

Accelerated Death Benefits Checklist

Every effort has been made to ensure the accuracy of the information in this document. All parties should consult the Texas Insurance Code (TIC), the Texas Administrative Code (TAC), and other applicable laws.

Definitions - [TIC Section 1111.051](#), [Section 1111.052](#) and [28 TAC Sections 4.1102](#) and [4.1103\(a\)](#)

Page _____ : Illness or physical condition - [TIC Section 1111.052\(1\)\(C\)](#).

Page _____ : Long Term care illness - [TIC Section 1111.051\(3\)](#) and [28 TAC Section 4.1102\(b\)\(2\)](#).

Page _____ : Specified Disease - [28 TAC Section 4.1102\(b\)\(3\)](#).

Page _____ : Terminal Illness - [TIC Section 1111.051\(4\)](#) and [28 TAC Section 4.1102\(b\)\(4\)](#).

Page _____ : The provision must clearly define the amount eligible for acceleration.

Prohibited provisions - [TIC Chapter 1701](#) and [28 TAC Section 3.14\(3\)](#)

Page _____ : Accelerated benefit payments due to terminal illness or hospice care may not be contingent upon a waiting period.

Page _____ : The amount eligible for an accelerated benefit may not be conditioned on other policies issued by the company or an affiliated company.

Page _____ : Exclusions for pre-existing conditions are not allowed in life insurance contracts.

Balance of death benefit - [28 TAC Section 4.1102\(c\)](#)

Page _____ : The provision must state that any portion of the death benefit remaining after reduction the death benefit due to payment of any accelerated benefit and related charges, interest or lien, if applicable, shall be paid upon the death of the insured.

Full settlement on maturity - [28 TAC Section 4.1102\(e\)](#)

Page _____ : The provision must state that the accelerated benefit, related charges, interest, discounts liens, if applicable, and the balance of the death benefit of the life insurance contract shall constitute full settlement on maturity of the face amount of the contract.

Physician's opinion to establish eligibility - [28 TAC Section 4.1104](#)

Page _____ : The provision may state that the company reserves the right to have a physician of its choice make additional diagnoses to establish eligibility for the accelerated benefit if the company reserves this right.

Page _____ : If the company reserves the right, then the provision must clarify which medical opinion will rule if there are conflicting opinions between the insured's physician and the company's physician.

Page _____ : Any additional diagnoses must be at the company's expense.

Methods for determining benefits and allowable charges and fees - [28 TAC Section 4.1106](#)

Page _____ : The provision must define the financing method. The definition must be contained within the contract and cannot refer to other documents, contracts, or policies. The company must choose one of the following three financing methods, and may not combine methods.

Additional premium or cost-of-insurance charge method - [28 TAC Section 4.1106\(1\)](#)

Page _____ : The provision must specify and define any separately identifiable additional premium or cost-of-insurance charge.

Note: An administrative fee shall not be charged under this method.

Actuarial discount methods - [28 TAC Section 4.1106\(2\)](#)

Page _____ : Under an actuarial discount method, a specified administrative fee of no more than \$150.00 may be charged at the time each acceleration.

Page _____ : The death benefit shall be reduced by no more than an amount equal to the amount paid, plus the actuarial discount and any administrative fee deducted.

Page _____ : **(A) Present Value Actuarial Discount** - The actuarial discount used to reach the present value calculation must be appropriate to the life insurance contract designand based on sound actuarial principles. For an insured with terminal illness, the present value actuarial discount shall not reduce the amount of benefits accelerated by more than 15%. For other insureds eligible for acceleration-of-life- insurance benefits, the interest rate used to derive the present value actuarial discount shall not exceed the greater of:

- i. the current yield on 90-day treasury bills;
- ii. the current maximum adjustable contract loan interest rate based on Moody's Corporate Bond Yield Averages, or any successor thereto;
- iii. the life insurance contract's guaranteed cash value interest rate plus 1% per annum; or
- iv. an alternate rate approved by the commissioner.

Page _____ : **(B) Interest-only Actuarial Discount** - This discount may only be applied to the death benefit of an insured with a terminal illness. The text must state that it shall not reduce the benefit amount by more than 10% per annum.

Lien method - [28 TAC Section 4.1106\(3\)](#)

The insurer may consider the accelerated benefit, any administrative expense charges, any due and unpaid premiums and any accrued interest as a lien against the death benefit of the life insurance contract in accordance to the following:

Page _____ : **(A)** The accelerated benefit provision must specify or define any administrative fee, not to exceed \$150.00, and any additional interest charge on the accelerated benefit amount.

Page _____ : **(B)** Access to cash value, if any, may be restricted to any excess of the cash value over the sum of the lien and any outstanding loans. Future access to additional contract loans and any partial withdrawals may also be limited to any excess of the cash values over the sum of the accelerated benefit lien and any other outstanding contract loans.

Page _____ : **(C)** The lien cannot exceed the value of the death benefit of the life insurance contract. The provision shall state that coverage will terminate when the lien equals the value of the death benefit.

Page _____ : **(D)** The interest rate and interest rate methodology used in the calculation shall be based on sound actuarial principles and disclosed in the contract and actuarial memorandum. The text must define the interest rate applicable to the portion of the lien equal to the cash value of the life insurance contract at the time the benefit is accelerated. Such interest rate cannot exceed the contract loan interest rate stated in the life insurance contract. Each subsequently approved accelerated benefit request may provide for an administrative fee and lien, subject to the following limits. The maximum interest rate used shall not exceed the greater of:

- i. the current yield on 90-day treasury bills;
- ii. the current maximum adjustable contract loan interest rate based on Moody's Corporate Bond Yield Averages or any successor thereto; (**Note:** The interest rate may not exceed the maximum allowed under [TIC Section 1110.004](#).)
- iii. the policy's guaranteed cash value interest rate plus 1% per annum; or
- iv. an alternate rate approved by the Commissioner.

Limitations on reduction of cash values - [28 TAC Section 4.1107](#)

Page _____ : Except as authorized under the Lien Method, reductions in cash values by the accelerated benefit, related charges and interest, shall not be unjust and shall not exceed an amount equal to the pro rata portion of the cash value associated with the death benefit used in providing the benefit.

Page _____ : Future cash values shall not be less than the minimum cash values required in [TIC Section 1105.004](#), for the reduced future guaranteed death benefits. The mortality and interest used in calculating the minimum cash values will be as provided in [TIC Section 1105.004](#) for the life insurance coverage, disregarding any accelerated benefit.

Pro rata reduction of loans - [28 TAC Section 4.1108](#)

Page _____ : Except as authorized under the Lien Method, if there is a loan on the life insurance contract, the insurer may deduct up to a pro rata portion of the loan from the amount of the accelerated benefit.

Effect of accelerated benefit on nonforfeiture calculations - [28 TAC Section 4.1109](#)

Page _____ : An accelerated benefit provision shall be disregarded in ascertaining nonforfeiture benefits under [TIC Section 1105.004](#).

Reserves - [28 TAC Section 4.1110](#)

Page _____ : The basis of reserves for any contract which contains an accelerated benefit provision shall accompany the filing.

Page _____ : Lien Method reserves, including accrued interest, represent assets of the company for statutory reporting purposes. For any life insurance contract on which the lien exceeds the contract's statutory reserve liability, such excess must be held as a non-admitted asset.

Disclosure requirements - [28 TAC Section 4.1112](#)

Page _____ : A prominently printed notice on the face page substantively stating: **“Death benefits, cash values, and loan values will be reduced if an accelerated benefit is paid.”** This statement shall be appropriately modified for contracts which have no cash or loan values, or in which the cash value is not reduced.

Page _____ : The provision's title shall describe the coverage provided and shall use such terms as “acceleration-of-life-insurance benefit,” “accelerated benefit,” or words of similar meaning.

Page _____ The contract must provide a statement that a notice will be sent to the owner at the time of the accelerated benefit payment.

Long-term care fund expenses - [28 TAC Section 4.1114](#) and [28 TAC Chapter 3, Subchapter Y](#)

Coverage of long-term care expenses funded through an accelerated death benefit must comply with applicable provisions of both [28 TAC Section 4.1114](#) and [28 TAC Chapter 3, Subchapter Y](#). For example, any product that will be marketed as long-term care insurance is subject to [Subchapter Y](#).

Riders that meet **all** three conditions described in [28 TAC §3.3804\(b\)\(20\)\(C\)](#), are not **required** to meet all the long-term care requirements outlined in [28 TAC Chapter 3 Subchapter Y](#) but must comply with the policy summary requirement in [28 TAC Section 3.3860\(a\)\(4\)](#).

Coverage of long-term care expenses funded through an accelerated benefit **that provides for an extension of the death benefits after the policy's death benefit has been exhausted** does not fall within the definition of

an accelerated death benefit and must meet the requirements of [28 TAC Chapter 3 Subchapter Y](#).

Page _____ : Terms must be defined consistently with [28 TAC Section 3.3804](#).

Page _____ : Definitions and descriptions of providers must be consistent with the requirements of [28 TAC Section 3.3812](#).

Page _____ : If the accelerated benefit provision provides for payment of home health or adult daycare expenses, then the provision must comply with [28 TAC Section 3.3815](#).

Page _____ : Conditions triggering eligibility for benefits must comply with [28 TAC Section 3.3818](#).

Page _____ : If the accelerated benefit provision provides for qualified long-term care expenses, the provision must comply with [28 TAC Section 4.1115](#).

Favorable tax treatment of qualified benefits - [28 TAC Section 4.1115](#)

Page _____ : Tax-qualified accelerated benefit must be limited to insureds who have a "qualified terminal illness" or a "qualified long-term care illness" certified by a physician.

Page _____ : An insured has a "qualified long-term care illness," if a licensed health care practitioner certifies, within 12 months prior to the approval of the insured's request to exercise the accelerated benefit provision, that the illness or physical condition has caused the insured to:

- Be unable to perform, without substantial assistance from another individual, at least 2 activities of daily living for a period of at least 90 days due to functional incapacity;
 - Be disabled at a level similar to the level described in subparagraph (A), as determined by rules promulgated by the US Secretary of Treasury, in consultation with the US Secretary of Health and Human Services, under section 7702B of the IRC of 1986, as amended by HIPAA of 1996;
- or**
- Require substantial supervision to protect the insured from threats to the insured's health and safety due to the impairment of cognitive ability.

Page _____ : Any accelerated benefit paid to an insured with a qualified long-term care illness is limited in use to payment for instances in which the individual has incurred expenses for qualified long-term care services.

Page _____ : Any accelerated benefit provision providing for payment for a qualified long-term care illness:

- Shall not pay or reimburse expenses incurred under Medicare or that would be reimbursable under Medicare but for the application of a deductible or coinsurance amount, except expenses which are reimbursable under Medicare only as a secondary payor;
- May coordinate benefits with Medicare benefits; and must meet all requirements of [28 TAC](#)

Tax qualification and effect on public assistance - [28 TAC Section 4.1116](#)

Page _____ : If the accelerated benefit provision is intended to qualify for favorable tax treatment under federal law, the face page of the contract must contain a disclosure substantially similar to:

- "The acceleration-of-life-insurance benefits offered under this contract are intended to qualify for favorable tax treatment under the Internal Revenue Code of 1986. If the acceleration-of-life-insurance benefits qualify for such favorable tax treatment, the benefits will be excludable from your income and not subject to federal taxation. Tax laws relating to acceleration-of-life-insurance benefits are complex. You are advised to consult with a qualified tax advisor about circumstances under which you could receive acceleration-of-life-insurance benefits excludable from income under federal law."

Page _____ : If the accelerated benefit provision does not qualify for favorable tax treatment under federal law, then the face page of the contract must contain a disclosure substantially similar to:

- "The acceleration-of-life-insurance benefits offered under this contract **may or may not** qualify for favorable tax treatment under the Internal Revenue Code of 1986. Whether such benefits qualify depends on factors such as your life expectancy at the time benefits are accelerated or whether you use the benefits to pay for necessary long-term care expenses, such as nursing home care. If the acceleration-of-life-insurance benefits qualify for favorable tax treatment, the benefits will be excludable from your income and not subject to federal taxation. Tax laws relating to acceleration-of-life-insurance benefits are complex. You are advised to consult with a qualified tax advisor about circumstances under which you could receive acceleration-of-life-insurance benefits excludable from income under federal law."

Page _____ : Any contract that contains an accelerated benefit provision must include on or attach to the face page a disclosure substantially similar to:

- "Receipt of acceleration-of-life-insurance benefits may affect you, your spouse or your eligibility for public assistance programs such as medical assistance (Medicaid), Aid to Families with Dependent Children (AFDC), supplementary social security income (SSI), and drug assistance programs. You are advised to consult with a qualified tax advisor and with social service agencies concerning how receipt of such a payment will affect you, your spouse and your family's eligibility for public assistance."