CHAPTER 90h. INDIVIDUAL WAIVER OF SURRENDER CHARGES FOR LIFE AND ANNUITY CONTRACTS RESULTING FROM HEALTH CARE FACILITY USAGE; PROVIDED BY RIDERS OR BUILT INTO POLICIES—STATEMENT OF POLICY

Sec.
90h.1. Scope.
90h.2. General provisions.
90h.3. Benefit provisions.
90h.4. Exclusions and restrictions.
90h.5. Claim provisions.
90h.6. Termination of coverage.
90h.7. Prohibited terminology.
90h.8. Inconsistent or contradictory provisions.
90h.9. Definition.
90h.10. Fraternal benefit society.
90h.11. Riders.

Source

The provisions of this Chapter 90h adopted January 18, 1991, effective January 19, 1991, 21 Pa.B. 256, unless otherwise noted.

§ 90h.1. Scope.

An individual waiver of surrender charge benefit filing complying with the standards of this chapter is acceptable.

§ 90h.2. General provisions.

An individual waiver of surrender charge 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 company requests tentative approval under § 89.4(d) (Reserved). A form submitted for tentative approval is in draft, printer's-proof, photocopied, ''filer'' or other legible form.

(4) The form number and the wording in the form 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 a 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—waiver of surrender charge, waiver of surrender charge for health care facilities usage or other descriptive disclosure. This caption discloses that the form provides surrender charge waiver.

(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 any premium, cost of insurance rates or other charges, whether in the rider or on the specifications page of the policy. For a benefit built into a policy, the specifications 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 of insurance or another charge is guaranteed.

§ 90h.3. Benefit provisions.

(a) *Surrender charges.*

(1) The form discloses that the surrender charges will be waived when the insured/annuitant receives care from a designated health care facility. The form designates one or more types of health care facilities. The following are types of health care facilities: skilled nursing facility, extended care facility, intermediate care facility, convalescent care facility, personal care facility, home care facility or hospice facility. This is not an all inclusive list of types of health care facilities which may be designated.

(2) The form does or does not provide that the cause for the need of the care from the health care facility is sickness or injury.

(3) The cause for the 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 § 90h.4 (relating to exclusions and restrictions) is acceptable.

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

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

(6) The form does or does not provide that the care from health care facilities is medically necessary. If the form provides that the care from health care facilities is medically necessary, the form contains a definition of ''medically necessary.''

 Copyright © 2003 Commonwealth of Pennsylvania

(b) *Benefit provided.* The form discloses the benefit provided.

(1) The amount of the benefit is equal to a waiver of 100% of the surrender charge applied to at least 50% of the accumulation value.

(2) The form provides an explanation of how the amount of the waiver is determined.

(3) The form discloses any limitation on the amount of the waiver.

(4) The maximum period for which the waiver is provided is at least 1 year for each occurrence of (continuous) health care facility usage.

(5) Any maximum benefit period for waiver due to home care usage is or is not identical to that applied to other health care facility usage waiver.

(6) The form does or does not provide for a maximum monthly waiver amount.

(7) A maximum benefit amount for waiver due to home care usage is not less than 50% of the benefit that applies to other health care facility usage waiver.

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

(c) *Conditions for payment.* The form discloses the conditions for payment of the waiver benefit.

(1) The insured/annuitant receives service from a health care facility.

(2) The services are provided during the coverage period.

(3) The services are provided while the rider or the policy alone in the case of a built-in benefit are in force.

(4) The form does or does not require that services be provided while the policy is in full force; for example, not under a nonforfeiture option.

(5) If the payment of the benefit requires that the insured/annuitant enter the health care facility within a period of time from discharge from an institutional confinement, the period of time from discharge is at least 30 days. The original institutional confinement is not required to be greater than 3 days.

(6) The insured/annuitant is or is not required to receive services for a period of time prior to payment of a benefit. This period of time is referred to as an elimination or waiting period and does not exceed 90 days.

(7) A new elimination or waiting period is or is not applied each time an insured/annuitant begins receiving services for a new or nonrelated cause, or for the same cause if services by a health care facility have not been provided to the insured for a period of at least 6 months.

(8) A new elimination or waiting period is not applied each time an insured begins receiving services for the same cause if the services are provided less than 6 months from the last time services were provided.

(9) If the waiver benefit requires that the insured/annuitant receive services for a period of time prior to waiver, the form does not require that the period of time be continuous or without interruption or that the period of time immediately precede the period for which a benefit will be paid unless ''continu-

ous,'' ''without interruption'' or ''immediately preceding'' are defined in a manner consistent with paragraphs (7) and (8).

(10) If the form contains a home health care benefit and requires that the insured be confined in a health care facility to establish eligibility for the home health care benefit, the period of confinement is not required to be greater than 30 days.

(11) The owner requests payment of the benefit.

(d) *Renewable coverage.* If the form provides renewable coverage, the renewability is guaranteed.

(e) *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.

(f) *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.

(g) *Limitations.* The form does or does not provide for limitations which apply accumulatively to other policies issued on the insured/annuitant's life by the insurer and affiliated insurers. The accumulative application could be for the purpose of determining the initial eligibility for the benefit or the maximum monthly benefit or maximum lifetime benefit. If a form provides for this, the insurer certifies that a copy of the form will be included in each and every affected policy. As an alternative for policies issued prior to the issuance of the form, the insurer certifies that a certificate listing all the policies eligible for the benefit will be provided to the owner. The form discloses the manner in which the accumulative application affects any conditions, restrictions or benefits of the form.

(h) Accumulative application. The form does not provide for the accumulative application to policies issued on the insured/annuitant by the insurer and nonaffiliated insurers.

(i) *Pooling of values.*

(1) The form does or does not provide for the pooling of the values of all policies issued on the insured/annuitant's life by the insurer or by the insurer and affiliated insurers. Pooling is for the purpose of determining the initial eligibility for the benefit and the amount and duration of the waiver of surrender 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 all 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 all policies issued on the insured by the insurer and nonaffiliated insurers.

Copyright © 1999 Commonwealth of Pennsylvania

(j) *Waiver benefit denied.* If the waiver benefit is denied, the form provides that the surrender proceeds will not be disbursed until the owner is notified of the denial and provided with the opportunity to reapply for the surrender proceeds or to reject the surrender proceeds.

§ 90h.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) Alcoholism treatment.

(19) Chronic alcoholism.

(20) 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.''

(21) Care or confinement prescribed for convenience only.

(22) Care or confinement prescribed for custodial purpose only.

(23) Care or confinement prescribed for rest cures.

(24) Benefit payment denial if services are provided by a health care facility operated by a member of the insured's immediate family.

(25) Benefit payment denial if services are provided by a health care facility which does not maintain at least a daily record for each patient.

(26) Mental, nervous, emotional or personality disorder without demonstrable organic disease, including, but not limited to, neurosis, psychoneurosis, psychopathy or psychosis.

(27) Services provided outside either the United States or the United States or Canada.

(28) Reimbursement for services covered by Medicare or another government program.

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

(1) Riot or insurrection.

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

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

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

(5) Air travel.

(6) Air travel except as a fare paying passenger on a regularly scheduled commercial airline.

(7) Illegal drug use.

(8) Drug addiction.

(9) Involuntary taking of drugs or poison.

(10) Voluntary taking of drugs or poison.

(11) Preexisting conditions.

(12) Requirement that the form be in force for a specific period of time prior to eligibility for coverage.

(13) Alzheimer's Disease or another disorder with a demonstrable organic origin.

(14) Benefit payment denial due to the insured's financial resources, income or need.

Copyright © 1999 Commonwealth of Pennsylvania

(15) Benefit payment denial if there is not a reasonable expectation that a significant improvement will occur in the insured's condition.

(16) Benefit payment denial if services are provided by a health care facility for the insured less often than on a daily basis.

(17) Benefit payment denial if services are not provided in the least costly setting.

(18) Benefit payment denial if the health care facility does not accommodate a minimum number of persons.

(19) Benefit payment denial if reimbursement for services is provided by another insurer.

(20) Other exclusions or restrictions that are unfair or unduly restrictive.

Cross References

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

§ 90h.5. Claim provisions.

(a) The form contains the following claim provisions:

(1) *Notice of claim.* Written notice of claim is to be given to the insurer within 20 days after the occurrence or commencement of a covered loss or as soon thereafter as is reasonable possible. Notice given by or on behalf of the insured to the insurer at_____(insert the location of the office as the insurer may designate) or to an authorized agent of the insurer, with information sufficient to identify the insured, is deemed notice to the insurer.

(2) *Claim forms.* The insurer upon receipt of a notice of claim, is required to furnish to the claimant forms as are usually furnished by it for filing proofs of loss. If the forms are not furnished within 15 days after the giving of the notice of claim, it is considered that the claimant complied with the requirements of this contract as to proof of loss if the claimant submits, within the time fixed in the contract for filing proofs of loss, written proof covering the occurrence, the character and the extent of the loss for which claim is made.

(3) *Proofs of loss.* Written proof of loss is to be furnished to the insurer at its office, in case of claim for loss for which this contract provides a periodic payment contingent upon continuing loss, within 90 days after the termination of the period for which the insurer is liable, and in case of claim for another loss, within 90 days after the date of the loss. Failure to furnish proof within the time required does not invalidate nor reduce any claim if it was not reasonably possible to give proof within that time, if the proof is furnished as soon as reasonably possible and in no event, except in the absence of legal capacity, later than 1 year from the time proof is otherwise required.

(4) *Physical examinations.* The insurer at its own expense has the right and opportunity to examine the person of the insured when and as often as it may reasonably require during the pendency of a claim hereunder.

(b) In lieu of the claim provisions specified in this section, the form contains other appropriate provisions and the submission letter contains a complete justification for the lack of the claim provisions specified in this section.

§ 90h.6. Termination of coverage.

The form discloses the conditions under which the coverage terminates.

(1) *Benefit provided by rider.*

(i) The following conditions are disclosed if the benefit is provided by a rider.

(A) Written request from the owner for termination.

(B) Termination of the policy.

(C) Nonpayment of premium.

(D) The total amount of charges waived equals the maximum amount. This condition is disclosed if a benefit is built into a policy.

(ii) The form may or may not provide for a continuation of the waiver benefit during the confinement period if the owner is receiving a benefit at the time the rider terminates.

(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.

§ 90h.7. 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.

§ 90h.8. Inconsistent or contradictory provisions.

The form contains no inconsistent or contradictory language or provisions.

Copyright © 1999 Commonwealth of Pennsylvania

§ 90h.9. Definition.

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.

§ 90h.10. 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).

§ 90h.11. Riders.

(a) If a rider is 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).

(294413) No. 339 Feb. 03

[Next page is 90i-1.]

Copyright © 2003 Commonwealth of Pennsylvania