TITLE 114
LEGISLATIVE RULE
INSURANCE COMMISSIONER

SERIES 80
VIATICAL SETTLEMENTS

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§114-80-1. General.

1.1. Scope. -- The purpose of this rule is to implement W. Va. Code §33-13C relating to the regulation of persons and institutions engaged in the business of viatical settlements in West Virginia and to protect the public from unfair and unconscionable practices in the course of that business. This rule is based on the National Association of Insurance Commissioners' "Viatical Settlement Regulation" (Model 698), as amended in 2004.

1.2. Authority. -- W. Va. Code §§33-2-10, 33-13C-3(b), 33-13C-5(b), 33-13C-12(d) and 33-13C-17.

1.3. Filing Date. --

1.4. Effective Date. --

§114-80-2. Definitions.

In addition to the definitions in W.Va. Code §33-13C-2, the following definitions apply:

2.1. "Escrow agent" means an independent third-party person who, pursuant to a written agreement signed by the viatical settlement provider, viatical settlement broker and viator, provides escrow services related to the acquisition of a life insurance policy pursuant to a viatical settlement contract. "Escrow agent" does not include any person associated with, affiliated with, or under the control of a person licensed under W.Va. Code §33-13C-3 or any person retained to represent a viator who is licensed as an attorney, certified public accountant or financial planner accredited by a nationally recognized accreditation agency whose compensation is not paid directly or indirectly by the viatical settlement provider, and whose viatical settlement activities are incidental to the professional practice of the attorney, certified public accountant or financial planner. "Escrow agent" also does not include an insurance producer authorized to act under W. Va. Code §33-13C- 3(2)(A).

2.2. "Insured" means the person covered under the policy being considered for viatication.

2.3. "Life expectancy " means an opinion or evaluation that will yield an estimate of the number of months the individual insured under the life insurance policy to be viaticated can be expected to live as determined by an independent life expectancy provider who determines, based upon necessary education training and expertise acquired, life expectancies considering medical records and appropriate experiential data, such as mortality ratings used to determine life expectancies on behalf of or in connection with a viatical settlement provider, viatical settlement broker, a person engaged in the business of viatical settlements, a viatical settlement contract or a viatical settlement investment.

2.4. "Net death benefit" means the amount of the life insurance policy or certificate to be viaticated less any outstanding debts or liens.

2.5. "Patient identifying information" means an insured's address, telephone number, facsimile number, electronic mail address, photograph or likeness, employer, employment status, social security number, or any other information that is likely to lead to the identification of the insured.

2.6. "Brochure" means the informational brochure, in the NAIC format, that is distributed to viators by viatical settlement providers explaining viatical settlement contracts.

2.7. "Proposal" means the documents distributed to a viator by a viatical settlement provider pursuant to section 10 of this rule that outlines the terms and conditions of the viatical settlement contract.

§114-80-3. Viatical Settlement Provider Licensing and Renewal Requirements.

3.1. A person shall not operate as a viatical settlement provider without first obtaining a license from the Commissioner pursuant to W. Va. Code §33-13C-3 and this rule.

3.2. A person must submit the following to obtain a license to act as a viatical settlement provider in this state:

a. A fully completed Viatical Settlement Provider Application (VSP-2);

b. A $600.00 non-refundable application fee;

c. A certificate of good standing from state of domicile;

d. A West Virginia business license from the Secretary of State's Office;

e. A copy of the last certified public accountant audit and the latest examination

report from the state of domicile. If the state of domicile does not require examination, please so state;

f. An unaudited financial statement for the most recent quarter;

g. Evidence of a minimum equity of not less than $250,000 in cash or cash equivalents reflected in the applicant's audited financial statements or through a surety bond executed and issued by an insurer authorized to issue bond in this state in the amount of $250,000;

h. A detailed plan of operations;

i. An anti-fraud plan that meets the requirements of W. Va. Code §33-13C-14;

j. National Association of Insurance Commissioners' UCAA biographical affidavit for each individual, member, officer or principal owner (ownership of ten percent or more of the company) of applicant and each person to be authorized to act under the license;

k. If the applicant is a member of a holding company system, submit an organizational chart which depicts the affiliate relationships among the members. "Affiliate" means a person that directly or indirectly through one or more intermediaries is controlled by or is under common control with the member specified. "Control" shall be presumed to exist if any person directly or indirectly owns, controls, holds with the power to vote or holds proxies representing collectively ten percent or more of the voting securities of any other person;

l. Samples of all forms the provider uses or plans to use to enter into viatical settlement contracts with viators and viator application forms;

m. Samples of all advertising and other solicitation materials the provider is using or plans to use in the state; and

n. Samples of all information brochures.

3.3. An incomplete application, as determined by the commission, that remains incomplete four months from the date filed will be considered withdrawn and a new application and application fee will be required.

3.4. A viatical settlement provider license must be renewed annually by payment of $300 on or before the thirty-first day of May next following the date of issuance. If a viatical settlement provider fails to pay the renewal fee, the nonpayment shall result in a lapse of the license. A viatical settlement provider that allows its license to lapse may, within twelve months

from the due date of the renewal fee, reinstate the same license, however, a penalty in the amount of $300 shall be required for any renewal fee received after the due date.

3.5. If a viatical settlement provider has, at the time of renewal, viatical settlement contracts where the insured has not died, it shall do one of the following:

a. Renew or maintain its current license status until the earlier of the following events:

1. The date the viatical settlement provider properly assigns, sells or otherwise transfers the viatical settlement contract where the insured has not died; or

2. The date that the last insured covered by viatical settlement contract has died.

b. Appoint, in writing, either the viatical settlement provider that entered into the viatical settlement contract, the broker who received commissions from the viatical settlement contract, if applicable, or any other viatical settlement provider or broker licensed in this state to make all inquiries to the viator, or the viator's designee, regarding health status of the insured or any other matters.

3.6. A license issued to a legal entity pursuant to W.Va. Code §33-13C-3 and subsection 3.2 of this rule authorizes all partners, officers, members and designated employees to act as viatical settlement providers under the license and all those persons shall be named in the application and any supplements to the application.

§114-80-4. Viatical Settlement Broker Licensing and Renewal Requirements.

4.1. A person or entity shall not operate as a viatical settlement broker without first obtaining a license from the Commissioner pursuant to W. Va. Code §33-13C-3 and this rule.

4.2. A person or entity must submit the following to obtain a license to act as a viatical settlement broker in this state:

a. A fully completed Viatical Settlement Broker Application (VSB-2);

b. If a legal entity, a certificate of good standing from state of domicile and a West Virginia business license from the Secretary of State's Office;

c. If a legal entity, a copy of the last certified public accountant audit and the latest examination report from the state of domicile. If the state of domicile does not require

examination, please so state;

d. Evidence of a minimum equity of not less than $250,000 in cash or cash equivalents reflected in the applicant's audited financial statements or through a surety bond executed and issued by an insurer authorized to issue bond in this state in the amount of $250,000: *Provided*, That the Commissioner may permit an applicant for a broker's license to demonstrate evidence of financial responsibility through a policy of insurance covering legal liability resulting from erroneous acts or failure to act in their capacity as a viatical settlement broker and inuring to the benefit of any aggrieved party as the result of any single occurrence in the sum of not less than $100,000 and $300,000 in the aggregate for all occurrences within one year;

e. An anti-fraud plan that meets the requirements of W. Va. Code §33-13C-14(g);

f. If a legal entity, National Association of Insurance Commissioners' UCAA biographical affidavit for each individual, member, officer or principal owner (ownership of ten percent or more of the company) of applicant;

g. Samples of all information brochures to be provided to prospective viators.

4.3. a. An individual applicant for a viatical settlement broker's license shall pass the Viatical Settlements Brokers Examination. An examination fee of $25 shall be paid by each applicant and the examination shall be administered by a designated independent testing service selected by the Commissioner. The examination fees will be collected by the independent testing service and remitted to the Commissioner. Any additional fees charged by the independent testing service shall be paid by the applicant.

b. An applicant who holds or has held a life insurance producer's license for at least five years and is in good standing with the Insurance Commission shall be exempt from licensing and continuing education requirements set forth in subsection 4.10 and W.Va. Code §33-13C-3(g) as long as the viatical settlement activities of the producer are incidental to the producer's insurance business activities. Viatical settlement activities are "incidental" to a producer's insurance business activities if that producer receives a commission or other remuneration as a result of no more than one viatical settlement contract completed in the calendar year for which the exemption is claimed.

4.4. The Insurance Commissioner may waive any requirement for an individual's nonresident viatical settlement broker's license , including the examination and continuing education requirements, for an applicant with a valid license from his or her home state if the applicant's home state awards nonresident licenses to residents of this state on a reciprocal basis. For instance, an individual nonresident broker's satisfaction of his or her home state's continuing

education requirements for licensed viatical settlement brokers shall constitute satisfaction of this state's continuing education requirements if the nonresident broker's home state recognizes the satisfaction of its continuing education requirements imposed upon brokers from this state on substantially the same basis. An application for a nonresident's license may include a request for a waiver of any requirements of W.Va. Code §33-13C-3 and this rule.

4.5. A passing score for the Viatical Settlements Broker Examination shall be a minimum score of 70%.

4.6. A license issued to a legal entity pursuant to W.Va. Code §33-13C-3 and subsection 4.2 of this rule authorizes all partners, officers, members and designated employees to act as viatical settlement brokers under the license and all those persons shall be named in the application and any supplements to the application.

4.7. In addition to the information required in W. Va. Code §33-13C-3 and subsection 4.2 of this section, the Commissioner reserves the right to request other information as determined necessary for issuance of a license, to ensure that the applicant for a license as a viatical settlement provider or a viatical settlement broker complies with W. Va. Code §33-13C-3.

4.8. The application of a viatical settlement broker shall be accompanied by a fee of $200 for an entity license and $50 for an individual license. All viatical settlement broker licenses, as fixed by the Commissioner, shall expire at midnight on the thirty first day of May next following the date of issuance. The license may be renewed annually by payment of $200 for an entity license and $50 for an individual license and a current copy of a letter of good standing obtained from the filing officer of the applicant's state of domicile.

4.9. If a viatical settlement broker fails to pay the renewal fee, the nonpayment shall result in a lapse of the license. A viatical settlement broker that allows its license to lapse may, within twelve months from the due date of the renewal fee, reinstate the same license without the necessity of passing a written examination. However, a penalty in the amount of $200 for an entity and $50 for an individual shall be required for any renewal fee received after the due date.

4.10. a. An individual licensed as a viatical settlement broker shall complete fifteen hours of commission-approved continuing education every two years. Such requirement shall be met in accordance with directions posited on the Commissioner's website.

b. An individual who fails to comply with the continuing education requirement and who has not been granted an extension of time to comply shall promptly surrender their license to the Commissioner without demand.

§114-80-5. Standards for Evaluation of Reasonable Payments for Terminally or Chronically Ill Insureds.

5.1. In order to assure that viators who are terminally or chronically ill receive a reasonable return for viaticating an insurance policy, the return for viaticating a policy shall be no less than the following payout:

a. If the life expectancy is less than six months, eighty percent of the net death benefit.

b. If the life expectancy is at least six months but less than twelve months, seventy percent of the net death benefit.

c. If the life expectancy is at least twelve months but less than eighteen months, sixty-five percent of the net death benefit.

d. If the life expectancy is at least eighteen months but less than twenty-five months, sixty percent of the net death benefit.

e. If the life expectancy is twenty-five months or more, the viator must receive at least the greater of the cash surrender value or accelerated death benefit in the policy.

5.2. Except where the cash surrender value is paid, the percentage may be reduced by five percent for viaticating a policy written by an insurer rated less than the highest four categories by A.M. Best, or a comparable rating by another rating agency.

§114-80-6. Reporting Requirements.

6.1. On or before March 1 of each year, each licensed provider shall make an annual report of all viatical settlement contract transactions in which the viators are currently residents of this state or were residents at the time the contract was initiated. Relocation out of state by a viator does not relieve the licensed provider from reporting transaction activities for such viator. The report shall contain the following information for the previous calendar year:

a. For each viatical settlement contract entered into during the reporting period:

1. Date of viatical settlement contract;

2. Viator's state of residence at the time of the contract;

3. Life expectancy of the insured at the time of contract in months;

4. Face amount of policy viaticated;

5. Net death benefit viaticated;

6. Estimated total premiums to keep policy in force for mean life expectancy;

7. Net amount paid to viator;

8. Source of policy (B-Broker, D-Direct Purchase);

9. Type of coverage (I-Individual or G-Group);

10. Whether or not the viatical settlement contract was entered into during the policy's contestable or suicide period, or both;

11. Classification of the viator's or insured's diseases or injuries:

A. Cardiovascular diseases;

B. Diseases of the central nervous system;

C. Diseases of the peripheral nervous system;

D. Elders with nonspecific disease processes;

E. Infectious diseases and autoimmune diseases;

F. Liver and renal diseases;

G. Neoplasms;

H. Non-neoplastic pulmonary diseases;

12. Type of funding for viatical settlement contracts (P-purchaser, L-licensee, I-accredited investor, F-financing entity, S-special purpose entity, R-related provider trust); and

13. Rating of insurer that issued the policy at the time the policy was viaticated.

b. In addition to the requirements stated in subdivision a of this subsection, when death has occurred the following information should also be provided:

1. In place of the net death benefit viaticated provided in paragraph 5, subdivision a of this subsection the net death benefit collected;

2. In place of the estimated total premiums to keep the policy in force for the mean life expectancy provided in paragraph 6, subdivision a of this subsection, the total of the premiums paid to maintain the policy;

3. Date of death;

4. Difference between the number of months that passed between the date of contract and the date of death and the mean life expectancy in months as determined by the reporting company;

5. Type of coverage (I-Individual or G-Group); and

6. Whether or not the viatical settlement contract was entered into during the policy's contestable or suicide period, or both;

c. Name and address of each viatical settlement broker through whom the reporting provider purchased a policy from a viator who resided in this state at the time of contract; and

d. Number of policies purchased from an individual or entity other than the original viator as a percentage of total policies purchased.

6.2. On March 1 of each year, each licensed broker shall make an annual report of all viatical settlement contract transactions during the previous year in which the viators are currently residents of this state or were residents of this state at the time the contract was initiated. The report shall be in the format on the Insurance Commission website.

§114-80-7. General Rules.

7.1. Payment of the proceeds of a viatical settlement contract pursuant to W. Va. Code §33-13C-10 shall be by means of wire transfer to an account designated by the viator or by certified check or cashier's check.

7.2. Payment of the proceeds payable to the viator pursuant to a viatical settlement contract shall be made in a lump sum except where the viatical settlement provider has

purchased an annuity or similar financial instrument issued by a licensed insurance company, bank or an affiliate of either. Retention of a portion of the proceeds not disclosed or described in the viatical settlement contract by the viatical settlement provider or escrow agent is not permissible without written consent of the viator.

7.3. A viatical settlement provider or a viatical settlement broker shall not discriminate in the making or soliciting of viatical settlement contracts or discriminate between viators with dependents and without.

7.4. A viatical settlement provider shall not knowingly solicit purchasers who have treated or have been asked to treat the illness of the viator whose coverage would be the subject of the investment.

7.5. If a viatical settlement provider enters into a viatical settlement contract that allows the viator to retain an interest in the policy, the viatical settlement contract shall contain the following:

a. A provision that the viatical settlement provider will effect the transfer of the amount of the death benefit only to the extent or portion of the amount viaticated. The contract shall provide that benefits in excess of the amount viaticated shall be paid directly to the viator's beneficiary by the insurance company.

b. A provision that the viatical settlement provider will, upon acknowledgment of the completion of the transfer by the insurance company, either;

1. Advise the viator, in writing, that the insurance company has confirmed the viator's interest in the policy; or

2. Send a copy of the instrument sent from the insurance company to the viatical settlement provider that acknowledges the viator's interest in the policy.

c. A provision that apportions the premiums to be paid by the viatical settlement provider and the viator, provided that the contract provides premium payment terms and nonforfeiture options no less favorable, on a proportional basis, than those included in the policy.

7.6. In all cases where the viator is a minor child, disclosures to and permission of a parent or legal guardian shall satisfy the requirements of W. Va. Code §33-13C-8 and this rule.

§114-80-8. Contracts and Payment of Proceeds.

8.1. Every viatical settlement provider shall file for approval with the Commissioner

each contract form, application form, brochure and disclosure state form pursuant to W. Va. Code §33-13C-5.

8.2. In addition to the requirements in W. Va. Code §33-13C-10, every contract shall include the following provisions:

a. If the viator elects the right to rescind the contract, the provider's rights or interest in the policy will terminate immediately upon the viator giving notice of the rescission and tendering of the settlement proceeds together with any escrow interest received by the viator.

b. The amount of the fee or fees to be paid by the viator to the provider in conjunction with the contract shall be clearly stated, along with any conditions of payment or receipt of the fee or fees.

c. The contract together with the application constitutes the entire agreement between the parties.

d. If the contract provides for the payment of an additional settlement amount to the viator upon the exercise of a guaranteed insurability option by the viator, the contract shall disclose the amount of the additional settlement and the terms upon which it shall be payable.

e. If the policy to be viaticated provides a guaranteed insurability option, the option may only be exercised for the benefit of a person who has an insurable interest in the life to be insured.

f. The viatical settlement provider shall instruct the viator to send the executed documents required to effect the change in ownership, assignment or change in beneficiary directly to the escrow agent. Upon the escrow agent's receipt of the acknowledgment of the properly completed transfer of ownership, assignment or designation of beneficiary from the insurance company, the escrow agent shall pay the settlement proceeds to the viator, broker and any other persons pursuant to the viatical settlement contract and the escrow agreement. The escrow agent shall make payment within three business days of the date the escrow agent received the acknowledged forms from the insurance company.

8.3. Every application for a contract shall:

a. Contain the viator's printed name and signature;

b. Be notarized by a person who does not have a financial interest in the policy or viatical settlement contract; and

c. Provide for an acknowledgment by the viator of receipt of the information booklet required by W. Va. Code §33-13C-8.

§114-80-9. Advertising and Marketing.

A person may not use any advertising directed at prospective viators unless filed with the Commissioner: *Provided, That* this requirement is met if the advertising used is substantially similar ro the sample advertising filed with the application for a license or for a renewal of such license and the provider retains copies of all advertising for five years after last use and is able to provide access to such copies to the Commissioner upon request. Marketing materials directed at brokers, financial advisors and persons other than prospective viators do not have to be filed with the Commissioner prior to use.

§114-80-10. Disclosures.

10.1. The provider, upon receipt of a completed application to viaticate and after determining the value to be offered in return for the assignment or transfer of the death benefit or ownership of a policy to the provider, shall deliver a proposal to the viator no later than the date the contract for a viatical settlement contract is to be signed. The proposal shall disclose the following information:

a. Amount of death benefit to be viaticated;

b. Policy cash value before deducting any loan;

c. Policy net cash value after deducting any loan;

d. Policy death benefit less net cash value;

e. Amount offered to viator;

f. Whether any supplemental benefit or benefits are present, will be continued and, if so, the source of premium payment and the beneficiary of the proceeds of such supplemental benefit, and the provider's interest in each benefit for the following:

1. Accidental death and dismemberment benefit, including the amount of the benefit;

2. Disability income;

3. Waiver of premium or of monthly deduction waiver;

4. Guaranteed insurability options; or

5. Children or spouse coverage;

g. Name of the insurer, and whether the insurer does or does not have an accelerated death benefit program for which the viator qualifies; and

h. That an escrow agent shall provide escrow services to the parties pursuant to a written agreement, signed by the viatical settlement provider, the viatical settlement broker and the viator. All persons to receive any form of compensation under the escrow agreement shall be clearly identified, including name, business address, telephone number and tax identification number.

10.2. The provider shall disclose on the application or in the brochure that the identity of the viator will not be disclosed except under the permissible conditions set forth in W. Va. Code §33-13C-6, or as otherwise required by law. The provider shall provide an explanation of these conditions found in W. Va. Code §33-13C-6 to the viator.

§114-80-11. Prohibited Practices.

11.1. A viatical settlement provider or viatical settlement broker shall obtain from a person that is provided with patient identifying information a signed affirmation that the person or entity will not further divulge the information without procuring the express, written consent of the insured for the disclosure. Notwithstanding the foregoing, if a viatical settlement provider or viatical settlement broker is served with a subpoena and, therefore, compelled to produce records containing patient identifying information, it shall notify the viator and the insured in writing at their last known addresses within five business days after receiving notice of the subpoena.

11.2. A viatical settlement provider may not act also as a viatical settlement broker, whether entitled to collect a fee directly or indirectly, in the same viatical settlement contract.

11.3. A viatical settlement broker shall not, without the written agreement of the viator obtained prior to performing any services in connection with a viatical settlement contract, seek or obtain any compensation from the viator.

§114-80-12. Insurance Company Practices.

12.1. Life insurance companies licensed to do business in this state shall respond to a request for verification of coverage from a viatical settlement provider or a viatical settlement broker within thirty calendar days of the date a request is received, subject to the following

conditions:

a. A certificate of authority signed by the policy owner or certificate holder, accompanies the request; and

b. In the case of in individual policy or group insurance coverage where details with respect to the certificate holder's coverage are maintained by the insurer, submission of a form substantially similar to the format prescribed by the National Association of Insurance Commissioners available on the Insurance Commission website, which has been completed by the viatical settlement provider or the viatical settlement broker in accordance with the instructions on the form.

12.2. Nothing in this section shall prohibit a life insurance company and a viatical settlement provider or a viatical settlement broker from using another verification of coverage form that has been mutually agreed upon.

12.3. A life insurance company may not charge a fee for responding to a request for information from a viatical settlement provider or a viatical settlement broker in compliance with this section in excess of any usual and customary charges to contract holders, certificate holder or insureds for similar services.

12.4. The life insurance company shall send an acknowledgment of receipt of the request for verification of coverage to the policy owner or certificate holder and, where the policy owner or certificate holder is other than the insured, to the insured. The acknowledgment must contain a general description of any accelerated death benefit that is available under a provision of or rider to the life insurance contract.

12.5. A life insurance company shall not require the viator to sign any request for change in a policy or a group certificate from a viatical settlement provider that is the owner or assignee of the insured's insurance coverage, unless the viator or insured has ownership, assignment or irrevocable beneficiary rights under the policy. In such a situation, the viatical settlement provider shall provide timely notice to the insured that a settlement transaction on the policy has occurred. Notice shall be provided within fifteen calendar days of the change in a policy or group certificate.