

**CHAPTER 90f. INDIVIDUAL IMMINENT DEATH/LIFETIME
HEALTH CARE FACILITY CONFINEMENT BENEFITS PROVIDED
AS ACCELERATED DEATH BENEFIT OR SETTLEMENT OF
DEATH BENEFIT; PROVIDED BY RIDERS OR BUILT INTO
POLICIES—STATEMENT OF POLICY**

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Source

The provisions of this Chapter 90f adopted January 18, 1991, effective January 19, 1991, 21 Pa.B. 245, unless otherwise noted.

§ 90f.1. Scope.

An individual imminent death/lifetime health care facility confinement benefit filing complying with the standards of this chapter is acceptable.

§ 90f.2. General provisions.

An individual imminent death/lifetime health care facility confinement benefit complying with the following is acceptable:

- (1) The submission letter for a form complies with applicable requirements of § 89b.5 (relating to letter of submission). For a rider, the submission letter includes a list of the contracts to which the rider will be attached.
- (2) The form is submitted in duplicate. This complies with § 89b.4(a) (relating to general filing procedure).
- (3) The form is submitted in the final printed form intended for actual issue, unless the insurer requests tentative approval under § 89.4(d) (Reserved). A form submitted for tentative approval is in draft, printer's-proof, photocopied, "filer" or some other legible form.
- (4) The wording in a form and the form number are printed in easily readable type.

(5) Logos are or are not present and are more or less prominent than the company name.

(6) The full company name appears on the rider for filing purposes. The name is printed or added by rubber stamp or other appropriate means. This complies with § 89b.11(a) (relating to general contents of forms).

(7) An administrative office address or the home office address is or is not shown. If an address is captioned as “home office,” it is the official home office address of record.

(8) The form contains a caption:

(i) Disclosing the coverage provided—premature death, premature death/lifetime health care facility confinement or other descriptive disclosure.

(ii) For a rider, disclosing that the form is a rider, endorsement, agreement or amendment. An alternative caption may be used if the form provides that the form is “attached to and made a part of the policy.”

(9) A rider contains an effective date disclosure, either in the rider or on the specifications page of the policy.

(10) A rider contains a disclosure of a premium, cost of insurance rates or other charges, either in the rider or on the specifications page of the policy. For a benefit built into a policy, the specification page discloses that the cost of the benefit is included in the basic policy premium. If the benefit provides for other charges, the benefit or specifications page discloses the charges.

(11) The premium, maximum cost or another charge are guaranteed.

§ 90f.3. Benefit design.

(a) *Alternatives.*

(1) The form discloses that a benefit will be paid if elected by the owner when the following condition occurs: Due to a medically determinable condition suffered by the insured, the insured’s life expectancy is expected to be for a limited period of time. The allowable time periods range from “6 months or less” to “12 months or less.”

(2) The form discloses that a benefit will be paid if elected by the owner when the following condition occurs: The insured suffers from a medical condition that would in the absence of treatment result in death within a limited period of time. The allowable time periods range from “6 months or less” to “12 months or less.”

(3) The form discloses that a benefit will be paid if elected by the owner when the following condition occurs: The insured suffers a total and permanent disability which prevents the insured from performing any work for pay or profit for a period of time. The allowable time period is no longer than “12 months.”

(4) The form discloses that a benefit will be paid if elected by the owner when the following condition occurs: The insured suffers a disability which prevents the insured from engaging in the substantial and material duties of an

occupation for which the insured is or may reasonably become qualified by reason of education, experience or training for a period of time. The allowable time period is no longer than “12 months.”

(5) The form discloses that a benefit will be paid if elected by the owner when one or more of the following conditions occurs:

(i) Due to a medically determinable condition suffered by the insured, the insured’s life expectancy is expected to be for a limited period of time. The allowable time periods range from “6 months or less” to “12 months or less.”

(ii) The insured suffers from a medical condition that would in the absence of treatment result in death within a limited period of time. The allowable time periods range from “6 months or less” to “12 months or less.”

(iii) The insured suffers a total and permanent disability. The disability prevents the insured from performing any work for pay or profit and exists for a period of time. The allowable time period is no longer than “12 months.”

(iv) The insured suffers a disability which prevents the insured from engaging in the substantial and material duties of an occupation for which the insured is or may reasonably become qualified by reason of education, experience or training for a period of time. The allowable time period is no longer than “12 months.”

(6) The form discloses that a benefit will be paid if elected by the owner when any one of the preceding alternatives applies with the addition of the following alternative condition: The insured is confined to an eligible health care facility with the expectation that the insured will remain in the facility for his entire lifetime.

(b) *General form requirements.* For any of the alternatives:

(1) The form does or does not provide that the cause of death, disability or health care facility confinement is a result of sickness or injury.

(2) The form does not provide that the cause may not be sickness.

(3) The form does not provide that the cause may not be injury.

(4) The form does or does not provide that there is no reasonable prospect of recovery from the cause of death or health care facility confinement.

(c) *Medically determinable condition.* For purposes of this subsection, the medically determinable condition or medical condition is not restricted to one or more specific medical condition. A medically determinable condition or medical condition, except as excluded in accordance with § 90f.4 (relating to exclusions and restrictions) qualifies.

(d) *Cause for the disability.* For purpose of this subsection, the cause for the disability or need of care from the health care facility is not restricted to one or more specific medical condition. A medical condition, except as excluded in accordance with § 90f.4, is acceptable.

(e) *Benefit paid.* The form discloses the benefit paid.

(1) The amount of the benefit paid is meaningful. If the benefit is designed as an accelerated death benefit, the benefit, including the aggregate of all periodic payments, is meaningful if it is equivalent to at least 25% of the total death benefit affected by the benefit payment.

(2) The form provides an explanation of how the benefit payment is determined.

(3) The form discloses the maximum benefit amount that will be paid over the lifetime of the coverage. This amount does not exceed 100% of the total death benefit affected by the benefit payment.

(4) The benefit is paid periodically or in a lump sum.

(5) The form does not provide for age or duration requirements as to when the insured is first eligible for the benefit.

(f) *Conditions for payment.* The form discloses the conditions for payment of the accelerated death benefit.

(1) A licensed physician provides certification that the insured is diagnosed to have a life expectancy of the limited period of time as required by the form or the insured has suffered a medical condition which will in the absence of treatment result in death within a limited period of time as required by the form, whichever is applicable or the insured has suffered a total and permanent disability which will result in the insured's inability to perform any work for pay or profit and the disability has existed for the limited period of time as required by the form. Additionally, if the form includes coverage for confinement to an eligible health care facility with the expectation that the insured will remain in the facility for his entire lifetime, a licensed physician provides certification to that effect.

(2) An examination of the insured may or may not be required by the insurer at its expense to qualify for the benefit.

(3) The form may or may not require a second medical opinion.

(4) The diagnosis, need for treatment or disability occurs during the coverage period.

(5) The diagnosis, need for treatment or disability occurs while the rider, and policy, or the policy, in the case of a built-in benefit, are in force.

(6) The form does or does not require that diagnosis, need for treatment or disability be provided while the policy is in full force; for example, not under a nonforfeiture option.

(7) The form does not provide for a probationary period during which coverage is not effective. If the form provides a benefit when the insured is confined to an eligible health care facility with the expectation that the insured will remain in the facility until death, an elimination or waiting period is or is not applied to the health care facility benefit. The probationary period does not exceed 90 days or 180 days, if the benefit is designed as a settlement of the life insurance proceeds based on a reduced life expectancy of the insured and

there is no scheduled premium charge for the benefit other than an administrative charge made at the time the settlement is made.

(8) The owner requests payment of the benefit.

(9) The form does or does not provide that it cannot be assigned. If the form provides that it may be assigned, the form does or does not require the written consent of any assignee prior to the election of the benefit.

(10) A return of the contract to the insurer may or may not be required.

(11) The form does or does not require the written consent of the beneficiary prior to the election of the benefit.

(g) *Death benefit reduced.*

(1) The form contains a clear statement that the death benefit and any accumulation values and cash values will be reduced if an accelerated death benefit is paid. The statement appears immediately following the caption of the form in prominent type on the first page of the rider. If the benefit is built into the policy and the brief description refers to the benefit, the statement appears in close proximity to the brief description of the policy in prominent type on the first page of the policy. If the benefit is not referred to in the brief description, the statement appears in a prominent position in prominent type on the first page of the policy. Prominent type means, for example, all capital letters, contrasting color, underlined or otherwise differentiated from the other type in the form.

(2) This statement is unnecessary if the benefit is designed as a settlement of the life insurance proceeds based on a reduced life expectancy of the insured and is equal to 100% of the policy death benefit and the policy terminates upon payment of the settlement option. The benefit can be paid out in monthly installments.

(h) *Effects of payment of benefit.*

(1) The form describes the effects of the payment of the benefit on the death benefit and accumulation value, cash value, loan balance and premium payment following payment of a benefit or at settlement of the life insurance proceeds based on a reduced life expectancy of the insured.

(2) If the cash value or accumulation value are reduced by the proportional reduction in the death benefit, the fixed premiums for the policy, affected death benefit riders and imminent death benefit are reduced by the same proportional amount.

(3) If the cash value or accumulation value are reduced by 100% of the benefit payment amount, as a lien, an adjustment in the premium of the policy, affected death benefit riders and imminent death benefit may or may not be made.

(4) If the premium for the imminent death benefit form is flexible and the form is attached to or included in a flexible premium policy or with flexible premium affected death benefit riders, an adjustment to the premium payment of the policy, affected death benefit riders and imminent death benefit may or

may not be made. If an adjustment is made, the reasons for the premium adjustment are explained in writing.

(5) If the benefit payment is reduced by an amount of the loan balance, the loan balance is reduced by the same amount.

(i) *Single premium policy.* If the form is attached to or included in a single premium policy, the benefit payment is increased by the portion of the single premium unearned as of the date of qualification for the benefit corresponding to the amount of the benefit payment.

(j) *Renewable coverage.* If the forms provide renewable coverage, the renewability is guaranteed.

(k) *Cancellation.* The form is not subject to cancellation by the insurer during the coverage period, except as provided in the grace period and nonforfeiture provisions.

(l) *Health care facility licensure.* If the form provides that the health care facility must be licensed by the jurisdiction in which it is located, clarification is provided in the form that licensing is only required if the jurisdiction actually requires licensing.

(m) *Pooling of values.*

(1) The form does or does not provide for the pooling of the values of all policies issued on the insured's life by the insurer or by the insurer and affiliated insurers. Pooling is for the purpose of determining initial eligibility for the benefit or the amount and duration of the benefit. If a form provides for pooling, the insurer certifies that a copy of the form will be included in each affected policy. As an alternative for policies issued prior to the issuance of the form, the insurer certifies that a certificate listing the policies eligible for the benefit will be provided to the owner. The form discloses the manner in which the pooling affects any conditions, restrictions or benefits in the form.

(2) The form does not provide for the pooling of the values of policies issued on the insured by the insurer and nonaffiliated insurers.

§ 90f.4. Exclusions and restrictions.

(a) The form contains none or one or more of the following exclusions and restrictions:

- (1) War, declared or undeclared, or an act of war, whether or not serving in the military forces or a civilian noncombatant unit serving with the forces.
- (2) Active duty as a member of the armed forces of any nation.
- (3) Committing an assault or felony, whether sane or insane.
- (4) Participating in a riot or insurrection.
- (5) A fight in which the insured is a voluntary participant.
- (6) Suicide or attempted suicide, whether sane or insane.
- (7) Intentionally self-inflicted injury, whether sane or insane.
- (8) Engaging in an illegal occupation.

(9) Travel or flight in an aircraft or spacecraft or descent from such a craft while in flight, or subsequent drowning, if the insured is a pilot, officer or crew member of the craft; is giving or receiving aviation training or instruction; has any duties on or relating to the craft; or is being flown for the purpose of descent from the craft while in flight.

(10) Voluntary taking or injection of drugs, unless prescribed or administered by a licensed physician. The wording "taken as prescribed" or "taken in the manner prescribed" is not present.

(11) Voluntary taking or injection of drugs, whether legal or illegal, unless prescribed or administered by a licensed physician. The wording "taken as prescribed" or "taken in the manner prescribed" is not present.

(12) The voluntary taking of any drugs, prescribed for the insured by a licensed physician and intentionally not taken as prescribed.

(13) The voluntary taking of any drugs, whether legal or illegal, prescribed for the insured by a licensed physician and intentionally not taken as prescribed.

(14) Sensitivity to drugs, voluntarily taken, unless prescribed by a physician.

(15) Sensitivity to drugs, whether legal or illegal, voluntarily taken, unless prescribed by a physician.

(16) Drug addiction, unless addiction results from the voluntary taking of drugs prescribed or administered by a licensed physician or from the involuntary taking of drugs.

(17) Drug addiction, unless addiction results from the voluntary taking of drugs, whether legal or illegal, prescribed or administered by a licensed physician or from the involuntary taking of drugs, whether legal or illegal.

(18) Chronic alcoholism.

(19) Loss resulting directly or indirectly from the voluntary taking of alcohol alone or in combination with a drug, medication or sedative when this action results in legal intoxication as defined by Pennsylvania law. The insurer provides a certification that the Pennsylvania legal definition for intoxication will be used if the form does not refer to "intoxication as defined by Pennsylvania law."

(b) The form contains none of the following exclusions and restrictions:

(1) Active duty as a member of the armed forces of any nation.

(2) Riot or insurrection.

(3) Gunshot or pistol wound, unless unintentionally caused by someone else.

(4) Gunshot or pistol wound, unless intentionally or unintentionally caused by someone else.

(5) Travel in any kind of military aircraft or seacraft or aircraft or seacraft operated for the armed forces.

(6) Air travel.

- (7) Air travel except as a fare paying passenger on a regularly scheduled commercial airline.
- (8) Illegal drug use.
- (9) Drug addiction.
- (10) Involuntary taking of drugs or poison.
- (11) Voluntary taking of drugs or poison.
- (12) Preexisting conditions.
- (13) Requirement that the form be in force for a specific period of time prior to eligibility for coverage.
- (14) Alzheimer's Disease or another disorder with a demonstrable organic origin.
- (15) Disease resulting from the failure of the insured to follow accepted medical advice as required to prevent the condition.
- (16) Other exclusions or restrictions that are unfair or unduly restrictive.

Cross References

This section cited in 31 Pa. Code § 90f.3 (relating to benefit design).

§ 90f.5. Conditions for filing claim.

The form discloses the conditions for the filing of claims.

§ 90f.6. Facility of payment after death.

The form does not provide for the use of a facility of payment to disburse benefit payments after the insured's death. The payments are paid in accordance with the terms of the policy or an assignment.

§ 90f.7. Facility of payment while living.

The form does or does not provide for the use of a facility of payment to disburse benefit payments while the insured is living.

§ 90f.8. Termination of coverage.

The form discloses the conditions under which the coverage terminates.

(1) *Benefit provided by rider.* The following conditions are disclosed if the benefit is provided by a rider:

- (i) Written request from the owner for termination.
- (ii) Termination of the policy.
- (iii) Nonpayment of premium.
- (iv) The benefit is paid. This condition is disclosed if the benefit is built into a policy.

(2) *Termination condition disclosed.* The following termination condition is disclosed if applicable: When a policy nonforfeiture option takes effect. This complies with § 89.42(e) (relating to nonforfeiture value requirements). Alternatively, this termination condition is disclosed in the policy.

(3) *Termination condition not disclosed.* The following termination condition is not disclosed: Attainment of a specific age or contract anniversary, or both, other than at an age or anniversary at which the policy terminates.

§ 90f.9. Prohibited terminology.

The following terminology is not present:

(1) The term “special,” unless used in reference to or to designate one or more of the following: a premium payment mode, a premium rating class, a settlement option or options under a policy. This complies with § 89.13(c) (relating to use of certain words and terms).

(2) The term “deposit,” unless used in conjunction with the word “premium” or the payment establishes a debtor-creditor relationship. This complies with § 87.28 (relating to reference to payment as “deposit”).

(3) The term “legal reserve”, the absence of which complies with Chapter 139 (relating to prohibited phrases).

(4) The term “franchise.”

(5) The term “sponsor,” unless used in reference to an entity which pays all or part of the premium or is a pension or welfare plan sponsor under ERISA.

§ 90f.10. Inconsistent or contradictory language.

The form contains no inconsistent or contradictory language or provisions.

§ 90f.11. Definitions.

The form contains a definition or explanation of any terminology that in the absence of definition or explanation would not be understood by a lay person of average intelligence.

§ 90f.12. Fraternal benefit society.

If a form will be issued by a fraternal benefit society, nonstandard insurance terminology is or is not used. This complies with § 89.102(b)(3) (relating to guidelines for approval of forms).

§ 90f.13. Riders.

(a) If a rider will be attached to a policy after issue, the form contains an officer’s signature. If a rider will be attached to a policy only at issue, an officer’s signature is or is not present.

(b) A rider contains a form number. This complies with § 89b.11(b) (relating to general contents of forms).

§ 90f.14. Tax consequences notice.

(a) The form contains a clear statement that the tax status of the accelerated death benefit payment is not clear at this time and that the owner should seek

additional information from his personal tax advisor. The statement appears in a prominent position in prominent type on the first page of the rider, or the policy if the benefit is built into the policy. Prominent type means, for example, all capital letters, contrasting color, underlined or otherwise differentiated from the other type in the form.

(b) If the tax status is determined by legislation or Internal Revenue Service ruling, a tax consequences notice will not be required until further notification.

§ 90f.15. Disclosure and benefit payment notice.

(a) The insurer certifies that no later than the time the application for the benefit is signed, the agent, broker or insurer will provide the applicant with a written disclosure of the benefit providing:

- (1) An explanation of how payment of the benefit affects the death benefit and any policy accumulation values, cash values, loan balance and premium.
- (2) An explanation of how the termination or maturity of the policy affects the benefit.
- (3) A description of the amount of the benefit.
- (4) A disclosure of exclusions, reductions or limitations.

(b) Disclosures required by subsection (a)(1) and (2) appear in a prominent position in prominent type. Prominent type means, for example, all capital letters, contrasting color, underlined or otherwise differentiated from the other type in the policy.

(c) The insurer certifies that the disclosure will be provided either as a separate form or in the disclosure statement required by Chapter 83 Subchapter A (relating to required disclosures in the solicitation of life insurance).

(d) The insurer certifies that no later than the time the benefit payment or first payment, if paid in installments, is made, the insurer will provide the owner with a written benefit payment notice providing:

- (1) The dollar amount of the lump sum or periodic payment benefit.
- (2) The dollar amounts of the remaining death benefit and any accumulation values, cash values and loan balance.

(e) The insurer certifies that the benefit payment notice will be provided as a separate form.

(f) The form provides a disclosure that the benefit payment notice will be provided.

(g) The insurer certifies that all information included in the disclosure and benefit payment notice is based on contract guarantees. No projected or nonguaranteed values or benefits will be shown.

§ 90f.16. Actuarial considerations.

Actuarial considerations for forms designed as a settlement of the life insurance proceeds based on a reduced life expectancy of the insured.

(1) The insurer files the current mortality and interest and the formula used to determine the settlement amount. The insurer also files sample settlement amounts per \$1,000 insurance for representative ages and plans and a sample calculation in the format that the Insurance Department can reproduce the settlement amount.

(2) The insurer certifies in writing that it will file future changes on the basis of the calculation of the settlement amount. It will file changes in the mortality table or formula and changes in the interest rate of more than 1/2 of 1%.

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