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## **Outline for Accelerated Payment of the Death Benefit (12/15/99)**

- I) Filing Process
  - A) General Information
    - 1) No filing fee required.
    - 2) The “re” or caption of the submission letter must be in compliance with Circular Letter No. 8 (1999).
    - 3) Compliance with Circular Letter No. 6 (1963), Section I(A) through (G).
      - (a) Filings need to be made in duplicate.
      - (b) Form numbers need to appear in the lower left hand corner.
      - (c) All blank spaces for forms need to be filled in with hypothetical data.
      - (d) Advise as to whether or not the form is replacing a previously approved form. If so, submit a highlighted copy showing the differences or changes to the form. Please explain in the narrative of the submission letters the reasons for the differences or the changes.
      - (e) If there are similar forms (e.g. other accelerated death benefit riders) not being replaced identify those forms and indicate why they are not being replaced.
      - (f) Include the application that is to be used to obtain an accelerated death benefit policy or rider. If previously approved, include the approval date. Note the application must comply with Section 41.4(c) of Regulation 143. (See Section II.F.1 of outline).
      - (g) The submission letter should identify the approach being utilized for the acceleration e.g. discount approach, lien approach with interest accrual etc...
    - 4) Include the actuarial memorandum required by Section 41.7(a) of Regulation 143.
    - 5) Provide a statement of self-support in compliance with Section 4228(h) and Circular Letter No. 8 (1998).
    - 6) Include the illustration to comply with Section 41.4(a) or the illustration to comply with Section 41.4(b) of Regulation 143 depending on the approach used for the accelerated death benefit. Clearly identify and mark the illustration as being submitted to comply with Section 41.4(a)(1) or (2) or 41.4(b)(1) or (2).
    - 7) Include and mark the numerical computation and the illustration to comply with Section 41.4(b) and (e) of Regulation 143. Specimen forms must have numbers correctly calculated and filled in.

- 8) Include the application or claim form used to apply for the acceleration of death benefits to comply with Section 41.4(d) of Regulation 143.
- 9) Provide the marketing material in accordance with Circular Letter No. 12 (1976).
- 10) Filings that are incomplete or do not comply with laws and regulations will be returned. See Circular Letter No. 14 (1997).
- 11) Provide a Flesch score certification in accordance with Section 3102. (The Flesch score must be at least 45). The number of words, sentences and syllables in the form should be set forth as part of the certification. Please refer to the Department's February 18, 1982 letter on Section 3102 for a sample certification.
- 12) Submission letter should be as detailed as possible explaining the need for the product, any unique features and any special market or intended use of the form.
- 13) Since the majority of accelerated death benefits are provided by rider the submission letter should identify the policies with which the rider will be used by form number, approval date and Department file number and address how in force policies will be handled. If there is no charge or premium associated with the attachment of the rider to the policy, then the rider should be either automatically sent to all existing policyholders or those existing policyholders should be given written notification of the availability of the rider at any time upon their request. (See Section V of this Outline). For accelerated death benefits which are provided by rider please note that the base policy would be subject to all the requirements of the product outline which are applicable to that type of base policy.
- 14) Expedited Approvals -
  - (a) Compliance with Section 3201(b)(6) and Circular Letter No. 2 (1998). Please note that Circular Letter No. 2 (1998) requires that the certification of compliance should make reference to any law, regulation, or circular letter that specifically applies or is unique to the type of policy form (and rates as required) submitted. A statement that the policy is in compliance with all applicable laws and regulations is not acceptable.
  - (b) Expedited review is not available when the form filed is to be used with a form currently under review by the Department. (Department Interpretation of Section 3201(b)(6)).
- 15) Filings for Out-Of-State Delivery Only
  - (a) A single copy with an explanation of how the provisions and rates differ, if at all, from comparable forms approved for delivery in New York.

- (b) A statement of self-support for compliance with Section 4228(h) and Circular Letter No. 8 (1998) when applicable.

## II) Accelerated Payment of the Death Benefit

### A) Definition

- 1) Accelerated death benefit means proceeds payable in part or in full under a life insurance policy to a policyowner or certificateholder during the lifetime of the insured:
  - (a) upon the diagnosis of terminal illness which would result in a life expectancy as specified in the policy not to exceed 12 months; or
  - (b) upon the diagnosis of a medical condition requiring extraordinary medical care or treatment regardless of life expectancy; or
  - (c) upon certification by a licensed health care practitioner of any condition which requires continuous care for the remainder of the insured's life in an eligible facility or at home when the insured is chronically ill as defined by Section 7702(B) of the Internal Revenue Code and regulations thereunder, provided the accelerated payments qualify under Section 101(g)(3) of the Internal Revenue Code and all other applicable sections of the federal law in order to maintain favorable tax treatment. (Please note that Regulation 143 is currently being updated to accommodate this new qualifying event).

### B) Standard Provisions

- 1) The life insurance policy or rider must provide for the accelerated payment of death benefits based on the occurrence of a diagnosis of terminal illness where life expectancy will not exceed 12 months or a shorter period as specified in the policy or rider. (Section 41.6(a) of Regulation 143).
- 2) The life insurance policy or rider may in addition to the terminal illness trigger provide for payment based on the qualifying event of the diagnosis of a medical condition requiring extraordinary medical care or treatment regardless of life expectancy. A policy which offers only the qualifying event of the diagnosis of a medical condition requiring extraordinary medical care or treatment regardless of life expectancy will not be approved. (Section 41.6(a) of Regulation 143).
- 3) The accelerated death benefit provision must be effective on the issue date of the policy, certificate or rider. (Section 41.6(b) of Regulation 143).

- 4) The policy or rider must provide for a minimum accelerated death benefit which cannot be less than the lower of 25 percent of the face amount or \$50,000, but not greater than 50 percent of the face amount. (Section 41.5(b) of Regulation 143).
- 5) The policy or rider may provide for acceleration of up to 100 percent of the death benefit. (Section 41.5(b) of Regulation 143).
- 6) The policy or rider must include the option to take the benefit as a lump sum payment. (Section 41.5(g) of Regulation 143).
- 7) The policy or rider may provide for an election for the payment of the accelerated death benefit in installments not less frequently than quarterly, provided such installment is not less than 25 percent of the actual amount accelerated by the owner. (Section 41.5(c) of Regulation 143).
- 8) The aggregate administrative expense charge required for receipt of the accelerated death benefit in installments cannot exceed 110 percent of the administrative expense charge required for receipt of the accelerated benefit in a lump sum. (Section 41.5(e) of Regulation 143).
- 9) The policy or rider must describe the effect, if any, of the payment of the accelerated death benefit on any remaining death benefits, cash values, loan values and premium payments. (Section 41.5(d) of Regulation 143).
- 10) The accelerated death benefit must be fixed at the time the insurer approves the request for the acceleration of death benefits. (Section 41.5(f) of Regulation 143).
- 11) If an insurer chooses to offer the qualifying event of “a medical condition requiring extraordinary medical care or treatment regardless of life expectancy” it must be specified in the policy or rider and can be one or more of the following:
  - (a) coronary artery disease resulting in an acute infarction or requiring surgery;
  - (b) permanent neurological deficit resulting from a cerebral vascular accident;
  - (c) end-stage renal failure;
  - (d) Acquired Immune Deficiency Syndrome;
  - (e) major organ transplant; or
  - (f) other medical conditions which the Superintendent shall deem appropriate. (Section 41.5(h) of Regulation 143).
- 12) The insurer can require a separate premium charge or cost of insurance charge for the accelerated death benefit. For group policies, the premium charge can be assessed as part of an experience based rate or as a separate premium charge. (Section 41.5(i) of Regulation 143).
- 13) The policy, rider or certificate, if the certificateholder is required to pay such a charge, must disclose any premium charge, cost of

- insurance charge and any administrative expense charges for the accelerated death benefit. (Section 41.5(i) of Regulation 143).
- 14) The policy, rider or certificate must describe the effect, if any, of the premium charge, cost of insurance charge, administrative expense charges on the policy dividends, or additional amount credits, the period of coverage, cash values, surrender values and loan value. (Section 41.5(i) of Regulation 143).
  - 15) When payment of an accelerated death benefit results in a pro rata reduction in cash value, the payment must be applied toward repaying a portion of loan equal to a pro rata portion of any outstanding policy loans unless disclosure of the effect of acceleration upon any remaining death benefit, cash value or accumulation account, policy loan and premium payments including a statement of the possibility of termination of any remaining death benefit is provided to the policyowner or certificateholder. The policyowner or certificateholder must provide written consent authorizing a difference percentage. (Section 41.5(m) of Regulation 143).
  - 16) The policy or rider cannot provide for any restrictions on the use of the proceeds from the policy. (Section 41.5(n) of Regulation 143).
  - 17) A group life policy shall provide that only the certificateholder has the right to the accelerated death benefit payment. (Section 41.5(q) of Regulation 143).
  - 18) The policy or rider must specify whether any premium due after the initial accelerated death benefit is established needs to be paid in cash or whether the payment can be waived or whether additional accelerated death benefit payments must be made to cover such premiums as they become due. (Section 41.5(r) of Regulation 143).
  - 19) The policy or rider must specify the actions required, if any, to prevent policy or certificate termination if future premiums or interest due requires an additional acceleration of the death benefit which would exceed the maximum in the policy. The policyowner or certificateholder must always have the right to pay that excess in cash within an appropriate grace period to prevent termination. The policy or rider may also specify that future premiums or interest becoming due be paid in cash. (Section 41.5(s) of Regulation 143).
  - 20) The policy or rider should specify whether the accelerated death benefit provision applies to the face amount or the current death benefit for universal life type policies which allow automatic increases due to Section 7702 of the Internal Revenue Code or requested increases under the terms of the policy. (Section 41.5(t) of Regulation 143). The accelerated amount and the remaining death benefit for all policies providing non-level benefits must be determined at the time the claim is made.

- 21) The right to the accelerated death benefit must continue during any nonforfeiture reduced paid-up period or extended term period subject to any policy minimums. The policy may provide that the accelerated death benefit be applied for one year prior to the insurance termination date when extended term insurance is effective. (Section 41.5(u) of Regulation 143).
- 22) Any exclusions for the payment of the accelerated death benefit are permissible only in accordance with the applicable exclusion provisions in the Insurance Law pertaining to life insurance. Such exclusions must be set forth in the rider or the policy. (Section 41.5(v) of Regulation 143).
- 23) If accelerated payment of the death benefit is provided in the policy, such benefit must be set forth in a separate provision and appropriately captioned as an accelerated death benefit. (Section 41.5(w) of Regulation 143).

C) Other Provisions

- 1) An insurer may establish a minimum policy issue amount for which accelerated death benefits will be made available. This information needs to be identified in either the submission letter or rider or policy. (Section 41.5(a) of Regulation 143).
- 2) If any death benefit remains after payment of an accelerated death benefit any accidental death benefit provision shall not be affected by payment of the accelerated benefit. The insurer must provide written confirmation of compliance with this provision. (Section 41.5(o) of Regulation 143).
- 3) Upon the possible remission or cure of the terminal illness or medical condition, no attempt will be made by the insurer to recover the benefits paid. The insurer must provide written confirmation of compliance with the provision. (Section 41.5(p) of Regulation 143).

D) Options for Providing Accelerated Death Benefits

- 1) Nondiscounted acceleration of the death benefit. (Section 41.7(a) of Regulation 143).
- 2) Discounted acceleration of the death benefit by mortality and/or interest. (Section 41.7(a) of Regulation 143).
  - (a) An insurer may pay a discount death benefit. The calculation shall be based on any applicable actuarial discount appropriate to the policy design. The interest rate or interest rate methodology used in the calculation must be disclosed in the policy and in the actuarial memorandum.
  - (b) In no event shall the maximum interest rate used be greater than the greater of:

- (i) the then current yield on the 90-day Treasury Bills available at the date of application for an accelerated payment; and
  - (ii) the then current maximum adjustable policy loan interest rate based on the greater of:
    - (1) Moody's Corporate Bond Yield Averages - Monthly Average Corporates - published by Moody's Investors Services, Inc. or any successor thereto for the calendar month ending two months before the date of the application for an accelerated payment; and
    - (2) the policy guaranteed cash value interest rate plus one per centum per annum (1%). (Section 41.5(j) of Regulation 143).
- 3) Lien, whether interest bearing or non-interest bearing. (Section 41.7(a) of Regulation 143).
- (a) The payment of any accelerated death benefit, any administrative expense charges, any future premium and any accrued interest can be considered a lien against the death benefit of the policy and the access to the cash value may be restricted to any excess of the cash value over the sum of any other outstanding loans and the lien. Future access to additional policy loans and partial withdrawals may also be limited to any excess of the cash value over the sum of the lien and any other outstanding policy loans.
  - (b) Under the lien approach, the insurer may accrue an interest charge on the amount of the accelerated benefits. The interest rate or interest rate methodology used in the calculation must be disclosed in the policy and actuarial memorandum.
  - (c) In no event shall the maximum interest rate used be greater than the greater of:
    - (i) the then current yield on the 90-day Treasury Bills available on the date of application for an accelerated death benefit; or
    - (ii) the higher of:
      - (1) the then current maximum adjustable policy loan interest rate based on Moody's Corporate Bond Yield Averages - Monthly Average Corporates - published by Moody's Investors Service, Inc. or any successor thereto, for the calendar month ending two months before the date of application for an accelerated payment; and
      - (2) the policy guaranteed cash value interest rate plus one per centum per annum (1%).

- (d) The interest rate accrued on the portion of the lien which is equal in amount to the cash value of the policy at the time of the benefit acceleration shall be no more than the policy loan interest rate. (Section 41.5(l) of Regulation 143).

E) Actuarial Standards

- 1) A statement of self-support must be submitted pursuant to Section 4228(h). To demonstrate self support on a stand-alone basis it must be shown that the net effect of accelerated benefits, reductions in death benefits otherwise payable and premiums if any is at least revenue neutral. The time value of money must be reflected using a discount rate consistent with the rate(s) used to price the base policies. Alternatively the company could retest each base policy assuming it is accompanied by the Accelerated Death Benefit Rider to verify self-support. The statement should indicate which of these methods was used.
- 2) The actuarial memorandum must fully describe the method used to compute the amount payable when the acceleration is requested and the remaining benefits payable at death. All of the following must be fully defined.
  - (a) The interest rates used to discount payments or accumulate liens.
  - (b) The administrative charges and/or premiums.
  - (c) The methods and formulas used to compute the amount accelerated and the amount of remaining death benefit including details applicable to Universal Life type policies in corridor and other life insurance with non-level benefits.

F) Application for Policy or Rider and the Application or Claim Forms to Accelerate Death Benefit

- 1) The application for a life insurance policy or an enrollment form for group life coverage must contain a prominent notice stating “Receipt of accelerated death benefits may affect eligibility for public assistance programs and may be taxable”. The notice, except for noncontributory group life coverage, must also include the amount of any separate premium charge or cost of insurance charge. If no separate identifiable premium or cost of insurance charge is made, such notice must disclose whether a discount or lien is associated with the acceleration and any administrative charge required upon the exercise of the benefit. (Section 41.4(c) of Regulation 143).
- 2) We have permitted insurers to provide the notice described above in a separate form until the next reprinting of the application form to include the required language. The separate notice must be

submitted for review and approval. Once the application is reprinted to include the notice it must be resubmitted for approval with a distinguishing form identification number. (Department Interpretation).

- 3) The application or the claim form used to apply for the acceleration of death benefits must provide for the following:
- (a) a notice prominently displayed to read “Receipt of accelerated death benefits may affect eligibility for public assistance programs such as medical assistance (Medicaid), Aid to Families with Dependent Children and Supplemental Security Income. Receipt of accelerated death benefits in periodic payments may be treated differently than receipt in a lump sum. Prior to applying for accelerated death benefits, (policyowners) (certificateholders) should consult with the appropriate social services agency concerning how receipt will affect the eligibility of the recipient and/or the recipient’s spouse or dependents”;
  - (b) a notice prominently displayed to read “Receipt of accelerated death benefits may be taxable. Receipt of accelerated death benefits in periodic payments may be treated differently than receipt in a lump sum. Prior to applying for such benefits, (policyowners) (certificateholders) should seek assistance from a qualified tax advisor”;
  - (c) a statement by the policyowner or certificateholder that such application is voluntary and without coercion on the part of any third party;
  - (d) a statement that no health care facility as defined in section 20 of the Public Health Law can require any person to accelerate payment of a death benefit as a condition of admission to such health care facility or for providing any care in such facility;
  - (e) a statement setting forth the remaining death benefits, if any, available to the beneficiary;
  - (f) a notice that the insurer is prohibited from paying accelerated death benefits to the policyowner or certificateholder for a period of 14 days from the date on which the information specified in Section 41.4(e) of Regulation 143 is transmitted in writing to the policyowner or certificateholder;
  - (g) the application must be dated by the insurer upon transmittal and be completed and signed by the policyowner or certificateholder not more than 30 days thereafter;

- (h) the application or claim form must set forth these statements directly above the policyowner or certificateholder's signature. (Section 41.4(d) of Regulation 143).
- 4) The application or claim form used to apply for the acceleration of the death benefit must be submitted with the filing package and clearly identified as the material used to comply with Section 41.4(d) of Regulation 143. The material will be filed for informational purposes.

### III) Disclosure

#### A) Preliminary Information and Sales Illustrations

- 1) The preliminary information and all sales illustrations for the acceleration of death benefits that do not provide for a discounting feature or an interest accrual under the lien approach must provide for either:
  - (a) an individualized illustration based on the policy being purchased or considered for purchase. The illustration must show:
    - (i) acceleration based on 50% of the maximum benefit specified in the policy available for acceleration;
    - (ii) illustrated by numerical example the effect on the policy's face amount, specified amount, death benefit, accumulation account, cash values, loan balance, premium payments, availability of policy loans and partial withdrawals;
    - (iii) demonstrate the benefit being paid as of the earlier of 10 years from date of issue or at the insured's age 75;
    - (iv) the illustration must provide for a brief description of the benefit and the qualifying events for payment of the benefits or
  - (b) a generic illustration demonstrating the manner in which the benefit operates. The illustration must show:
    - (i) the acceleration based on 50% of the maximum benefit permitted by the insurer for acceleration;
    - (ii) illustrate by numerical example the effect on the policy's face amount, specified amount, death benefit, accumulation account, cash values, loan balance, premium payments, availability of policy loans and partial withdrawals;
    - (iii) demonstrate the benefit at issue age 45 with acceleration at age 55;

- (iv) the illustration must provide for a brief description of the benefit and the qualifying events for payment of the benefits. (Section 41.4(a)(1) and (2) of Regulation 143).
- 2) The preliminary information and sales illustration for the accelerated payment of death benefits that do provide for a discounting feature or interest accrual under the lien approach must provide for either:
  - (a) an individualized illustration based on the policy being purchased or considered for purchase. The illustration must:
    - (i) be based on mortality assumption that death will occur within one year or other mortality basis on file with the Superintendent and an interest rate of 8%;
    - (ii) demonstrate acceleration based on 50% of the maximum benefit specified in the policy available for acceleration;
    - (iii) illustrate by numerical example the effect on the policy's face amount, specified amount, death benefit, accumulation account, cash values, loan balance, premium payments, availability of policy loans and partial withdrawals;
    - (iv) demonstrate the benefit being paid as of the earlier of 10 years from date of issue or at the insured's age 75;
    - (v) the illustration must provide for a brief description of the benefit and the qualifying events for payment of the benefits; or
  - (b) a generic illustration demonstrating the manner in which the benefit operates. The illustration must:
    - (i) be based on a mortality assumption that death will occur within one year or other mortality basis on file with the Superintendent and an interest rate of 8%;
    - (ii) demonstrate acceleration based on 50% of the maximum benefit permitted by the insurer for acceleration;
    - (iii) illustrate by numerical example the effect on the policy's face amount, specified amount, death benefit, accumulation account, cash values, loan balance, premium payments, availability of policy loans and partial withdrawals;
    - (iv) the illustration must provide for a brief description of the benefit and the qualifying events for payment of the benefits. (Section 41.4(b)(1) and (2) of Regulation 143).

- 3) The material required by Section III A. 1 or 2 must be submitted within the filing package and clearly identified as the material being used to comply with Section 41.4(a)(1) or (2) or Section 41.4(b)(1) or (2) of Regulation 143. This material will be filed for informational purposes.
- B) Disclosure Required After Receipt of the Application or Claim Form to Accelerate Payment of the Death Benefit
- 1) Not later than 5 days after receipt of an application or claim form to accelerate the payment of the death benefit, the insurer must provide the policyowner or certificateholder with the following:
    - (a) a numerical computation of the amount of the death benefit that has been requested to be accelerated and the amount to be paid in cash to the policyowner or certificateholder;
    - (b) a numerical computation of the amount of the death benefit which would be payable on death, if no part of the death benefit was accelerated;
    - (c) an illustration demonstrating the effect of the accelerated death benefit requested on the policy's face amount, specified amount, death benefit, premium payments, accumulation account, cash value, loan balance and partial withdrawals as provided under the terms of the policy (Section 41.4(e) of Regulation 143). For flexible premium Universal Life policies the remaining premium must be addressed carefully. A non-required premium amount such as the planned premium reduced by the percent accelerated may be misleading because the amount may not be sufficient to keep the policy in force or in the alternative it may be greater than the amount necessary to keep the policy in force. Therefore, there should be statements in the notice to the effect that the remaining death benefit will be paid only if the cash surrender value is sufficient to keep the policy in force. Additional premiums may be necessary to cover future monthly deductions. The monthly deductions will now be prorated using the same ratio used to compute the remaining death benefit. You will receive notice of the minimum payment required pursuant to the grace period of the policy. To obtain an estimate of the amount and timing of such premiums you may want to obtain a projection of the in-force policy values for a fee of \$XX. (Department Interpretation).
    - (d) a notice that other means may be available to achieve the intended goal, including a policy loan. (Section 41.4(e) of Regulation 143).

- 2) The disclosure material required by Section III) B) 1) above must be submitted as part of the filing package with actual sample numeric values filled in and must be clearly identified as the material intended to comply with Section 41.4(e) of Regulation 143. This material will be filed by the Department for informational purposes.

IV) Advertising

A) General Requirements

- 1) All advertising material must be in compliance with the provisions of Regulation No. 34-A. Advertising material is not required to be filed with the accelerated death benefit policy or rider. However, it should be available upon request by the Department.

B) Specific Requirements

- 1) Any advertisements for accelerated death benefits are subject to the following:
  - (a) all advertising material must include a statement that receipt of the accelerated death benefit may affect eligibility for public assistance programs;
  - (b) all advertising material must include a statement that receipt of the accelerated death benefits may be taxable;
  - (c) no advertisements can refer to life insurance policies providing for accelerated death benefits as long term care insurance, nursing home insurance or home care insurance, as an alternative to long term care insurance, nursing home insurance or home care insurance, or as providing long term care, nursing home or home care benefits;
  - (d) no advertisement can indicate or imply that the accelerated death benefit provision is the only means for providing access to the policy's values; and
  - (e) no advertisement can indicate or imply that the accelerated death benefit is being provided without cost unless the insurer can demonstrate otherwise to the Department. (Section 41.3 of Regulation 143).

V) In-Force Policies

A) Availability of Benefit

- 1) Accelerated payment of death benefits may be made available for in-force policies by written notification to the policyowner or certificateholder. Written acceptance by the policyowner or

certificateholder will be required for all riders which provide for a separate premium charge or cost of insurance charge if the policyowner or certificateholder is required to pay the charge. (Section 41.6(c) of Regulation 143).

- 2) When there is no charge for the attachment of the rider to a policy then the rider should be automatically sent out to all existing policyowners or certificateholders or in the alternative those existing policyowners or certificateholders should be given written notification of the availability of the benefit at any time. If the insurer advises the existing policyowners or certificateholders that the accelerated death benefit is now available at any time upon request, the insurer can then require a positive election of the benefit by the existing policyowner or certificateholder.

Please note that the existing policyowners or certificateholders would be only those policyowners or certificateholders who have the same type of policy or certificate (including minimum issue amount) that if newly issued would have the accelerated death benefit attached to their coverage at no charge. (Department Interpretation)