

806 KAR 12:160. Standards for accelerated death benefits.

RELATES TO: KRS 304.6-170, 304.6-171, 304.12-010, 304.12-020, 304.12-235, 304.14-600(2), 304.15-115

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Executive Director of the Office of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS Chapter 304. This administrative regulation establishes standards for accelerated death benefits in individual life insurance forms.

Section 1. Definitions.

- (1) "Accelerated death benefit" means the advance payment of some or all of the death proceeds payable pursuant to a life insurance policy:
 - (a) To the owner, during the lifetime of the insured triggered by a qualifying event;
 - (b) That reduces the death benefit otherwise payable under the policy through a present value payment or imposition of a lien upon the death benefits; and
 - (c) That are payable upon the occurrence of any single qualifying event.
- (2) "Executive director" is defined in KRS 304.1-050(1).
- (3) "Form" means accelerated death benefit form, or policy provision if the benefit is built into the policy.
- (4) "Qualifying event" means a medical condition that is reasonably expected to result in a drastically limited life span for the insured.

Section 2. Applicability. The requirements established in this administrative regulation shall:

- (1) Apply to accelerated death benefits in individual life insurance policies; and
- (2) Not apply to long-term care insurance or policies providing long-term care benefits.

Section 3. Form Filings. The following form filing requirements shall apply to accelerated death benefits and shall be included on Certification Form L-TD Life, Transmittal Document, Office of Insurance (1/1/06), incorporated by reference in 806 KAR 14:005, or as an attachment to the filing:

- (1) A statement of the types of policy forms with which this benefit will be offered;
- (2) Underwriting restrictions involving face amount or age;
- (3) Whether the benefit is intended for use with new issues, or in force business, or both;
- (4) A notice describing the amount of the accelerated benefit option and its effect on the other benefit provisions of the policy, to be provided to the owner prior to or concurrent with the election of the accelerated death benefit option; and
- (5) An actuarial memorandum prepared, dated, and signed by the member of the American Academy of Actuaries which shall provide the following information:
 - (a) A description of the accelerated death benefit, including the effects of payment of the accelerated death benefit on all policy benefits, premium payments, cost of insurance rates, and values, including any outstanding loan, if applicable, for all types of forms with which the accelerated death benefit will be used;
 - (b) Justification for expense charges associated with the accelerated death benefit and the maximum expense charges;
 - (c) The interest rate or interest rate methodology used in any present value calculation or in accruing interest on the amount of the accelerated death benefit, which shall not exceed the greater of:
 1. The current yield on 90-day treasury bills; or
 2. An adjustable rate determined in accordance with KRS 304.15-115;

- (d) The mortality basis and methodology, including the period of time applicable to any mortality discount, used in any present value calculation of the accelerated death benefit;
- (e) The mortality and morbidity basis and methodology used in the determination of any separate premium or costs of insurance for the accelerated death benefit;
- (f) The formula used to determine the accelerated death benefit, including any limitations on the amount of the benefit, and the formula used to determine the post-acceleration premium;
- (g) A sample calculation of the accelerated death benefit.
 - 1. If the policy contains a loan provision, the example shall assume that there is an outstanding loan at date of acceleration.
 - 2. All policy benefits, premium payments, cost of insurance charges, and values, including the outstanding loan, if applicable, immediately before and immediately after acceleration shall be shown in the example;
- (h) If an accelerated death benefit may be paid in installments, the basis used in the calculation of the minimum periodic payment for the payment period and a sample calculation of a minimum periodic payment;
- (i) If the insured dies before all periodic payments for the payment period are made, identification of the basis used and a sample calculation of the lump sum payable; and
- (j) A certification that the value and premium of the accelerated death benefit is incidental to the life coverage.

Section 4. General Form Requirements.

- (1) The company's definition of a "drastically limited life span" shall have a minimum of "six (6) months or less" and a maximum of "twenty-four (24) months or less" and shall be specified in the form
- (2) The cover page of the form, or the cover page of the policy if the benefit is built into the policy, shall include the following in prominent type:
 - (a) The term "accelerated death benefit" included in the brief description or descriptive title of the form;
 - (b) A clear statement that the death benefit and any accumulation values and cash values and, if applicable, premium payments or cost of insurance charges, shall be reduced if an accelerated death benefit is paid; and
 - (c) A clear statement recommending that the owner seek additional information from the owner's personal tax advisor about the tax status of the accelerated death benefit payment.
- (3) The form shall not contain provisions that unfairly discriminate among insureds with differing qualifying events covered pursuant to the form or among insureds with similar qualifying events covered pursuant to the form.
- (4) Products subject to these standards shall not be described as long-term care insurance or as providing long-term care benefits.
- (5)
 - (a) The percentage or dollar amount of the policy death benefit that may be accelerated may be limited.
 - (b) The limit shall be specified in the form.
- (6) A time frame within which proof of eligibility shall be provided shall be prohibited.

Section 5. Benefit Design Options.

- (1) The form shall describe the accelerated death benefit option or options that shall be available to the owner, such as the payment of all of the death benefit of the policy, the payment of part of the death benefit of the policy, or a lien on the death benefit of the policy.
- (2) If the form allows for the present value calculation, the form shall:

- (a) Specify the amount of the death benefit of the policy that may be accelerated by the owner;
 - (b) State that the company may apply a portion of the accelerated death benefit to repay an outstanding policy loan but only up to the amount of the outstanding policy loan multiplied by the percentage of the policy death benefit that has been accelerated;
 - (c) State that the premium shall be reduced to the premium that would apply had the policy been issued at the reduced amount, and may be further reduced according to some defined formula, such as pro rata reduction, or become paid-up;
 - (d) State that the company may pay the owner a present value of the policy death benefit being accelerated. The interest rate or interest rate methodology used in the calculation shall be disclosed in the form; and
 - (e) State that the policy cash value, if any, shall be reduced by the same percentage as the policy death benefit.
- (3) If the payment to the owner of the accelerated death benefit is treated as a lien on the death benefits of the policy, the form shall state that:
- (a) The lien may be applied only against the policy death benefit, not against any policy cash value;
 - (b) The lien may bear interest.
 - 1. The interest rate accrued on the portion of the lien which is equal to the cash value of the policy upon acceleration shall not be more than the policy loan interest rate stated in the policy.
 - 2. For the amount of the lien in excess of the cash value, the interest rate or interest rate methodology shall be disclosed in the form;
 - (c) Expense charges may be added to the lien;
 - (d) Due and unpaid premiums may be included in the lien after the automatic premium loan, if available, is exercised; and
 - (e) Access to the policy cash value may be restricted to the excess of the cash value over the sum of the lien and any other outstanding policy loans.
- (4)
- (a) A premium charge or cost of insurance charge for the accelerated death benefit shall be disclosed to the insured.
 - (b) A premium charge or cost of insurance charge shall be prohibited for a qualifying event of the type described in Section 11(1)(a) of this administrative regulation.
- (5) The company may deduct a reasonable expense charge for accelerating the death benefit and shall state the maximum expense charge in the form.
- (6) If an index used in determining the accelerated death benefit is discontinued, the company shall use an appropriate substitute index.
- (7) The form or policy shall not:
- (a) Provide that the insured forfeits the remainder of the policy death benefit upon acceleration of part of the policy death benefit;
 - (b) Place an aggregate limit provision that caps the accelerated death benefits payable for all policies issued by the company and its subsidiaries and affiliates;
 - (c) Require that the accelerated death benefit be provided if the policy remains in force for a specific period of time following acceleration. The option may exclude from acceleration a term insurance coverage scheduled to terminate prior to the end of the period used to define a qualifying event of the type described in Section 11(1)(a) of this administrative regulation; and
 - (d) Contain restrictions on the use of the accelerated death benefit proceeds.
- (8) A form with an accelerated death benefit shall include an option upon acceleration:
- (a) To reduce the accelerated death benefit payment by an amount actuarially determined to pay the remaining premiums; or
 - (b) To continue to pay premiums to keep the policy in force.

Section 6. Effect of Benefit Payment on other Benefit Provisions.

(1) Prior to or concurrent with the election to accelerate the policy death benefits, the owner and each irrevocable beneficiary shall be given a statement demonstrating the effect of the acceleration of the payment of death benefits on the cash value, death benefit, premium, cost of insurance charges, and policy loans, including policy liens, of the particular policy involved.

(a) The statement shall display the premium or cost of insurance charges necessary to continue coverage following the acceleration, and shall display all expense and interest charges associated with accelerating the death benefit.

(b) Statements for use with liens shall state that future due and unpaid premiums or cost of insurance charges may be included in the lien if the provision provides for the charges.

(c) The statement shall be based only on guaranteed values and shall not show any projected or non-guaranteed values.

(d) The statement shall include a disclosure that receipt of an accelerated death benefit may affect eligibility for Medicaid or other government benefits or entitlements and may have income tax consequences.

(2) The form shall describe the effect of acceleration on premiums, cost of insurance charges, cash values, and loan values, as applicable.

(3) The form shall describe the effect that acceleration of death benefits will have on coverage on another insured pursuant to the policy.

(4) If a part of the death benefit remains after payment of the accelerated death benefit, the following requirements shall apply:

(a) If the accelerated death benefit is paid under a present value calculation, the policy shall be modified by an endorsement, which includes a statement of cash values, policy loans, premiums, cost of insurance charges, and death benefits following acceleration;

(b) The dividends or non-guaranteed elements credited shall not discriminate between policies whose death benefits have been reduced through acceleration and policies originally issued in the amount of the reduced death benefits; and

(c) The accidental death benefit provision, if any, in the policy shall not be affected by the payment of the accelerated death benefit.

Section 7. Exclusions or Restrictions. The accelerated death benefit shall not contain exclusions or restrictions that are not also exclusions or restrictions in the policy.

Section 8. Incontestability. The accelerated death benefit shall be incontestable on the same, or on a more favorable basis, as the individual policy.

Section 9. Payment Options.

(1)

(a) The payment options shall include the option to receive the accelerated death benefit payment in a lump sum and may include an option to receive the benefit in periodic payments for a period certain.

(b) Periodic payments based on the continued survival or institutional confinement of the insured shall be prohibited.

(2)

(a) The amount payable as a lump sum shall be at least equal to the acceleration percentage multiplied by the difference between the current policy cash value and any outstanding policy loans.

(b) The current policy cash value shall include any termination dividend payable on the surrender of the policy.

(3)

- (a) The form shall specify what occurs if the insured dies before all payments of the accelerated death benefit are made.
- (b) If the present value of remaining payments is paid, the interest rate used to calculate any present value of the settlement option shall be that assumed in calculating the original payments.
- (4) If the insured dies after the owner elects to receive accelerated death benefits but before benefits are received, the election shall be cancelled and the death benefit paid pursuant to the policy.

Section 10. Payment Procedures. The procedures required to accelerate the death benefit of the policy shall be specified in the form and shall be at least as favorable as the following:

- (1)
 - (a) If the company requires the filing of a proof of eligibility claim form, the company shall provide the claim form within fifteen (15) days of the acceleration request.
 - (b) If the claim form is not furnished within fifteen (15) days, it shall be considered that the claimant complied with the claim requirements if the claimant submits written proof covering the occurrence, the character, and the extent of the occurrence for which claim is made;
- (2)
 - (a) The company may reserve the right to require a second or third medical opinion to confirm benefit eligibility.
 - (b) The second or third medical opinion shall be provided at the company's expense.
 - (c) The second medical opinion may include a physical examination by a physician designated by the company.
 - (d) In the case of conflicting opinions, eligibility for benefits shall be determined by a third medical opinion provided by a physician that is mutually acceptable to the insured and the company;
- (3) The accelerated death benefit shall be paid to the owner or owner's estate while the insured is living, unless the benefit has been otherwise assigned or designated by the owner; and
- (4)
 - (a) Prior to the payment of the accelerated death benefit, the company shall obtain from any assignee or irrevocable beneficiary a signed acknowledgement of concurrence for payout.
 - (b) If the company paying the accelerated death benefit is itself the assignee under the policy, an acknowledgement shall not be required.
 - (c) Payment of the accelerated death benefit is due in accordance with KRS 304.12-235 with respect to any delay in processing requests to accelerate the payment of death benefits.

Section 11. Qualifying Events.

- (1) A qualifying event may, at the option of the company, include one (1) or more of the following:
 - (a) A medical condition that requires extraordinary medical intervention, such as major organ transplant or continuous artificial life support, without which the insured is expected to die;
 - (b) A condition that usually requires continuous confinement in an institution, as defined in the form, and the insured is expected to remain there for the rest of the insured's life;
 - (c) A specified medical condition that, in the absence of extensive or extraordinary medical treatment, is expected to result in a drastically limited life span; or
 - (d) A chronic illness that results in permanent inability to perform a specified number of activities of daily living without substantial assistance from another individual, or

permanent severe cognitive impairment, or both.

(2) The form shall specify the terms and conditions applicable to each qualifying event.

(3) The form shall not require that the cause of a qualifying event first manifest itself or be diagnosed after issuance of the individual policy or form.

(4) The form shall not include a waiting period requirement.

(5) A requirement that the individual policy or form be in force past the incontestable period shall be prohibited.

Section 12. Reinstatement. The form shall include a reinstatement provision on the same, or more favorable, terms as contained in the policy.

Section 13. Termination.

(1) The form shall include the following conditions for termination, upon:

(a) A written request; or

(b) Termination of the policy; or

(c) Nonpayment of any separate premium or cost of insurance charge for the accelerated death benefit, in accordance with the provisions of the form or the policy.

(2) The form may state that the accelerated death benefit may be terminated if a nonforfeiture benefit becomes effective pursuant to the policy.

(3) The form shall state that termination shall not prejudice the payment of benefits for a qualifying event that occurred while the form was in force.

Section 14. Effective Date. The requirements, implementation, and enforcement of this administrative regulation shall begin on January 1, 2008.

(33 Ky.R. 4301; Am. 34 Ky.R. 295; 736; eff. 11-2-2007; Crt eff. 2-26-2020.)