

Title 23. Public Utilities and Regulated Industries
Chapter I. State Insurance Department, Department of Commerce
Subchapter B. Life, Health, and Accident
Part 109. Accelerated Benefits Provisions in Life Insurance Policies

Codification Notes. This part as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"SECTION 2. AUTHORITY AND SCOPE.

This Rule shall be issued under the authority of the Commissioner pursuant to Ark. Code Ann. §23-61-108, §§25-15-201, et seq., and other applicable laws."

"SECTION 3. EFFECTIVE DATE. The provisions of this Rule shall be effective August 1, 1994, upon signature of the Commissioner, and upon filing with the Arkansas Secretary of State and the Arkansas State Library, pursuant to Ark. Code Ann. §§25-15-201, et seq., as amended by Act 1106 of 1993. Insurers' compliance with this Rule and Regulation shall commence on and after November 1, 1994"

"SECTION 15. SEVERABILITY. Any section or provision of this Rule held by a court to be invalid or unconstitutional will not affect the validity of any other section or provision of this Rule."

Subpart 1. Generally

23 CAR § 109-101. Purpose.

The purpose of this part is to:

- (1) Regulate accelerated benefit provisions of individual and group life insurance policies; and
- (2) Provide required standards of disclosure.

Authority. Arkansas Code § 23-61-108.

23 CAR § 109-102. Scope.

(a) This part shall apply to all licensed domestic, foreign, and alien life insurers.

(b) This part shall apply to all accelerated benefits provisions of individual and group life insurance policies and riders attached thereto issued or issued for delivery in this state, except long-term care insurance policies.

Authority. Arkansas Code § 23-61-108.

23 CAR § 109-103. Definitions.

As used in this part:

(1) "Accelerated benefits" covered under this part are benefits payable under a life insurance contract:

(A) To a policy owner or certificate holder, during the lifetime of the insured, in anticipation of death or upon the occurrence of specified life-threatening or catastrophic conditions as defined by the policy or rider;

(B) That may reduce or eliminate the death benefit otherwise payable under the life insurance contract; and

(C) That are payable upon the occurrence of a single qualifying event that results in the payment of a benefit amount fixed at the time of acceleration; and

(2) "Qualifying event" shall mean one (1) or more of the following:

(A) A medical condition that would result in a drastically limited life span as specified in the contract (for example, twenty-four (24) months or less);

(B) A medical condition that has required or requires extraordinary medical intervention, such as, but not limited to, major organ transplant or continuous artificial life support, without which the insured would die;

(C) Any condition that usually requires continuous confinement in an eligible institution as defined in the contract if the insured is expected to remain there for the rest of his or her life;

(D)(i) A medical condition that would, in the absence of extensive or extraordinary medical treatment, result in a drastically limited life span.

(ii) Such conditions may include, but are not limited to, one (1) or more of the following:

(a) Coronary artery disease resulting in an acute infarction or requiring surgery;

(b) Permanent neurological deficit resulting from cerebral vascular accident;

(c) End stage renal failure;

(d) Acquired immunodeficiency syndrome; or

(e) Other medical conditions that the Insurance Commissioner shall approve for any particular filing; or

(E) Other qualifying events that the Insurance Commissioner shall approve for any particular filing.

Authority. Arkansas Code § 23-61-108.

23 CAR § 109-104. Type of product.

(a) Accelerated benefit riders and life insurance policies with accelerated benefit provisions are primarily mortality risks rather than morbidity risks.

(b) They are life insurance benefits subject to Arkansas Code § 23-79-101 et seq., and § 23-81-101 et seq.

Authority. Arkansas Code § 23-61-108.

23 CAR § 109-105. Assignee/beneficiary.

(a) Prior to the payment of the accelerated benefit, the insurer is required to obtain from any assignee or irrevocable beneficiary a signed acknowledgement of concurrence for payout.

(b) If the insurer making the accelerated benefit payment is itself the assignee under the policy, no such acknowledgement is required.

Authority. Arkansas Code § 23-61-108.

23 CAR § 109-106. Criteria for payment.

(a) Lump sum settlement option required.

(1) Contract payment options shall include the option to take the benefit as a lump sum.

(2) The benefit shall not be made available as an annuity contingent upon the life of the insured.

(b) **Restrictions on use of proceeds.** No restrictions are permitted on the use of the proceeds.

(c) **Accidental death benefit provision.** If any death benefit remains after payment of an accelerated benefit, the accidental death benefit provision, if any, in the policy or rider shall not be affected by the payment of the accelerated benefit.

Authority. Arkansas Code § 23-61-108.

23 CAR § 109-107. Disclosures.

(a) Descriptive title.

(1) The terminology "accelerated benefit" shall be included in the descriptive title.

(2) Products regulated under this part shall not be described or marketed as long-term care insurance or as providing long-term care benefits.

(b) Tax consequences.

(1) A disclosure statement is required at the time of application for the policy or rider and at the time the accelerated benefit payment request is submitted, disclosing that:

(A) Receipt of these accelerated benefits may be taxable; and

(B) Assistance should be sought from a personal tax advisor.

(2) The disclosure statement shall be prominently displayed on the first page of the policy or rider and any other related documents.

(c) **Solicitations.**

(1)(A) A written disclosure including, but not necessarily limited to, a brief description of the accelerated benefit and definitions of the conditions or occurrences triggering payment of the benefits shall be given to the applicant.

(B) The description shall include an explanation of any effect of the payment of a benefit on the policy's:

- (i) Cash value;
- (ii) Accumulation account;
- (iii) Death benefit;
- (iv) Premium;
- (v) Policy loans; and
- (vi) Policy liens.

(C)(i) In the case of agent-solicited insurance, the agent shall provide the disclosure form to the applicant prior to or concurrently with the application.

(ii) Acknowledgment of the disclosure shall be signed by the applicant and writing agent.

(D)(i) In the case of a solicitation by direct response methods, the insurer shall provide the disclosure form to the applicant at the time the policy is delivered, with a notice that a full premium refund shall be received if the policy is returned to the company within the free look period.

(ii) Insurers shall provide a ten-day free look period for individual contracts in compliance with Arkansas Code § 23-79-112(f).

(E) In the case of group insurance policies, the disclosure form shall be contained as part of the certificate of coverage or any related document furnished by the insurer for the certificate holder.

(2)(A) If there is a premium or cost of insurance charge, the insurer shall give the applicant a generic illustration numerically demonstrating any effect of the payment of a benefit on the policy's:

- (i) Cash value;
- (ii) Accumulation account;
- (iii) Death benefit;
- (iv) Premium;
- (v) Policy loans; and
- (vi) Policy liens.

(B) In the case of agent-solicited insurance, the agent shall provide the illustration to the applicant prior to or concurrently with the application.

(C) In the case of a solicitation by direct response methods, the insurer shall provide the illustration to the applicant at the time the policy is delivered.

(D) In the case of group insurance policies, the disclosure form shall be contained as part of the certificate of coverage or any related document furnished by the insurer for the certificate holder.

(3) Disclosure of premium charge.

(A)(i) Insurers with financing options other than as described in 23 CAR § 109-111(a)(2) and (3) shall disclose to the policy owner any premium or cost of insurance charge for the accelerated benefit.

(ii) These insurers shall make a reasonable effort to ensure that the certificate holder is aware of any additional premium or cost of insurance charge if the certificate holder is required to pay such charge.

(B) Insurers shall furnish an actuarial demonstration to the State Insurance Department when filing the product disclosing the method of arriving at their cost for the accelerated benefit.

(4) Disclosure of administrative expense charge.

(A) The insurer shall disclose to the policy owner any administrative expense charge.

(B) The insurer shall make a reasonable effort to assure that the certificate holder is aware of any administrative expense charge if the certificate holder is required to pay such charge.

(d) Effect of the benefit payment.

(1) When a policy owner or certificate holder requests an acceleration, the insurer shall send a statement to the policy owner or certificate holder and irrevocable beneficiary showing any effect that the payment of the accelerated benefit will have on the policy's:

- (A) Cash value;
- (B) Accumulation account;
- (C) Death benefit;
- (D) Premium;
- (E) Policy loans; and
- (F) Policy liens.

(2) The statement shall disclose that:

(A) Receipt of accelerated benefit payments may adversely affect the recipient's eligibility for Medicaid or other government benefits or entitlements; and

(B) Receipt of an accelerated benefit payment may be taxable and assistance should be sought from a personal tax advisor.

(3) When a previous disclosure statement becomes invalid as a result of an acceleration of the death benefit, the insurer shall send a revised disclosure statement to the policy owner or certificate holder and irrevocable beneficiary.

(4) When the insurer agrees to accelerate death benefits, the insurer shall issue an amended schedule page to the policyholder or notify the certificate holder under a group policy to reflect any new, reduced in-force face amount of the contract.

Authority. Arkansas Code § 23-61-108.

23 CAR § 109-108. Effective date of the accelerated benefits.

(a) The accelerated benefit provision shall be effective for accidents on the effective date of the policy or rider.

(b) The accelerated benefit provision shall only be effective for illnesses which first manifest themselves more than sixty (60) days following the effective date of the policy or rider.

Authority. Arkansas Code § 23-61-108.

23 CAR § 109-109. Waiver of premiums.

(a) The insurer may offer a waiver of premium for the accelerated benefit provision in the absence of a regular waiver of premium provision being in effect.

(b) At the time the benefit is claimed, the insurer shall explain any continuing premium requirement to keep the policy in force.

Authority. Arkansas Code § 23-61-108.

23 CAR § 109-110. Discrimination.

(a) Insurers shall not unfairly discriminate among insureds with differing qualifying events covered under the policy or among insureds with similar qualifying events covered under the policy.

(b) Insurers shall not apply further conditions on the payment of the accelerated benefits other than those conditions specified in the policy or rider.

Authority. Arkansas Code § 23-61-108.

23 CAR § 109-111. Actuarial standards.

(a) Financing options.

(1)(A) The insurer may require a premium charge or cost of insurance charge for the accelerated benefit.

(B) These charges shall be based on sound actuarial principles.

(C) In the case of group insurance, the additional cost may also be reflected in the experience rating.

(2)(A) The insurer may pay a present value of the face amount.

(B) The calculation shall be based on any applicable actuarial discount appropriate to the policy design.

(C) The interest rate or interest rate methodology used in the calculation shall be:

(i) Based on sound actuarial principles; and

(ii) Disclosed in the contract or actuarial memorandum.

(D) Subject to any applicable limitations contained in the Arkansas Constitution on interest rates or applicable Arkansas Code sections thereon, the maximum interest rate used shall be no greater than the greater of:

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

(ii) The current maximum statutory adjustable policy loan interest rate under Arkansas Code § 23-81-109.

(3)(A) The insurer may accrue an interest charge on the amount of the accelerated benefits.

(B) The interest rate or interest rate methodology used in the calculation shall be:

(i) Based on sound actuarial principles; and

(ii) Disclosed in the contract or actuarial memorandum.

(C) Subject to any applicable limitations contained in the Arkansas Constitution or Arkansas Code sections on interest rates, the maximum interest rate used shall be no greater than the greater of:

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

(ii) The current maximum statutory adjustable policy loan interest rate under Arkansas Code § 23-81-109.

(D) The interest rate accrued on the portion of the lien that is equal in amount to the cash value of the contract at the time of the benefit acceleration shall be no more than the policy loan interest rate stated in the contract.

(b) Effect on cash value.

(1) Except as provided in subdivision (b)(2) of this section, when an accelerated benefit is payable, there shall be no more than a pro rata reduction in the cash value based on the percentage of death benefits accelerated to produce the accelerated benefit payment.

(2)(A) Alternatively, the payment of accelerated benefits, any administrative expense charges, any future premiums, and any accrued interest can be considered a lien against the death benefit of the policy or rider, and the 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.

(B) Future access to additional policy loans could also be limited to any excess of the cash value over the sum of the lien and any other outstanding policy loans.

(c) Effect of any outstanding policy loans on accelerated death benefit payment. When payment of an accelerated benefit results in a pro rata reduction in the cash value, the payment may not be applied toward repaying an amount greater than a pro rata portion of any outstanding policy loans.

Authority. Arkansas Code § 23-61-108.

23 CAR § 109-112. Actuarial disclosure and reserves.

(a) Actuarial memorandum.

(1) An actuary qualified under Actuaries, 23 CAR pt. 10, should describe the accelerated benefits, the risks, the expected costs, and the calculation of statutory reserves in an actuarial memorandum accompanying each state filing.

(2) The insurer shall maintain in its files descriptions of the bases and procedures used to calculate benefits payable under these provisions.

(3) These descriptions shall be made available for examination by the Insurance Commissioner upon request.

(b) Reserves.

(1)(A) When benefits are provided through the acceleration of benefits under group or individual life policies or riders to such policies, policy reserves shall be determined in accordance with the Standard Valuation Law for Life Insurance and Annuities, Arkansas Code § 23-84-101 et seq.

(B) All valuation assumptions used in constructing the reserves shall be determined as appropriate for statutory valuation purposes by:

(i) A member in good standing of the American Academy of Actuaries; or

(ii) An actuary otherwise qualified under the provisions of Actuaries, 23 CAR pt. 10.

(C) Mortality tables in compliance with Standard Nonforfeiture Law for Life Insurance, Arkansas Code § 23-81-201 et seq., and 23 CAR pts. 98 and 99, and interest currently recognized for life insurance reserves by the NAIC may be used as well as appropriate assumptions for the other provisions incorporated in the policy form.

(D) The actuary must follow both actuarial standards and certification for good and sufficient reserves.

(E) Reserves in the aggregate should be sufficient to cover:

(i) Policies upon which no claim has yet arisen; and

(ii) Policies upon which an accelerated claim has arisen.

(2) For policies and certificates which provide actuarially equivalent benefits, no additional reserves need to be established.

(3)(A) Policy liens and policy loans, including accrued interest, represent assets of the insurer for statutory reporting purposes.

(B) For any policy on which the policy lien exceeds the policy's statutory reserve liability, such excess must be held as a nonadmitted asset.

Authority. Arkansas Code § 23-61-108.

Codification Notes. "NAIC" means National Association of Insurance Commissioners.

23 CAR § 109-113. Filing requirement.

(a) Notwithstanding other sections to the contrary, the filing and prior approval of forms for both individual and group life insurance policies containing an accelerated benefit are required, under the provisions of Arkansas Code § 23-79-109 and other applicable provisions, despite or notwithstanding any form filing requirements to the contrary and despite any form filing exemptions contained in Arkansas Code § 23-79-109 et seq., as customarily applicable.

(b) Policy forms shall be filed not less than sixty (60) days in advance of intended use in Arkansas, although the Insurance Commissioner may waive all or any part of that period upon written application by the filer that demonstrates good cause.

(c) No unapproved form shall be issued or issued for delivery in Arkansas.

Authority. Arkansas Code § 23-61-108.