangement shall be approved in advance by the commissioner.

(3) No issuer may reduce or increase the rate of a long-term care partnership contract form except on the written, prior approval of the commissioner.

(4) Rate increases shall be made only on a class basis.

(5) The insured shall be notified in writing of the amount of any rate increase no fewer than sixty days in advance of charging an approved increase in rates and the insured shall be permitted to reduce contract benefits to defray the increased premium and guard against lapsation.

[Statutory Authority: RCW 48.02.060, 48.17.150, 48.20.450, 48.85.030 and 48.85.040. 96-17-029 (Matter No. R 95-16), § 284-85-040, filed 8/13/96, effective 9/13/96.]

WAC 284-85-045 Conversion from group to individual coverage or replacement of coverage. (1) If the insured is no longer eligible for group long-term care partnership coverage, the insured shall have the option to convert to an individual contract of long-term care insurance or to a long-term care partnership contract. The conversion policy offered shall include substantially similar benefits to the group contract. The insured shall not be required to provide evidence of good health or insurability. Such a transaction shall be treated as a conversion and the premium charged shall be based on either: The insured's original issue age of the long-term care partnership contract being converted, or the insured's attained age, if a credit is provided, either as to benefit or premium.

(2) Except where an individual is no longer eligible for group long-term care partnership coverage, and except as provided at WAC 284-85-055, no issuer may require an insured to convert his or her policy to a new form or benefit level.

(3) Insureds in claim status on the effective date of any conversion provided for by this section may be excluded. An issuer may provide that there will be no difference between the benefits of the prior contract and the benefits of the resulting contract.

[Statutory Authority: RCW 48.02.060, 48.17.150, 48.20.450, 48.85.030 and 48.85.040. 96-17-029 (Matter No. R 95-16), § 284-85-045, filed 8/13/96, effective 9/13/96.]

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WAC 284-85-050 Disclosure and suitability standards. (1) At no time shall any statement contained in the contract, advertising related to solicitation or preservation of the contract, or representations made by the issuer or its agent, state or have the appearance of representing that the insured will be guaranteed to be automatically eligible for medicaid or that medicaid will deliver the same benefits as the insured's long-term care partnership policy.

(2) Every issuer and every agent shall make reasonable efforts to determine whether the issuance of a long-term care partnership policy will duplicate benefits under another disability insurance policy, long-term care insurance contract, or duplicate other sources of coverage such as medicare supplemental insurance coverage; and shall take reasonable steps to determine that the purchase of the coverage being applied for is suitable for the applicant based on the financial circumstances of the applicant or insured.

(3) Every applicant shall be provided a copy of the long-term care partnership publication which is developed jointly by the commissioner and the department of social and health services no later than when the long-term care partnership application is signed by the applicant.

(4) Every long-term care partnership contract shall state that it is designed to qualify for medicaid asset protection on the first page of the contract. A similar statement shall be included on every application for a long-term care partnership contract and on any outline or summary of coverage provided to applicants or insureds.

[Statutory Authority: RCW 48.02.060, 48.17.150, 48.20.450, 48.85.030 and 48.85.040. 96-17-029 (Matter No. R 95-16), § 284-85-050, filed 8/13/96, effective 9/13/96.]

WAC 284-85-055 Termination of participation in the Washington long-term care partnership program. If an issuer terminates its participation in the Washington long-term care partnership program, the issuer shall cause as little disruption to insured residents of this state as possible. Such issuer shall first obtain written permission of the commissioner to cease the issuance of new long-term care partnership contracts. The issuer shall continue in force the then-existing contracts of insurance or may make arrangements satisfactory to the commissioner for another admitted issuer to assume all of the issuer's in force long-term care partnership policies. Such a transaction shall be subject to the assumption reinsurance rules for transfer of contracts of chapter 284-95 WAC, whereby the ceding issuer remains liable for obligations of the contract, unless issuer first obtains the written agreement of the insured to the transfer.

[Statutory Authority: RCW 48.02.060, 48.17.150, 48.20.450, 48.85.030 and 48.85.040. 96-17-029 (Matter No. R 95-16), § 284-85-055, filed 8/13/96, effective 9/13/96.]

WAC 284-85-060 Applications for long-term care partnership coverage. Every application shall be signed by the applicant and agent and shall certify that:

(1) The person received a description of the Washington long-term care partnership, the disclosure pamphlet set forth at WAC 284-85-050(3), including a description of the state's asset recovery program;

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(2) The person understands that eligibility for medicaid upon exhaustion of the benefits of the long-term care partnership policy is neither guaranteed nor automatic;

(3) The person understands that the benefits provided under medicaid may not be the same as those provided under the long-term care partnership contract;

(4) The person agrees to permit the issuer to release information included in the application to the commissioner, solely for the purpose of data collection in preparation of the commissioner's report to the legislature, which release will advise the person that the issuer will act to preserve confidentiality of all medical information and document eligibility for the asset disregard provisions of medicaid and the department of social and health services; and

(5) If a person elects to purchase nursing home-only coverage, that the person understands that he or she has voluntarily waived coverage for home and community-based care.

[Statutory Authority: RCW 48.02.060, 48.17.150, 48.20.450, 48.85.030 and 48.85.040. 96-17-029 (Matter No. R 95-16), § 284-85-060, filed 8/13/96, effective 9/13/96.]

WAC 284-85-070 Advertising standards. Every issuer of long-term care partnership contracts shall submit its advertising materials to the commissioner no fewer than thirty days prior to use in this state. In addition to the standards of this chapter, all advertising materials are subject to the advertising rules in chapter 284-50 WAC.

[Statutory Authority: RCW 48.02.060, 48.17.150, 48.20.450, 48.85.030 and 48.85.040. 96-17-029 (Matter No. R 95-16), § 284-85-070, filed 8/13/96, effective 9/13/96.]

WAC 284-85-075 Summary of insurance benefits. (1) Upon request of an insured, an issuer shall prepare promptly a summary of the total services paid and the total amount of benefits remaining under the contract as of the date of the summary.

(2) A summary of insurance benefits paid and remaining shall be provided to the insured or his or her representative approximately ninety days prior to exhaustion of benefits.

(3) A reasonable fee may be charged for the preparation of a summary if requested more than once in any twelve-month period.

[Statutory Authority: RCW 48.02.060, 48.17.150, 48.20.450, 48.85.030 and 48.85.040. 96-17-029 (Matter No. R 95-16), § 284-85-075, filed 8/13/96, effective 9/13/96.]

WAC 284-85-080 Consumer education program. Issuers shall demonstrate to the satisfaction of the commissioner that they have and use procedures to provide notice to each purchaser of long-term care partnership insurance about the state's long-term care consumer education program. The program will include information regarding the need for long-term care, the methods of financing long-term care, the availability of long-term care insurance, the availability and eligibility requirements of the state's asset protection program, and the impact of this state's estate recovery rules.

[Statutory Authority: RCW 48.02.060, 48.17.150, 48.20.450, 48.85.030 and 48.85.040. 96-17-029 (Matter No. R 95-16), § 284-85-080, filed 8/13/96, effective 9/13/96.]

WAC 284-85-085 Standards for education of licensees soliciting long-term care partnership contracts. (1) Every issuer shall annually certify to the commissioner that each resident and nonresident licensee involved in the transaction of long-term care partnership insurance has completed an approved six-hour course on either long-term care partnership or long-term care partnership and long-term care every two years in accordance with WAC 284-17-220 (2)(b)(i).

Applications may only be accepted if the licensee involved in the transaction meets the requirements of WAC 284-17-220 (2)(b)(i).

(2) Beginning with the calendar year 1998, issuers shall file a copy of the following certification report with the commissioner on or before March 31 of each year:

Annual Filing of Compliance with the Long-Term Care and Long-Term Care Partnership Education Requirements of WAC 284-17-220 (2)(b)(i)

To be filed with the commissioner on or before March 31 of each year

For the period of January 1 to December 31 of _____ (Year)

Company Name _____

Address _____

Insurance Policies Offered:

Long-Term Care _____ Long-Term Care Partnership _____ Both _____

I hereby certify that all our affiliated licenses involved in the transaction of each long-term care or long-term care partnership policy we issue in Washington fulfilled the requirements of WAC 284-17-220 (2)(b)(i). I certify that to the best of my knowledge, we did not accept or process any applications that involved the participation of a licensee who was not in compliance with WAC 284-17-220 (2)(b)(i).

Signature of Officer:

Date:

Name and Title of Officer:

Prepared by:

Phone Number:

Phone Number:

Return Certification Form to:

Education Manager

Office of the Insurance Commissioner

P.O. Box 40257

Olympia, WA 98504-0257

[Statutory Authority: RCW 48.02.060, 48.17.150 and 48.85.030. 97-19-007, § 284-85-085, filed 9/4/97, effective 10/5/97. Statutory Authority: RCW 48.02.060, 48.17.150, 48.20.450, 48.85.030 and 48.85.040. 96-17-029 (Matter No. R 95-16), § 284-85-085, filed 8/13/96, effective 9/13/96.]

WAC 284-85-090 Standards for case management services. In order to assure covered services are used in a cost-effective and beneficial manner, objectivity in claims payment or benefit eligibility decisions, and to effectuate RCW 48.85.030 (2)(b), issuers that employ or contract with case managers shall:

the insured's representative shall be permitted access to the case record of the insured upon reasonable request.

(b) Case management services used by the issuer shall provide for a grievance or complaint procedure, the use of which is made known to the insured or the insured's representative.

(1) Demonstrate to the satisfaction of the commissioner that it has case management services sufficiently adequate to provide the necessary level of management throughout the state of Washington, that the case manager is able to supply or arrange for the recommended professional services in a plan of care, and that the case manager is able to adequately monitor the quality of services provided.

(c) Each case manager shall exercise reasonable care to keep the insured's medical information confidential.

(2) Employ or contract with case management services that are objectively provided and demonstrate that the services provided are in the best interests of the insured.

(d) The plan of care shall be agreed to in advance by the insured or the insured's representative, the issuer, and the insured's physician or primary care provider, and it shall be updated no less frequently than once every six months.

(a) Case management services shall recognize the dignity of insureds. An insured or the insured's representative shall be provided sufficient information to make an informed choice of how to receive services, shall be permitted to participate in the development of the plan of care. The insured or

(e) In order to assure compliance with this chapter, the issuer shall make records of the case manager available to the commissioner upon request for purposes of audit.

[Statutory Authority: RCW 48.02.060, 48.17.150, 48.20.450, 48.85.030 and 48.85.040. 96-17-029 (Matter No. R 95-16), § 284-85-090, filed 8/13/96, effective 9/13/96.]

WAC 284-85-100 Recordkeeping. Issuers shall demonstrate to the satisfaction of the commissioner that they have

procedures to provide for the special recordkeeping required by RCW 48.85.030 and this chapter.

[Statutory Authority: RCW 48.02.060, 48.17.150, 48.20.450, 48.85.030 and 48.85.040. 96-17-029 (Matter No. R 95-16), § 284-85-100, filed 8/13/96, effective 9/13/96.]

WAC 284-85-110 Records retention. Records of all policies issued shall be kept a minimum of ten years after exhaustion of benefits or nonrenewal, rescission, death of insured, or other termination of the contract by the issuer.

[Statutory Authority: RCW 48.02.060, 48.17.150, 48.20.450, 48.85.030 and 48.85.040. 96-17-029 (Matter No. R 95-16), § 284-85-110, filed 8/13/96, effective 9/13/96.]

WAC 284-85-900 Chapter not exclusive. Nothing contained in this chapter shall be construed to limit the authority of the commissioner to regulate a long-term care partnership contract under other sections of Title 48 RCW.

[Statutory Authority: RCW 48.02.060, 48.17.150, 48.20.450, 48.85.030 and 48.85.040. 96-17-029 (Matter No. R 95-16), § 284-85-900, filed 8/13/96, effective 9/13/96.]