

AMENDED IN ASSEMBLY AUGUST 5, 2013

AMENDED IN ASSEMBLY JULY 3, 2013

AMENDED IN SENATE MAY 1, 2013

AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 281

Introduced by Senator Calderon

February 14, 2013

An act to amend Sections 10110.5, ~~10271.1~~ 10271.1, and 10292 of, to add Article 2.1 (commencing with Section 10295) to Chapter 4 of Part 2 of Division 2 of, and to repeal and add Section 10271 of, the Insurance Code, relating to life insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 281, as amended, Calderon. Life insurance: accelerated death benefits.

Existing law governs the business of insurance, and defines various types of insurance for these purposes, including life insurance and disability insurance. Existing law, except as provided, makes the requirements imposed on disability insurance contracts inapplicable to life insurance, endowment, and annuity contracts, or supplemental contracts thereto, that provide additional benefits in case of death or dismemberment or loss of sight by accident, or that operate to safeguard contracts against lapse, or give a special surrender benefit, or a special benefit, as specified. Existing law also provides the language required as part of a provision or supplemental contract governed by these provisions.

This bill would delete the term "special benefit" and replace it with the defined term "accelerated death benefit." The bill would generally

revise the phrase “provision or supplemental contract” and replace it with the term “supplemental-benefit.” *benefit,* as defined. The bill would also revise and recast the required language of the provision or supplemental contract, as prescribed.

Existing law authorizes the Insurance Commissioner to adopt reasonable rules and regulations necessary to administer and carry out the purposes of certain provisions relating to the required language in a provision or supplemental contract.

This bill would extend that authorization for the commissioner to adopt reasonable rules and regulations to those provisions relating to supplemental benefits that operate to safeguard life insurance contracts against lapse when the insured becomes totally disabled and those life insurance contracts with an accelerated death benefit.

Existing law authorizes provisions or supplemental contracts that operate to safeguard life insurance contracts against lapse, in which the insurer waives the premium or monthly deduction for a life insurance contract when the insured becomes totally disabled, and where the waiver continues until the end of the insured’s disability, or until the attainment of an age established by the insurer.

This bill would delete the provision regarding attainment of age and would instead authorize the waiver of premiums to continue for a period of time specified in the supplemental benefit. The bill would define “accelerated death benefit” as a policy *provision, endorsement, or rider* added to a life insurance policy ~~to provide~~ *that provides* for the advance payment of any part of the death proceeds, payable upon the occurrence of a ~~single~~ qualifying event, as defined. The bill would require a life insurance policy with an accelerated death benefit provision to comply with *and, if applicable, explain* specified requirements, including payment of benefits, commissioner approval of forms and disclosures, and a free look period, and would place limits on advertising and marketing. The bill would prohibit an insurer, broker, agent, or other person from causing a policyholder to unnecessarily replace a long-term care *insurance* policy with an accelerated death benefit policy, and provide certain notices when a life insurance policy or long-term care insurance policy would be replaced. The bill would also provide that an insurer that fails to conform to the requirements of the above provisions would be subject to the provisions of existing law that provide for the imposition of a civil penalty against any person who engages in any unfair method of competition or any unfair or deceptive act or practice in the business of insurance, as provided. *The bill would prohibit*

accelerated death benefits from limiting or excluding coverage by type of illness, treatment, medical condition, or accident, except as specified.

The bill would authorize the commissioner to disapprove any advertising that does not meet the requirements of these provisions, as specified. The bill would also require a policy, certificate, rider, or endorsement to include a provision giving the policyholder or certificate holder the right to appeal to the insurer a decision regarding benefit eligibility.

This bill would delete obsolete provisions and make conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 10110.5 of the Insurance Code is
2 amended to read:

3 10110.5. (a) A policy or endorsement issued by an admitted
4 life and disability insurer may contain a provision for a waiver of
5 premium payments in the event of involuntary unemployment of
6 the insured. Insurers issuing policies or endorsements containing
7 that provision shall establish any additional reserves and file any
8 additional financial reports that the commissioner may require.

9 (b) A contract or supplemental contract issued by an admitted
10 life and disability insurer may contain a provision for a waiver of
11 surrender charge benefit for a life insurance or annuity contract in
12 the event of voluntary or involuntary unemployment of the owner,
13 insured, or annuitant, as applicable. Insurers issuing contracts or
14 supplemental contracts containing that provision shall establish
15 any additional reserves and file any additional financial reports
16 that the commissioner may require.

17 SEC. 2. Section 10271 of the Insurance Code is repealed.

18 SEC. 3. Section 10271 is added to the Insurance Code, to read:

19 10271. (a) Except as set forth in this section, this chapter shall
20 not apply to, or in any way affect, provisions in life insurance,
21 endowment, or annuity contracts, or contracts supplemental thereto,
22 that provide additional benefits in case of death or dismemberment
23 or loss of sight by accident, or that operate to safeguard those
24 contracts against lapse, as described in subdivision (a) of Section
25 10271.1, or give a special surrender benefit, as defined in

1 subdivision (b) of Section 10271.1, or an accelerated death benefit
 2 as defined in Article 2.1 (commencing with Section 10295), in the
 3 event that the owner, insured, or annuitant, as applicable, meets
 4 the benefit triggers specified in the life insurance or annuity
 5 contract or supplemental contract.

6 *(b) For the purposes of this section, the term “supplemental*
 7 *benefit” means a rider to or provision in a life insurance policy,*
 8 *certificate, or annuity contract that provides a benefit as set forth*
 9 *in subdivision (a).*

10 ~~(b)~~

11 *(c) A supplemental benefit described in subdivision (a) shall*
 12 *contain all of the following provisions. However, an insurer, at its*
 13 *option, may substitute for one or more of the provisions a*
 14 *corresponding provision of different wording approved by the*
 15 *commissioner that is not less favorable in any respect to the owner,*
 16 *insured, or annuitant, as applicable. The required provisions shall*
 17 *be preceded individually by the appropriate caption, or, at the*
 18 *option of the insurer, by the appropriate individual or group*
 19 *captions or subcaptions as the commissioner may approve.*

20 ~~(1) The supplemental benefit~~ *A life insurance policy or annuity*
 21 *contract that contains a supplemental benefit shall provide that*
 22 *the contract, supplemental contract, and any papers attached thereto*
 23 *by the insurer, including the application if attached, constitute the*
 24 *entire insurance or annuity contract and shall also provide that no*
 25 *agent has the authority to change the contract or to waive any of*
 26 *its provisions. This provision shall be preceded individually by a*
 27 *caption stating “ENTIRE CONTRACT; CHANGES:” or other*
 28 *appropriate caption as the commissioner may approve.*

29 ~~(2) The supplemental benefit shall provide for reinstatement~~
 30 ~~consistent with paragraph (3) of subdivision (c) of Section 2534.3~~
 31 ~~of Title 10 of the California Code of Regulations. This requirement~~
 32 ~~applies without regard to whether the contract is a variable or~~
 33 ~~nonvariable contract, or a group or individual contract.~~
 34 *Reinstatement of a supplemental benefit shall be on the same or*
 35 *more favorable terms as those in the underlying policy. In all other*
 36 *respects, the insured and insurer shall have the same rights under*
 37 *reinstatement as they had under the supplemental benefit*
 38 *immediately before the due date of the defaulted premium, subject*
 39 *to any provisions endorsed in the rider or endorsement or attached*
 40 *to the rider or endorsement in connection with the reinstatement.*

1 This *reinstatement* provision shall be preceded individually by a
2 caption stating “REINSTATEMENT:” or other appropriate caption
3 as the commissioner may approve.

4 (3) A supplemental benefit subject to underwriting shall include
5 an incontestability statement that provides that the insurer shall
6 not contest the supplemental benefit after it has been in force during
7 the lifetime of the insured for two years from its date of issue, and
8 that the supplemental benefit may only be contested based on a
9 statement made in the application for the supplemental ~~contract,~~
10 *benefit*, if the statement is attached to the contract and if the
11 statement was material to the risk accepted or the hazard assumed
12 by the insurer. This provision shall be preceded individually by a
13 caption stating “INCONTESTABILITY:” or other appropriate
14 caption as the commissioner may approve.

15 (4) The supplemental benefit shall provide either that the insurer
16 may accept written notice of claim at any time or that the insurer
17 may require that written notice of claim be submitted by a due date
18 that is no less than 20 days after an occurrence covered by the
19 supplemental benefit, or commencement of any loss covered by
20 the supplemental benefit, or as soon after the due date as is
21 reasonably possible. Notice given by or on behalf of the insured
22 or the beneficiary, as applicable to the insurer at the insurer’s
23 address or telephone number, or to any authorized agent of the
24 insurer, with information sufficient to identify the insured, shall
25 be deemed notice to the insurer. This provision shall be preceded
26 individually by a caption stating “NOTICE OF CLAIM:” or other
27 appropriate caption as the commissioner may approve.

28 (5) The supplemental benefit shall provide that the insurer, upon
29 receipt of a notice of claim, shall furnish to the claimant those
30 forms as are usually furnished by it for filing a proof of occurrence
31 or a proof of loss. If the forms are not furnished within 15 days
32 after giving notice, the claimant shall be deemed to have complied
33 with the requirements of the supplemental benefit as to proof of
34 occurrence or proof of loss upon submitting, within the time fixed
35 by the supplemental benefit for filing proof of occurrence or proof
36 of loss, written proof covering the character and the extent of the
37 occurrence or loss. This provision shall be preceded individually
38 by a caption stating “CLAIM FORMS:” or other appropriate
39 caption as the commissioner may approve.

1 (6) The supplemental benefit shall provide that the insurer may
2 require that the insured provide written proof of occurrence or
3 proof of loss no less than 90 days after the termination of the period
4 for which the insurer is liable, and, in the case of claim for any
5 other occurrence or loss, within 90 days after the date of the
6 occurrence or loss. Failure to furnish proof within the time required
7 shall not invalidate or reduce the claim if it was not reasonably
8 possible to give proof within the time, provided proof is furnished
9 as soon as reasonably possible and, except in the absence of legal
10 capacity, no later than one year from the time proof is otherwise
11 required. This provision shall be preceded individually by a caption
12 stating “PROOF OF LOSS:” or other appropriate caption as the
13 commissioner may approve.

14 (7) The supplemental benefit shall provide that the insurer, at
15 its own expense, shall have the right and opportunity to examine
16 the person of the insured when and as often as the insurer may
17 reasonably require during the pendency of a claim and to make an
18 autopsy in case of death where it is not forbidden by law. This
19 provision shall be preceded individually by a caption stating
20 “PHYSICAL EXAMINATIONS:” or other appropriate caption
21 as the commissioner may approve.

22 (e)

23 (d) The commissioner shall not approve any contract or
24 supplemental contract for insurance or delivery in this state if the
25 commissioner finds that the contract or supplemental contract does
26 any of the following:

27 (1) Contains any provision, label, description of its contents,
28 title, heading, backing, or other indication of its provisions that is
29 unintelligible, uncertain, ambiguous, or abstruse, or likely to
30 mislead a person to whom the supplemental benefit is offered,
31 delivered, or issued.

32 (2) Constitutes fraud, unfair trade practices, or insurance
33 economically unsound to the owner, insured, or annuitant, as
34 applicable.

35 (3) *Contains any actuarial information that is significantly*
36 *incomplete, incorrect, or inadequate.*

37 (d)

38 (e) A ~~provision or supplemental contract~~ *benefit* described in
39 subdivision (a) shall not contain any title, description, or any other

1 indication that would describe or imply that the supplemental
2 benefit provides long-term care coverage.

3 (e)

4 (f) Commencing two years from the date of the issuance of the
5 supplemental benefit, no claim for loss incurred or disability, as
6 defined by the supplemental benefit, may be reduced or denied on
7 the grounds that a disease or physical condition not excluded from
8 coverage by name or specific description effective on the date of
9 loss had existed prior to the effective date on the coverage of the
10 supplemental benefit.

11 (f)

12 (g) With regard to supplemental benefits set forth in ~~Section~~
13 ~~10271.1~~, *subdivision (a)*, the supplemental benefit shall specify
14 any applicable exclusions, which shall be limited to the following:

15 (1) Condition or loss caused or substantially contributed to by
16 any attempt at suicide or intentionally self-inflicted injury, while
17 sane or insane.

18 (2) Condition or loss caused or substantially contributed to by
19 war or an act of war, as defined in the exclusion provisions of the
20 contract.

21 (3) Condition or loss caused or substantially contributed to by
22 active participation in a riot, insurrection, or terrorist activity.

23 (4) Condition or loss caused or substantially contributed to by
24 committing or attempting to commit a felony.

25 (5) Condition or loss caused or substantially contributed to by
26 voluntary intake of either:

27 (A) Any drug, unless prescribed or administered by a physician
28 and taken in accordance with the physician's instructions.

29 (B) Poison, gas, or fumes, unless they are the direct result of an
30 occupational accident.

31 ~~(6) Condition or loss occurring after the policy anniversary or~~
32 ~~supplemental contract anniversary, as applicable and as defined~~
33 ~~by the supplemental benefit, on which the insured attains a~~
34 ~~specified age of no less than 65 years.~~

35 (7)

36 (6) Condition or loss in consequence of the insured being
37 intoxicated, as defined by the jurisdiction where the condition or
38 loss occurred.

39 (8)

1 (7) Condition or loss caused or ~~materially~~ *substantially*
 2 contributed to by engaging in an illegal occupation.

3 ~~(g)~~

4 (h) If the commissioner notifies the insurer, in writing, that the
 5 filed form *or actuarial information* does not comply with the
 6 requirements of law and specifies the reasons for his or her opinion,
 7 it is unlawful for an insurer to issue any policy in that form.

8 SEC. 4. Section 10271.1 of the Insurance Code is amended to
 9 read:

10 10271.1. (a) (1) Supplemental benefits that operate to
 11 safeguard life insurance contracts against lapse are defined as a
 12 waiver of premium benefit or a waiver of monthly deduction
 13 benefit, as applicable, in which the insurer waives the premium or
 14 monthly deduction for a life insurance contract when the insured
 15 becomes totally disabled, as defined by the supplemental benefit,
 16 and where the waiver continues until the end of the insured's
 17 disability, or for the period specified by the supplemental benefit,
 18 consistent with paragraph (5).

19 (2) For purposes of this subdivision, total disability shall not be
 20 less favorable to the insured than the following:

21 (A) During the first 24 months of total disability, the insured is
 22 unable to perform with reasonable continuity the substantial and
 23 material duties of his or her job due to sickness or bodily injury.

24 (B) After the first 24 months of total disability, the insured, due
 25 to sickness or bodily injury, is unable to engage with reasonable
 26 continuity in any other job in which he or she could reasonably be
 27 expected to perform satisfactorily in light of his or her age,
 28 education, training, experience, station in life, or physical and
 29 mental capacity.

30 (3) The definition of total disability may also include
 31 presumptive total disability, such as the insured's total and
 32 permanent loss of sight of both eyes, hearing of both ears, speech,
 33 the use of both hands, both feet, or one hand and one foot.

34 (4) The insurer may require total disability to continue for an
 35 uninterrupted period of time specified by the supplemental benefit,
 36 or the insurer may allow separate periods of disability to be
 37 combined.

38 (5) The waiver of premium or monthly deduction benefit shall
 39 continue for the period specified by the supplemental benefit, but
 40 shall not be less favorable to the insured than the following:

1 (A) If the insured’s total disability begins before the insured
2 attains 60 years of age, the insurer shall waive all premiums or
3 monthly deductions due for the period of the total disability, and
4 if the total disability extends to the insured’s attainment of 65 years
5 of age, the insurer shall waive all further premiums or monthly
6 deductions due.

7 (B) If the insured’s total disability begins after the age specified
8 in subparagraph (A), the insurer shall waive all premiums or
9 monthly deductions due for the period that the insured continues
10 to be totally disabled up to 65 years of age.

11 (6) *In addition to the permissible exclusions listed in subdivision*
12 *(g) of Section 10271, the insurer may exclude a condition or loss*
13 *occurring after the policy anniversary or supplemental contract*
14 *anniversary, as applicable and as defined by the supplemental*
15 *benefit, on which the insured attains a specified age of no less than*
16 *65 years.*

17 (b) “Special surrender benefit” is defined as a “waiver of
18 surrender charge benefit” wherein the insurer waives the surrender
19 charge usually charged for a withdrawal of funds from the cash
20 value of a life insurance contract or the account value of an annuity
21 contract if the owner, insured, or annuitant, as applicable, meets
22 any of the following criteria:

23 (1) Develops any medical condition where the owner’s,
24 insured’s, or annuitant’s life expectancy is expected to be less than
25 or equal to a limited period of time that shall not be restricted to
26 a period of less than 12 months or greater than 24 months.

27 (2) Is receiving, as prescribed by a physician, registered nurse,
28 or licensed social worker, home care or community-based services,
29 as defined in subdivision (a) of Section 10232.9, or is confined in
30 a skilled nursing facility, convalescent nursing home, or extended
31 care facility, which shall not be defined more restrictively than as
32 in the Medicare program, or is confined in a residential care facility
33 or residential care facility for the elderly, as defined in the Health
34 and Safety Code. Out-of-state providers of services shall be defined
35 as comparable in licensure and staffing requirements to California
36 providers.

37 (3) Has any medical condition that would, in the absence of
38 treatment, result in death within a limited period of time, as defined
39 by the supplemental benefit, but that shall not be restricted to a
40 period of less than six months.

1 (4) Is totally disabled, as follows:

2 (A) During the first 24 months of total disability, the owner,
3 insured, or annuitant, as applicable, is unable to perform with
4 reasonable continuity the substantial and material duties of his or
5 her job due to sickness or bodily injury.

6 (B) After the first 24 months of total disability, the owner,
7 insured, or annuitant, as applicable, due to sickness or bodily injury,
8 is unable to engage with reasonable continuity in any other job in
9 which he or she could reasonably be expected to perform
10 satisfactorily in light of his or her age, education, training,
11 experience, station in life, or physical and mental capacity.

12 (C) The definition of total disability may also include
13 presumptive total disability, such as the insured's total and
14 permanent loss of sight of both eyes, hearing of both ears, speech,
15 the use of both hands, both feet, or one hand and one foot.

16 (D) The insurer may require the total disability to continue for
17 an uninterrupted period of time specified by the supplemental
18 benefit, or the insurer may allow separate periods of disability to
19 be combined.

20 (5) Has a chronic illness as defined pursuant to either
21 subparagraph (A) or (B):

22 (A) Either of the following:

23 (i) Impairment in performing two out of seven activities of daily
24 living, as set forth in subdivisions (a) and (g) of Section 10232.8,
25 meaning the insured needs human assistance, or needs continual
26 substantial supervision.

27 (ii) The insured has an impairment of cognitive ability, meaning
28 a deterioration or loss of intellectual capacity due to mental illness
29 or disease, including Alzheimer's disease or related illnesses, that
30 requires continual supervision to protect oneself or others.

31 (B) Either of the following:

32 (i) Impairment in performing two out of six activities of daily
33 living as described in subdivisions (b), (d), (e), and (f) of Section
34 10232.8 due to a loss of functional capacity to perform the activity.

35 (ii) Impairment of cognitive ability, meaning the insured needs
36 substantial supervision due to severe cognitive impairment, as
37 described in subdivisions (b), (d), and (e) of Section 10232.8.

38 (6) Has become involuntarily or voluntarily unemployed.

39 (c) *The term "supplemental benefit" means a rider to or*
40 *provision in a life insurance policy, certificate, or annuity contract*

1 *that provides a benefit as set forth in subdivision (a) of Section*
2 *10271.*

3 SEC. 5. Section 10292 of the Insurance Code is amended to
4 read:

5 10292. (a) A supplemental-~~contract~~ *benefit* described in
6 *subdivision (a) of Section 10271* shall not be delivered or issued
7 for delivery to any person in this state until a copy of the form
8 thereof is submitted to, and approved by, the commissioner. If the
9 supplemental-~~contract~~ *benefit* is an integral part of a contract of
10 life insurance or annuity, the entire contract shall be submitted to
11 the commissioner, but his or her power of approval or disapproval,
12 unless it is otherwise authorized, is limited to the supplemental
13 portion and any other portions that relate to the supplemental
14 portion.

15 (b) A supplemental-~~contract~~ *benefit* described in *subdivision (a)*
16 *of Section 10271.1 and Article 2.1 (commencing with Section*
17 *10295)* shall be considered an integral part of a contract for
18 purposes of this section. To facilitate the review of a supplemental
19 ~~contract, benefit,~~ the insurer shall submit, for informational
20 purposes, a sample copy of the life insurance or annuity contract
21 with which the supplemental-~~contract~~ *benefit* will be used. To
22 facilitate the location of the required provisions as stated in
23 ~~paragraph (2) of subdivision (b)~~ *(c) of Section 10271*, the insurer
24 shall provide the sample copy page reference for the provisions
25 that appear in the contract.

26 (c) The commissioner may adopt reasonable rules and
27 regulations as are necessary to administer and carry out the
28 purposes of Sections 10271 and 10271.1, Article 2.1 (commencing
29 with Section 10295), and this section.

30 SEC. 6. Article 2.1 (commencing with Section 10295) is added
31 to Chapter 4 of Part 2 of Division 2 of the Insurance Code, to read:

32
33 Article 2.1. Accelerated Death Benefits

34
35 10295. (a) ~~It is the intent of the Legislature that an An~~
36 accelerated death benefit, as described in this section, shall not be
37 offered, sold, issued, or marketed as health, accident, or long-term
38 care insurance. ~~It is further the intent of the Legislature that an An~~
39 accelerated death benefit *shall* not reimburse or provide specific

1 coverage for any health, accident, or long-term care insurance
 2 benefits.

3 (b) (1) For the purposes of this article, an “accelerated death
 4 benefit” means a ~~policy provision, endorsement, or rider~~ added
 5 to a life insurance policy ~~to provide that provides~~ for the advance
 6 payment of any part of the death proceeds, payable upon the
 7 occurrence of a ~~single~~ qualifying event *in accordance with Section*
 8 *10295.1.*

9 (1)
 10 (2) For the purposes of this article, “qualifying event” means
 11 ~~any of the following: that subparagraph (A) or (B) applies.~~

12 ~~(A) Developing any medical condition where the insured’s life~~
 13 ~~expectancy is expected to be less than, or equal to, a limited period~~
 14 ~~of time that shall not be restricted to a period of less than 12 months~~
 15 ~~or greater than 24 months. If an insurer wishes to add additional~~
 16 ~~qualifying events, it may do so as long as the events are one or~~
 17 ~~more of the following:~~

18 ~~(i) A~~
 19 (A) *The insured has a medical condition that would, in the*
 20 *absence of treatment, result in death within a limited period of*
 21 *time, as defined by the supplemental benefit, but that shall not be*
 22 *restricted to a period of less than six months.*

23 ~~(ii) A~~
 24 (B) (i) *The insured has a chronic illness as defined in*
 25 *subparagraph (B) of paragraph (5) of subdivision (b) of Section*
 26 *10271.1.*

27 ~~(B) Other qualifying events that the commissioner shall approve~~
 28 ~~for a particular filing.~~

29 ~~(C) For accelerated death benefits intended to be tax qualified~~
 30 ~~under Section 101(g) of the Internal Revenue Code (26 U.S.C.~~
 31 ~~Sec. 101(g)), the~~

32 (ii) *For purposes of determining whether this subparagraph*
 33 *applies, the insurer may also require that a licensed health care*
 34 *practitioner, independent of the insurer, certifies that the insured*
 35 *meets the definition of “chronically ill individual” as defined under*
 36 *the federal Health Insurance Portability and Accountability Act*
 37 *(Public Law 104-191).*

38 (2) For the purposes of this article, “policy” means any policy,
 39 provision, contract, rider, supplemental contract, or endorsement
 40 for accelerated death benefits delivered or issued for delivery in

1 ~~this state by an insurer, fraternal benefit society, or any similar~~
2 ~~organization regulated by the commissioner.~~

3 *(iii) Nothing in this subdivision shall preclude an insurer from*
4 *requiring certification that the chronic illness is expected to be*
5 *permanent.*

6 (3) For the purposes of this article, “applicant” means any of
7 the following:

8 (A) In the case of an individual ~~accelerated death benefit life~~
9 *insurance policy with an accelerated death benefit*, the person
10 who seeks to contract for benefits.

11 (B) (i) In the case of a group ~~accelerated death benefit life~~
12 *insurance policy with an accelerated death benefit*, the proposed
13 certificate holder.

14 (ii) “Certificate” means any certificate issued under a group life
15 insurance policy that includes an accelerated death ~~benefit or~~
16 ~~supplemental benefit.~~

17 ~~(c) Accelerated death benefit policies are primarily mortality~~
18 ~~risks rather than morbidity risks. The benefits are life insurance~~
19 ~~benefits subject to provisions of this code relating to life insurance~~
20 ~~products.~~

21 (4) *For the purposes of this article, the term “supplemental*
22 *benefit” means a rider to or provision in a life insurance policy,*
23 *certificate, or annuity contract that provides a benefit as set forth*
24 *in subdivision (a) of Section 10271.*

25 ~~(d)~~

26 (c) A life insurance policy that accelerates death benefits ~~to~~
27 ~~cover long-term care benefits and services, under if the insured is~~
28 *chronically ill and requires that the insured receives long-term*
29 *care services described in Section 10231.2*, shall not be considered
30 an accelerated death benefit for the purposes of this article.

31 (d) *Nothing in this subdivision shall be construed as prohibiting*
32 *an insurer from including other riders to a life insurance policy,*
33 *such as a terminal illness rider, that are not be subject to this*
34 *article.*

35 10295.1. ~~A life insurance policy or certificate that provides an~~
36 (a) *An accelerated death benefit as defined in paragraph (1) of*
37 *subdivision (b) of Section 10295 shall comply with, and, if*
38 *applicable, shall explain all of, the following:*

39 (a) ~~The policy or certificate shall specify that~~

- 1 (1) *That* the accelerated death benefit is fixed at the time the
2 insurer approves the request for the accelerated death benefit.
- 3 ~~(b) The policy or certificate shall specify that~~
- 4 (2) *That* the payment of the accelerated death benefit is not
5 conditioned on the receipt of long-term care or medical services.
- 6 ~~(c) The policy or certificate shall include~~
- 7 (3) *That* the option to take the accelerated death benefit in a
8 lump sum on the occurrence of a ~~single~~ qualifying event ~~and may~~
9 ~~include, as well as~~ an option to receive the benefit in periodic
10 payments *is provided* for a certain period only. ~~Periodic payments~~
11 ~~shall not be based on the continued survival or institutional~~
12 ~~confinement of the insured.~~
- 13 ~~(d) The policy or certificate shall not restrict~~
- 14 (4) *That there will be no restrictions on* the use of the proceeds
15 of the accelerated death benefit.
- 16 ~~(e) The policy or certificate shall specify that~~
- 17 (5) *That* the payment of the accelerated death benefit is due
18 immediately upon receipt of the due written proof of eligibility.
- 19 ~~(f) Prior~~
- 20 (6) *That, prior* to the payment of the accelerated death benefit,
21 the insurer is required to obtain from an assignee or irrevocable
22 beneficiary, if any, a signed acknowledgment of concurrence for
23 payout. If the insurer making the accelerated death benefit is itself
24 the assignee under the policy, the acknowledgment is not required.
- 25 ~~(g) If~~
- 26 (7) *That if* any death benefit remains after payment of an
27 accelerated death benefit, the accidental death benefit provision,
28 if any, in the policy shall not be affected by the payment of the
29 accelerated death benefit.
- 30 ~~(h) The policy or certificate shall provide for a maximum amount~~
31 ~~that may be accelerated.~~
- 32 (b) *The accelerated death benefit shall also provide for all of*
33 *the following:*
- 34 (1) *A maximum amount that may be accelerated.*
- 35 (2) *An explanation of whether the insured may accelerate more*
36 *than once on a qualifying event up to the maximum amount.*
- 37 (3) *An explanation of whether the insured may accelerate on*
38 *more than one of the qualifying events specified in the supplemental*
39 *provision up to the maximum amount.*

1 (4) A statement that the policy, rider, endorsement, or certificate
2 pays proceeds intended for favorable tax treatment under Section
3 101(g) of the Internal Revenue Code (26 U.S.C. Sec. 101(g)), if
4 applicable.

5 ~~(i) The policy or certificate may pay a daily per diem benefit
6 without regard to the amount of expenses the insured incurs for
7 qualified long-term care services.~~

8 (c) The insurer shall advise the policyholder or certificate holder
9 that there may be tax consequences of accepting an amount above
10 the amount that would be tax qualified under the Internal Revenue
11 Code.

12 ~~(j) The policy or certificate~~

13 ~~(d) The accelerated death benefit shall not have long-term care
14 benefit or service-related features, such as the use of contain any
15 preexisting condition limitations, or the limitation and shall not
16 contain any requirement that benefits acceleration be conditioned
17 on a prior hospitalization or institutionalization.~~

18 (e) The accelerated death benefit shall contain an explanation
19 of how the insured will pay for the accelerated death benefit,
20 whether by paying a portion of the premium for the life insurance
21 policy, by paying a fee at the time of the acceleration, by paying
22 the cost of insurance charge, or by paying the administrative
23 expense charge, together with an illustration. If there is a premium
24 or cost of insurance charge, or a charge imposed upon the
25 acceleration, a generic illustration numerically demonstrating any
26 effect of the payment of a benefit on the policy's cash value,
27 accumulation account, death benefit, premium, policy loans, and
28 policy liens shall suffice for this purpose.

29 (f) Every accelerated death benefit that pays proceeds intended
30 for favorable tax treatment under Section 101(g) of the Internal
31 Revenue Code (26 U.S.C. Sec. 101(g)) shall be identified as such
32 by prominently displaying and printing that intention on page one
33 of the accelerated benefit policy provision, rider, endorsement, or
34 certificate.

35 10295.2. A life insurance contract ~~or supplemental contract~~
36 with an accelerated death benefit shall be submitted for the
37 approval of the commissioner ~~pursuant to in the same manner as~~
38 required under Section 10292 and shall be submitted with the
39 following additional ~~information if the contract includes an~~
40 accelerated death benefit: *information:*

1 (a) The term “accelerated death benefit” shall be included in
2 the descriptive title of *the filing*.

3 (b) A statement of the ~~types of~~ *specific* policy forms with which
4 this *accelerated death* benefit will be offered, any underwriting
5 restrictions involving face amount or age, and whether the
6 *accelerated death* benefit is intended for use with new issues or
7 in force business, *or both*.

8 ~~(c) Information consistent with the filing requirements in~~
9 ~~subdivision (b) of Section 10292.~~

10 ~~(d) A written disclosure, including, but not necessarily limited~~
11 ~~to, a brief description of the accelerated death benefit and~~
12 ~~definitions of the conditions or occurrences triggering payment of~~
13 ~~the benefits, shall be given to the applicant. The description shall~~
14 ~~include an explanation of any effect of the payment of a benefit~~
15 ~~on the policy’s cash value, accumulation account, death benefit,~~
16 ~~premium, policy loans, and policy liens.~~

17 ~~(1) The written disclosure shall also include a statement that~~
18 ~~accelerated death benefits are not intended to replace long-term~~
19 ~~care benefits, and that the receipt of an accelerated death benefit~~
20 ~~may affect eligibility for Medicaid or other governmental benefits~~
21 ~~or entitlements and may have tax consequences.~~

22 ~~(2) The required notice shall be provided in the following form:~~

23 ~~–~~
24 ~~“IMPORTANT NOTICE TO APPLICANT/BUYER~~
25 ~~REGARDING ACCELERATED DEATH BENEFITS~~

26 ~~The benefits provided by this (provision/supplemental contract)~~
27 ~~are not intended to provide, and will never provide, long-term care~~
28 ~~insurance, nursing home insurance, or home care insurance. If an~~
29 ~~applicant/buyer wants that insurance, the applicant/buyer should~~
30 ~~consult with an insurance agent licensed to sell that insurance,~~
31 ~~inquire with the insurance company offering the accelerated death~~
32 ~~benefits, or visit the California Department of Insurance Internet~~
33 ~~Web site (www.insurance.ca.gov) that provides information~~
34 ~~regarding long-term care insurance.~~

35 ~~Receipt of accelerated death benefits may be taxable. Prior to~~
36 ~~electing to buy the accelerated death benefit, policyholders or~~
37 ~~certificate holders should seek assistance from a qualified tax~~
38 ~~adviser.~~

39 ~~Receipt of accelerated death benefits may affect eligibility for~~
40 ~~public assistance programs, such as Medi-Cal or Medicaid. Prior~~

1 to electing to buy the accelerated death benefit, the applicant/buyer
2 should consult with the appropriate social services agency
3 concerning how receipt of accelerated death benefits may affect
4 that eligibility.”

5 -

6 ~~(3) In the case of agent-solicited life insurance, the agent shall~~
7 ~~provide the disclosure form to the applicant prior to, or~~
8 ~~concurrently with, the application. Acknowledgment of the~~
9 ~~disclosure shall be signed by the applicant and the writing agent.~~

10 ~~(4) In the case of a solicitation by direct response methods, the~~
11 ~~insurer shall provide the disclosure form to the applicant at the~~
12 ~~time the policy is delivered, with a notice that a full premium~~
13 ~~refund shall be provided to the insured if the policy is returned to~~
14 ~~the company within the free look period, pursuant to Section~~
15 ~~10295.6.~~

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

19 ~~(e) If there is a premium or cost of insurance charge, the insurer~~
20 ~~shall give the applicant a generic illustration numerically~~
21 ~~demonstrating any effect of the payment of a benefit on the policy's~~
22 ~~cash value, accumulation account, death benefit, premium, policy~~
23 ~~loans, and policy liens.~~

24 ~~(1) In the case of agent-solicited life insurance, the agent shall~~
25 ~~provide the illustration to the applicant prior to, or concurrently~~
26 ~~with, the application.~~

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

30 ~~(3) In the case of group life insurance policies, the disclosure~~
31 ~~form shall be contained as part of the certificate of coverage or~~
32 ~~any related document furnished by the insurer for the certificate~~
33 ~~holder.~~

34 ~~(f) An insurer with financing options other than through present~~
35 ~~value or a lien approach shall disclose to the policyholder any~~
36 ~~premium or cost of insurance charge for the accelerated death~~
37 ~~benefit. If the certificate is required to pay any additional premium~~
38 ~~or cost of insurance charge, that charge shall be shown on the~~
39 ~~specifications page.~~

1 ~~(g) The insurer shall disclose to the policyholder any~~
2 ~~administrative expense charge.~~

3 ~~(h) An insurer shall file with the commissioner an actuarial~~
4 ~~memorandum prepared, dated, and signed by a member of the~~
5 ~~American Academy of Actuaries that includes all of the following~~
6 ~~information:~~

7 ~~(1) A description of the accelerated death benefit, including the~~
8 ~~effects of payment of the accelerated death benefit on all policy~~
9 ~~benefits, premium payments, cost of insurance rates, and values,~~
10 ~~including any outstanding loan, if applicable, for all types of forms~~
11 ~~with which the accelerated death benefit will be used.~~

12 ~~(2) A description of, and justification for, expense charges~~
13 ~~associated with the accelerated death benefit and the maximum~~
14 ~~expense charges.~~

15 ~~(3) A description of the interest rate or interest rate methodology~~
16 ~~used in any present value calculation or in accruing interest on the~~
17 ~~amount of the accelerated death benefit, which shall not exceed~~
18 ~~the greater of the current yield on 90-day treasury bills, or a~~
19 ~~variable rate determined in accordance with the National~~
20 ~~Association of Insurance Commissioners (NAIC) Model Policy~~
21 ~~Loan Interest Rate Bill No. 590.~~

22 ~~(4) A description of the mortality basis and methodology,~~
23 ~~including the period of time applicable to any mortality discount,~~
24 ~~used in any present value calculation of the accelerated death~~
25 ~~benefit.~~

26 ~~(5) A description of the mortality and morbidity basis and~~
27 ~~methodology used in the determination of any separate premium~~
28 ~~or costs of insurance for the accelerated death benefit.~~

29 ~~(6) The formula used to determine the accelerated death benefit,~~
30 ~~including any limitations on the amount of the benefit, and the~~
31 ~~formula used to determine the postacceleration premium.~~

32 ~~(7) A sample calculation of the accelerated death benefit. If the~~
33 ~~policy contains a loan provision, the example shall assume that~~
34 ~~there is an outstanding loan on the date of acceleration. All policy~~
35 ~~benefits, premium payments, cost of insurance charges and values,~~
36 ~~including the outstanding loan, if applicable, immediately before~~
37 ~~and immediately after acceleration shall be shown in the example.~~

38 ~~(8) If an accelerated death benefit may be paid in installments,~~
39 ~~the basis used in the calculation of the minimum periodic payment~~
40 ~~for the payment period and a sample calculation of a minimum~~

1 periodic payment, and the basis used, and a sample calculation of
2 the lump sum payable if the insured dies before all periodic
3 payments for the payment period are made.

4 (9) ~~For any accelerated death benefit of the type other than a~~
5 ~~terminal illness, a certification that the value and premium of the~~
6 ~~accelerated death benefit is 10 percent or less of the total value of~~
7 ~~the benefits over the life of the policy. These values shall be~~
8 ~~measured as of the date of issue.~~

9 10295.3. (a) *A written disclosure, as set forth below, shall be*
10 *included with the filing for the commissioner's approval, and shall*
11 *be given to each applicant. The same written disclosure shall be*
12 *attached to the policy or certificate delivered to the insured.*

13 (b) *The required written disclosure shall be in the following*
14 *form:*

15 *“IMPORTANT NOTICE TO APPLICANT/BUYER REGARDING*
16 *ACCELERATED DEATH BENEFITS”*

17 (A) *Description of the accelerated death benefit.*

18 (B) *Explanation of the qualifying event or events.*

19 (C) *Explanation of any effect of the payment of an accelerated*
20 *death benefit on the life insurance policy's cash value,*
21 *accumulation account, death benefit, premium, policy loans, and*
22 *policy liens.*

23 (D) *Explanation of how the insured will be paying for this*
24 *supplemental accelerated death benefit, by paying a portion of the*
25 *premium for the life insurance policy, by paying a fee at the time*
26 *of the acceleration, by paying the cost of insurance charge, or by*
27 *paying the administrative expense charge, together with an*
28 *illustration. If there is a premium or cost of insurance charge, or*
29 *charge imposed upon acceleration, a generic illustration*
30 *numerically demonstrating any effect of the payment of a benefit*
31 *on the policy's cash value, accumulation account, death benefit,*
32 *premium, policy loans, and policy liens shall suffice for this*
33 *purpose.*

34 (E) *Explanation of whether the portion of the premium on the*
35 *life insurance policy attributed to the accelerated death benefit*
36 *will ever increase, and if so, how.*

37 (F) *Explanation of how acceleration affects the premium for*
38 *the life insurance policy or certificate and the effect on the premium*
39 *for the accelerated death benefit.*

1 (G) *Explanation of whether the insured may accelerate more*
2 *than one time within the stated maximum and whether there is any*
3 *restriction as to accelerating based on more than one qualifying*
4 *event.*

5 (c) *The disclosure shall also contain this language, verbatim:*

6 “*The benefits provided by this accelerated death benefit are not*
7 *intended to provide, and will never provide, long-term care*
8 *insurance, nursing home insurance, or home care insurance. If*
9 *you are interested in long-term care or nursing home or home*
10 *care insurance, you should consult with an insurance agent*
11 *licensed to sell that insurance, inquire with the insurance company*
12 *offering the accelerated death benefits, or visit the California*
13 *Department of Insurance Internet Web site (www.insurance.ca.gov)*
14 *section regarding long-term care insurance.*”

15 *Receipt of accelerated death benefits may be taxable. Prior to*
16 *electing to buy the accelerated death benefit, you should seek*
17 *assistance from a qualified tax adviser.*

18 *Receipt of accelerated death benefits may affect eligibility for*
19 *public assistance programs, such as Medi-Cal or Medicaid. Prior*
20 *to electing to buy the accelerated death benefit, you should consult*
21 *with the appropriate social services agency concerning how receipt*
22 *of accelerated death benefits may affect that eligibility.”*

23 (d) *In the case of agent-solicited life insurance, the agent shall*
24 *provide the disclosure form to the applicant prior to, or*
25 *concurrently with, the application. Acknowledgment of the*
26 *applicant’s receipt of the disclosure shall be signed by the*
27 *applicant and the writing agent.*

28 (e) *In the case of a solicitation by direct response methods, the*
29 *insurer shall provide the disclosure form to the applicant together*
30 *with the application. A notice that a full premium refund shall be*
31 *provided to the insured if the policy is returned to the company*
32 *within the free look period, pursuant to Section 10295.8.*

33 (f) *In the case of group insurance policies, the disclosure form*
34 *shall be delivered together with the application for the certificate,*
35 *or with the certificate of coverage or any related document*
36 *furnished by the insurer for the certificate holder.*

37 10295.4. *An insurer shall file with the commissioner an*
38 *actuarial memorandum prepared, dated, and signed by a member*
39 *of the American Academy of Actuaries that includes all of the*
40 *following information:*

1 (a) A description of the accelerated death benefit, including the
2 effects of payment of the accelerated death benefit on all life
3 insurance policy benefits and any subsequent accelerated death
4 benefits, premium payments, cost of insurance rates, and values,
5 including any outstanding loan, if applicable, for all types of forms
6 with which the accelerated death benefit will be used.

7 (b) A description of, and justification for, expense charges
8 associated with the accelerated death benefit and the maximum
9 expense charges.

10 (c) A description of the interest rate or interest rate methodology
11 used in any present value calculation or in accruing interest on
12 the amount of the accelerated death benefit, which shall not exceed
13 the greater of the current yield on 90-day treasury bills, or a
14 variable rate determined in accordance with the National
15 Association of Insurance Commissioners (NAIC) Model Policy
16 Loan Interest Rate Bill No. 590.

17 (d) A description of the mortality basis and methodology,
18 including the period of time applicable to any mortality discount,
19 used in any present value calculation of the accelerated death
20 benefit.

21 (e) A description of the mortality and morbidity basis and
22 methodology used in the determination of any separate premium
23 or costs of insurance for the accelerated death benefit.

24 (f) The formula used to determine the accelerated death benefit,
25 including any limitations on the amount of the benefit, and the
26 formula used to determine the postacceleration premium for the
27 accelerated death benefit as well as the life insurance policy.

28 (g) A sample calculation of the accelerated death benefit. If the
29 life insurance policy contains a loan provision, the example shall
30 assume that there is an outstanding loan on the date of
31 acceleration. All policy and accelerated death benefit benefits,
32 premium payments, cost of insurance charges and values, including
33 the outstanding loan, if applicable, immediately before and
34 immediately after acceleration shall be shown in the example.

35 (h) If an accelerated death benefit will be paid in installments,
36 the actuarial memorandum shall explain the basis used in the
37 calculation of the minimum periodic payment for the payment
38 period and a sample calculation of a minimum periodic payment,
39 and the basis used, and a sample calculation of the lump sum

1 payable if the insured dies before all periodic payments for the
2 payment period are made.

3 (i) For any accelerated death benefit of the type other than a
4 terminal illness, a certification that the value and premium of the
5 accelerated death benefit is 10 percent or less of the total value
6 of the benefits over the life of the policy. These values shall be
7 measured as of the date of issue.

8 ~~10295.3.~~

9 ~~10295.5.~~ (a) ~~All applications~~ Applications, if any, or forms
10 supporting an application, if any, for accelerated death benefit
11 provisions or supplemental contracts benefits shall contain clear,
12 unambiguous, short, and simple questions designed to ascertain
13 the health condition of the applicant. Each question shall contain
14 only one health status inquiry and shall require only a “yes” or
15 “no” answer, except that the application may include a request for
16 the name of any prescribed medication and the name of the
17 prescribing physician. If the application requests the name of any
18 prescribed medication or the prescribing physician, then any
19 mistake or omission shall not be used as a basis for the denial of
20 a claim or the rescission of a the accelerated death benefit or life
21 insurance policy or certificate.

22 (b) The following warning shall be printed conspicuously and
23 in close conjunction with the applicant’s signature block:

24

25 “Caution: If your answers on this application are misstated or
26 untrue, the insurer may have the right to deny benefits or rescind
27 your accelerated death benefit coverage.”

28

29 (c) If an insurer does not complete medical underwriting for the
30 accelerated death benefit separate from underwriting for the life
31 insurance policy and resolve all reasonable questions arising from
32 information submitted on or with an application before issuing the
33 ~~policy or certificate~~, accelerated death benefit, then the insurer
34 may only rescind the accelerated death benefit or life insurance
35 policy or certificate or deny an otherwise valid claim upon clear
36 and convincing evidence of fraud or material misrepresentation
37 of the risk by the applicant. The evidence shall do all of the
38 following:

39 (1) Pertain to the condition for which benefits are sought.

1 (2) Involve a chronic condition or involve dates of treatment
2 before the date of application.

3 (3) Be material to the acceptance for coverage.

4 (d) *An accelerated death benefit may not be field issued.*

5 ~~(d)~~

6 (e) The contestability period for ~~an individual~~ *a life insurance*
7 *policy or certificate that contains an accelerated death benefit*
8 *shall comply with subparagraph (C) of paragraph (2)-(3) of*
9 *subdivision (b) (c) of Section 10271.*

10 ~~(e)~~

11 (f) A copy of the completed application shall be delivered to
12 the insured at the time of delivery of the *life insurance* policy or
13 *certificate that contains an accelerated death benefit.*

14 ~~10295.4.~~

15 10295.6. (a) When a policyholder or certificate holder requests
16 an acceleration of death benefits, the insurer shall send a statement
17 to the policyholder or certificate holder and irrevocable beneficiary
18 showing any effect that the payment of the accelerated death benefit
19 would have on the policy's cash value, accumulation account,
20 death benefit, premium, policy loans, and policy liens. The
21 statement shall disclose that receipt of accelerated death benefit
22 payments may adversely affect the recipient's eligibility for
23 Medicaid or other government benefits or entitlements. In addition,
24 receipt of an accelerated death benefit payment may be taxable
25 and assistance should be sought from a personal tax adviser. When
26 a previous disclosure statement becomes invalid as a result of an
27 acceleration of the death benefit, the insurer shall send a revised
28 disclosure statement to the policyholder or certificate holder and
29 irrevocable beneficiary.

30 (b) ~~The accelerated death benefit provision shall be effective~~
31 ~~for terminal illness on the effective date of the policy or~~
32 ~~supplemental contract. The accelerated death benefit provision~~
33 ~~shall be effective for other qualifying events not more than 30 days~~
34 ~~following the effective date of the policy or supplemental contract.~~
35 *provision, rider, endorsement, or certificate.*

36 (c) The insurer may offer a waiver of premium for the
37 accelerated death benefit provision in the absence of a regular
38 waiver of premium provision being in effect. At the time the benefit
39 is claimed, the insurer shall explain any continuing premium
40 requirement to keep the policy in force.

1 (d) An insurer shall not unfairly discriminate among insureds
2 with ~~differing~~ *different* qualifying events covered under the policy
3 or among insureds with similar qualifying events covered under
4 the policy. An insurer shall not apply further conditions on the
5 payment of the accelerated death benefits other than those
6 conditions specified in the ~~policy or supplemental contract.~~
7 *unrestricted accelerated death benefit.*

8 (e) The insurer shall provide the policyholder or certificate
9 holder with a report, at least monthly, of any *accelerated death*
10 benefits paid out during the prior month, an explanation of any
11 changes to the policy or certificate, death benefits, and cash values
12 on account of the benefits being paid out, and the amount of the
13 remaining benefits that can be accelerated at the end of the prior
14 month. ~~A The insurer may use a calendar month or policy or~~
15 ~~certificate month may be utilized.~~

16 (f) The policy or certificate may provide that any option
17 otherwise available to the insured to accelerate less than all of the
18 remaining death benefit on account of a terminal illness diagnosis
19 shall be suspended while the death benefit is being so accelerated
20 in accordance with the requirements of this article.

21 (g) The conversion benefit available to group certificate holders
22 on termination of employment pursuant to paragraph (2) of
23 subdivision (a) of Section 10209 shall include a benefit comparable
24 to the accelerated death benefit. This requirement may be satisfied
25 by a separate policy or certificate. This requirement, subject to the
26 approval of the commissioner, may be satisfied by arrangement
27 with another insurer to provide the required coverage.

28 (h) When payment of an accelerated death benefit results in a
29 pro rata reduction in cash value, the payment may be applied
30 toward repaying a portion of *the* loan equal to a pro rata portion
31 of any outstanding policy loans if disclosure of the effect of
32 acceleration upon any remaining death benefit, cash value or
33 accumulation account, policy loan, and premium payments,
34 including a statement of the possibility of termination of any
35 remaining death benefit, is provided to the policyholder or
36 certificate holder. The policyholder or certificate holder shall
37 provide written consent authorizing any other arrangement for the
38 repayment of outstanding policy loans.

1 ~~10295.5.~~

2 10295.7. (a) The insurer may require a premium charge or
3 cost of insurance charge for the accelerated death benefit. This
4 charge shall be based on sound actuarial principles. In the case of
5 group insurance, the additional cost may also be reflected in the
6 experience rating.

7 (b) (1) The insurer may pay a present value of the face amount.
8 The calculation shall be based on any applicable actuarial discount
9 appropriate to the policy design. The interest rate or interest rate
10 methodology used in the calculation shall be based on sound
11 actuarial principles and disclosed in the contract or actuarial
12 memorandum *required in Section 10295.4*. The maximum interest
13 rate used shall be no greater than the greater of one of the
14 following:

15 (A) The current yield on 90-day treasury bills.

16 (B) The current maximum statutory adjustable policy loan
17 interest rate.

18 (2) The interest rate accrued on the portion of the lien that is
19 equal in amount to the cash value of the ~~contract at the time of the~~
20 *life insurance policy at the time of the supplemental* benefit
21 acceleration shall be not more than the policy loan interest rate
22 stated in the contract.

23 (c) (1) Except as provided in paragraph (2), when an accelerated
24 death benefit is payable, there shall not be more than a pro rata
25 reduction in the cash value based on the percentage of death
26 benefits accelerated to produce the accelerated death benefit
27 payment.

28 (2) Alternatively, the payment of accelerated death benefits,
29 any administrative expense charges, any future premiums, and any
30 accrued interest can be considered a lien against the death benefit
31 of the *life insurance policy or supplemental contract* and the access
32 to the cash value of *the life insurance policy* may be restricted to
33 any excess of the cash value over the sum of any other outstanding
34 loans and the lien. Future access to additional policy loans may
35 also be limited to any excess of the cash value over the sum of the
36 lien and any other outstanding policy loans.

37 (d) When payment of an accelerated death benefit results in a
38 pro rata reduction in the cash value of *the life insurance policy*,
39 the payment shall not be applied toward repaying an amount greater
40 than a pro rata portion of any outstanding policy loans.

1 ~~10295.6.~~

2 10295.8. (a) If an accelerated death benefit is incorporated
 3 into the terms of the policy or certificate, an applicant for a policy
 4 or a certificate shall have the right to return the *accelerated death*
 5 *benefit* policy or certificate by first-class United States mail within
 6 30 days of its delivery and to have the premium refunded if, after
 7 examination of the policy or certificate, the applicant is not satisfied
 8 for any reason. If the *accelerated death* benefit is purchased as a
 9 ~~supplemental contract~~ *an endorsement or rider* at the same time
 10 as the base *life insurance* policy, then the ~~supplemental contract~~
 11 *endorsement or rider* may be returned within 30 days. The
 12 underlying life insurance policy shall be otherwise subject to this
 13 code.

14 (b) The return of a *life insurance* policy or certificate *that*
 15 *contains an accelerated death benefit, or the return of an*
 16 *accelerated death benefit rider or endorsement* shall void the *life*
 17 *insurance* policy or certificate, *or rider or endorsement* from the
 18 beginning and the parties shall be in the same position as if no
 19 policy, certificate, ~~or contract~~ *rider, or endorsement* had been
 20 issued. All premiums paid and any policy fee paid for the ~~policy~~
 21 *accelerated death benefit* shall be fully refunded directly to the
 22 applicant by the insurer within 30 days after the policy, *rider,*
 23 *endorsement,* or certificate is returned.

24 (c) Policies ~~or~~, certificates, *riders, or endorsements* to which
 25 this section applies shall have a notice prominently printed ~~on the~~
 26 ~~first page of the policy or certificate,~~ or attached thereto, stating
 27 in substance the conditions described in subdivisions (a) and (b).

28 ~~10295.7.~~

29 10295.9. (a) ~~(1)~~ Application forms *for accelerated death*
 30 *benefits* shall include a question designed to elicit information as
 31 to whether the proposed insurance policy is intended to replace
 32 any long-term care insurance presently in force. A supplementary
 33 application or other form to be signed by the applicant containing
 34 that question may be used.

35 ~~(2) An insurer that determines that the policy is intended to~~
 36 ~~replace a similar life policy without a benefit subject to this section~~
 37 ~~shall follow the procedures in Article 8 (commencing with Section~~
 38 ~~10509) of Chapter 5.~~

39 (b) (1) An insurer, broker, agent, or other person shall not
 40 cause a policyholder to replace a long-term care insurance policy

1 unnecessarily. This section shall not be construed to allow an
2 insurer, broker, agent, or other person to cause a policyholder to
3 replace a long-term care insurance policy or life insurance policy
4 subject to this section that will result in a decrease in benefits and
5 an increase in premium.

6 ~~(1) For the purposes of this section, “benefits” includes any~~
7 ~~term of a life insurance policy, including the availability of~~
8 ~~obtaining the benefit in a lump sum, the potential for a remaining~~
9 ~~death benefit, or any other favorable characteristic not otherwise~~
10 ~~available in a long-term care policy.~~

11 (2) It shall be presumed that any third or greater policy sold to
12 a policyholder in any 12-month period is unnecessary within the
13 meaning of this section. This section shall not apply to those
14 instances in which a policy is replaced solely for the purpose of
15 consolidating policies with a single insurer.

16 (c) Upon determining that a sale ~~does~~ *will* involve a replacement
17 of a life insurance policy subject to this section or *replacement* of
18 a long-term care *insurance* policy, an insurer, ~~other than an insurer~~
19 ~~using direct response solicitation methods~~, or its agent shall furnish
20 the applicant, prior to issuance or delivery of a policy ~~or~~, certificate,
21 *rider, or endorsement*, a notice regarding replacement of life
22 insurance *that includes an accelerated death benefit*, or long-term
23 care insurance coverage with a life insurance policy ~~with or~~
24 *certificate that contains an accelerated death benefit, health*
25 ~~insurance, or long-term care insurance coverage benefit~~. One copy
26 of this notice shall be retained by the applicant and an additional
27 copy signed by the applicant shall be retained by the insurer. The
28 required notice shall be provided in the following form:
29

30 ~~“NOTICE TO APPLICANT REGARDING REPLACEMENT~~
31 ~~OF LIFE INSURANCE OR PERSONS APPLYING TO REPLACE~~
32 ~~EXISTING LONG-TERM CARE INSURANCE OR REPLACE~~
33 ~~EXISTING LIFE INSURANCE INCLUDING ACCELERATED~~
34 ~~DEATH BENEFITS~~

35 According to (your application) (information you have
36 furnished), you intend to lapse or otherwise terminate existing life
37 insurance or long-term care insurance and replace it with a life
38 insurance policy with an accelerated death benefit to be issued by
39 (company name) Insurance Company. Your new *accelerated death*
40 *benefit* coverage provides ~~thirty (30)~~ 30 days within which you

1 may decide, without cost, whether you desire to keep the coverage.
 2 *Please note that your underlying life insurance policy may only*
 3 *provide for a 10-day period during which you may decide, without*
 4 *cost, whether you will keep the coverage.* For your own information
 5 and protection, you should be aware of, and seriously consider,
 6 certain factors that may affect the insurance protection available
 7 to you under the new coverage.

8 ~~This Accelerated Death Benefit~~ *accelerated death benefit* is
 9 NOT Nursing Home, Home Care, or Long-Term Care Insurance,
 10 and it is not intended or designed to eliminate your need for that
 11 coverage. There are no restrictions or limitations on the use of the
 12 ~~Accelerated Death Benefit~~ *accelerated death benefit* proceeds.

13 If you want ~~that kind of~~ *long-term care* insurance, you should
 14 consult with an insurance agent licensed to sell that insurance,
 15 inquire with the insurance company offering the accelerated death
 16 benefits, or visit the California Department of Insurance Internet
 17 Web site (www.insurance.ca.gov) that provides information
 18 regarding long-term care insurance.

19 *If you want to replace existing coverage with life insurance that*
 20 *includes an accelerated death benefit, you should note the*
 21 *following:*

22 ~~Receipt~~

23 (1) *Receipt* of accelerated death benefits may be taxable. Prior
 24 to electing to buy the accelerated death benefit, ~~policy owners~~
 25 *policyholders* or certificate holders should seek assistance from a
 26 qualified tax adviser.

27 ~~Receipt~~

28 (2) *Receipt* of accelerated death benefits may affect eligibility
 29 for public assistance programs, such as Medi-Cal or Medicaid.
 30 Prior to electing to buy the accelerated death benefit, the
 31 applicant/buyer should consult with the appropriate social services
 32 agency concerning how receipt of accelerated death benefits may
 33 affect that eligibility.

34 ~~(1) You~~

35 *You* may wish to secure the advice of your present insurer or its
 36 agent regarding the proposed replacement of your present coverage.
 37 This is not only your right, but it is also in your best interest to
 38 make sure you understand all the relevant factors involved in
 39 replacing your present coverage.

40 ~~(2) If,~~

1 *If*, after due consideration, you still wish to terminate your
 2 present coverage and replace it with new coverage, be certain to
 3 truthfully and completely answer all questions on the application
 4 concerning your medical health history. Failure to include all
 5 material medical information on an application may provide a
 6 basis for the company to deny any future claims and to refund your
 7 premium as though your coverage had never been in force. After
 8 the application has been completed and before you sign it, reread
 9 it carefully to be certain that all the information has been properly
 10 recorded.

11 The above “Notice to Applicant” was delivered to me on:

12 (Date)

13 (Applicant’s Signature)”

14

15 ~~(d) For group coverage not subject to the 30-day return provision~~
 16 ~~of Section 10295.6, the notice shall be modified to reflect the~~
 17 ~~appropriate time period in which the policy may be returned and~~
 18 ~~premium refunded.~~

19 (e)

20 (d) The replacement notice shall include the following statement
 21 except when the replacement coverage is group insurance:

22

23 ~~COMPARISON~~

24 “*COMPARISON TO YOUR CURRENT COVERAGE*: I have
 25 reviewed your current coverage for the purposes of estate planning
 26 for the need for terminal illness/chronic illness coverage. To the
 27 best of my knowledge, the replacement of insurance involved in
 28 this transaction materially improves your position for the following
 29 reasons:

30 Additional or different benefits

31 (please specify) _____.

32 No change in benefits, but lower premiums.

33 Fewer benefits and lower premiums.

34 Life insurance feature not available in long-term care
 35 insurance (please specify).

36 Other (please specify) _____.

37 (Signature of Agent and Name of Insurer)

38 (Signature of Applicant)

39 (Date)

40

1 (f) Insurers using direct response solicitation methods shall
2 deliver a notice regarding replacement of life or long-term care
3 coverage to the applicant upon issuance of the policy or certificate.
4 The required notice shall be provided in the following form:

5 -
6 ~~“NOTICE TO APPLICANT REGARDING REPLACEMENT
7 OF LIFE INSURANCE OR LONG-TERM CARE INSURANCE~~

8 According to (your application) (information you have
9 furnished), you intend to lapse or otherwise terminate existing life
10 insurance or long-term care insurance and replace it with a life
11 insurance policy with an accelerated death benefit to be issued by
12 (company name) Insurance Company. Your new coverage provides
13 thirty (30) days within which you may decide, without cost,
14 whether you desire to keep the coverage. For your own information
15 and protection, you should be aware of and seriously consider
16 certain factors that may affect the insurance protection available
17 to you under the new coverage.

18 This Accelerated Death Benefit is NOT Nursing Home, Home
19 Care, or Long-Term Care Insurance, and it is not intended or
20 designed to eliminate your need for that coverage. There are no
21 restrictions or limitations on the use of the Accelerated Death
22 Benefit proceeds.

23 If you want that kind of insurance, you should consult with an
24 insurance agent licensed to sell that insurance, inquire with the
25 insurance company offering the accelerated death benefits, or visit
26 the California Department of Insurance Internet Web site
27 (www.insurance.ca.gov) that provides information regarding
28 long-term care insurance.

29 Receipt of accelerated death benefits may be taxable. Prior to
30 electing to buy the accelerated death benefit, policy owners or
31 certificate holders should seek assistance from a qualified tax
32 adviser.

33 Receipt of accelerated death benefits may affect eligibility for
34 public assistance programs, such as Medi-Cal or Medicaid. Prior
35 to electing to buy the accelerated death benefit, the applicant/buyer
36 should consult with the appropriate social services agency
37 concerning how receipt of accelerated death benefits may affect
38 that eligibility.

39 (1) You may wish to secure the advice of your present insurer
40 or its agent regarding the proposed replacement of your present

1 coverage. This is not only your right, but it is also in your best
2 interest to make sure you understand all the relevant factors
3 involved in replacing your present coverage.

4 (2) ~~(To be included only if the application is attached to the~~
5 ~~policy or certificate.)~~ If, after due consideration, you still wish to
6 terminate your present coverage and replace it with new coverage,
7 read the copy of the application attached to your new coverage
8 and be sure that all questions are answered fully and correctly.
9 Omissions or misstatements in the application may cause an
10 otherwise valid claim to be denied. Carefully check the application
11 and write to ~~(company name and address)~~ within thirty (30) days
12 if any information is not correct and complete, or if any past
13 medical history has been left out of the application.

14 (Company Name)²²

15 -

16 (g) For group coverage not subject to the 30-day return provision
17 of Section 10295.6, the notice shall be modified to reflect the
18 appropriate time period in which the policy may be returned and
19 premium refunded.

20 (h) If a group policy is replaced by another group policy issued
21 to the same policyholder, the succeeding insurer shall offer
22 coverage consistent with subdivision (g) of Section 10295.4.

23 (i)

24 (e) In recommending the purchase or replacement of any policy
25 or certificate issued under this section, an agent shall make
26 reasonable efforts to determine the appropriateness of a
27 recommended purchase or replacement.

28 (j)

29 (f) The replacing policy or certificate shall not contain a
30 provision establishing a new waiting period in the event existing
31 coverage is converted to, or replaced by, a new or other form within
32 the same insurer, except with respect to an increase in benefits
33 voluntarily selected by the insured individual or group
34 policyholder.

35 10295.10. *With regard to an accelerated death benefit, an*
36 *insurer may not:*

37 (a) *Cancel, nonrenew, or otherwise terminate an accelerated*
38 *death benefit on the grounds of the age or the deterioration of the*
39 *mental or physical health of the insured individual or certificate*
40 *holder.*

1 (b) *Terminate a policy, certificate, or rider, or contain a*
 2 *provision that allows the premium for an in-force policy,*
 3 *certificate, or rider, to be increased due to the divorce of a*
 4 *policyholder or certificate holder.*

5 ~~10295.8. (a) An accelerated death benefit policy shall not be~~
 6 ~~advertised or marketed as long-term care insurance, nursing home~~
 7 ~~insurance, or home care insurance. Any advertisement, description,~~
 8 ~~comparison, marketing material, or illustration shall state in bold~~
 9 ~~that: “This product is a life insurance policy that accelerates the~~
 10 ~~death benefit for qualified chronic illness or other qualified events~~
 11 ~~and is not insurance providing long-term care insurance subject~~
 12 ~~to the minimum requirements of California Law, does not qualify~~
 13 ~~for the California Partnership for Long-Term Care program, and~~
 14 ~~is not a Medicare supplement (policy or certificate).” An insurer~~
 15 ~~shall include in any advertisement or marketing materials for these~~
 16 ~~insurance policies all of the following:~~

17 (1) ~~A statement that the policy or certificate is intended to be a~~
 18 ~~tax-qualified insurance contract under Section 7702(b) of the~~
 19 ~~Internal Revenue Code (26 U.S.C. 7702(b)), if applicable.~~

20 (2) ~~A description of the benefits provided by the policy,~~
 21 ~~including a description of the acceleration of the death benefit to~~
 22 ~~pay an unrestricted cash benefit when the insured has become~~
 23 ~~chronically ill or otherwise eligible for benefits from a qualified~~
 24 ~~event.~~

25 (3) ~~A comparison between the benefits provided by these~~
 26 ~~policies and the benefits provided by long-term care insurance.~~

27 (b) ~~The statement in paragraph (1) of subdivision (a) may only~~
 28 ~~appear in an advertisement, description comparison, illustration,~~
 29 ~~or marketing material for policies or certificates that accelerate~~
 30 ~~death benefits pursuant to Section 10295 if the policy or certificate~~
 31 ~~is a tax-qualified insurance contract under Section 7702(b) of the~~
 32 ~~Internal Revenue Code (26 U.S.C. 7702(b)).~~

33 *10295.11. (a) An accelerated death benefit shall not be*
 34 *advertised or marketed as long-term care insurance, nursing home*
 35 *insurance, or home care insurance. Any advertisement, description,*
 36 *comparison, marketing material, or illustration shall state in bold*
 37 *type:*

38 *“This is a life insurance benefit that also gives you the option*
 39 *to accelerate some or all of the death benefit in the event that you*
 40 *meet the criteria for a qualifying event described in the policy.*

1 *This policy or certificate does not provide long-term care insurance*
2 *subject to California long-term care insurance law. This policy*
3 *or certificate is not a California Partnership for Long-Term Care*
4 *program policy. This policy or certificate is not a Medicare*
5 *supplement (policy or certificate).”*

6 *An insurer shall also include in any advertisement or marketing*
7 *materials for these insurance policies all of the following:*

8 *(1) A statement that the policy or certificate pays proceeds that*
9 *are intended for favorable tax treatment under Section 101(g) of*
10 *the Internal Revenue Code (26 U.S.C. Sec. 101(g)), if applicable.*

11 *(2) A description of the accelerated death benefits provided by*
12 *the policy, including a description of the acceleration of the death*
13 *benefit to pay an unrestricted cash benefit when the insured has*
14 *become chronically ill or otherwise eligible for benefits from a*
15 *qualified event.*

16 *(3) A comparison between the benefits provided by life insurance*
17 *policies, riders, or endorsements that contain accelerated death*
18 *benefits and the benefits provided by long-term care insurance.*

19 *(4) The statement in paragraph (1) of subdivision (a) may only*
20 *appear in an advertisement, description comparison, illustration,*
21 *or marketing material for policies or certificates that accelerate*
22 *death benefits pursuant to Section 10295 if the policy pays proceeds*
23 *that are intended for favorable tax treatment under Section 101(g)*
24 *of the Internal Revenue Code (26 U.S.C. Sec. 101(g)).*

25 *(b) Advertising for term life insurance policies or certificates*
26 *that contain an accelerated death benefit to be attached to an*
27 *existing term life policy shall include a statement that the*
28 *accelerated death benefit will terminate with the policy.*

29 *(c) On or after January 1, 2014, every insurer offering*
30 *accelerated death benefits shall file with the commissioner copies*
31 *of all printed advertising for accelerated death benefits that the*
32 *insurer proposes to disseminate in the state prior to use of that*
33 *material. The commissioner shall have the authority to disapprove*
34 *any advertising that does not meet the requirements of this code.*
35 *If the commissioner disapproves the advertising, the insurer shall*
36 *not use and shall stop using the disapproved advertising. Nothing*
37 *in this subdivision shall be construed as requiring prior approval*
38 *of advertising prior to dissemination in this state.*

39 *10295.12. Insurers shall ensure that agents offering, marketing,*
40 *or selling accelerated benefits on their behalf are able to describe*

1 *the differences between benefits provided under an accelerated*
 2 *benefit and benefits provided under long-term care insurance.*
 3 *Completion of California agent education or continuing education*
 4 *for long-term care insurance shall be deemed to have met the*
 5 *requirements of this section.*

6 ~~10295.9.~~

7 ~~10295.13.~~ *The* *In addition to other unfair trade practices*
 8 *described in this code, the following acts and practices in the sale*
 9 *of insurance under this article are prohibited:*

10 (a) *Twisting.* *Knowingly making any misleading representation*
 11 *or incomplete or fraudulent comparison of any insurance policies*
 12 *or insurers for the purpose of inducing, or tending to induce, any*
 13 *person to lapse, forfeit, surrender, terminate, retain, pledge, assign,*
 14 *borrow on or convert any insurance policy, or to take out a policy*
 15 *of insurance with another insurer.*

16 (b) *High pressure tactics.* *Employing any method of marketing*
 17 *having the effect of, or tending to, induce the purchase of insurance*
 18 *through force, fright, threat, whether explicit or implied, or undue*
 19 *pressure to purchase or recommend the purchase of insurance.*

20 (c) *Cold lead advertising.* *Making use directly or indirectly of*
 21 *any method of marketing that fails to disclose in a conspicuous*
 22 *manner that a purpose of the method of marketing is solicitation*
 23 *of insurance and that contact will be made by an insurance agent*
 24 *or insurance company.*

25 ~~10295.10.~~

26 ~~10295.14.~~ *An individual accelerated death benefit ~~policy or~~*
 27 *certificate shall not be issued unless it meets the requirements of*
 28 *Section 10113.72 regarding unintentional lapse.*

29 ~~10295.11.~~

30 ~~10295.15.~~ (a) *Except at the request of the policyholder or*
 31 *contract holder, all accelerated death benefit provisions or*
 32 *supplemental contracts shall be renewable for the life of the*
 33 *underlying life insurance policy, provided the premiums are timely*
 34 *paid. The statement shall be prominently displayed on the first*
 35 *page of the accelerated death benefit policy or rider.*

36 (b) *Term life insurance policies shall also include a statement*
 37 *that the accelerated death benefit terminates with the policy.*

38 ~~10295.12.~~

39 ~~10295.16.~~ *Termination of the accelerated death benefit*
 40 *provision shall be without prejudice to any benefits payable for*

1 any claim if the claim began while the accelerated death benefit
2 provision was in force and continues without interruption after
3 termination. ~~An extension of benefits beyond the period the~~
4 ~~insurantee was in force may be limited to the duration of the benefit~~
5 ~~period, if any, or to payment of the maximum benefits and may~~
6 ~~be subject to any policy waiting period, and all other applicable~~
7 ~~provisions of the insurance policy.~~

8 ~~10295.13.~~

9 ~~10295.17. (a) Except as described in subdivision (b), an An~~
10 ~~insurer that fails to conform to the requirements provided under~~
11 ~~this article shall be subject to Article 6.5 (commencing with Section~~
12 ~~790) of Chapter 1 of Part 2 of Division 1.~~

13 (b) A violation of this article is not subject to subdivision (d)
14 of Section 790.036.

15 *10295.18. Accelerated death benefits shall not limit or exclude*
16 *coverage by type of illness, treatment, medical condition, or*
17 *accident, except under the circumstances described in paragraphs*
18 *(1) to (4), inclusive, of subdivision (g) of Section 10271.*

19 *10295.19. A policy, certificate, rider, or endorsement shall*
20 *include a provision giving the policyholder or certificate holder*
21 *the right to appeal to the insurer a decision regarding benefit*
22 *eligibility.*