

**KANSAS INSURANCE DEPARTMENT
Notice of Hearing on Proposed
Administrative Regulations**

A public hearing will be conducted at 1:30 p.m., October 26, 2015, in the third floor conference room, Kansas Insurance Department, 420 S.W. 9th, Topeka, Kansas, to consider the adoption of proposed amendments to a rule and regulation.

The 60-day notice of the public hearing shall constitute a public comment period for the purpose of receiving written public comments on the proposed rules and regulations. All interested parties may submit written comments prior to the hearing to Diane Minear, Kansas Insurance Department, 420 S.W. 9th, Topeka, Kansas, 66612-1678, via facsimile at 785-291-3190, or via email at dminear@ksinsurance.org. All interested parties will be given a reasonable opportunity to present their views orally on the adoption of the proposed regulation during the hearing.

A summary of the proposed regulation and its economic impact follows.

K.A.R. 40-2-20. Life insurance; accelerated benefits; contract requirements and restrictions. This amendment to the existing regulation contains two substantive changes from the current regulation: 1) Defines and establishes chronic illness as a possible qualifying condition for accelerated benefits; and 2) Specifies there can be no timeframe for a claim to be submitted following the occurrence of a qualifying condition.

Because current practice is consistent with this amendment, there is no economic impact on life insurers.

Similarly, there will be no economic impact on the Kansas Insurance Department, consumers, small businesses, or other governmental agencies.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request any proposed regulation and the economic impact statement in an accessible format. Requests for accommodation to participate in the hearing should be made at least 5 working days in advance by contacting Diane Minear at (785) 296-2676 or via email at dminear@ksinsurance.org. Any individual desiring a copy of any regulation and/or the policy and procedure that is being adopted by reference, if applicable, may obtain a copy from our website, www.ksinsurance.org, under the Legal Issues link or by contacting Diane Minear by phone at (785) 296-2676 or via email at dminear@ksinsurance.org. The charge for copies is fifty cents per page.

K.A.R. 40-2-20. Life insurance; accelerated benefits; contract requirements and

restrictions. (a) As used in this regulation, ~~these~~ or in a life insurance or annuity contract providing for accelerated benefits, each of the following terms shall have the following meanings meaning specified in this subsection:

(1) “Accelerated benefits” ~~shall mean~~ means benefits that meet the following conditions:

(A) Are payable under an individual or group life insurance or annuity contract to a policyowner or certificate holder; during the lifetime of the insured for the occurrence of a qualifying condition;

(B) reduce the death or annuity benefit otherwise payable under the ~~life insurance~~ contract; and

(C) are payable upon the occurrence of a ~~single~~ qualifying condition, which results in the payment of a benefit amount fixed at the time of acceleration.

(2) “Commissioner” means commissioner of insurance.

(3) “Elimination period” means a specified period of time during which the insured continuously meets the requirements of a qualifying condition before an accelerated benefit becomes payable.

(4) “Qualifying condition” shall mean any of the following conditions:

(A) means a prerequisite designated in a contract for the payment of accelerated benefits.

Each contract providing for accelerated benefits shall include as a qualifying condition a medical condition that a health care provider licensed to practice medicine and surgery or osteopathy predicts will result in a limited life expectancy of 24 months or less;. Any contract providing for accelerated benefits may include any of the following as a qualifying condition:

~~(B)~~ (A) A medical condition that has required or requires extraordinary medical intervention, including a major organ transplant or continuous artificial life support, without which the insured would die;

~~(C)~~ (B) any condition that ~~usually requires~~ is reasonably expected to require continuous confinement in an eligible institution as defined in the contract if the insured is expected to remain there for the rest of the insured's life;

~~(D)~~ (C) a medical condition that medical evidence indicates would, in the absence of extraordinary medical intervention, result in a limited life expectancy of 24 months or less. ~~Such conditions may include any of the following:~~

- ~~(i) — Coronary artery disease resulting in an acute infarction or requiring surgery;~~
- ~~(ii) — a permanent neurological deficit resulting from a cerebral vascular accident;~~
- ~~(iii) — end stage renal failure;~~
- ~~(iv) — acquired immune deficiency syndrome;~~
- ~~(v) — cancer;~~
- ~~(vi) — paralysis;~~
- ~~(vii) — blindness;~~
- ~~(viii) — muscular sclerosis;~~
- ~~(ix) — Alzheimer's disease;~~
- ~~(x) — HIV;~~
- ~~(xi) — anterior lateral sclerosis; or~~
- ~~(xii) — severe burns; and;~~

(D) a chronic illness, which shall mean either of the following:

(i) An illness that renders the insured permanently unable to perform, without substantial assistance from another individual, a specified number of activities of daily living, except that a company's definition of chronic illness shall not require the inability to perform more than two activities of daily living; or

(ii) permanent severe cognitive impairment and similar forms of dementia; or

(E) any other similar condition approved by the commissioner as ~~the basis for a~~ qualifying ~~event~~ condition.

~~(3) "Commissioner" shall mean the commissioner of insurance, state of Kansas.~~

(b) Each contract providing for an accelerated benefit shall have a title printed on or attached to the first page of the ~~policy~~ contract or rider. The title shall describe the coverage provided and shall be followed or accompanied by a description of the coverage containing the phrase "accelerated benefit" or words of similar ~~import~~ meaning.

(c) Each applicant for a contract providing for an accelerated benefit shall be given a summary of the accelerated benefit provisions at or before the time ~~an~~ the application is completed. For group policies, each certificate holder shall be given a copy of the summary with the certificate. This summary shall include the following:

(1) A brief description of the accelerated benefit and definitions of the qualifying conditions that would result in payment of the benefit;

(2) the existence and amount of any separately identifiable premium for the accelerated benefit and a description of any charge for administrative expense;

(3) a generic illustration numerically demonstrating the effect of the payment of a benefit on cash values, accumulation accounts, death benefits, premiums, policy loans, and policy liens;

(4) a statement that receipt of the accelerated benefit could be taxable;

(5) a statement that receipt of accelerated benefits could affect medicaid eligibility; and

(6) an acknowledgement, signed and dated by the agent and the applicant for the group or individual coverage, that the summary has been furnished. Each direct response insurer shall incorporate the summary and acknowledgement in the application or attach them to the application.

(d) Contract payment options shall include the option to take the accelerated benefit as a lump sum. The accelerated benefit shall not be made available as an annuity contingent upon the life of the insured.

(e) No ~~restrictions~~ contract shall ~~be permitted to~~ restrict the use of the proceeds.

(f) No contract shall limit the time frame within which a claim must be submitted following the occurrence of a qualifying condition.

(g) If the accelerated benefit is offered without an additional premium, a separate written explanation of how the accelerated benefit is funded shall be filed with the commissioner and included with the summary.

~~(g)~~ (h) Each time an accelerated benefit is requested and whenever a previous summary becomes invalid, the irrevocable beneficiary and either the individual policyowner or group certificate holder shall be given a summary. This summary shall include statements meeting the following conditions:

(1) Warning that receipt of the accelerated benefit could be taxable and that assistance from a tax advisor is suggested;

(2) showing the effect that the payment of the accelerated benefit will have on cash values, accumulation accounts, death benefits, premiums, policy loans, and policy liens; and

(3) disclosing that receipt of accelerated benefit payments may adversely affect the recipient's eligibility for medicaid or other government benefits or entitlements.

~~(h)~~ (i) Each time an accelerated benefit option is exercised, the policyowner and certificate holder shall be given an endorsement, rider, or schedule page that reflects any revisions to cash values, death benefits, accumulation accounts, premiums, policy loans, policy liens, and any other values that change as a result of the payment or payments.

~~(i)~~ (j) Insurers shall not unfairly discriminate among insureds with different or similar qualifying conditions covered under the policy. Insurers shall not apply any additional conditions to the payment of the accelerated benefits other than those conditions specified in the policy or rider.

~~(j)~~ (k) Any insurer may offer a waiver of premium for the accelerated benefit provision if a regular waiver of premium provision is not in effect. ~~At the time~~ When the accelerated benefit is claimed, the insurer shall explain any continuing premium requirement to keep the policy in force.

~~(k)~~ (l) Accelerated benefits shall be funded by any of the following methods:

(1) Requiring the policyowner to pay an additional premium;

(2) utilizing the present value of the face amount of the policy if the following conditions are met:

(A) The present value calculation is based on an actuarial discount appropriate to the policy design;

(B) the interest rate used in the present value calculation is based on sound actuarial principles and disclosed in the contract or actuarial memorandum; and

(C) the maximum interest rate is no ~~greater~~ more than the greater of either of the following:

(i) The current yield on 90-day treasury bills; or

(ii) the current maximum policy loan interest rate permitted by K.S.A. 40-420c₂ and amendments thereto; or

(3) accruing an interest charge on the amount of the accelerated benefits at an interest rate based on sound actuarial principles and disclosed in the contract or actuarial memorandum and no ~~greater~~ more than the greater of either of the following:

(~~+~~) (A) The current yield on 90-day treasury bills; or

(~~+~~) (B) the current maximum policy loan interest rate permitted by K.S.A. 40-240c₂ and amendments thereto.

(~~+~~) (m) When an accelerated benefit is payable, no ~~greater~~ more than a ~~pro~~ rata proportionate reduction in the cash value shall be made, unless the payment of the accelerated benefits and any accrued interest can be treated as a lien against the death benefit of the policy or rider. Therefore, 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 and access to additional policy loans may be limited to the difference between the cash value and the sum of the lien and any other outstanding policy loans on the policy under which the accelerated benefits were paid.

(~~+~~) (n) (1) If payment of an accelerated benefit results in a ~~pro-rata~~ proportionate reduction in the cash value, the payment shall not be applied toward repaying an amount greater than a ~~pro-rata~~ proportionate portion of any outstanding policy loans; or

(2) if the payment is considered a lien as provided in subsection (~~+~~) (m), the insurance company may require any accelerated death benefit payment to be applied toward repaying the

portion of any other outstanding policy loan that causes the sum of the accelerated ~~death~~ benefit and policy loan to exceed the cash value.

~~(n)~~ (o) The death benefit shall not be reduced more than the amount of the accelerated benefits after adjustment for any actuarial discount or accrued interest as provided in subsection ~~(k)~~ (l) and any administrative expense charge required by policies providing accelerated benefits without an additional premium charge as disclosed on the summary required by subsection (c).

~~(o)~~ (p) If any death benefit remains after payment of an accelerated benefit, the accidental death benefit, if any, in a policy or rider shall not be affected by the payment of an accelerated benefit.

~~(p)~~ (q) The valuation method and assumptions used to produce the accelerated benefit provisions shall be filed with the insurance department with the related policy form or rider. The assumptions shall reflect the statutory mortality and interest rate assumptions for the life insurance provisions and appropriate assumptions for the other provisions incorporated in the policy or rider. Each insurer shall maintain in its files descriptions of the bases and procedures used to calculate benefits, which shall be made available for examination by the commissioner or a designee upon request.

~~(q)~~ (r) A qualified actuary shall describe the accelerated benefits, the risks, the expected costs, and the calculation of statutory reserves in an actuarial memorandum accompanying each filing of accelerated benefits products with the commissioner. Each insurer shall maintain in its files descriptions of the bases and procedures used to calculate benefits payable under these provisions. These descriptions shall be made available for examination by the commissioner upon request.

(1) If benefits are provided through the acceleration of benefits under group or individual life policies or riders to these policies, policy reserves shall be determined in accordance with the standard valuation law. All valuation assumptions used in constructing the reserves shall be determined as appropriate for statutory valuation purposes by a member in good standing of the American academy of actuaries. Mortality tables and interest rates currently recognized for life insurance reserves by the national association of insurance commissioners, ~~may be used~~ as well as appropriate assumptions for ~~the other provisions incorporated in the policy form contract, may be used~~. The actuary shall follow both actuarial standards and certification for good and sufficient reserves. Reserves in the aggregate shall be sufficient to cover the following:

- (A) Policies upon which no claim has yet arisen; and
- (B) policies upon which an accelerated claim has arisen.

(2) For policies and certificates that provide actuarially equivalent benefits, no additional reserves shall be required to be established.

(3) Policy liens and policy loans, including accrued interest, shall represent assets of the company for statutory reporting purposes. For any policy on which the policy lien exceeds the policy's statutory reserve liability, the excess shall be held as a non-admitted asset.

~~(s)~~ (s) The accelerated benefit provision shall become effective ~~for accidents~~ on the effective date of the policy or rider ~~and shall become effective for illness no more than 30 days following the effective date of the policy or rider.~~

(t) Any contract may include an elimination period for the qualifying conditions of continuous confinement and chronic illness, other than chronic illness meeting the requirements of 26 U.S.C. sections 7702B and 202(g) of the United States internal revenue code or any subsequent corresponding internal revenue code, as amended. The elimination period shall not

exceed 90 days from the time the qualifying condition first manifests itself after the effective date of the contract.

(u) The individual and group life insurance and annuity contracts subject to this regulation shall not be described or marketed as being long-term care insurance or as providing long-term care benefits. (Authorized by K.S.A. 40-103 and K.S.A. 2014 Supp. 40-401; implementing K.S.A. 2014 Supp. 40-401; effective, T-40-11-29-90, Nov. 29, 1990; effective April 15, 1991; amended Feb. 9, 2007; amended P-_____.)

ECONOMIC IMPACT STATEMENT

Proposed Kansas Administrative Regulation 40-2-20

Pursuant to the requirement of K.S.A. 77-416(b) the Kansas Insurance Department submits the following description of the economic impact of the above referenced proposed amendment to K.A.R. 40-2-20:

1. This amendment to the existing regulation contains two substantive changes from the current regulation: 1) Defines and establishes chronic illness as a possible qualifying condition for accelerated benefits; and 2) Specifies there can be no timeframe for a claim to be submitted following the occurrence of a qualifying condition.

2. Because current practice is consistent with this amendment, there is no economic impact on life insurers.

3. Similarly, there will be no economic impact on the Kansas Insurance Department, consumers, small businesses, or other governmental agencies.