

NEW YORK STATE
INSURANCE DEPARTMENT

FIRST AMENDMENT TO REGULATION NO. 143
(11 NYCRR 41)

ACCELERATED PAYMENT OF THE DEATH BENEFIT UNDER
A LIFE INSURANCE POLICY

I, Louis Pietroluongo, First Deputy Superintendent of Insurance, pursuant to the authority granted by Sections 201, 301, 1113, 1304, 3201, 3209, 3230, 4217 and 4517 of the Insurance Law, do hereby promulgate the First Amendment to Part 41 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Regulation No. 143) to take effect upon publication in the State Register, to read as follows:

MATTER IN BRACKETS IS DELETED
MATTER UNDERLINED IS NEW

The table of contents of Part 41 of Title 11 is amended to read as follows:

Section 41.1 Purpose.
Section 41.2 Definitions.
Section 41.3 Advertising.
Section 41.4 Disclosure.
Section 41.5 Benefit levels, payment criteria, and policy provisions.
Section 41.6 Benefit eligibility.
Section 41.7 Actuarial [standards - policy funding, reserves, nonforfeiture] requirements.
Section 41.8 Additional requirements for accelerated death benefits pursuant to sections 1113(a)(1)(C) or (D) of the Insurance Law.
Section 41.9 Separability Provision.

Section 41.1 is amended to read as follows:

Section 41.1 Purpose.

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[, non-forfeiture] and [reserve standards.]actuarial requirements. This Part also provides the requirements for accelerated death benefits pursuant to 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 section

1113 (a)(1) (C) and (D) accelerated death benefit products meet the applicable requirements of the Internal Revenue Code and regulations thereunder for federal tax qualification.

Section 41.2 is amended to read as follows:

Section 41.2 Definitions.

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 would result in a life expectancy as specified in the contract not to exceed 12 months;[or]

(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 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 law in order to maintain favorable tax treatment; or

(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 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.

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

¹ Internal Revenue Code, 26 U.S.C. Section 101, Current through P.L. 109-94, Published by U.S. Government Printing Office, Pittsburg, PA, is available for public inspection at the Insurance Department offices at One Commerce Plaza, Albany, New York 12257 and at 25 Beaver Street, New York, New York 10004.

² Internal Revenue Code, 26 U.S.C. Section 4980C, Current through P.L. 109-94, Published by U.S. Government Printing Office, Pittsburg, PA, is available for public inspection at the Insurance Department offices at One Commerce Plaza, Albany, New York 12257 and at 25 Beaver Street, New York, New York 10004.

³ Internal Revenue Code, 26 U.S.C. Section 7702B, Current through P.L. 109-94, Published by U.S. Government Printing Office, Pittsburg, PA, is available for public inspection at the Insurance Department

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

(d) "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.

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

([d]f) "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.

([e]g) "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 or fraternal benefit society.

[(f) "Qualifying event" means a diagnosis of terminal illness with a life expectancy as specified in the contract not to exceed 12 months or a determination of a medical condition requiring extraordinary medical care or treatment regardless of life expectancy.

(g) "Special surrender value" means any accelerated death benefit wherein the proceeds payable are discounted for interest and/or mortality depending upon the life expectancy of the insured. Special surrender value may be for part or all of the proceeds. As used hereafter, special surrender value shall mean "discount accelerated death benefit."]

(h) "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.

Section 41.3 is amended to read as follows:

Section 41.3 Advertising.

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:

offices at One Commerce Plaza, Albany, New York 12257 and at 25 Beaver Street, New York, New York 10004.

(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 sections 1113(a)(1)(C) or (D) of the Insurance Law, all advertising material shall include a statement that receipt of the accelerated death benefits may be taxable;

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

(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 [department]superintendent.

Section 41.4 is amended to read as follows:

Section 41.4 Disclosure.

(a) The preliminary information required pursuant to section 3209([e]d) of the Insurance Law and all sales illustrations for the accelerated payment of death benefits pursuant to sections 1113(a)(1)(A) or (B) of the Insurance Law [which do not provide for a discounting feature or an interest accrual under the lien approach]shall at the insurer's option provide for either:

(1) 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) 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.

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 or 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 section 3209([e]d) of the Insurance Law and all sales illustrations for the accelerated payment of death benefits [which do provide for a discounting feature or an interest accrual under the lien approach]pursuant to sections 1113(a)(1)(C) or (D) of the Insurance Law shall at the insurer's option provide for either:

(1) an individualized illustration based on the policy being purchased or considered for purchase. [The illustration shall 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 eight percent. The illustration shall also demonstrate the acceleration based on 50 percent of the maximum benefit specified in the policy available for acceleration,]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) a generic illustration demonstrating the manner in which the benefit operates. [The illustration shall 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 eight percent. The illustration shall also demonstrate the acceleration based on 50% of the maximum benefit permitted by the insurer for acceleration]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.

(c) The application for a life insurance policy or an enrollment form for group life coverage providing for accelerated payment of death benefits pursuant to sections 1113(a)(1)(A), (B) or (C) of the Insurance Law 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 non-contributory 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.

(d) The application for a life insurance policy or an enrollment form for group life coverage providing for accelerated payment of death benefits pursuant to section 1113(a)(1)(D) of the Insurance Law shall contain a prominent notice stating "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."

([d]e) In the case of accelerated payment of death benefits pursuant to sections 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";

(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 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 days from the date on which the information specified in subdivision ([e]g) of this section is transmitted in writing to the policyowner or certificateholder;

(7) 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;

(8) the application or claim form must set forth the statements required by this subsection directly above the policyowner or certificateholder's signature. The notices required by this subsection must 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.

([e]g) In the case of accelerated payment of death benefits pursuant to sections 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.

(f)h) 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 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 the insurer agrees to accelerate the death benefits in installments or in a lump sum under the lien approach, pursuant to sections 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, any other values provided by the policy that are affected by the acceleration including premium requirements.

Section 41.5 is amended to read as follows:

Section 41.5 Benefit levels, payment criteria, and policy provisions.

(a) An insurer may establish a minimum policy issue amount for which accelerated death benefits will be made available.

(b) [A policy may provide for acceleration of up to 100 percent of the death benefit, but the policy must provide a minimum accelerated death benefit which shall not be less than the lower of 25 percent of the policy face amount or \$50,000, but not greater than 50 percent face amount.]A policy shall set forth, if applicable, the minimum amount and the maximum amount that may be accelerated.

(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 sections 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 sections 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 sections 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% and twice the death benefit at the time of the first accelerated payment.

(d) Notwithstanding the requirements of subdivision (c) of this paragraph, 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 sections 1113(a)(1)(C) and (D) of the Insurance Law. Such residual death benefit may not exceed the lesser of 10% of the highest death benefit that existed at the time an accelerated payment was made pursuant to sections 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 sections 1113(a)(1)(A) or (B) of the Insurance Law:

(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;

[(c) The](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[.];

(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.

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

[(e)g] The aggregate administrative expense charge required for receipt of the accelerated death benefit in installments shall not exceed 110% of the administrative expense charge required for receipt of the accelerated benefit in a lump sum.

[(f) The accelerated death benefit shall be fixed at the time the insurer approves the request for the acceleration of benefits.

(g) The policy shall include the option to take the benefit as a lump sum payment.]

(h) "A medical condition requiring extraordinary medical care or treatment regardless of life expectancy" must 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.

(i) The insurer may require a separate premium charge or cost of insurance charge for the accelerated death benefit. In the case of premium charges for group policies, the premium charge associated with an accelerated death benefit option may be assessed as part of an experience based rate or as a separate premium charge. The policy or certificate, if the certificateholder is required to pay such charge, shall disclose any such charges and any administrative expense charges. The policy shall also describe the effect, if any, of such charges on the policy dividends or additional amount credits, the period of coverage, [cash values, surrender values]account value, nonforfeiture benefits and loan value.

(j) The insurer may pay a discounted accelerated death benefit. A discounted accelerated death benefit is paid any time the actual cash or equivalent received by the policyowner or certificateholder is less than the amount of the death benefit accelerated. 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 and its application shall be disclosed in the policy[and in the actuarial memorandum]. The maximum interest rate used shall not [be greater than]exceed the greater of:

(1) The then current yield on the 90-day Treasury Bills available at the date of application for an accelerated payment; and

(2) The then current maximum adjustable policy loan interest rate based on the greater of:

(i) 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

(ii) the policy guaranteed cash value interest rate plus one per centum per annum.

(k) When an accelerated death benefit on either a discounted or non-discounted basis is payable, there shall be no more than a pro rata reduction in the cash value based on the percentage of death benefits accelerated to produce the accelerated benefit payment.

(l) Under the lien approach, the payment of any accelerated death benefits, any administrative expense charges, any future premiums 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. 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 and its application shall be disclosed in the policy[and actuarial memorandum]. The maximum interest rate used shall [be no greater than]not exceed the greater of:

(1) the then current yield on the 90-day Treasury Bills available on the date of application for an accelerated benefit; or

(2) the higher of:

(i) 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

(ii) the policy guaranteed cash value interest rate plus one per centum per annum.

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.

(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 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.

([m]n) For policies or certificates that provide for the benefit payment pursuant to sections 1113 (a)(1)(A) or (B) [When]when payment of an accelerated benefit results in a pro-rata reduction in [cash value]account value or nonforfeiture benefits, 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 accumulation account]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 also provide written consent authorizing a different percentage.

([n]o) No restrictions shall be permitted on the use of the proceeds from the policy.

([o]p) 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.

([p]q) Upon the possible remission or cure of the terminal illness[or], medical condition or chronic illness, no attempt will be made by the insurer to recover the benefits paid.

([q]r) A group life policy shall provide that only the certificateholder has the right to the accelerated death benefit payment.

([r]s) The policy shall 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.

([s]t) The policy shall 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 result in a total accelerated benefit payment exceeding the percentage or dollar maximum amount specified in the policy. The policyowner or certificateholder must always have the right to pay that excess in cash within an appropriate grace period in order to prevent policy or certificate termination. The policy may also specify that future premiums or interest becoming due must be paid in cash.

([t]u) The policy [should]shall specify whether the accelerated death benefit provision would apply to the initial death benefit amount or the current death benefit amount for universal life or variable universal life policies resulting from automatic increases due to section 7702 of the Internal Revenue Code or applied for increases permitted under the terms of the policy, as well as increases that result from operation of the contract.

([u]v)(1) The right to the accelerated death benefit pursuant to sections 1113(a)(1)(A) or (B) of the Insurance Law must 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 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 sections 1113(a)(1)(C) or (D) of the Insurance Law must 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 sections 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.

([v]w) Except in the case of benefits accelerated pursuant to sections 1113(a)(1)(C) or (D) of the Insurance Law, [Exclusions] 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.

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

Section 41.6 is amended to read as follows:

Section 41.6 Benefit eligibility.

(a) The life insurance policy shall provide for the accelerated payment of death benefits pursuant to 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 policy may also provide for payment pursuant to 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 for payments pursuant to sections 1113(a)(1)(C) or (D) of the Insurance Law, as provided in section 41.8 of this Part. [A policy offering only the single qualifying event of a diagnosis of a medical condition requiring extraordinary medical care or treatment regardless of life expectancy alone will not be approved.] Any policy may specify whether benefits may be accelerated pursuant to sections

1113(a)(1)(A), (B), (C) or (D) of the Insurance Law singly or in combination. A policy that provides for accelerated payment of the death benefit pursuant to sections 1113(a)(1)(B), (C) or (D) of the Insurance Law must also provide that the death benefit may be accelerated pursuant to section 1113(a)(1)(A) of the Insurance Law.

(b) The accelerated death benefit provision shall be effective on the issue date of the policy, certificate or rider.

(c) 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 such charges.

(d) This Part shall not apply to policies providing benefits subject to section 52.12 or section 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 sections 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 this Title.

Section 41.7 is amended to read as follows:

Section 41.7 Actuarial [Standards - policy funding, reserves, nonforfeiture] Requirements.

[(a) Actuarial Memorandum Each form submission to make accelerated benefits available shall be accompanied by an actuarial memorandum signed by a qualified actuary. Such actuarial memorandum shall include a description of the following:

(1) Benefits including any minimums or maximums, or applicable percentage, and generally one of the following options;

(i) Nondiscounted acceleration of death benefits;

(ii) Discounted acceleration of death benefits, by mortality and/or interest; and

(iii) Lien, whether interest bearing or non-interest bearing;

(2) Financing including the applicable:

(i) premiums, or charges associated with the non-discounted approach; or

(ii) any discounting for interest and mortality associated with the discounted approach; or

(iii) any interest charges associated with the lien approach; and

(iv) all other data relevant to the acceleration of benefits including administrative charges;

(3) Effects after claim payment on any remaining death benefits, cash values, loan values, and premium payments; and

(4) Reserves.]

(a) The statement of self-support required by 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 section 4240(d)(3) of the Insurance Law shall be in compliance with section 4221(l) of the Insurance Law.

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

([b]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 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 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.

(ii) A reserve formula should consider all relevant factors.

(iii) Approximations to develop a single decrement table which utilize all relevant factors except for voluntary termination rates are acceptable for policies subject to this subsection provided it can be demonstrated that the approximations used produce essentially similar reserves, conservative reserves, or negligible reserves. The calculations should take into account the reduction in life insurance benefits due to prior acceleration. In no event shall the reserves for these benefits and the life insurance benefit when taken together be less than the reserves for the life insurance benefit assuming no accelerated benefit feature. In the development and calculation of reserves for policies subject to this Part, due regard shall be given to the applicable policy provisions, marketing methods, administrative procedures and all other considerations which have an impact on projected claims costs, including, but not limited to the following:

- (a) definition of qualifying events;
- (b) premium waiver-provision;
- (c) marketing method;
- (d) underwriting procedures;
- (e) maximum benefit;
- (f) optional nature of benefit; and
- (g) guaranteed insurability options.

(2) Nondiscounted accelerated benefit

(i) Prior to an accelerated benefit claim, the use of an additional premium and the loss of interest by the insurer in prepaying the benefit suggests a reserve in addition to the basic reserve. In the case of traditional life insurance, the basic mortality table may be conservative enough to cover any additional benefit. The qualified actuary should test the need for any additional reserves. In the case of universal life insurance[, the effect of] adding any additional premium and subtracting any additional cost factors [should be explained in the actuarial memorandum along with the effect on may be considered when calculating the reserves].

(ii) After an accelerated death benefit claim has arisen:

(a) A liability for accelerated death benefits payable in a lump sum should be set up until paid.

(b) A liability for accelerated death benefits payable in installments shall be equal to the present value of remaining installment payments discounted at an appropriate valuation interest rate but not discounted for mortality.

(c) If the reserve (whether expressed as the full reserve or in parts as a standard reserve and a substandard extra reserve) for any remaining death benefit not accelerated for such policy is not specifically based on an appropriate valuation interest rate and a substandard mortality table reflecting the policy life expectancy, the qualified actuary [should]shall make appropriate tests to determine whether the aggregate reserves for all policies make sufficient provision for all policies, including those on which accelerated death benefit claims have been approved, in light of the aggregate amount of remaining death benefits under all policies upon which a portion has been accelerated, the total insurance inforce and reserves, distribution of risk and conservatism in the valuation mortality table used compared to the insurer's own mortality experience.

(3) Discounted accelerated death benefit

(i) Prior to an accelerated benefit claim, the basic life insurance reserves based on sections 4217 or 4517 of the Insurance Law are generally considered good and sufficient in the aggregate. However, due to the nature of a particular insurer's block of business or supporting assets, the qualified actuary may need to test for adequacy and, if necessary, set up additional reserves.

(ii) After an accelerated death benefit claim has arisen, the liability and reserve shall be as stated in subparagraph [(b)](2)(ii) of this [section]subdivision.

(4) Lien approach with an interest accrual

(i) Prior to an accelerated benefit claim, minimum statutory reserves for policies containing interest accrual provisions are the same as for policies with identical death benefits that do not contain interest accrued lien provisions, provided that the method of determining the interest rate to be charged, as specified in the policy provisions and actuarial memorandum, results in an interest rate at least equal to the valuation interest rate applicable to the policy. If such is not the case, an extra reserve may be necessary on such policies, if it is determined that the aggregate reserves are not good and sufficient.

(ii) After a claim for an accelerated benefit is approved and the lien effected, if the policy reserve (whether expressed as the full reserve or in parts as a standard reserve and a substandard extra reserve) held for the full amount of death benefit is not specifically determined based upon a substandard mortality table reflecting the policy life expectancy, the qualified actuary [should]shall make appropriate tests to determine whether the aggregate reserves for all policies make sufficient provision for all policies, including those on which accelerated death benefit claims have been approved, in light of the aggregate amount of remaining death benefits under all policies upon which a portion has been accelerated, the total insurance inforce and reserves, distribution of risk and conservatism in the valuation mortality table used compared to the insurer's own mortality experience. Since a policy lien is considered an asset, the policy reserve

should be at least equal to the policy lien; otherwise, any excess of policy lien over policy reserve shall be considered as a non-admitted asset.

(5) The additional morbidity risk assumed by the insurer in providing the benefit suggests a reserve should be held in addition to the basic reserve prior to an actual claim for policies that provide for periodic payments for long term care services or accelerated death benefit payments to an individual who is chronically ill. The qualified actuary shall test the need for any additional reserves if the policies that accelerate the death benefit to pay for long term care services or accelerated death benefit payments to an individual who is chronically ill are a material portion of the insurer's life policies.

(6) After a claim for an accelerated benefit payable in installments has arisen, a reserve liability equal to the actuarial present value of remaining installment payments, using an appropriate valuation interest rate, mortality and morbidity in accordance with sections 4217 or 4517 of the Insurance Law, shall be recognized. If the reserve (whether expressed as the full reserve or in parts as a standard reserve and a substandard extra reserve) for any remaining death benefit not accelerated for such policy is not specifically based on an appropriate valuation interest rate and a substandard mortality table reflecting the policy life expectancy, the qualified actuary shall make appropriate tests to determine whether the aggregate reserves for all policies make sufficient provision for all policies, including those on which accelerated death benefit claims have been approved, in light of the aggregate amount of remaining death benefits under all policies upon which a portion has been accelerated, the total insurance inforce and reserves, distribution of risk and conservatism in the valuation mortality table used compared to the insurer's own mortality experience.

[(c) Cash Values of Policy Before Claim. For traditional life insurance policies, the requirements for the cash value and non-forfeiture benefits for policies with accelerated death benefit options shall be the same as for policies without accelerated death benefit options. In case of universal life insurance, the effect of any premium charges and any cost of insurance factors on the policy value and the cash value should be explained in the actuarial memorandum.

(d) Effect of Paying Accelerated Death Benefits Upon Cash Values, Loan Values, Death Benefits, and Premiums.

(1) The requirements set forth in section 41.5 of this Part shall apply.

(2) In case of discounted or non-discounted accelerated death benefits, when payment of an accelerated death benefit results in a pro-rata reduction in the 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; 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 also provide written consent authorizing a different percentage.

(3) In the case of the lien approach:

(i) The presence of a lien against the policy does not require a pro-rata reduction in the policy premium or other values.

(ii) Access to non-forfeiture benefits upon surrender or through future policy loans may be restricted to any excess of the cash surrender value over the sum of any outstanding loans and the lien.

(iii) If Reduced Paid-up Insurance (RPU) is available as a non-forfeiture benefit, the amount of RPU may be calculated as if no lien existed and the lien may continue to apply, provided that the lien continues to satisfy any percentage and dollar maximums and minimums specified in the contract. Alternatively, the excess, if any, of the cash surrender value over the sum of outstanding loans and the lien may be applied in calculating the amount of the RPU. If the choice of methods is not left as an option to the policyowner or certificateholder, the policy must specify which method will apply.

(iv) If Extended Term Insurance (RTI) is available as a non-forfeiture benefit, the period of ETI may be calculated as if no lien existed and the lien may continue to apply, provided that the lien continues to satisfy any percentage and dollar maximums and minimums specified in the contract.

(v) Any accelerated death benefit payment may first be applied toward repaying the portion of any outstanding policy loans which causes the sum of the accelerated death benefit and policy loans to exceed the cash value. Alternatively, such outstanding loans may be retained and the lien that would otherwise be allowed may be reduced by such outstanding loans at the time of acceleration. If the choice of methods is not left as an option to the policyowner or certificateholder, the policy must specify which method will apply.

(vi) The policy may specify that the existence of a benefit lien will not prevent termination of coverage in accordance with the regular policy termination provisions.

(vii) If a policy or certificate terminates while subject to a 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.

(viii) The policyowner or certificateholder must have the option of paying all or part of any premium or accrued interest that would be capitalized under the terms of the policy provisions in cash, 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.]

Section 41.8 is renumbered to Section 41.9 and a new Section 41.8 is added to read as follows:

Section 41.8 Additional requirements for accelerated death benefits pursuant to sections 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 sections 1113(a)(1)(C) or (D) of the Insurance Law shall meet the following standards:

(a) Pursuant to 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 law in order to maintain favorable tax treatment.

(b) Pursuant to 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, and

(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, and

(2) the policy or certificate shall 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 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".

(c) 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 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 section 1113(a)(1)(D) of the Insurance Law 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) 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) 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 section 3203(a)(11) of the Insurance Law, which shall not be less than 30 days.

(f) 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:

(i) 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;

(ii) alcoholism and drug addiction;

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

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

(b) participation in a felony, riot or insurrection;

(c) service in the armed forces or units auxiliary thereto;

(d) suicide, attempted suicide or intentionally self-inflicted injury; or

(e) aviation (this exclusion applies only to non-fare paying passengers.)

(iv) 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 or 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

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

(g) 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 non-institutional benefits on the prior receipt of institutional care.

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

(1) that a policy or certificate that has been 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) 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) 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) 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) The conversion benefit available pursuant to sections 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) 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:

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

(ii) 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 law for favorable tax treatment.

(n) 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 section 367-f of the Social Services Law and 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 section 367-f of the social services law and 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 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) 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 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 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 section 4980C of the Internal Revenue Code, as amended, for those provisions under which the death benefit may be so accelerated.

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

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

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

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

(iv) if applicable to the policy type,

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

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

(c) current and projected maximum lifetime benefits.

If the policy or certificate is illustrated and such illustration is used to satisfy the requirement of 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) 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) The policy and certificate shall not be advertised or marketed 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 section 367-f of the Social Services Law and 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 that accelerates the death benefit for qualified long term care services (The phrase "on account of chronic illness" may be substituted for the phrase "for qualified long term care services" for products that accelerate the death benefit pursuant to section 1113(a)(1)(C)) and is not a health insurance (policy)(certificate) providing 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)".** An insurer may include in any advertisement or marketing materials for such policies:

(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 qualified long term care 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.

The statement in subparagraph (i) of this paragraph 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.

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

(1) establish marketing procedures to insure 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, 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 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 section 1113(a)(1)(C) and provide benefits on a per diem basis, 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 the foregoing paragraphs (1) through (5).

(u) 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 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 or insurance company.

(v)(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:

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

(b) 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 membership 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:

(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 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 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 recommending the purchase or replacement of any policy or certificate issued under this section an agent shall make reasonable efforts to determine the appropriateness of a recommended purchase or replacement.

(x) Accelerated death benefit payments subject to this section may only be made if they are subject to favorable tax treatment by the federal government. The insurer shall comply with the following:

(1) The claim form to receive benefits pursuant to this section shall include a statement to the effect:

"Benefit payments may only be made if the payments are 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."

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

(3) 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 government.

(y) Policies or certificates that provide for the payment of benefits pursuant to section 1113(a)(1)(D) 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 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 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 2 years.

(2) When the policyholder or certificateholder pays premium for the policy or certificate through a payroll or pension deduction plan, the requirements contained in paragraph (1) of this subsection need not be met until sixty (60) days after the policyholder 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 thirty (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 thirty (30) days after a premium is due and unpaid. Notice shall be deemed to have been given as of five (5) days after the date of mailing.

(4) In addition to the requirements of 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 or certificateholder's cognitive impairment or the loss of functional capacity. This option shall be available to the insured if requested within five (5) 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) For policies or certificates that provide for the payment of benefits pursuant to section 1113(a)(1)(D) 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 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 or certificates that provide for the payment benefit pursuant to section 1113(a)(1)(D) 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).

(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 eighty (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.

(bb) Every insurer selling or issuing policies or certificates that provide for the payment benefit pursuant to section 1113(a)(1)(D) 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.

(cc) For policies or certificates that provide for the payment benefit pursuant to section 1113(a)(1)(D) 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.

(dd) For policies or certificates that provide for the payment benefit pursuant to section 1113(a)(1)(D) the termination of the accelerated death benefits shall be without prejudice to any benefits payable for any claim pursuant to section 1113(a)(1)(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.

(ee) For policies or certificates that provide for the payment benefit pursuant to section 1113 (a)(1)(D) the insurer shall maintain records of replacement sales and the number of lapses of such policies and certificates pursuant to the requirements of section 4980C of the Internal Revenue Code as amended.

I, Louis Pietroluongo, First Deputy Superintendent of Insurance, do hereby certify that the foregoing is the First Amendment to Part 41 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Regulation No. 143), promulgated by me on November 16, 2005, pursuant to the authority granted by Sections 201, 301, 1113, 1304, 3201, 3209, 3230, 4217 and 4517 of the Insurance Law, to take effect upon publication in the State Register.

Pursuant to the provision of the State Administrative Procedure Act, prior notice of the proposed amendment was published in the State Register on August 31, 2005. No other publication or prior notice is required by Statute.

Louis Pietroluongo
First Deputy Superintendent of Insurance

November 16, 2005