

INSURANCE

DEPARTMENT OF BANKING AND INSURANCE

DIVISION OF INSURANCE

Actuarial Services

Accelerated Death Benefits

Adopted Amendments: N.J.A.C. 11:4-30.2 through 30.11

Proposed: December 5, 2011 at 43 N.J.R. 3119(a).

Adopted: April 13, 2012 by Kenneth E. Kobylowski, Acting Commissioner, Department of Banking and Insurance.

Filed: April 13, 2012 as R. 2012 d.096, **with substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 17:1-8.1 and 17:1-15(e).

Effective Date: May 7, 2012

Expiration Date: September 28, 2018.

Summary of Public Comments and Agency Responses:

The Department received comments from the American Council of Life Insurers (ACLI) and the New Jersey State Nurses Association.

COMMENT: One commenter stated that the proposal's amended definition of "qualifying event" that includes "a chronic illness as defined in 26 U.S.C. § 7702(b)(c)(2)(A)" could be interpreted somehow to include policies that accelerate the death benefits for long-term care (LTC) benefits. Such policies and certificates would have to be approved as long-term care insurance. To address this concern, the Interstate Insurance Product Regulation Commission (IIPRC) standards on accelerated death benefits includes the following language: "The Interstate Compact standards handle life/LTC in a dual fashion. Life products that accelerate the death benefit to provide long-term care benefits are within the scope of the LTC product standards and are outside the scope of the accelerated death benefit feature standards."

The commenter recommended that the Department amend its proposal to include this specific IIPRC language or add this language to the Summary section of the proposed rule.

RESPONSE: The Department does not believe it is necessary to amend the rule to include the suggested language. N.J.A.C. 11:4-30.2, Application and scope, states that "these rules shall apply to all accelerated death benefit provisions of individual and group life insurance policies delivered or issued for delivery in this State." The definition of life insurance in New Jersey statutes at N.J.S.A. 17B:17-3 clearly does not include long-term care insurance.

COMMENT: One commenter requested that proposed N.J.A.C. 11:4-30.8 be amended to include advanced practice nurses (APNs), along with physicians, as providers who can complete the primary, secondary, or tertiary physical examination required by insurers to confirm the qualifying condition necessary for receiving accelerated death benefits. As stated by the commenter, N.J.S.A. 45:11-49 et seq. authorizes APNs to diagnose and manage both acute and chronic conditions, including those that may be terminal in nature. The commenter added that APNs are, increasingly, New Jersey consumers' primary care providers in the community, in long-term care, and in acute care settings and may be the attending provider who can most accurately attest to a patient's illness or disability status.

RESPONSE: The Department agrees with the commenter, and is revising N.J.A.C. 11:4-30.8(b)1 to clarify that APNs and other appropriately licensed providers can perform the physical examinations described in that provision.

Federal Standards Statement

A Federal standards analysis is not required because the adopted amendments are not subject to any Federal requirements.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***):

11:4-30.8 Terms of accelerated death benefit contract provisions

- (a) (No change from proposal).
- (b) The following are permitted terms:

1. Accelerated death benefit provisions may include the right of the insurer to require a second or third medical opinion to confirm benefit eligibility. The second and third medical opinions will be at the insurer's expense. The second medical opinion may include a physical examination by a physician ***or other medical provider acting within the scope of their licensure*** designated by the insurer. These provisions may also specify that in the case of conflicting opinions, eligibility for the accelerated death benefit shall be determined by a third medical opinion that is provided by a physician ***or other medical provider acting within the scope of their licensure*** that is mutually acceptable to the owner and the insurer.

2. – 5. (No change from proposal.)

(c) (No change from proposal.)