



Mike Kreidler - Insurance Commissioner

As required by

The Washington State Administrative Procedure Act

Chapter 34.05 RCW

Matter No. **R 2023-08**

**CONCISE EXPLANATORY STATEMENT; RESPONSIVENESS
SUMMARY; RULE DEVELOPMENT PROCESS; AND
IMPLEMENTATION PLAN**

Relating to the adoption of

Life Insurance Riders and Disclosure Requirements

January 2, 2023

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Section 1: Introduction

Revised Code of Washington (RCW) 34.05.325(6) requires the Office of the Insurance Commissioner (OIC) to prepare a “concise explanatory statement” (CES) prior to filing a rule for permanent adoption. The CES shall:

1. Identify the Commissioner's reason's for adopting the rule;
2. Describe differences between the proposed rule and the final rule (other than editing changes) and the reasons for the differences;
3. Summarize and respond to all comments received regarding the proposed rule during the official public comment period, indicating whether or not the comment resulted in a change to the final rule, or the Commissioner's reasoning in not incorporating the change requested by the comment; and
4. Be distributed to all persons who commented on the rule during the official public comment period and to any person who requests it.

Section 2: Reasons for Adopting the Rule

The agency is adopting this rulemaking to resolve misalignment identified between authorities in the Insurance Code. The rules in Chapter 284-23 WAC do not align with the laws in Chapter 48.83 RCW, as applied to life insurance policy riders with accelerated benefits for long-term care insurance (LTCi). The rules currently prohibit insurers from offering life insurance policies with riders that have accelerated benefits for LTCi and require disclosure statements communicating this prohibition. This contradicts current law that allows life insurance policies with riders to fund LTCi benefits through the acceleration of the policy's death benefits under certain conditions (see WAC 284-23-650, RCW 48.83.010(3), 48.83.020(5)(a), and 48.83.080).

The misalignment of authorities identified above causes complications for all affected parties including insurers, consumers, and regulators. The effective rules cause complications for insurers who submit product filings for life insurance policies with accelerated death benefits to fund LTCi. Currently insurers are experiencing difficulty in filing and marketing these policies as such to consumers, due to the misalignment in rules, as identified above. This rulemaking will achieve alignment between the life insurance disclosure requirements in the Washington Administrative Code and the statutory provisions provided by Chapter 48.83 RCW.

Section 3: Rule Development Process

The CR-101 (Preproposal Statement of Inquiry) for this rulemaking was filed with the Washington State Register (WSR) on Wednesday, October 4, 2023 (WSR 23-20-124). The comment period for the CR-101 was open for over two weeks,

closing on Friday, October 20, 2023. Five written comments were received in response to the CR-101.

The CR-102 (Proposed Rule Making) was filed with the WSR on Monday, November 22, 2023 (WSR 23-23-173). The Commissioner accepted comments through Thursday, December 28, 2023. No written comments were received in response to the CR-102.

The Commissioner held a public hearing on the proposed rule text on Wednesday, December 27, 2023, at 9:00 AM; the public hearing was administered by Sr. Policy Analyst, Michael Walker, as a virtual meeting. Public testimony was provided at the public hearing by Long Term Care Associates, Inc., and Senior Vice President Stephen Forman. The public testimony provided by Stephen Forman repeated written comments submitted in response to the CR-101 Preproposal Statement of Inquiry.

All comments received are summarized and responded to in the responsiveness summary of Section 5 below.

The CR-103 (Rule-Making Order) was submitted to the Office of the Code Reviser on Tuesday, January 2, 2023, for agency adoption.

Section 4: Differences Between Proposed and Final Rule

None.

Section 5: Responsiveness Summary

Written Comments	Agency Considerations and Responses
<u>CR-101 (Preproposal Statement of Inquiry)</u>	
<p>Thank you to the Commissioner for the opportunity to comment on this topic. The issue I have and would like you to consider is the negative side of LTC and pending mandatory ruling requiring LTC insurance, which is generally available as a benefit to most life insurance policies.</p> <p>LTC insurance is NOT a general benefit of medical insurance (LTC insurance being what would pay for low-income individuals to go into a nursing home early, pay for homeless housing to individuals who have expired their TANF benefits with no change to circumstance, or long-term commitment in a mental health facility, or jail). Problems include untapped benefits for those who need it most and abuse of benefits. LTCI is set for a standard total benefit amount that is equal so a straightforward plan that includes any future need in respects to subjects age as well as prior use of the benefit. So, the lifetime</p>	<p>Thank you for your comment. The Commissioner considered this comment and made no changes to the rule.</p> <p>The commenter requests removal of the ability for insureds to access accelerated benefits and also asks the agency to investigate abuse of long-term care. This rulemaking process is not the proper forum or protocol for these efforts.</p> <p>OIC has created a Consumer Complaint Center designed to help investigate issues involving consumers and insurers under the Insurance Code. Insurance consumers can submit complaints to the OIC for investigation of any compliance matters, help settling disputes, and enforcement of Washington State's insurance authorities. Consumer complaints can be submitted to the online Complaint Center via (https://www.insurance.wa.gov/file-complaint-or-</p>

<p>amount is not exceeded. The issue we need to look at is the abuse of long-term care. Having a change to the access of accelerated benefits should be in my opinion completely removed.</p>	<p>check-your-complaint-status).</p>
<p>I have looked over the laws and rules and I see nothing wrong with them as they are, they are talking about 2 separate riders. The 2 separate riders include accelerated death benefit (ADB) riders and long-term care (LTC) insurance riders.</p> <p>The rule simply states the ADB cannot be marketed or sold as a LTC plan. That is because it is not a LTC coverage. LTC in WA must have the ability to pay out for 1 year (RCW 48.83.020(5)) and the underlying life policy may not be large enough to cover those costs.</p> <p>WAC 284-23-650 (1) The words "accelerated benefit" must be included in the required title of every life insurance policy or rider that includes a provision for accelerated benefits. Accelerated benefits shall not be described, advertised, marketed, or sold as either long-term care insurance or as providing long-term care benefits.</p>	<p>Thank you for your comment. The Commissioner considered this comment and made no changes to the rule.</p> <p>The effective rules in WAC 284-23-650 do not distinguish between accelerated death benefit life insurance policy riders for terminal illness and life insurance policy riders for LTCI (see also WAC 284-23-620). Under WAC 284-23-650(1) the words "<u>accelerated benefit</u>" must be included in the title of <u>every life insurance policy or rider</u> that includes a provision for <u>accelerated benefits</u>. Under WAC 284-23-650(2)(b) every accelerated benefit disclosure statement must begin with the following language:</p> <p><i>"This <u>accelerated life benefit</u> does not and is not intended to qualify as long-term care under Washington state law. Washington state law prevents this <u>accelerated life benefit</u> from being marketed or sold as long-term care."</i></p> <p>This contradicts current law that allows life insurance policies with riders to fund LTCi benefits through the acceleration of the policy's death benefits under certain conditions (see RCW 48.83.010(3), 48.83.020(5)(a), and 48.83.080).</p>
<p>Consider, RCW 48.83.010 Application. This chapter applies to all long-term care insurance policies, contracts, or riders delivered or issued for delivery in this state on or after January 1, 2009. This chapter does not supersede the obligations of entities subject to this chapter to comply with other applicable laws to the extent that they do not conflict with this chapter, except that laws and regulations designed and intended to apply to Medicare supplement insurance policies shall not be applied to long-term care insurance.</p> <p>(1) Coverage advertised, marketed, or offered as long-term care insurance shall comply with the provisions of this chapter. Any coverage, policy, or rider advertised, marketed, or offered as long-term care or nursing home insurance shall comply with the provisions of this chapter.</p>	<p>Thank you for your comment. The Commissioner considered this comment and made no changes to the rule.</p> <p>The commenter correctly states that Chapter 48.83 RCW applies to any LTCi policies, contracts, or riders that are delivered or issued for delivery in this state on or after January 1, 2009. This is an accurate assessment of the LTCi authorities, and will require any life insurance policy riders with accelerated LTCi benefits to comply with the authorities for LTCi contained in the Insurance Code, including Chapter 48.83 RCW.</p> <p>The commenter also highlights RCW 48.83.010, which states that this chapter does not supersede the obligations of entities subject to this chapter to comply with other applicable laws to the extent that they do not conflict with this chapter.</p> <p>This rulemaking will align WAC 284-23-650 with the effective law in Chapter 48.83 RCW, including RCW 48.83.010, 48.83.020, and 48.83.080. This will</p>

	<p>require insurers to meet regulatory and statutory requirements related to life insurance policies, riders, accelerated benefits, and LTCi.</p>
<p>There's education and licensing to consider. A producer with a life only license may sell a life policy with an accelerated death benefit. They may not sell a life policy with a long-term care rider. (RCW 48.83.130) In order to lawfully sell this product, they will need a disability license, an 8-hour LTC certification course, and a 4-hour LTC refresher course every 2 years.</p>	<p>Thank you for your comment. The Commissioner considered this comment and made no changes to the rule.</p> <p>This rulemaking will not alter or change the education and licensing requirements for insurers and producers transacting in life insurance, riders, or LTCi. Insurers and producers must be appropriately licensed and educated under the Insurance Code for the products and services they transact in.</p>
<p>Our riders clearly state in the first paragraph under the title, <i>"It does not provide health, nursing home, or long-term care insurance."</i> Your proposed Disclosure statement WAC 284-23-650, (2)(b) states, <i>"The disclosure statement must begin with the following statement: 'This accelerated life benefit does not and is not intended to qualify as long-term care under Washington state law. Washington state law prevents this accelerated life benefit from being marketed or sold as long-term care.'"</i></p> <p>We would like clarification as to whether we will need to submit revised Terminal Illness Accelerated Death Benefit Riders or an Endorsement for use in Washington state only or is the language in our Compact-approved Riders sufficient to satisfy the proposed disclosure statement.</p>	<p>Thank you for your comment. The Commissioner considered this comment and made no changes to the rule.</p> <p>The commenter requested and received administrative guidance and regulatory clarification. While the language does not match exactly it is acceptable since the policy form was approved through the Interstate Insurance Compact. Compact filings must meet all established Compact Uniform Standards, not the laws of each individual state. For disclosure statements, Compact approved filings will have substantially similar language to state laws.</p>
<p>Are the disclosures stipulated by WAC 284-23-650 required only of ADBs for terminal illness, or are they required also of ADBs for long-term care? It seems they're required only of ADBs for terminal illness, since Ch. 284-23 WAC makes clear that its definitions apply only to such benefits. The proposed rulemaking, I trust will reconcile the requirements and make them consistent.</p> <p>The proposal does not address the other issue which surfaced during WA Cares' private insurance opt-out in 2021. RCW 48.83.020 does not adequately define for consumers or WA Cares staff what qualifies as LTCi insofar as ADBs are concerned. If a life insurance policy contains an ADB for terminal illness, the law says it is not LTCi and cannot be marketed as such. If a life insurance policy contains an ADB for LTC, the law says it may be LTCi and can be marketed as such.</p> <p>The products filed today are more sophisticated.</p>	<p>Thank you for your comment. The Commissioner considered this comment and made no changes to the rule.</p> <p>The effective rules in WAC 284-23-650 do not distinguish between accelerated death benefit life insurance policy riders for terminal illness and life insurance policy riders for LTCi (see also WAC 284-23-620). Under WAC 284-23-650(1) the words <u>"accelerated benefit"</u> must be included in the title of <u>every life insurance policy or rider</u> that includes a provision for <u>accelerated benefits</u>. Under WAC 284-23-650(2)(b) every accelerated benefit disclosure statement must begin with the following language:</p> <p><i>"This <u>accelerated life benefit</u> does not and is not intended to qualify as long-term care under Washington state law. Washington state law prevents this <u>accelerated life benefit</u> from being marketed or sold as long-term care."</i></p> <p>This contradicts current law that allows life insurance</p>

<p>Many include more than one type of accelerated benefit. It wouldn't be unusual for a life insurance policy to include an ADB for terminal, critical and chronic illness. It wouldn't be unusual for a life insurance policy to include both an ADB for terminal illness and an ADB for LTC. They are not mutually exclusive and may appear in tandem.</p>	<p>policies with riders to fund LTCi benefits through the acceleration of the policy's death benefits under certain conditions (see RCW 48.83.010(3), 48.83.020(5)(a), and 48.83.080).</p> <p>This rulemaking will reconcile the differences in authorities, as mentioned by the commenter.</p> <p>The commenter also requests legislative changes pertaining to the WA Cares Fund and optimized legal definitions in statute for LTCi. These requests should be made through legislation and not through this rulemaking.</p>
<p>We believe there is no conflict between regulation and statute. WAC 284-23-650(a) does not "<i>prohibit life insurers from offering life insurance policies with riders that have accelerated benefits for LTC</i>" but simply prohibits those accelerated benefits as specifically defined in Chapter 284-23-620(1) to be "<i>described, advertised, marketed, or sold as either long-term care insurance or as providing long-term care benefits.</i>" Benefits funded through a life insurance policy that are intended to qualify as long-term care and that can be marketed or sold as LTC are regulated under Chapter 48.83 RCW and must comply with the provisions of that chapter.</p>	<p>Thank you for your comment. The Commissioner considered this comment and made no changes to the rule.</p> <p>The effective rules in WAC 284-23-650 do not distinguish between accelerated death benefit life insurance policy riders for terminal illness and life insurance policy riders for LTCi (see also WAC 284-23-620). Under WAC 284-23-650(1) the words "<u>accelerated benefit</u>" must be included in the title of <u>every life insurance policy or rider</u> that includes a provision for <u>accelerated benefits</u>. Under WAC 284-23-650(2)(b) every accelerated benefit disclosure statement must begin with the following language:</p> <p><i>"This <u>accelerated life benefit</u> does not and is not intended to qualify as long-term care under Washington state law. Washington state law prevents this <u>accelerated life benefit</u> from being marketed or sold as long-term care."</i></p> <p>This contradicts current law that allows life insurance policies with riders to fund LTCi benefits through the acceleration of the policy's death benefits under certain conditions (see RCW 48.83.010(3), 48.83.020(5)(a), and 48.83.080).</p>
<p><u>CR-102 (Proposed Rule Making)</u></p>	
<p>None.</p>	<p>N/A</p>
<p><u>Public Hearing</u></p>	
<p>The public testimony provided repeated written comments submitted in response to the CR-101 Preproposal Statement of Inquiry, which communicate the commenter's belief that there is not a conflict between the existing authorities in the Insurance Code, as they pertain to life insurance policy riders and accelerated benefits for LTCi. The commenter believes the authorities are outlining regulations for two different accelerated death benefits, either those for terminal or LTCi benefits.</p>	<p>Thank you for your comment. The Commissioner considered this comment and made no changes to the rule.</p> <p>The effective rules in WAC 284-23-650 do not distinguish between accelerated death benefit life insurance policy riders for terminal illness and life insurance policy riders for LTCi (see also WAC 284-23-620).</p> <p>Under WAC 284-23-650(1) the words "<u>accelerated</u></p>

Testimony also stated that the products filed today are more sophisticated than the current authorities could have considered when they were made effective. Many products include more than one type of accelerated benefit. Therefore, it wouldn't be unusual for a life insurance policy to include an ADB for terminal, critical and chronic illness. It also wouldn't be unusual for a life insurance policy to include both an ADB for terminal illness and an ADB for LTC. They are not mutually exclusive and may appear in tandem.

benefit" must be included in the title of every life insurance policy or rider that includes a provision for accelerated benefits.

Under WAC 284-23-650(2)(b) every accelerated benefit disclosure statement must begin with the following language: *"This accelerated life benefit does not and is not intended to qualify as long-term care under Washington state law. Washington state law prevents this accelerated life benefit from being marketed or sold as long-term care."*

The above provisions in regulation directly contradict current law, which allows life insurance policies with riders to fund LTCi benefits through the acceleration of the policy's death benefits under certain conditions (see WAC 284-23-650, RCW 48.83.010(3), 48.83.020(5)(a), and 48.83.080).

This rulemaking will reconcile the differences in authorities, as mentioned by the commenter.

Section 6: Implementation Plan

A. Implementation and enforcement of the rule.

After the permanent rule is adopted and filed with the Office of the Code Reviser:

- Policy staff will distribute copies of the final rule and the CES to all interested parties through the State's GovDelivery electronic mail system.
- The CR-103 documents and adopted rule will be posted on the OIC's website.

Questions about the new regulations will be addressed by OIC staff as follows:

Type of Inquiry	Division
Consumer assistance	Consumer Protection
Rule content	Legal Affairs
Authority for rules	Policy
Enforcement of rule	Company Supervision
Market Compliance	Rates, Forms & Provider Networks

B. How the Agency intends to inform and educate affected persons about the rule.

The agency will answer inquiries, hold meetings, and provide assistance to all affected parties including but not limited to insurers, producers, consumers, or other regulators.

C. How the Agency intends to promote and assist voluntary compliance for this rule.

Policy staff will distribute copies of the final rule and the CES to all interested parties through the State's GovDelivery electronic mail system.

The CR 103 documents and adopted rule will be posted on the OIC's website.

D. How the Agency intends to evaluate whether the rule achieves the purpose for which it was adopted.

The Insurance Commissioner will monitor the frequency and impact of consumer complaints, investigations, and enforcement actions to evaluate whether the rules achieve their purpose.

Appendix A

CR-102 Hearing Summary

Summarizing Memorandum

**To: Mike Kreidler
Insurance Commissioner**

**From: Sr. Policy Analyst, Michael Walker,
Presiding Official, Hearing on Rule-making**

Matter No. R 2023-08

Topic of Rule-making: Life Insurance Riders and Disclosure Requirements

This memorandum summarizes the hearing on the above-named rule making, held on Wednesday, December 27, 2023, at 9:00 AM, virtually via Zoom Meetings, over which I presided in your stead.

The following agency personnel were present:

Dan Connolly, Insurance Policy and Compliance Analyst (FPA 3)
Mary Kay Schaefers, Insurance Policy and Compliance Analyst (FPA 3)
Lichiou Lee, Actuary 4 (HC)
Sharon Daniel, Functional Program Analyst 4
Victoria Garcia, Functional Program Analyst 3
Vince Watson, Market Conduct Oversight Manager
Donna Wells, Communications Consultant 5

In attendance and testifying:

Long Term Care Associates, Inc., and Senior Vice President Stephen Forman.

Contents of the presentations made at hearing: The public testimony provided by Stephen Forman repeated written comments submitted in response to the CR-101 Preproposal Statement of Inquiry, which communicate the commenter's belief that there is not a conflict between the existing authorities in the Insurance Code, as they pertain to life insurance policy riders with accelerated benefits for LTCI. The commenter believes the existing authorities outline regulations for two different accelerated death benefits, either those for terminal or LTCi benefits.

Testimony also stated that the products filed today are more sophisticated than the current authorities could have considered when they were made effective. Currently many products include more than one type of accelerated benefit. Therefore, it wouldn't be unusual for a life insurance policy to include an accelerated death benefit for terminal, critical and chronic illness. It also wouldn't

be unusual for a life insurance policy to include both an accelerated death benefit for terminal illness and an accelerated death benefit for LTCi. They are not mutually exclusive and may appear in tandem.

The hearing was adjourned.

SIGNED this 27th day of December 2023

Michael S. Walker
Michael S. Walker, Presiding Official