**20:06:21:28.01.  Applications -- Questions about replacement.** Application forms shall include questions designed to elicit information as to whether, as of the date of the application, the applicant has another long-term care insurance policy or certificate in force or whether a long-term care policy or certificate is intended to replace any other accident and sickness or long-term care policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and the agent, if any, containing the questions may be used. Unless coverage is direct marketed, the agent must ask and record the answers to all questions on the forms.

An insurer may complete or make contractual arrangements for persons other than agents to complete the appropriate application questions. The requirements of chapter 20:06:45 apply to such arrangements. If an insurer uses a contractor or performs the service of completing the application, the contractor or person performing the service must ask the applicant the appropriate application questions and such persons must record the applicant's responses to the questions in the application. While assisting the applicant in completing the application, a contractor is prohibited from attempting to sell or to interest the applicant in purchasing any product. The insurer is responsible for any failure to ask and accurately record the applicant's responses.

Nothing in this section in any way modifies the requirement for a person to hold an insurance agent license if that person sells, solicits, or negotiates insurance.

If the policy is a replacement policy issued to a group defined by SDCL 58-17A-1(6), the required questions may be modified only to the extent necessary to elicit information about health or long-term care insurance policies other than the group policy being replaced, provided that the certificateholders have been notified of the replacement.

The questions required by this section are as follows:

(1)  Do you have another long-term care insurance policy or certificate in force (including a health care service contract or a health maintenance organization contract)?

(2)  Did you have another long-term care insurance policy or certificate in force during the last 12 months?

(a)  If so, with which company?

(b)  What is the expiration or "paid-to" date of that policy?

(c)  If that policy lapsed, when did it lapse?

(3)  Are you covered by Medicaid? and

(4)  Do you intend to replace any of your medical or health insurance coverage with this policy (certificate)?

Agents must list any other health insurance policies they have sold to the applicant which are still in force and policies sold in the past five years which are no longer in force.

An insurer may delete the question in subdivision (2)(b) of this section from the application if the insurer either obtains the same information by means of a suitability form to be completed by the agent or obtains this information during the underwriting process.

**Source:** 23 SDR 55, effective October 20, 1996; 37 SDR 215, effective May 31, 2011; 39 SDR 10, effective August 1, 2012; 44 SDR 184, effective June 25, 2018.

**General Authority:** SDCL 58-17B-4.

**Law Implemented:** SDCL 58-17B-4, 58-17B-5.1.