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


FSL section 202 establishes the office of the Superintendent.

FSL section 302 and IL section 301, in pertinent part, authorize the Superintendent to effectuate any power accorded to the Superintendent by the IL, FSL, or any other law, and to prescribe regulations interpreting the IL.

IL section 1113(a)(1) authorizes life insurers to make available accelerated payment of part or all of the death benefit or payment of a special surrender value in certain circumstances set forth in that section of the law.

IL section 1304 requires insurers to maintain reserves for all life insurance policies and certificates according to prescribed tables of mortality and rates of interest.

IL section 3201(c)(11)(B) requires the Superintendent to promulgate a regulation establishing rules for advertising, disclosure, benefit levels, benefit eligibility, payment of long-term care benefits, nonforfeiture and reserves for accelerated payment of the death benefit or special surrender values under a life insurance policy.

IL section 3209 sets forth the disclosure requirements for all life insurance in this state at the time of solicitation, negotiation and procurement and authorizes the Superintendent to promulgate regulations to implement this section.

IL section 3230, sets forth specific disclosure and procedural requirements for the processing of a request by the policyholder or certificate holder for an accelerated payment of the death benefit or payment of the special surrender value under a life insurance policy.

IL section 4217 provides for the minimum valuation standards for life insurance policies issued by life insurance companies doing business in this state.

IL section 4517 provides for the minimum valuation standards for life insurance certificates issued by fraternal benefit societies in this state.
2. Legislative objectives: The Legislature has amended the laws related to acceleration of life insurance death benefits several times since the last amendment to Insurance Regulation 143. Those statutory amendments are reflected in Chapter 563 of the Laws of 2010, Chapter 465 of the Laws of 2014, Chapter 448 of the Laws of 2014, and Chapter 300 of the Laws of 2017.

Chapter 563 of the Laws of 2010 added a new subparagraph (E) to IL section 1113(a)(1), authorizing an additional accelerated death benefit trigger, on a non-tax qualified basis, upon an insured’s having retained residency at a nursing home for a period of three or more months, with an expectation that the insured will continue the residency until death. The stated legislative objective was to make more types of insurance coverage available to meet the specific needs (including financial) of an aging population and their families.

Chapter 465 of the Laws of 2014 added a new subparagraph (F) to IL section 1113(a)(1), authorizing an additional accelerated death benefit trigger, on a non-tax qualified basis, upon an insured’s having received end of life or palliative care for a period of three or more months at a residential health care facility, with the expectation that the insured will continue to require such services until death. This legislation was intended to be an extension of existing laws, such as Chapter 563 of the Laws of 2010, designed to encourage individuals to finance their own long-term care needs, which, according to the sponsor’s bill memorandum, 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. This amendment was intended to allow policyholders to receive their accelerated death benefits 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 qualified long term care insurance carrier under Section 4980c of the Internal Revenue Code”. According to the sponsor’s bill memo, the standard for triggering payment of an accelerated death benefit
for chronic illness was more restrictive than necessary for payments to be tax qualified under Internal Revenue Code ("IRC") section 101(g). The memorandum stated that the amendment would enable life insurers who are not also qualified long-term care insurers to offer the accelerated death benefit authorized by IL section 1113(a)(1)(D). The Legislature also revised IL section 3230 so that disclosure requirements would apply equally to all types of accelerated death benefits, where previously different disclosure requirements were applied for accelerated payment of death benefits under IL section 1113(a)(1)(D).

3. Needs and Benefits. IL section 3201(c)(11)(B) requires the Superintendent to promulgate, among other things, rules for accelerated death benefits. Current Insurance Regulation 143, governing accelerated death benefits, has been in effect since 1992. Since then, as discussed above, statutory amendments have been adopted that require correlative changes to Insurance Regulation 143. This proposed amendment incorporates and implements the statutory amendments and underlying legislative objectives.

This amendment extends existing requirements to the new accelerated death benefit triggers authorized in IL sections 1113(a)(1)(E) and (F), 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. In some instances, a policyholder may qualify under the same policy for acceleration under triggers that are subject to favorable federal tax treatment, as well as other triggers that are not. To ensure that favorable tax treatment is not inadvertently lost in these situations, the amendment requires payments to be accelerated pursuant to any IL section 1113(a)(1)(A), (B), (C) or (D) benefits for which the policyholder qualifies under the policy before accelerating payments pursuant to any IL section 1113(a)(1)(E) or (F) benefits available under the policy.
IL sections 1113(a)(1)(E) and (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 New York authorized life insurers may offer acceleration of death benefits pursuant to IL section 1113(a)(1)(D). The amendment preserves the ability for insurers who are qualified long-term care insurers to continue to offer benefits under IL section 1113(a)(1)(D) that are designed to qualify as long-term care insurance contracts for federal tax purposes. In this way, the amendment expands the options available to insurers and consumers without removing existing benefits. The amendment preserves current standards for insurers whose benefits are intended to qualify as qualified long-term care insurance contracts for federal tax purposes, and adopts new standards for insurers whose benefits are not intended to so qualify. 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 these 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 accelerated death benefits. Prior thereto, IL section 3230 applied different disclosure requirements for the accelerated payment of death benefits under IL section 1113(a)(1)(D). Insurance 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 law to maintain favorable tax treatment. In determining whether benefit payments will receive favorable tax treatment, the current regulation requires an insurer to
consider the payment of benefits from all insurance policies. Some insurers have asserted that this requirement has become burdensome in practice 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. In some instances, the insurer must deny the claim if payments to the consumer under other policies issued by other insurers have already reached the limits under the IRC for favorable tax treatment. To address this concern, this amendment provides that accelerated death benefit payments must be designed so that, on a standalone basis, the benefit payments will be subject to favorable tax treatment under IRC section 101(g)(3). However, the insurer will no longer be required to look beyond the payments of its own policies and engage in a coordination of benefits with other insurers to determine that payments under their policy will receive favorable tax treatment, if proper disclosure is provided to policyholders that benefit payments may not be subject to favorable federal tax treatment. This change benefits insurers by reducing an administrative burden and associated costs. It also reduces delays in payments to policyholders arising from the coordination of benefits process. Although this change may result in situations where the benefits payable to policyholders may be taxable, the amendment requires disclosure of this potentiality so that policyholders can consult with their tax advisors and can make an informed decision about whether they still wish to apply for the benefits. The amendment continues to permit, however, an insurer to elect, on a non-discriminatory basis, to coordinate the insurer’s benefit payments with payments made by other insurers and may still deny claims for payments that would not receive favorable tax treatment by the federal government.

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 those 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.

This amendment will not impose additional costs on the Department of Financial Services, which will review the revised forms in the ordinary course of its business. 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 accelerated death benefit triggers authorized under subsections (E) and (F) of IL section 1113(a)(1) the existing paperwork requirements currently applicable to accelerated death benefit triggers authorized under IL section 1113(a)(1)(A), (B), (C) and (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 insurers that chose not to coordinate the benefits.

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 the acceleration of the death benefit in a life insurance policy. Accordingly, there is no alternative to amending the regulation.

9. Federal standards: IL section 1113(a)(1)(C) and (D) require an insured to be chronically ill as defined in IRC section 7702B and the accelerated death benefit payment to be tax qualified under IRC section 101(g), and all other applicable federal law, 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 content and language of the regulation is drafted to be consistent with those requirements.

10. Compliance Schedule: All insurers authorized to do a life insurance business in New York must comply with this amendment if and when they choose to offer the accelerated payment of the death benefit in their life insurance policies pursuant to IL section 1113(a)(1)(D), (E) or (F). The amendment will take effect 90 days after publication of the adopted rule in the State Register.
Statement setting forth the basis for the finding that a Regulatory Flexibility Analysis for Small Businesses and Local Governments for the Proposed Third Amendment to 11 NYCRR 41 (Insurance Regulation 143) is not necessary since the amendment will not impose adverse economic impact or compliance requirements on small businesses or local governments.

1. Small businesses: The Department of Financial Services finds that this amendment will not impose any adverse economic impact on small businesses and will not impose any reporting, recordkeeping or other compliance requirements on small businesses. The basis for this finding is that this amendment is directed at all life insurance companies and fraternal benefit societies authorized to do business in New York State, none of which come within the definition of “small business” as defined in State Administrative Procedure Act (“SAPA”) section 102(8). The Department reviewed filed reports on examination and annual statements of such authorized insurers and concluded that none of these entities come within the definition of “small business” because there are none that are both independently owned and have fewer than one hundred employees.

2. Local governments: This amendment does not impose any adverse economic impact, or reporting, recordkeeping, or other compliance requirements on any local governments because the amendment affects entities authorized to sell life insurance and annuity contracts, none of which are local governments.
Statement Setting Forth the Basis for the Finding that the Proposed First Amendment to 11 NYCRR 41 (Insurance Regulation 143) Will Not Impose Any Adverse Impact on Rural Areas.

The Department of Financial Services finds that this amendment to Part 41, which reflects recent amendments made to the New York Insurance Law, including an amendment that an insurer issuing accelerated death benefits under Insurance Law section 1113(a)(1)(D) is no longer required to be a qualified long-term care insurance carrier under Internal Revenue Code section 4980C (26 U.S.C.S. section 4980C), does not impose any additional burden on persons located in rural areas, and will not have an adverse impact on rural areas because this amendment applies uniformly to regulated parties that do business in both rural and non-rural areas of New York State.
Statement Setting Forth the Basis for the Finding that the Proposed Third Amendment to 11 NYCRR 41 (Insurance Regulation 143) Will Not Have a Substantial Adverse Impact on Jobs and Employment Opportunities.

The Department of Financial Services finds that this rule will not adversely impact jobs or employment opportunities in New York. This amendment reflects recent amendments made to the New York Insurance Law, including an amendment that an insurer issuing accelerated death benefits under Insurance Law section 1113(a)(1)(D) is no longer required to be a qualified long-term care insurance carrier under Internal Revenue Code section 4980C (26 U.S.C.S. section 4980C). This amendment should not impact jobs or employment opportunities for insurers or producers.