Summary of Proposed Third Amendment to 11 NYCRR 41 (Insurance Regulation 143).

Section 41.1, which specifies the purposes of the regulation, is revised to clarify that policies that accelerate death benefits under Insurance Law section 1113(a)(1)(C) and (D) must, on a standalone basis, meet requirements for federal tax qualification.

In Section 41.2, which contains the definitions for the regulation, the definition of “accelerated death benefits” is amended and new definitions are added consistent with the addition of new subparagraphs (E) and (F) to Insurance Law section 1113(a)(1). Additionally, footnotes to Internal Revenue Code (“IRC”) citations were deleted as unnecessary.

Section 41.3, which establishes rules for advertising accelerated death benefits, is amended to clarify that all advertising material for accelerated death benefits under Insurance Law section 1113(a)(1)(A), (B), (C) or (D) shall state that the receipt of those benefits may be taxable, and to require that all advertising material for benefits accelerated under Insurance Law section 1113(a)(1)(E) or (F) shall state that the benefits are not expected to receive favorable tax treatment.

Section 41.4, which contains disclosure requirements, is revised so that subdivision (b) applies to accelerated death benefits under Insurance Law section 1113(a)(1)(E) and (F), and requires tax disclosure in sales information, applications, claim forms and policies for such benefits. This section clarifies the disclosures required on application forms for acceleration under forms that are intended to be qualified long-term care (hereinafter “LTC”) insurance contracts for federal tax purposes and under those forms that are not. This section also applies the numerical computation disclosure requirements to all types of accelerated death benefits under Insurance Law section 1113(a)(1).

Section 41.5, regarding benefit levels, payment criteria, and policy provisions, is revised so that subdivision (e) applies to accelerated death benefits under Insurance Law section 1113(a)(1)(E) and (F).
Section 41.6, regarding benefit eligibility, is amended to apply to subparagraphs (E) and (F) of Insurance Law section 1113(a)(1) and to require that any policy providing benefits pursuant to those subsections must first accelerate benefits pursuant to Insurance Law section 1113(a)(1)(A), (B), (C) or (D) for which the policyowner or certificateholder qualifies under the same policy.

Section 41.8, regarding additional requirements under section 1113(a)(1)(C) or (D), is amended:

(i) to delete text that reads “and the policy or certificate shall meet all the applicable requirements of section 7702B of the Internal Revenue Code, as amended for a qualified LTC insurance contract or payments”, to be consistent with the recent statutory change to Insurance Law section 1113(a)(1)(D);

(ii) to add a new requirement for a policy or certificate that is not intended to be a qualified LTC insurance contract to specifically state that the contract is not intended to be a qualified LTC insurance contract;

(iii) to clarify disclosures that continue to be required for a policy or certificate that meets all the applicable requirements of IRC section 7702B, as amended for a qualified LTC insurance contract or payments;

(iv) to permit any advertisement, description, comparison, marketing material or illustration to include in the required disclosure, if applicable, the phrase “on account of chronic illness” instead of the phrase “for qualified long term care services” for policies that are not intended to be qualified LTC insurance contracts;

(v) to clarify, with respect to policies that are not intended to be qualified LTC insurance contracts for federal tax purposes, that advertising or marketing materials may include a description of the benefits and a comparison between such policy and a regular LTC insurance policy;

(vi) to clarify, with respect to policies that are intended to be qualified LTC insurance contracts, that advertising or marketing materials may include a statement of such intention as well as a description of benefits and comparison with regular LTC insurance;

(vii) to clarify that outlines of coverage must contain a specific notice to the buyer depending on the type of accelerated death benefit marketed;
(viii) to state that, except as otherwise provided in Insurance Regulation 187, in recommending the purchase or replacement of any policy or certificate issued under this section, a producer shall make reasonable efforts to determine the appropriateness of a recommended purchase or replacement;

(ix) to clarify the requirement that, on a stand-alone basis, the benefit payments will be subject to favorable tax treatment by the federal government and shall only be made if they qualify under IRC section 101(g)(3), and all other applicable federal laws, in order to maintain favorable tax treatment. However, an insurer may, on a non-discriminatory basis, coordinate the insurer’s benefit payments with payments made by other insurers, and may deny claims for payments that would not receive favorable tax treatment by the federal government;

(x) to include claim form disclosure requirements both for insurers that elect to coordinate benefits and for insurers that do not; and

(xi) to clarify that certain provisions in section 41.8, including those pertaining to protections against unintentional lapse, additional riders and separate premiums, post claim underwriting and notices about denial of benefits, records retention, benefit limitations or exclusions in the case of home health care, termination of benefits and records of lapses and replacements, are updated so that they only apply to policies or certificates that are intended to be qualified LTC insurance contracts.

Technical corrections were also made throughout Part 41 (i.e., citation corrections; replacement of the word “owner” with the words “policyowner or certificateholder”; replacement of the word “must” with the word “shall”; and the decapitalization of the word “federal”).