

**NEW YORK STATE
DEPARTMENT OF FINANCIAL SERVICES
THIRD AMENDMENT TO 11 NYCRR 41
(INSURANCE REGULATION 143)**

ACCELERATED PAYMENT OF THE DEATH BENEFIT UNDER A LIFE INSURANCE POLICY

I, Linda A. Lacewell, Superintendent of Financial Services, pursuant to the authority granted by Sections 202 and 302 of the Financial Services Law and Sections 301, 1113, 1304, 3201, 3209, 3230, 4217 and 4517 of the Insurance Law, do hereby promulgate the following Third Amendment to Part 41 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Insurance Regulation 143), to take effect upon publication in the State Register, to read as follows:

(New Matter Underscored; Matter In Brackets Deleted)

Section 41.1 is amended to read as follows:

The purpose of this Part is to establish rules for the accelerated death benefit provisions under an individual or group life insurance policy or fraternal benefit certificate. This Part provides advertising and disclosure requirements, benefit levels, benefit eligibility and actuarial requirements. This Part also provides the requirements for accelerated death benefits pursuant to Insurance Law section 1113(a)(1)(C) and (D) [of the Insurance Law], which must be tax qualified in order to meet the definition of life insurance under the Insurance Law. In addition to the requirements set forth in this Part, it is the insurer's responsibility to ensure that Insurance Law section 1113(a)(1)(C) and (D) accelerated death benefit policies, on a standalone basis, meet the applicable requirements of the Internal Revenue Code and regulations thereunder for [Federal] federal tax qualification.

Section 41.2 is amended to read as follows:

As used in this Part, the following terms shall have the following meanings:

(a) *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:

(1) upon the diagnosis of terminal illness [which] that would result in a life expectancy as specified in the contract not to exceed 12 months;

(2) upon the diagnosis of a medical condition requiring extraordinary medical care or treatment regardless of life expectancy;

(3) upon certification by a licensed health care practitioner of any condition [which] that requires continuous care for the remainder of the insured's life in an eligible facility or at home when the insured is chronically ill, provided the accelerated payments qualify under section 101(g)(3) of the Internal Revenue Code^[1] and all other applicable sections of [Federal] federal law in order to maintain favorable tax treatment; [or]

[¹ Internal Revenue Code, 26 U.S.C. section 101, current through P.L. 109-04, published by U.S. Government Printing Office, Pittsburgh, PA, is available for public inspection at the Department of Financial Services offices at One Commerce Plaza, Albany, NY 12257 and at One State Street, New York, NY 10004.]

(4) upon certification by a licensed health care practitioner that the insured is chronically ill, provided the accelerated payments qualify under section 101(g)(3) of the Internal Revenue Code and all other applicable sections of [Federal] federal law in order to maintain favorable tax treatment [and the insurer that issues such policy is a qualified long-term care insurance carrier under section 4980C of the Internal Revenue Code.²];

(5) upon the insured's having been a resident of a nursing home for a period of three months or more and upon certification by a licensed health care practitioner that there is an expectation that the insured will remain a resident of a nursing home until death; or

(6) upon the insured's having been the recipient of end of life or palliative care for a period of three months or more at a residential health care facility, home care services or hospice, and upon certification by a licensed health care practitioner that there is an expectation that the insured will continue to require the services until death.

(b) *Chronically ill* shall have the meaning set forth in section 7702B of the Internal Revenue Code^[3] (26 U.S.C. 7702B(c)(2)), as amended, and regulations thereunder.

(c) *Discounted accelerated death benefit* shall have the meaning set forth in section 41.5(j) of this Part.

(d) Home care services means one or more of the following services provided to persons at home: services provided by a home care services agency, home health aide services, personal care services, homemaker services, or housekeeper or chore services.

(e) Hospice means a coordinated program of home and in-patient care that treats a terminally ill patient and family as a unit, employing an interdisciplinary team acting under the direction of an autonomous hospice administration and where the program provides palliative and supportive care to meet the special needs arising out of physical, psychological, spiritual, social and economic stresses that are experienced during the final stages of illness, and during dying and bereavement.

(f) Insurance producer or producer means an insurance agent or insurance broker.

[(d)] (g) *Licensed health care practitioner* shall have the meaning set forth in section 7702B of the Internal Revenue Code (26 U.S.C. section 7702B(c)(4)), as amended, and regulations thereunder.

[(e)] (h) *Lien approach* shall have the meaning set forth in section 41.5(l) of this Part.

(i) Nursing home means a facility providing therein nursing care to sick, invalid, infirm, disabled or convalescent persons in addition to lodging and board or health-related service, or any combination of the

[² Internal Revenue Code, 26 U.S.C. section 4980C, current through P.L. 109-94, published by the U.S. Government Printing Office, Pittsburgh, PA, is available for public inspection at the Department of Financial Services offices at One Commerce Plaza, Albany, NY 12257 and at One State Street, New York, NY 10004.]

[³ Internal Revenue Code, 26 U.S.C. section 7702B, current through P.L. 109-94, published by U.S. Government Printing Office, Pittsburgh, PA, is available for public inspection at the Department of Financial Services offices at One Commerce Plaza, Albany, NY 12257 and at One State Street, New York, NY 10004.]

foregoing, and in addition thereto, providing nursing care and health-related service, or either of them, to persons who are not occupants of the facility.

(j) Palliative care means health care treatment, including interdisciplinary end-of-life care, and consultation with patients and family members, to prevent or relieve pain and suffering and to enhance the patient's quality of life, including hospice care.

[(f)] (k) Policy means any individual life policy, group life policy or group life certificate, fraternal benefit certificate or any rider attached to such policies or certificates providing accelerated payment of the death benefit.

[(g)] (l) Qualified actuary means a member in good standing of the American Academy of Actuaries meeting any qualifications standard of the Academy or Actuarial Standards Board for practice in life insurance and who represents the [insurance company] insurer or fraternal benefit society.

[(h)] (m) Qualified long-term care services shall have the meaning set forth in section 7702B of the Internal Revenue Code (26 U.S.C. section 7702B(c)(1)), as amended, and regulations thereunder.

(n) Residential health care facility means a nursing home or a facility providing health-related service.

Section 41.3 is amended to read as follows:

In addition to complying with the provisions of Part 219 of this Title (Regulation No. 34-A), any advertisements for accelerated death benefits shall be subject to the following:

(a) all advertising material shall include a statement that receipt of the accelerated death benefits may affect eligibility for public assistance programs;

(b) [except as otherwise provided in section 41.8 of this Part for policies that accelerate the death benefit pursuant to section 1113(a)(1)(C) or (D) of the Insurance Law,] all advertising material for accelerated death benefits under Insurance Law section 1113(a)(1)(A), (B), (C) or (D) shall include a statement that receipt of the accelerated death benefits may be taxable[;], and all advertising material for accelerated death benefits under Insurance Law section 1113(a)(1)(E) or (F) shall include a statement that receipt of these types of accelerated death benefits is not expected to receive the same favorable tax treatment as the receipt of other types of accelerated death benefits that may be available to the policyowner or certificateholder;

(c) no [advertisements] advertisement shall refer to life insurance policies providing for accelerated death benefits as long-term care insurance, nursing home insurance, home care insurance, or long-term care insurance provided under the partnership for long-term care program, as defined in Social Services Law section 367-f [of the Social Services Law] and Insurance Law section 3229 [of the Insurance Law], or as an alternative to such types of insurance, except as otherwise provided in section 41.8 of this Part;

(d) no advertisement shall 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 shall indicate or imply that the accelerated death benefit is being provided without cost unless the insurer can demonstrate otherwise to the superintendent.

Section 41.4 is amended to read as follows:

(a)(1) The preliminary information required pursuant to Insurance Law section 3209(d) [of the Insurance Law] and all sales illustrations for the accelerated payment of death benefits pursuant to Insurance Law section 1113(a)(1)(A) or (B) [of the Insurance Law] shall at the insurer's option provide for either:

[(1)] (i) an individualized illustration based on the policy being purchased or considered for purchase. The illustration shall demonstrate the acceleration based on 50 percent of the maximum benefit specified in the policy as available for acceleration, 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. The illustration shall demonstrate the benefit as being paid as of the earlier of 10 years from the date of issue or at the insured's age 75 but in no event earlier than five years from the date of issue. The illustration shall be accompanied by a brief description of the benefit and the qualifying events for payment of benefits; or

[(2)] (ii) a generic illustration demonstrating the manner in which the benefit operates. The illustration shall demonstrate the acceleration based on 50 percent of the maximum benefit as permitted by the insurer for acceleration, 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. The illustration shall demonstrate the benefit for an issue age of 45 with acceleration at age 55. The illustration shall be accompanied by a brief description of the benefit and the qualifying events for payment of benefits.

(2) If the accelerated payment of the death benefits provides for a discounting feature, then the illustration shall be based on a mortality assumption that death will occur within one year of such other mortality basis on file with the superintendent and an interest rate of eight percent. If the accelerated payment of the death benefits provides for an interest accrual under the lien approach, then the illustration shall be based on an interest rate of eight percent.

(b) The preliminary information required pursuant to Insurance Law section 3209(d) [of the Insurance Law] and all sales illustrations shall:

(1) for the accelerated payment of death benefits pursuant to Insurance Law section [1113(a)(1)(C) or (D) of the Insurance Law shall] 1113(a)(1)(C), (D), (E) or (F) at the insurer's option provide for either:

[(1)] (i) an individualized illustration based on the policy being purchased or considered for purchase. The illustration shall demonstrate the acceleration based on the maximum benefit specified in the policy as available for acceleration, 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. The numerical example may show the effects of the acceleration on a monthly basis for a period not less than 12 months, or on a quarterly, semi-annual or annual basis for the entire benefit period. The illustration shall demonstrate the benefit as being paid as of the earlier of 10 years from the date of issue or at the insured's age 75 but in no event earlier than five years. The illustration shall be accompanied by a brief description of the benefit and the qualifying events for the payment of benefits; or

[(2)] (ii) a generic illustration demonstrating the manner in which the benefit operates. The illustration shall demonstrate the acceleration based on the maximum benefit as permitted by the insurer for acceleration, 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. The numerical example may show the effects of the acceleration on a monthly basis for a period not less than 12 months, or on a quarterly, semi-annual or annual basis for the entire benefit period. The illustration shall demonstrate the benefit for an issue age of 45 with acceleration at age 55. The illustration shall be accompanied by a brief description of the benefit and the qualifying events for payment of benefits.

(2) for the accelerated payment of death benefits pursuant to Insurance Law section 1113(a)(1)(E) or (F), contain a prominent notice stating "Receipt of this type of accelerated death benefit is not expected to receive the same favorable tax treatment as other types of accelerated death benefits that may be available to you. Prior to applying for benefits, you should seek assistance from a qualified tax advisor."

(c)(1) The application for a life insurance policy or an enrollment form for group life coverage providing for accelerated payment of death benefits pursuant to Insurance Law section [1113(a)(1)(A), (B) or (C) of the Insurance Law] 1113(a)(1)(A) or (B) or pursuant to Insurance Law section 1113(a)(1)(C) or (D) that is not intended to be a qualified long-term care insurance contract for federal tax purposes shall 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] shall also indicate 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] shall disclose whether a discount or lien is associated with the acceleration and any administrative charge required upon the exercise of the benefit.

[(d)] (2) The application for a life insurance policy or an enrollment form for group life coverage providing for accelerated payment of death benefits pursuant to Insurance Law section [1113(a)(1)(D) of the Insurance Law] 1113(a)(1)(C) or (D) that is intended to be a qualified long-term care insurance contract for federal tax purposes shall contain a prominent notice stating "Receipt of accelerated death benefits may affect eligibility for public assistance [program] programs such as medical assistance (Medicaid), Aid to Families with Dependent Children and Supplemental Security Income and may be taxable."

(3) The application for a life insurance policy or an enrollment form for group life coverage providing for accelerated payment of death benefits pursuant to Insurance Law section 1113(1)(E) or (F) shall contain a prominent notice stating "Receipt of accelerated death benefits affects eligibility for public assistance programs and this type of accelerated death benefit is not expected to receive the same favorable tax treatment as other types of accelerated death benefits that may be available to you." The notice, except for noncontributory group life coverage, shall 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, the notice shall disclose whether a discount or lien is associated with the acceleration and any administrative charge required upon the exercise of the benefit.

(d) In the case of accelerated payment of death benefits pursuant to Insurance Law section 1113(a)(1)(E) or (F), the policy or rider on its face page shall state "Receipt of this type of accelerated death benefit is not expected to receive the same favorable tax treatment as other types of accelerated death benefits that may be available to you. Prior to applying for benefits, you should seek assistance from a qualified tax advisor."

(e) [In the case of accelerated payment of death benefits pursuant to section 1113(a)(1)(A), (B) or (C) of the Insurance Law, the] The application or claim form to accelerate the payment of the death benefit of a life insurance policy shall provide for the following:

(1) 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”;

(2) 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”. For policies that accelerate pursuant to Insurance Law section 1113(a)(1)(E) or (F), the disclosure shall further state “Receipt of this type of accelerated death benefit is not expected to receive the same favorable tax treatment as other types of accelerated death benefits that may be available to you”;

(3) a statement by the policyowner or certificateholder that such application is voluntary and without coercion on the part of any third party;

(4) a statement that no health care facility as defined in Public Health Law 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;

(5) a statement setting forth the remaining death benefits, if any, available to the beneficiary;

(6) a notice that the insurer is prohibited from paying accelerated death benefits to the policyowner or certificateholder for a period of [14] five days from the date on which the information specified in subdivision [g](f) of this section is transmitted in writing to the policyowner or certificateholder;

(7) the application [must] shall be dated by the insurer upon transmittal and be completed and signed by the policyowner or certificateholder not more than 30 days thereafter;

(8) the application or claim form [must] shall set forth the statements required by this subsection directly above the policyowner or certificateholder’s signature. The notices required by this subdivision [must] shall be set forth in the application or claim form used to apply for the acceleration of death benefits.

(f) [In the case of accelerated payment of death benefits pursuant to section 1113(a)(1)(D), the application or claim form to accelerate the payment of the death benefit of a life policy shall provide for the following:

(1) a statement by the policyowner or certificateholder that such application is voluntary and without coercion on the part of any third party; and

(2) 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.

(g) In the case of accelerated payment of death benefits pursuant to section 1113(a)(1)(A), (B) or (C) of the Insurance Law not] Not later than five days after receipt of an application or claim form to accelerate the payment of the death benefit of a life insurance policy, the insurer shall provide the policyowner or certificateholder with the following:

(1) 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 the certificateholder;

(2) a numerical computation of the amount of the death benefit which would be payable upon death, if no part of the death benefit were accelerated;

(3) 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; and

(4) a notice that other means may be available to achieve the intended goal, including a policy loan.

[(h)] (g) When the insurer agrees to accelerate the death benefits in a lump sum, the insurer shall issue a new policy or an amended schedule page to the policyowner or certificateholder or give written notification or an equivalent explanation of benefits statement to the certificateholder under a group life policy to reflect any new reduced in-force face amount and other values provided by the policy.

(i) When an insurer agrees to accelerate the death benefits in installments or in a lump sum under the lien approach, pursuant to Insurance Law section 1113(a)(1)(A) or (B) [of the Insurance Law], the insurer shall issue a report semiannually to the policyowner or certificateholder indicating the current face amount, the current specified amount, accumulation account, cash values, the current death benefit, and other values provided by the policy that are affected by the acceleration including premium requirements.

Subdivisions (c), (d), (e), (f), (h), (m), (n), (v), (w) and (x) of section 41.5 are amended to read as follows:

(c) The present value of the amounts to be accelerated shall not exceed the death benefit of the policy and the death benefit shall be reduced each time an accelerated payment is made by the amount of death benefit accelerated. Any additional accelerated death benefits pursuant to Insurance Law section 1113(a)(1)(C) and (D) [of the Insurance Law] payable in excess of the death benefit may only be provided if there are no premium requirements for such benefits once those benefits are being paid.

(1) The present value of the amounts accelerated pursuant to Insurance Law section 1113(a)(1)(A) and (B) [of the Insurance Law] shall be calculated using interest only at a rate not exceeding the rate specified in subdivision (j) of this section.

(2) The present value of the amounts accelerated pursuant to Insurance Law section 1113(a)(1)(C) and (D) [of the Insurance Law] shall be calculated using the underlying pricing assumptions as to interest, mortality

and morbidity but in no event in excess of the lesser of the amount produced by using a monthly discount of 1.125 percent and twice the death benefit at the time of the first accelerated payment.

(d) Notwithstanding the requirements of subdivision (c) of this section, a residual death benefit, not subject to any acceleration, may be paid in the event of death of an insured irrespective of the amount of the death benefit that has been paid as an acceleration of the death benefit pursuant to Insurance Law section 1113(a)(1)(C) and (D) [of the Insurance Law]. Such residual death benefit may not exceed the lesser of 10 percent of the highest death benefit that existed at the time an accelerated payment was made pursuant to Insurance Law section 1113(a)(1)(C) or (D) [of the Insurance Law] and \$25,000. Any residual death benefits payable in excess of the death benefit less the accelerated benefit paid, may only be provided if there are no additional premium requirements for such benefits once those benefits are available.

(e) In the case of [benefits accelerated pursuant to] accelerated death benefits under Insurance Law section [1113(a)(1)(A) or (B) of the Insurance Law] 1113(a)(1)(A), (B), (E) or (F):

(1) the amount accelerated shall not be required to be less than the lower of 25 percent of the policy face amount or \$50,000 and shall not be required to be greater than 50 percent of the face amount;

(2) the policy may provide 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] policyowner or certificateholder;

(3) the accelerated death benefit shall be fixed at the time the insurer approves the request for the acceleration of benefits; and

(4) the policy shall include the option to take the benefits in a lump sum.

(f) The policy [must] shall describe the effect, if any, of the payment of the accelerated death benefit on any remaining death benefits, nonforfeiture benefits, loan values, and premium payments.

(h) A medical condition requiring extraordinary medical care or treatment regardless of life expectancy [must] shall be specified in the policy and may include one or more of the following:

(1) coronary artery disease resulting in an acute infarction or requiring surgery;

(2) permanent neurological deficit resulting from a cerebral vascular accident;

(3) end-stage renal failure;

(4) Acquired Immune Deficiency Syndrome;

(5) major organ transplant; or

(6) other medical conditions which the superintendent shall deem appropriate.

(m) Under the lien approach:

(1) if a policy or certificate terminates while subject to the lien, the insurer shall extinguish the lien without further recourse to the policyowner or certificateholder. In the event that the policy or certificate is reinstated, the lien may also be reinstated with interest accrued as if the policy or certificate had never terminated; and

(2) the policyowner or certificateholder [must] shall have the option of paying in cash all or part of any premium or accrued interest that would be capitalized under the terms of the policy provisions as well as the option of repaying all or part of any lien in cash, in order to prevent the lien from causing the policy or certificate to terminate.

(n) For policies or certificates that provide for the benefit payment pursuant to Insurance Law section 1113(a)(1)(A) or (B) when payment of the accelerated benefit results in a pro rata reduction in account value or nonforfeiture benefits, the payment [must] shall 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, account value, nonforfeiture benefits, 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] shall also provide written consent authorizing a different percentage.

(v)(1) The right to the accelerated death benefit pursuant to Insurance Law section 1113(a)(1)(A) or (B) [of the Insurance Law must] shall continue during any nonforfeiture reduced paid-up or extended term period but may be subject to any policy minimums. The policy may provide that the accelerated death benefit [must] shall be applied for one year prior to the insurance termination date when extended term insurance is effective.

(2) The right to the accelerated death benefit pursuant to Insurance Law section 1113(a)(1)(C) or (D) [of the Insurance Law must] shall continue during at least one of the following paid-up nonforfeiture options, but may be subject to any policy minimums:

(i) reduced paid-up insurance;

(ii) extended term insurance; or

(iii) other similar offerings approved by the superintendent.

In the event the right to continue the accelerated death benefit pursuant to Insurance Law section 1113(a)(1)(C) or (D) [of the Insurance Law] is not available during at least one paid-up nonforfeiture option due to policy minimums then there shall be an equitable adjustment in the paid-up life insurance provided.

(w) Except in the case of [benefits accelerated pursuant to] accelerated death benefits under Insurance Law section 1113(a)(1)(C) or (D) [of the Insurance Law], exclusions for the payment of the accelerated death benefit will be permitted only in accordance with the applicable provisions of the Insurance Law pertaining to life insurance.

(x) If accelerated payment of the death benefit is provided in the policy, [such] the benefit [must] shall be set forth in a separate provision appropriately captioned as an accelerated death benefit.

Subdivisions (a) and (d) of section 41.6 are amended to read as follows:

(a)(1) The life insurance policy shall provide for the accelerated payment of death benefits pursuant to Insurance Law section 1113(a)(1)(A) [of the Insurance Law], based on the occurrence of the qualifying event of a diagnosis of terminal illness where the life expectancy will not exceed 12 months or a shorter period as specified in the contract.

[In addition, the] (2) The policy may also provide for payment pursuant to:

(i) Insurance Law section 1113(a)(1)(B) [of the Insurance Law], based on the qualifying event of a diagnosis of a medical condition requiring extraordinary medical care or treatment regardless of life expectancy[. In addition, the policy may also provide payments pursuant to];

(ii) Insurance Law sections 1113(a)(1)(C) or (D) [of the Insurance Law], as provided in section 41.8 of this Part[.]; and

(iii) Insurance Law section 1113(a)(1)(E) or (F).

(3) Any policy may specify whether benefits may be accelerated pursuant to Insurance Law section [1113(a)(1)(A), (B), (C) or (D) of the Insurance Law] 1113(a)(1)(A), (B), (C), (D), (E) or (F) singly or in combination. However, any policy providing benefits pursuant to Insurance Law section 1113(a)(1)(E) or (F) shall provide that the death benefit will first be accelerated under any Insurance Law section 1113(a)(1)(A), (B), (C) or (D) triggers for which the policyowner or certificateholder qualifies under the same policy. A policy that provides for accelerated payment of the death benefit pursuant to Insurance Law section [1113(a)(1)(B), (C) or (D) of the Insurance Law must] 1113(a)(1)(B), (C), (D), (E) or (F) shall also provide that the death benefit may be accelerated pursuant to Insurance Law section 1113(a)(1)(A) [of the Insurance Law].

(d) This Part shall not apply to policies providing benefits subject to section 52.12 or 52.13 of this Title, except as expressly provided for in this Part, in the case of policies that accelerate the death benefit pursuant to Insurance Law section 1113(a)(1)(C) or (D) [of the Insurance Law]. This Part shall not apply to policies providing benefits subject to sections 39.0, 39.1, 39.2 and 39.3 of Part 39 of this Title.

Subdivisions (a), (b) and (c)(1)(i) of section 41.7 are amended to read as follows:

(a) The statement of self-support required by Insurance Law section 4228(h) [of the Insurance Law] shall indicate that the cost of providing accelerated death benefits was considered in the demonstration of self-support.

(b) A nonforfeiture memorandum signed by a qualified actuary shall be submitted with the policy form filing. The memorandum shall include a discussion of any impact, both before and after acceleration, on nonforfeiture values due to the existence of the accelerated death benefit provision. If there is no impact, then the memorandum shall include an explanation as to why there is no impact.

(1) Policies and certificates or portions thereof that are not subject to the exemption in Insurance Law section 4240(d)(3) [of the Insurance Law] shall be in compliance with Insurance Law section 4221(l) [of the Insurance Law].

(2) Policies and certificates or portions thereof that are subject to the exemption in Insurance Law section 4240(d)(3) [of the Insurance Law] shall be in compliance with Part 54 of this Title.

(c) *Reserves.*

(1) General.

(i) When benefits are provided through the acceleration of death benefits under group or individual life policies or riders to such policies, policy reserves shall be determined in accordance with Insurance Law sections 4217 and 4517 [of the Insurance Law]. All valuation assumptions used in constructing the reserves shall be determined as appropriate for statutory valuation purposes by the qualified actuary. Mortality tables and interest currently recognized for life insurance reserves under Insurance Law sections 4217 and 4517 [of the Insurance Law] may be used as well as appropriate assumptions for the other provisions incorporated in the policy. The qualified actuary should ascertain that the reserves in the aggregate are sufficient to cover:

(a) policies upon which no claim has yet arisen; and

(b) policies upon which a claim has arisen.

Section 41.8 is amended to read as follows:

§ 41.8 Additional requirements for accelerated death benefits pursuant to Insurance Law section 1113(a)(1)(C) or (D) [of the Insurance Law].

Unless otherwise specifically indicated in this section a policy or certificate that provides for the accelerated payment of the death benefit pursuant to Insurance Law sections 1113(a)(1)(C) or (D) [of the Insurance Law] shall meet the following standards:

(a) Pursuant to Insurance Law section 1113(a)(1)(C) [of the Insurance Law] accelerated payment of the death benefit shall be based on the qualifying event of 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, provided that any such accelerated payments shall qualify under section 101(g)(3) of the Internal Revenue Code and all other applicable sections of [Federal] federal law in order to maintain favorable tax treatment.

(b) Pursuant to Insurance Law section 1113(a)(1)(D) [of the Insurance Law] accelerated payment of the death benefit shall be based on the qualifying event of certification by a licensed health care practitioner that the insured is chronically ill, provided that any such accelerated payments shall qualify under section 101(g)(3) of the Internal Revenue Code and all other applicable sections of federal law in order to maintain favorable tax treatment [and the policy or certificate shall meet all the applicable requirements of section 7702B of the Internal Revenue Code, as amended for a qualified long term care insurance contract or payments].

(c) A policy or certificate intended to be a qualified long-term care insurance contract for federal tax purposes shall:

(1) [The insurer issuing such policy or certificate shall] meet the applicable requirements of section 4980C of the Internal Revenue Code for a qualified long-term care insurance carrier[.];

(2) [The policy or certificate shall] meet all the applicable requirements of section 7702B of the Internal Revenue Code, as amended for a qualified long-term care insurance contract or payments; and

(3) state that it is intended to be a qualified long-term care insurance contract under section 7702B of the Internal Revenue Code. Such statement shall be qualified by the disclosure to the effect that “This is not a health insurance (policy)(certificate) and is not subject to the minimum requirements of New York Law pertaining to [Long Term] Long-Term Care Insurance and does not qualify for the New York State Long Term Care Partnership Program and is not a Medicare Supplement Policy. The (policy)(certificate) is intended to be a qualified long-term care insurance contract for federal tax law only.”

(d) A policy or certificate that is not intended to be a qualified long-term care insurance contract for federal tax purposes shall state that it is not intended to be a qualified long-term care insurance contract under section 7702B of the Internal Revenue Code.

[(c)] (e) The submission of the policy or certificate for approval to the superintendent shall include a written certification from a tax counsel that to the best of the counsel’s knowledge and belief the policy or certificate provides for accelerated payments that qualify under section 101(g)(3) of the Internal Revenue Code and all other applicable sections of [Federal] federal law in order to maintain favorable tax treatment. The certification by tax counsel for policies and certificates that accelerate payment of the death benefit pursuant to Insurance Law section [1113(a)(1)(D) of the Insurance Law] 1113(a)(1)(C) or (D) and is intended to be a qualified long-term care insurance contract for federal tax purposes shall also certify that the policy or certificate meets all the applicable requirements of section 7702B of the Internal Revenue Code, as amended, for a qualified long-term care contract and the insurer issuing such policy or certificate meets the applicable requirements of section 4980C of the Internal Revenue Code [as a qualified long-term care carrier].

[(d)] (f) Payments made shall be for costs incurred for qualified long-term care services or made on a per diem basis without regard to the expenses incurred for qualified long-term care services.

[(e)] (g) The policy or rider on its face page shall provide for a free look provision for the accelerated benefits in accordance with the requirements of Insurance Law section 3203(a)(11) [of the Insurance Law], which shall not be less than 30 days.

[(f)] (h) No policy or certificate shall limit or exclude the payment of accelerated death benefits by type of illness, treatment, medical condition or accident, except as follows:

(1) mental or nervous disorders, however, this shall not permit exclusion or limitation of benefits on the basis of Alzheimer’s Disease or demonstrable organic brain disease;

(2) alcoholism and drug addiction;

(3) illness, treatment or medical condition arising out of:

(i) war or act of war (whether declared or undeclared);

- (ii) participation in a felony, riot or insurrection;
- (iii) service in the armed forces or units auxiliary thereto;
- (iv) suicide, attempted suicide or intentionally self-inflicted injury; or
- (v) aviation (this exclusion applies only to non-fare paying passengers);

(4) treatment provided in a government facility (unless otherwise required by law), services for which benefits are provided under Medicare or other governmental program (except Medicaid), any [State] state or [Federal] federal workers' compensation, employer's liability or occupational disease law, or any mandatory motor vehicle no-fault law, services provided by a member of the covered person's immediate family and services for which no charge is normally made in the absence of insurance; and

(5) treatment or care received by the insured outside the United States and its possessions.

[(g)] (i) The policy or certificate shall not condition eligibility for any benefits on a prior hospitalization requirement or condition eligibility for benefits provided in an institutional care setting on the receipt of a higher level of care or condition eligibility of noninstitutional benefits on the prior receipt of institutional care.

[(h)] (j) The policy or certificate shall provide in the incontestable provision in addition to the requirements of Insurance Law section 3203(a)(3) or 3220(a)(1) [of the Insurance Law], as applicable:

(1) that a policy or certificate that has been [inforce] in force for at least six months but less than two years may be rescinded or an otherwise valid claim for accelerated benefits may be denied upon a showing of misrepresentation that is both material to the acceptance for coverage and which pertains to the condition for which benefits are sought; and

(2) if increases are permitted, that any increase in the policy or certificate that has been in effect for at least six months but less than two years which was applied for and subject to evidence of insurability may be rescinded or an otherwise valid claim for accelerated benefits on the amount of the increase may be denied upon a showing of misrepresentation that is both material to the acceptance for coverage and which pertains to the condition for which benefits are sought.

[(i)] (k) The policy or certificate may provide for a maximum monthly amount that may be accelerated, which maximum amount may differ based on whether the insured is receiving qualified care services at home or in a long-term care facility.

[(j)] (l) The insurer shall provide the policyowner or certificateholder with a report, at least monthly, of any benefits paid out during the prior month, an explanation of any changes to the policy or certificate, death benefits and cash values on account of the benefits being paid out, and the amount of the remaining benefits that can be accelerated at the end of the prior month. A calendar month or policy/certificate month may be utilized.

[(k)] (m) The policy or certificate may provide that any option otherwise available to the insured to accelerate less than all of the remaining death benefit on account of a terminal illness diagnosis shall be suspended while the death benefit is being so accelerated in accordance with the requirements of this section.

[(l)] (n) The conversion benefit available pursuant to Insurance Law section 3220(a)(6) or 3220(a)(7) [of the Insurance Law] shall include a benefit comparable to the acceleration benefit. This requirement may be satisfied by a separate policy or certificate. This requirement, subject to the approval of the superintendent, may be satisfied by arrangement with another insurer to provide the required coverage.

[(m)] (o) The policy or certificate may pay a daily per diem benefit without regard to the amount of expenses the insured incurs for qualified long-term care services, provided that:

(1) the policy or certificate otherwise complies with all requirements of this section; and

(2) the per diem benefit does not exceed the maximum amount eligible under section 101(g)(3) of the Internal Revenue Code and all other applicable sections of [Federal] federal law for favorable tax treatment.

[(n)] (p) In addition to any of the requirements of Part 51 of this Title the following shall apply:

(1) The insurer shall follow procedures consistent with those contained in section 52.29 of this Title with respect to determining whether the sale of any such policy or certificate is intended to replace any other similar life policy or any other long-term care insurance, nursing home insurance, home care insurance policy or coverage or long-term care insurance policy or coverage provided under the Partnership for Long-Term Care Program, as defined in Social Services Law section 367-f [of the Social Services Law] and Insurance Law section 3229 [of the Insurance Law]. An insurer that determines that any such policy is intended to replace a similar life policy or any other long-term care insurance, nursing home insurance or home care insurance policy or coverage or long-term care insurance policy or coverage provided under the Partnership for Long-Term Care Program, as defined in Social Services Law section 367-f [of the Social Services Law] and Insurance Law section 3229 [of the Insurance Law], shall make the disclosures required by section 52.29 of this Title.

(2) The insurer shall follow procedures consistent with those contained in section 52.29 of this Title with respect to determining whether the sale of any life policy providing benefits subject to this section or any other long-term care insurance, nursing home insurance, home care insurance policy or coverage or long-term care insurance policy or coverage provided under the Partnership for Long-Term Care Program, as defined in Social Services Law section 367-f [of the Social Services Law] is intended to replace a policy or certificate providing benefits subject to this section. An insurer that determines that such sale is intended to replace a policy or certificate providing benefits subject to this section shall make the disclosures required by section 52.29 of this Title.

(3) If a group policy is replaced by another group policy issued to the same policyholder, the succeeding insurer shall offer coverage to all persons covered under the previous group policy on its date of termination. Coverage provided or offered to individuals by the insurer and premiums charged to persons under the new group policy shall not vary or otherwise depend on the individual's health or disability status, claim experience or use of long-term care services.

[(o)] (q) When payment of an accelerated benefit results in a pro rata reduction in cash value, the payment may be applied toward repaying a portion of loan equal to a pro rata portion of any outstanding policy loans, or may be applied entirely to pay qualified long-term care expenses or distributed as long-term care payments, if 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] shall provide written consent authorizing any other arrangement for the repayment of outstanding policy loans.

[(p)] For policies or certificates that provide for the payment of benefits pursuant to section 1113(a)(1)(D) the] (r) The insurer shall, in addition to providing any other disclosures required by the applicable provisions of the Insurance Law pertaining to life insurance or by other provisions of this Part, provide the applicant with a disclosure statement or outline of coverage in the form [required by] set forth in section 4980C of the Internal Revenue Code, as amended, for those provisions under which the death benefit may be so accelerated.

[(q)] (s) The policy summary required by Insurance Law section 3209 [of the Insurance Law] shall include, in addition to all other required information:

(1) an explanation of how the accelerated benefit interacts with other components of the policy, including deductions from death benefits;

(2) an explanation of the amount of benefits, the length of benefits, and the guaranteed lifetime benefits if any, for each covered person;

(3) any exclusions, reductions and limitations on the accelerated benefits; and

(4) if applicable to the policy type:

(i) a disclosure of the effects of exercising other rights under the policy;

(ii) a disclosure of guarantees related to the premium or charges for the accelerated benefit; and

(iii) current and projected maximum lifetime benefits.

If the policy or certificate is illustrated and such illustration is used to satisfy the requirement of Insurance Law section 3209 [of the Insurance Law] for a policy summary in accordance with Part 53 of this Title, then such illustration shall include the information listed in this subdivision.

[(r)] (t) The policy or certificate shall be clear on how any increases or decreases in the face amount and/or death benefit other than decreases due to the payment of an accelerated death benefit affect the amount of the death benefit that may be accelerated.

[(s)] (u)(1) The policy and certificate shall not be advertised or marketed as long-term care insurance, nursing home insurance, home care insurance or [long term] long-term care insurance provided under the Partnership for Long Term Care Program, as defined in Social Services Law section 367-f [of the Social Services Law] and Insurance Law section 3229 [of the Insurance Law]. Any advertisement, description, comparison, marketing material or illustration shall state in bold that **“This [product] is a life insurance [policy] (policy)(certificate)”**

that accelerates the death benefit for qualified [long term] long-term care services (The phrase “on account of chronic illness” may be substituted for the phrase “for qualified [long term] long-term care services” for [products] policies that [accelerate the death benefit pursuant to section 1113(a)(1)(C)] are not intended to be qualified long-term care insurance contracts for federal tax purposes) and is not a health insurance (policy)(certificate) providing [long term] long-term care insurance subject to the minimum requirements of New York Law, does not qualify for the New York State Long Term Care Partnership Program and is not a Medicare supplement (policy)(certificate).”

(2) An insurer may include in any advertisement or marketing materials for such policies that are not intended to be qualified long-term care insurance contracts for federal tax purposes:

[(1) a statement that the policy or certificate is intended to be a qualified long term care insurance contract under section 7702B of the Internal Revenue Code;]

[(2)] (i) a description of the benefits provided by the policy, including a description of the acceleration of the death benefit to pay for [qualified long term care] services when the insured has become chronically ill; and

[(3)] (ii) a comparison between the benefits provided by such policies and the benefits provided by long-term care insurance.

[The statement in paragraph (1) of this subdivision may only appear in advertisement, description comparison, or illustration, or marketing material for policies or certificates that accelerate death benefits pursuant to section 1113(a)(1)(C) if the policy or certificate is a qualified long-term care insurance contract under section 7702B of the Internal Revenue Code.]

(3) An insurer may include in any advertisement or marketing materials for such policies that are intended to be qualified long-term care insurance contracts for federal tax purposes:

(i) a statement that the policy or certificate is intended to be a qualified long-term care insurance contract under section 7702B of the Internal Revenue Code;

(ii) a description of the benefits provided by the policy, including a description of the acceleration of the death benefit to pay for services when the insured has become chronically ill; and

(iii) a comparison between the benefits provided by such policies and the benefits provided by long-term care insurance.

[(t)] (v) Every insurer marketing insurance under this section, directly or through its producers, shall:

(1) establish marketing procedures to [insure] ensure that any comparison of policies by its [agents or other] producers will be fair and accurate;

(2) establish marketing procedures to assure excessive insurance is not sold or issued;

(3) except [for policies that accelerate death benefits pursuant to section 1113(a)(1)(C) and provide benefits on a per diem basis] as provided in paragraph (4) of this subdivision, display prominently by type, stamp or other appropriate means, on the first page of the outline of coverage and policy the following:

“Notice to buyer: This policy may not cover all of the costs associated with [long term] long-term care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all policy limitations”;

(4) for policies that accelerate death benefits pursuant to Insurance Law section 1113(a)(1)(C) and provide benefits on a per diem basis and are not intended to be qualified long-term care insurance contracts for federal tax purposes, display prominently by type, stamp or other appropriate means, on the first page of the outline of coverage and the policy the following:

“Notice to buyer: This policy may not cover all of the costs associated with the chronic illness of the insured. The buyer is advised to review carefully the policy benefits”;

(5) inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee already has accident and sickness or long-term care insurance and the types and amounts of any such insurance; and

(6) establish auditable procedures for verifying compliance with paragraphs (1) through (5) of this subdivision.

[(u)] (w) The following acts and practices in the sale of insurance under this section are prohibited:

(1) Twisting. Knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on or convert any insurance policy or to take out a policy of insurance with another insurer.

(2) High pressure tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.

(3) Cold lead advertising. Making use directly or indirectly of any method of marketing [which] that fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance [agent] producer or [insurance company] insurer.

[(v)] (x)(1) For purposes of this subdivision, *association* shall mean any professional, trade or occupational association for its members or former or retired members, or combination thereof, if the association:

(i) is composed of individuals all of whom are or were actively engaged in the same profession, trade or occupation; and

(ii) has been maintained in good faith for purposes other than obtaining insurance.

(2) An insurer shall not issue insurance under this section to an association, as defined in paragraph (1) of this subdivision, or its members unless the insurer has filed with the superintendent:

- (i) the policy and certificate;
- (ii) a corresponding outline of coverage;
- (iii) all advertisements; and
- (iv) any other material requested by the superintendent.

(3) The insurer shall certify to the superintendent, before a new policy and the first certificate is issued, and annually thereafter by December [31st] 31:

- (i) that all compensation to the association complies with all applicable statutes and regulations;
- (ii) when making insurance under this section available to its members, the association has:

(a) taken steps to educate its members concerning [long term] long-term care issues so that its members can make informed decisions; and

(b) furnished only objective information as provided by the insurer regarding the policies or certificates that are available to the association's members;

- (iii) in any solicitation for insurance under this section the solicitation:

(a) discloses the specific nature of any compensation arrangements, including the amount that the association or any of its related entities receives, with respect to the insurance;

(b) includes a brief description of the process under which such policies or certificates and the insurer issuing such policies or certificates were selected; and

(c) if the association and the insurer have interlocking directorates or trustee arrangements, discloses such fact to the members;

(iv) the board of directors of an association making the insurance policies or certificates available to its members has reviewed and approved such insurance policies or certificates as well as the compensation arrangements made with the insurer; and

- (v) the association has:

(a) engaged the services of a licensed insurance consultant or licensed insurance producer with expertise in [long term] long-term care insurance not affiliated with the insurer to conduct an examination of the policies and certificates, including benefits, features, and rates, at the time of the association's decision to have the insurance made available to its members and at the time of any material change;

(b) established procedures to actively monitor the marketing efforts of the insurer and its agents; and

(c) reviewed and approved all marketing materials or other insurance communications used to promote sales or sent to members regarding the policies or certificates.

(4) This subdivision shall not apply to any individual policy of life insurance issued to a member of an association where the sale of the policy was entirely independent from the association.

[(w) In] (y) Except as otherwise provided in Part 224 of this Title (Insurance Regulation 187), in recommending the purchase or replacement of any policy or certificate issued under this section [an agent] a producer shall make reasonable efforts to determine the appropriateness of a recommended purchase or replacement.

[(x)] (z) Accelerated death benefit payments subject to this section [may only be made if they are] shall be designed such that, on a standalone basis, the benefit payments will be subject to favorable tax treatment by the [Federal] federal government. [The insurer shall comply with the following:] Accordingly, on a standalone basis, accelerated payments shall only be made if they qualify under section 101(g)(3) of the Internal Revenue Code and all other applicable sections of federal law in order to maintain favorable tax treatment. An insurer may, on a non-discriminatory basis, coordinate the insurer's benefit payments with payments made by other insurers, and may deny claims for payments that would not receive favorable tax treatment by the federal government.

(1) [The] For insurers that elect to coordinate benefits and that will only make payments if the payments will receive favorable tax treatment by the federal government, the claim form to receive benefits pursuant to this section shall include [a] the following statement[to the effect]: "Benefit payments [may] will only be made if the payments are subject to favorable tax treatment by the federal government. [When] Receipt of benefit payments from multiple policies exceeding the applicable limits may result in tax consequences. Therefore, when determining whether the benefit payments will receive favorable tax treatment, the payment of benefits from all insurance policies must be considered."

[(2)] (i) The claim form shall include a question as to whether the insured is covered by other insurance policies that will pay similar benefits.

[(3)] (ii) The insurer shall have written procedures for use during the claim handling process for confirming that the benefit payments at the time of their payment are expected to receive favorable tax treatment by the [Federal] federal government.

(2) For insurers that do not elect to coordinate benefits, the claim form to receive benefits pursuant to this section shall include the following statement: "Benefit payments may not be subject to favorable tax treatment by the federal government. When determining whether the benefit payments will receive favorable tax treatment, the payment of benefits from all insurance policies must be considered. Receipt of benefit payments under multiple policies exceeding the applicable limits may result in tax consequences. This insurer does not coordinate benefits to ensure that the payments receive favorable tax treatment by the federal government. Accordingly, prior to applying for benefits, you should seek assistance from a qualified tax advisor."

[(y)] (aa) Policies or certificates that [provide for the payment of benefits pursuant to section 1113(a)(1)(D)] are intended to be qualified long-term care insurance contracts for federal tax purposes shall provide the following protections against unintentional lapse:

(1) No individual policy or certificate shall be issued until the insurer has received from the applicant either, a written designation of at least one person, in addition to the applicant, who is to receive notice of lapse or termination of the policy or certificate for nonpayment of premium; or a written waiver dated and signed by the applicant electing not to designate additional persons to receive notice. The applicant has the right to designate at least one person who is to receive the notice of termination, in addition to the insured. Designation shall not constitute acceptance of any liability on the third party for services provided to the insured. The form used for the written designation [must] shall provide space clearly designated for listing at least one person. The designation shall include each person's full name and home address. In the case of an applicant who elects not to designate an additional person, the waiver shall state: "Protection against unintended lapse. I understand that I have the right to designate at least one person other than myself to receive notice of lapse or termination of this [long term] long-term care insurance policy for nonpayment of premium. I understand that notice will not be given until thirty (30) days after a premium is due and unpaid. I elect NOT to designate any person to receive such notice." The insurer shall notify the insured of the right to change this written designation, no less often than once every two years.

(2) When the [policyholder] policyowner or certificateholder pays premium for the policy or certificate through a payroll or pension deduction plan, the requirements contained in paragraph (1) of this subdivision need not be met until 60 days after the [policyholder] policyowner or certificateholder is no longer on such a payment plan. The application or enrollment form for such policies or certificates shall clearly indicate the payment plan selected by the applicant.

(3) No individual policy or certificate shall lapse or be terminated for nonpayment of premium unless the insurer, at least 30 days before the effective date of the lapse or termination, has given notice to the insured and to those persons designated to receive notice, at the address provided by the insured for purposes of receiving notice of lapse or termination. Notice shall be given by first class United States mail, postage prepaid; and notice may not be given until 30 days after a premium is due and unpaid. Notice shall be deemed to have been given as of five days after the date of mailing.

(4) In addition to the requirements of Insurance Law section 3203(a)(10), the policy or certificate shall include a provision which provides for reinstatement of coverage, in the event of lapse if the insurer is provided proof of the [policyholder's] policyowner's or certificateholder's cognitive impairment or the loss of functional capacity. This option shall be available to the insured if requested within five months after termination and shall allow for the collection of past due premium, where appropriate. The standard of proof of cognitive impairment or loss of functional capacity shall not be more stringent than the benefit eligibility criteria on cognitive impairment or the loss of functional capacity, if any, contained in the policy and certificate.

[(z)] (ab) For policies or certificates that [provide for the payment of benefits pursuant to section 1113(a)(1)(D)] are intended to be qualified long-term care insurance contracts for federal tax purposes the insurer shall provide the following:

(1) Except for riders or endorsements by which the insurer effectuates a request made in writing by the insured under a policy, all riders or endorsements added to a policy after date of issue or at reinstatement or

renewal which reduce or eliminate benefits or coverage in the policy shall require signed acceptance by the individual insured.

(2) After the date of policy issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term [must] shall be agreed to in writing signed by the insured, except if the increased benefits or coverage are required by law.

(3) Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, such premium charge shall be set forth in the policy, rider or endorsement.

[(aa) Policies] (ac) For policies or certificates that [provide for the payment benefit pursuant to section 1113(a)(1)(D)] are intended to be qualified long-term care insurance contracts for federal tax purposes the insurer shall be subject to the following:

(1) insurers, whether or not they have obtained information concerning the applicant's health condition prior to the issuance of the policy or certificate, are prohibited from post-claim underwriting;

(2) if an insurer requests information on an application concerning medications being taken by the applicant and the medications listed in such application were known to the insurer, or should have been known by the insurer at the time of application to be directly related to a medical condition for which coverage would have been otherwise denied, then the policy or certificate shall not be rescinded for that condition; and

(3) except for policies or certificates that are guaranteed issue:

(i) the following language shall be set out in bold type, conspicuously and in close conjunction with the applicant's signature block on an application for a policy or enrollment form for a certificate:

Caution: If your answers on this (application)(enrollment form) fail to include all material information requested, (company) has the right to deny benefits or rescind your (policy)(certificate).; and

(ii) the following language, or language substantially similar to the following, shall be set out conspicuously in bold type on the policy or certificate at the time of delivery:

Caution: The issuance of this (policy)(certificate) is based upon your responses to the questions on your (application)(enrollment form). A copy of your (application)(enrollment form) (is enclosed)(was retained by you when you applied). If your answers fail to include all material information requested, the company has the right to deny benefits or rescind your (policy)(certificate). The best time to clear up any questions is now, before a claim arises! If for any reason, any of your answers are incorrect, contact the company at this address: (insert address).

(4) A copy of the completed application or enrollment form (whichever is applicable) shall be delivered to the insured no later than at the time of delivery of the policy or certificate unless it was retained by the applicant at the time of application.

(5) Prior to the issuance of a policy or certificate to an applicant age 80 or older, the insurer shall obtain one or more of the following:

- (i) a report of a physical examination;
- (ii) an assessment of functional capacity;
- (iii) an attending physician's statement; or
- (iv) copies of medical record.

[(ab)] (ad) Every insurer selling or issuing policies or certificates that [provide for the payment benefit pursuant to section 1113(a)(1)(D)] are intended to be qualified long-term care insurance contracts for federal tax purposes shall maintain a record of all policy or certificate rescissions, both state and countrywide, except those which the insured voluntarily effectuated and shall annually furnish this information in the format prescribed by the superintendent.

[(ac)] (ae) For policies or certificates that [provide for the payment benefit pursuant to section 1113(a)(1)(D)] are intended to be qualified long-term care insurance contracts for federal tax purposes the insurer shall comply with the following:

(1) a policy shall not, if it provides benefits for home health care or community care services, limit or exclude benefits:

- (i) by requiring that the insured/claimant would need care in a skilled nursing facility if home health care services were not provided;
- (ii) by requiring that the insured/claimant first or simultaneously receive nursing and/or therapeutic services in a home, community or institutional setting before home health care services are covered;
- (iii) by limiting eligible services to services provided by registered nurses or licensed practical nurses;
- (iv) by requiring that a nurse or therapist provide services covered by the policy that can be provided by a home health aide, or other licensed or certified home care worker acting within the scope of his or her licensure or certification;
- (v) by excluding coverage for personal care services provided by a home health aide;
- (vi) by requiring that the provision of home health care services be at a level of certification or licensure greater than that required by the eligible service;
- (vii) by requiring that the insured/claimant have an acute condition before home health care services are covered;
- (viii) by limiting benefits to services provided by Medicare-certified agencies or providers; and
- (ix) by excluding coverage for adult day care services.

(2) A policy, if it provides for home health or community care services, shall provide total home health or community care coverage that is a dollar amount equivalent to at least one-half of one year's coverage available for nursing home benefits under the policy or certificate, at the time covered home health or community care services are being received. This requirement shall not apply to policies issued to residents of continuing care retirement communities.

(3) Home health care coverage may be applied to the nonhome health care benefits provided in the policy or certificate when determining maximum coverage under the terms of the policy or certificate.

[(ad)] (af) For policies or certificates that [provide for the payment benefit pursuant to section 1113(a)(1)(D)] are intended to be qualified long-term care insurance contracts for federal tax purposes, the termination of the accelerated death benefits shall be without prejudice to any benefits payable for any claim pursuant to Insurance Law section [1113(a)(1)(D)] 1113(a)(1)(C) or (D) if such claim began while the accelerated death benefits were in force and continues without interruption after termination. Such extension of benefits beyond the period the insurance was in force may be limited to the duration of the benefit period, if any, or to payment of the maximum benefits and may be subject to any policy waiting period, and all other applicable provisions of the policy.

[(ae)] (ag) For policies or certificates that [provide for the payment benefit pursuant to section 1113(a)(1)(D)] are intended to be qualified long-term care insurance contracts for federal tax purposes the insurer shall maintain records of replacement sales and the number of lapses of such policies and certificates [pursuant to the requirements of] as set forth in section 4980C of the Internal Revenue Code as amended.



Department of Financial Services

ANDREW M. CUOMO
Governor

LINDA A. LACEWELL
Superintendent

I, Linda A. Lacewell, Superintendent of Financial Services, do hereby certify that the foregoing is the Third Amendment to Part 41 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Insurance Regulation 143), signed by me on November 7, 2019, pursuant to the authority granted by Sections 202 and 302 of the Financial Services Law and Sections 301, 1113, 1304, 3201, 3209, 3230, 4217 and 4517 of the Insurance Law.

Pursuant to the provisions of the State Administrative Procedure Act, prior notice of the proposed rule was published in the New York State Register on July 10, 2019. No other publication or prior notice is required by statute.

Linda A. Lacewell
Linda A. Lacewell
Superintendent of Financial Services

Date: November 7, 2019