WAC 284-54-040 Minimum standards for benefit triggers—Physician certification, activities of daily living, and cognitive impairments. (1)(a) Except as provided in (b) of this subsection, every long-term care insurance contract or certificate issued on or after January 1, 1996, which provides coverage to a resident of this state, shall require certification by the insured's attending physician that the services are appropriate due to illness or infirmity, or include provisions which condition the payment of benefits on an assessment of the insured's ability to perform specific activities of daily living or the insured's cognitive impairment.

(b) Certificates issued on or after January 1, 1996, under a group long-term care insurance contract that was in force on December 31, 1995, need not meet the standards of this section.

(2) Activities of daily living and cognitive impairment shall be used to measure an insured's need for long-term care and shall be described in the contract or certificate in a separate paragraph labeled "Eligibility for the Payment of Benefits." Any additional benefit triggers shall be explained in that section. If a trigger differs for different benefits, an explanation of the trigger shall accompany each benefit description. If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, the policy shall so specify.

(3) Eligibility for the payment of benefits based on the inability of the insured to perform certain activities shall not be more restrictive than requiring a deficiency in the ability to perform not more than three of the following activities of daily living.

(a) "Activities of daily living" on which an insurer intends to rely as a measure of functional incapacity shall be defined in the policy, and shall include at least all of the following:

(i) Bathing: The ability of the insured to wash himself or herself either in the tub or shower or by sponge bath, including the task of getting into or out of a tub or shower.

(ii) Continence: The ability of the insured to control bowel and bladder functions; or, in the event of incontinence, the ability to perform associated personal hygiene (including caring for catheter or colostomy bag).

(iii) Dressing: The ability of the insured to put on and take off all items of clothing, and necessary braces, fasteners, or artificial limbs.

(iv) Eating: The ability of the insured to feed himself or herself by getting food and drink from a receptacle (such as a plate, cup, or table) into the body including intravenously or by feeding tube.

(v) Toileting: The ability of the insured to get to and from the toilet, get on and off the toilet, and perform associated personal hygiene.

(vi) Transferring: The ability of the insured to move in and out of a chair, bed, or wheelchair.

(b) For purposes of this section, the determination of a deficiency shall not be more restrictive than:

(i) Requiring the hands-on assistance of another person to perform the prescribed activities of daily living; or

(ii) If the deficiency is due to the presence of a cognitive impairment, supervision or verbal cuing by another person is needed in order to protect the insured or others.

(c) Upon prior approval of the commissioner in writing, an insurer may use standards or definitions for activities of daily living in addition to the standards set forth in (a) of this subsection; however, in no case may an insurer require a deficiency in more than three activities of daily living as a barrier to benefits. Any additional activities of daily living approved by the commissioner, shall be used in addition to those set forth in (a) of this subsection, and not in lieu thereof. Assessments of activities of daily living and cognitive impairment shall be performed by licensed or certified professionals, such as physicians, nurses, or social workers. No contract or certificate may combine more than one activity of daily living to create a compound impairment requirement.

(d) Each long-term care insurance contract or certificate shall include a clear description of the process for appealing and resolving benefit determinations.

(4) If an insurer proposes standards other than those described in this section, the insurer shall describe to the satisfaction of the commissioner how the proposed assessment will reasonably be expected to produce reliable, valid, and clinically appropriate results and shall demonstrate that the alternate assessment method is not less beneficial to the insured than the standards described in this section.

(5) For purposes of this section the following definitions apply:

(a) "Cognitive impairment" means a deficiency in a person's short-term or long-term memory; orientation as to person, place, and time; deductive or abstract reasoning; or judgment as it relates to safety awareness.

(b) "Hands-on assistance" means any amount of physical assistance (whether minimal, moderate, or maximal) without which the insured would not be able to perform the activity.

[Statutory Authority: RCW 48.02.060, 48.84.030 and 48.84.050. WSR 95-19-028 (Order R 95-5), § 284-54-040, filed 9/11/95, effective 10/12/95.]