Summary of the Regulatory Impact Statement for the Proposed Third Amendment to 11 NYCRR 41 (Insurance Regulation 143).

1. Statutory authority: The authority of the Superintendent of Financial Services (“Superintendent”) to promulgate the Third Amendment to Insurance Regulation 143 (11 NYCRR 41) derives from Financial Services Law (“FSL”) sections 202 and 302, and Insurance Law (“IL”) sections 301, 1113, 1304, 3201, 3209, 3230, 4217 and 4517.

   Descriptions of the statutes providing authority for the proposed amendment are included in the full Regulatory Impact Statement posted on the website of the Department of Financial Services (“Department”) at https://www.dfs.ny.gov


   In Chapter 563 of the Laws of 2010 and Chapter 465 of the Laws of 2014, the legislature added IL subsections (E) and (F) to section 1113(a)(1), respectively, authorizing an additional ADB trigger, on a non-tax qualified basis, upon an insured’s having retained residency at a nursing home, or received end of life or palliative care, for a period of three or more months, with an expectation that the insured will retain such residency, or receive such care, until death. The legislative objective for both statutory amendments was to make more types of insurance coverage available to meet the specific needs (including financial) of an aging population and their families. The legislature also indicated that this legislation was designed to encourage individuals to finance their own long-term care needs, which may reduce future Medicaid program costs.

   Chapter 448 of the Laws of 2014 amended IL section 3230(c) to reduce the time that an insurer must wait to pay benefits, from 14 days to five days, after the information required by IL section 3230(d) is properly transmitted to the policyholder, in writing, to allow policyholders to receive their ADBs faster.
Chapter 300 of the Laws of 2017 removed the following text from IL section 1113(a)(1)(D): “and the insurer that issues such policy is a QLTC insurance carrier under section 4980c of the Internal Revenue Code” (“IRC”). According to the legislature, the standard for triggering payment of an ADB for chronic illness was more restrictive than necessary for payments to be tax qualified under IRC section 101(g). The legislature believed that the amendment would enable life insurers who are not also qualified long-term care (“QLTC”) insurers to offer the ADB under IL section 1113(a)(1)(D). The legislature also revised IL section 3230 so that disclosure requirements would apply equally to all types of ADBs.

3. Needs and Benefits: IL section 3201(c)(11)(B) requires the Superintendent to promulgate rules for, among other things, ADBs. Current Regulation 143, governing ADBs, has been in effect since 1992. This amendment implements the statutory revisions enacted since that time.

This amendment extends existing requirements to the new ADB triggers authorized in subparagraphs (E) and (F) of IL section 1113(a)(1), with appropriate modification and new definitions to reflect differences in the triggers and tax treatment of the benefit payments. Because receipt of accelerated death benefits under the new triggers is not expected to receive the same favorable federal tax treatment as other types of accelerated death benefits that may be available, the amendment requires insurers to disclose the differences to consumers.

IL section 1113(a)(1)(E)-(F) triggers require an “expectation” that the insured will remain a resident of a nursing home, or a recipient of end of life or palliative care, until death, respectively. To ensure objective analysis, this amendment requires certification of the expectation to be made by a licensed health care practitioner.

This amendment is revised to be consistent with the new timeframes adopted by Chapter 448 of the Laws of 2014, so that policyholders receive accelerated death benefits faster.

To correspond with the amendment made by Chapter 300 of the Laws of 2017, this proposed amendment clarifies that all life insurers licensed to do business in this state may offer ADBs pursuant to IL section 1113(a)(1)(D), while preserving the ability for QLTC insurers to offer benefits under IL section 1113(a)(1)(D),
thereby expanding the options available to insurers and consumers without removing existing benefits. Because some ADBs under IL section 1113(a)(1)(D) may be intended to qualify as QLTC insurance contracts for federal tax purposes and others may not, this amendment requires insurers to disclose this information to consumers so that they can make informed purchase decisions. Similar requirements already exist for benefits offered under IL section 1113(a)(1)(C). This amendment clarifies that requirements apply to both subparagraphs (C) and (D) of IL section 1113(a)(1).

The legislature also amended IL section 3230 so that disclosure requirements apply equally to all types of ADBs. Prior thereto, IL section 3230 applied different disclosure requirements for ADBs under IL section 1113(a)(1)(D). Regulation 143 is amended to be consistent with that legislative change.

Finally, subparagraphs (C) and (D) of IL section 1113(a)(1) require accelerated payments to qualify under IRC section 101(g)(3) and all other applicable federal laws to maintain favorable tax treatment. The current regulation requires, in determining whether benefit payments will receive favorable tax treatment, an insurer to consider the payment of benefits from all insurance policies. Some insurers consider this requirement to be burdensome because consumers today are more likely to have multiple policies with different insurers and an insurer must coordinate benefits with other insurers before it is able to pay the claim. This amendment requires ADB payments to be designed so that, on a standalone basis, payments will be subject to favorable tax treatment under IRC section 101(g)(3). However, the insurer will no longer be required to engage in a coordination of benefits with other insurers if tax disclosure is provided to policyholders, although it may still, on a non-discriminatory basis, elect to coordinate and deny claims for non-qualified payments.

4. Costs: This amendment only impacts insurers, including insurers located in a rural area, desiring to make available to consumers the contractual right to accelerate the payment of life insurance benefits. No insurer is required to offer accelerated death benefits. For insurers who choose not to offer this type of benefit there is no cost. Also, this amendment relates to accelerated death benefits offered by insurers pursuant to IL sections
1113(a)(1)(D), (E), and (F). For insurers who only offer accelerated death benefits pursuant to IL sections 1113(a)(1)(A), (B), and (C) there would be no costs imposed under this amendment. Since this amendment is implementing legislative changes, most of the costs are attributable to the legislation rather than this amendment. For example, revisions to forms or disclosure documents to reduce the time an insurer must wait to pay benefits from 14 days to five days after the information required by IL section 3230(d) is transmitted to the policyholder in writing results from the 2014 amendment to IL section 3230, rather than this regulatory amendment. Similarly, revisions to disclosure documents for accelerated death benefits pursuant to IL section 1113(a)(1)(D) to comply with IL section 3230 result from the 2017 amendment to that section rather than this regulatory amendment.

For insurers, including those located in a rural area, that choose to develop or continue to issue policies offering benefits pursuant to IL section 1113(a)(1)(D), (E) or (F), costs associated with this amendment are expected to be minimal. Many insurers are already offering accelerated death benefits under the other various authorized triggers in IL section 1113(a)(1). Should insurers wish to develop or continue to issue an insurance product subject to this amendment, they may need to update application and/or claim forms and develop new policy forms to take advantage of the changes made to IL sections 1113(a)(1)(D) if they are not a qualified long-term care insurer or wish to design benefits that are not intended to be qualified long-term care contracts for federal tax purposes. Further, for insurers that already offer accelerated death benefits under contracts that are intended to be qualified long-term care insurance contracts for federal tax purposes, systems have already been developed to generate the required illustrations, numerical computations, application and claim forms, and policy forms. These systems can be leveraged to now develop policies that are not intended to be qualified long-term care insurance contracts or to revise disclosure forms in accordance with IL section 3230. For insurers that are not also qualified long-term care insurers that may now offer benefits pursuant to IL section 1113(a)(1)(D) for the first time, the cost of compliance should be similar to those costs estimated (discussed below) when
accelerated death benefits were first authorized, increased for inflation and reduced where the insurer can leverage existing documents and systems previously developed for other accelerated death benefit triggers.

Insurers who wish to take advantage of the new accelerated death benefit triggers authorized under IL sections 1113(a)(1)(E) or (F) will have some initial costs to prepare policy forms, illustrations and disclosures. In 1991, industry representatives estimated initial costs to prepare policy forms to be, on average, less than $100, and to develop computer programming to provide illustrations and disclosures to be between $250 and $500 since such systems were already used to generate disclosures required by IL section 3209. The cost of compliance should be similar to those estimated costs when accelerated death benefits were first authorized, increased for inflation, and reduced where the insurer can leverage existing documents and systems previously developed for other accelerated death benefit triggers.

Amendment to section 41.8(z) of the regulation (previously 41.8(x)) is expected to result in cost savings to insurers since they will no longer be required to coordinate their benefit payments with benefit payments made under other policies to ensure that the accelerated payments under their policy will receive favorable federal tax treatment. After the amendment, insurers will only need to make sure that the payments under the insurer’s own policy, standing alone, would qualify for favorable federal tax treatment, as required by IL section 1113(a)(1)(C) and (D). The cost savings are difficult to estimate due to various factors including the insurers that issued the policies, the number of policies issued, and the tax limits in effect at the time of acceleration.

There are no costs to state or local governments.

5. Local government mandates: The amendment imposes no new programs, services, duties or responsibilities on any county, city, town, village, school district, fire district or other special district.

6. Paperwork: This amendment does not impose any new reporting requirements for insurers except that it extends to the new ADB triggers authorized under IL section 1113(a)(1)(E)-(F) the existing paperwork requirements applicable to ADBs under IL section 1113(a)(1)(A)-(D).
The amendment provides that insurers are no longer required to engage in coordinating benefits with other insurers to ensure that payments are only made if they receive favorable federal tax treatment. This portion of the amendment is expected to decrease paperwork for certain insurers.

7. Duplication: This amendment does not duplicate any existing law or regulation.

8. Alternatives: IL section 3201(c)(11)(B) requires the Superintendent to promulgate a regulation setting forth provisions for ADBs. Accordingly, there is no alternative to amending the regulation.

9. Federal standards: IL section 1113(a)(1)(C) and (D) requires an insured to be chronically ill as defined in IRC section 7702B and that the ADB payment be tax qualified under IRC section 101(g), and all other applicable federal laws, to maintain favorable federal tax treatment. The IRC requires compliance with certain provisions of the National Association of Insurance Commissioners Long Term Care Insurance Model Act and Regulation or more stringent state requirements. To a great extent, the language of the regulation is drafted to be consistent with those requirements.

10. Compliance Schedule: All insurers licensed in New York must comply with this amendment if and when they choose to offer ADBs in their life insurance policies under IL section 1113(a)(1)(D), (E) or (F). The amendment will take effect 90 days after publication in the State Register.