

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #3

Do Not Mark In this Box

FILED

2009 JUL 24 PM 3:19

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Insurance Commissioner TITLE NUMBER: 114

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

AMENDMENT TO AN EXISTING RULE: YES NO

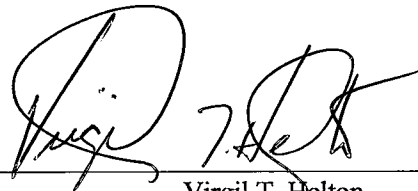
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 80

TITLE OF RULE BEING AMENDED: Viatical Settlements

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



Virgil T. Helton
Cabinet Secretary
West Virginia Department of Revenue

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period, Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: July 24, 2009

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: OFFICE OF THE INSURANCE COMMISSIONER
ATTN: Legal Division
1124 Smith Street
Post Office Box 50540
Charleston, West Virginia 25305-0540

LEGISLATIVE RULE TITLE: Viatical Settlements, Title 114,
Series 80

1. Authorizing statute(s) citation:

This is an amendment needed to reflect legislation enacted in 2009. SB 284 amended W. Va. Code §33-13C-3(d) and changed the requirements for a viatical broker's license by permitting, as an alternative to the pre-amendment requirement of a \$250,000 surety bond, evidence of an errors and omissions policy in the amounts of \$100,000 per occurrence and \$300,000 annual limits.

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

May 26, 2009 - Comment Period

b. What other notice, including advertising, did you give of the hearing?

N/A

c. Date of Public Hearing(s) or Public Comment Period ended:

June 25, 2009 - End of Comment Period

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received

Insurance Commissioner
Title 114, Series 80

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Timothy R. Murphy, Associate Counsel
WV Offices of the Insurance Commissioner
Legal Division
P.O. Box 50540
Charleston, WV 25305-0540
Phone: (304) 558-6279, Ext. 1210
Fax: (304) 558-1362
E-mail: timothy.murphy@wvinsurance.gov

- g. IF DIFFERENT FROM ITEM 'f', please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

Same

- 3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:
 - a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A
 - b. Date of hearing or comment period:

N/A
 - c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. **Attach findings and determinations and reasons:**

N/A

ATTACHEMENT TO QUESTION 2 (d):

Extensive comments were received in a letter from the Life Insurance Settlement Association, a national trade organization representing viatical providers and a comment from Western Southern Life. The substantive comments will be addressed separately below:

(1) In addition to general rulemaking authority, the viatical statute authorizes the Insurance Commissioner to promulgate rules that may include "standards for evaluating reasonableness of payments under viatical settlements contracts or persons who are terminally or chronically ill..." W. Va. Code §33-13C-17. The current rule contains such provisions in §5, which requires specified payouts relative to the life expectancy of such persons. For example, if a viator's life expectancy is less than six months, the contract would have to be no less than 80% of the net benefit of the policy being viaticated. See 114 CSR 80-5.1.a. Further, the statute makes another distinction based on life expectancy of a viator. See W. Va. Code §33-13C-8(a)(11) & 33-13C-10(f) ("Contacts with the insured for the purpose of determining the health status of the insured by the viatical settlement provider or viatical settlement broker after the viatical settlement has occurred shall only be made by the viatical settlement provider or broker licensed in this state or its authorized representatives and shall be limited to once every three months for insureds with a life expectancy of more than one year, and to no more than once per month for insureds with a life expectancy of one year or less"). "Life expectancy" and the process for determining it is not spelled out in the code.

The current rule contains a definition that was added last year at the suggestion of ACLI, a national trade association of life insurance companies with 284 members licensed in West Virginia. OIC's response to last year's comment from ACLI was as follows:

Comments were submitted on the definition of "Life Expectancy" found at §114-80-2.3. One commenter explains that life expectancy is a principles-based process, not rules-based, and that citizens would be better served if West Virginia licensed Life Expectancy Firms that evidence professional competence in this discipline. Another commenter urges deleting the words "as determined by the viatical settlement provider" from the definition, stating that life expectancies are performed most often by third party underwriters unaffiliated with life settlement providers and life settlement brokers. Another commenter offered a similar comment that the definition of "Life Expectancy" should include that it be determined by an outside firm or underwriter unaffiliated with providers and brokers and urges the OIC to adopt a definition similar to that found in the Ohio viatical settlement bill, HB404, with an expansion to include a portion of a definition of a "life expectancy provider." They suggest that the following definition replace the current definition:

Life Expectancy' means an opinion or evaluation as to how long a particular person is going to live that is rendered by an independent life expectancy provider who determines, or claims to have the necessary education, training, and expertise to determine life expectancies or mortality ratings used to determine life expectancies on behalf of or in connection with any of the following: (1) a viatical settlement provider, viatical settlement broker, or person engaged in the business of viatical settlements; (2) a viatical settlement contract or viatical settlement investment.

The Commissioner agrees that life expectancy should be determined by someone other than the viatical settlement provider and therefore will change the subsection as follows:

2.3. "Life Expectancy" means an opinion or evaluation that will yield an estimate ~~the mean~~ of the number of months the individual insured under the life insurance policy to be viaticated can be expected to live as determined by ~~the viatical settlement provider~~ 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.

LISA states that the definition is "superfluous and confusing" and that it should be replaced with one in the NAIC model that is "being used in multiple states":

"Life expectancy' means the arithmetic mean of the number of months the viator ... can be expected to live as determined by a life expectancy company considering medical records and appropriate experiential data."

The Commissioner, after reviewing the definitions from other state statutes, agrees that the current definition is unnecessarily complex, but that the requirement of an independent life expectancy provider is a necessary component that should be

specifically included. Accordingly, using Georgia law as a basis, she amends the rule as follows.

2.3. "Life expectancy " means ~~an opinion or evaluation that will yield an estimate~~ the arithmetic mean 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) LISA requests that the mandated use of the NAIC brochure by providers be replaced by a brochure published by LISA ("The Basics of Life Insurance Settlements," a copy of which was attached to LISA's comment letter). LISA notes that the NAIC brochure has not been updated since 2004 and that it contains "substantial inaccurate information." The Commissioner believes that the purpose of the rule would be better served if she were given the flexibility to develop her own brochure or mandate the use of another group's brochure, including possibly LISA's brochure. Accordingly, she amends the rule as follows:

2.6. "Brochure" means ~~the~~ an informational brochure, ~~in the NAIC format,~~ that is distributed to viators by viatical settlement providers explaining viatical settlement contracts. The brochure shall be in the National Association of Insurance Commissioners' (NAIC) format unless the Commissioner develops or adopts another version and makes it available on the Insurance Commission's website: *Provided*, That a licensed provider may apply to the Commissioner for permission to use a specific brochure in lieu of the NAIC brochure or other one approved by the Commissioner.

(3) A change is being made to §3.2d to require a business license and delete the wording "Secretary of State's Office." The change reads as follows:

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

...

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

(4) LISA questions the requirement in §3.2.e of the rule that an applicant for a provider license submit (in addition to the last CPA audit), “the latest examination report from the state of domicile,” adding that it is unclear as to what type of report – financial, market conduct or another -- is being required. LISA also notes that such reports may not be shared and, in any event, “the need for such a report escapes us because a CPA audit should be sufficient to demonstrate financial stability.” The Commissioner agrees that the reference to “latest examination report” is unclear and, accordingly, agrees to clarify the section to require the latest financial report or market conduct report performed in another state.

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

...

e. A copy of the last certified public accountant audit and, if any, the latest financial and market conduct examination report reports from the state of domicile; ~~If the state of domicile does not require examination, please so state;~~

(5) The current rule requires that an applicant for a provider’s license submit to the OIC “samples of all advertising and other solicitation materials the provider is using or plans to use in the state.” LISA complains that this provision requires the submission of any materials being used anywhere and suggests that the section provide submission of only “samples of all advertising and other solicitation materials the provider plans to use in the state.” The Commissioner agrees that this change clarifies the intent of the subsection and makes the suggested amendment:

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

(6) The viatical statute exempts certain life insurance agents from viatical broker licensing requirements “if the viatical settlement activities of the producer are incidental to the producer’s insurance business activities.” W. Va. Code §33-13C-3(a)(2)(A). The statute does not define “incidental,” and the definition was added in the rule last year in response to comments (from LISA and others) that one was needed (in a comment letter dated 7/14/08, LISA stated: “What are ‘incidental’ activities? We are unable to determine what criteria will affect determination of this essential criterion for exemption from licensure for an insurer”). The decision to limit the “incidental” exemption was made and approved by the Legislature during the 2009 session.

LISA submits that the definition of “incidental” in §4.3.b of the rule is overly restrictive because it “would only prevent the individuals who are in the best position with selling their policies from being able to do so” and suggests that the term not be defined. A specific definition is necessary to clarify the issue; no definition would breed disputes. The limitation to an annual settlement activity was decided upon as in keeping

with the overall intent of the statute to strictly regulate the industry. The Commissioner believes that the extensive regulatory scheme would be frustrated if producers without a viatical broker's license could escape the various requirements imposed on other brokers, such as the continuing education requirements and evidence of financial responsibility. In deciding on limiting "incidental" to one per year, the Commissioner was mindful that the NCOIL and NAIC models had a similar restriction with respect to *providers*. Each model exempts from the licensing requirement "any natural person who enters into or effectuates no more than one [viatical] agreement in a calendar year ... for any value less than the expected death benefit." The Commissioner believes a similar *de minimus* exemption from the broker licensing is what was intended by the statutory use of the term "incidental." Accordingly, no change is made to this section.

(7) W. Va. Code §33-13C-6(a) provides in part as follows: "On or before the first day of March of each year, each viatical settlement provider shall file with the commissioner an annual statement containing such information as the commissioner may prescribe. The information shall be limited to only those transactions where the viator is a resident of this state." (emphasis added). Section 6.1 of the rule currently provides that the annual report be made with respect to all transactions "in which the viators are currently residents of this state or were residents at the time the contract was initiated."

The focus of the statutory scheme is clearly consumer protection, and the reporting requirements are a tool to maintain oversight on an ongoing basis. LISA submits that the statute only permits the OIC to make the provider report only for "viators who were residents at the time the contract was initiated" and not those who may have moved to West Virginia after initiating a contract elsewhere. The Commissioner agrees; because nothing in the West Virginia Code protects those persons who have entered into contracts elsewhere, there is no compelling reason to require reports with respect to such persons. Moreover, the majority of states that regulate the industry only require similar reports. Accordingly, the rule will be amended as follows:

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 same change is being made in §6.2 for viatical settlement brokers that is being made for viatical settlement providers in §6.1. The viatical settlement brokers reporting subsection is amended as follows:

6.2. On or before 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

(8) Western Southern Life submitted a comment pertaining to §12.1(a) and the use of the term “certificate of authority” in the Insurance Company Practices section. The comment states that from an insurer's standpoint, a certificate of authority essentially means a license or authorization to transact lines of insurance business in a state. They state that when used in Subsection a.: "A certificate of authority signed by a policy owner or certificate holder, accompanies the request;" it is unclear as to what this really means within in the context of an insurer's definition of a certificate of authority; particularly when it requires a signature of the policy owner or certificate holder. They request that the OIC revise the language to provide a clear understanding of the legislative intent of an authorization. The Commissioner agrees that the use of the term “certificate of authority” in this subdivision causes confusion from an insurer’s standpoint and changes the subdivision to read as follows:

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~~ An authorization or release signed by the policy owner or certificate holder, accompanies the request; and

June 25, 2009

Mr. Timothy R. Murphy
Office of the West Virginia Insurance Commissioner, Legal Division
1124 Smith Street
Charleston, West Virginia 25301

RE: PROPOSED VIATICAL SETTLEMENTS RULE

Dear Mr. Murphy:

Thank you for the opportunity to comment on West Virginia's proposed viatical settlements rule. With over 145 active Member Companies, the Life Insurance Settlement Association ("LISA") is the oldest and largest national industry trade group. We are proponents of sound, effective viatical settlement legislation and regulation that benefits consumers – by ensuring that there remains a viable market that allows them to sell their life insurance policy – and our own industry.

Indeed, it is our hope that the process of adopting this rule does not mimic the legislative process of last year's passage of West Virginia's Viatical Settlements Act. That Act was rushed through the legislature without any substantive participation from the viatical settlement industry; resulting in the creation of a bad law. In turn, West Virginia consumers have suffered the consequences. Though some viatical settlement providers have requested and received licensure in West Virginia since the Act was enacted, the total number of licensed providers in West Virginia pales in comparison to the number of licensed providers in other states that are regulated with good law. The small amount of licensed brokers in West Virginia is even more appalling. Simply put, the fewer avenues a consumer has to sell his or her policy, the less that consumer will receive as compensation for his or her policy. Moreover, West Virginia's consumers suffer when they cannot find someone to assist them with selling their policies or when they have no one to whom they can sell their policies. It is our belief that a promulgated rule that has been properly considered and debated will benefit all parties.

After careful review of the proposed rule, it is our belief that there are a number of issues that need to be addressed before this rule is promulgated. We submit the following comments with the hopes that they be considered during further discussions of this rule:

We are apprehensive about the requirement that would compel provider applicants to submit "the latest examination report from the state of domicile" to West Virginia in order to become licensed. At first glance, we are not sure what type of examination is being asked to be submitted – whether it is a financial examination or another type of examination, perhaps another state's market conduct examination. In some cases these documents cannot be shared. In either instance, the need for such a report escapes us.

Certainly, if evidence of financial stability is needed, an audit from a certified public accountant – as already required by the rule – should suffice.

Section 114-80-4(4.3)(b) of the rule deems that only life insurance producers whose viatical settlement activities are “incidental” to a producer’s insurance business activities are eligible to participate in the industry without having to go the extra step and obtain a viatical settlement broker’s license. “Incidental” is described in the rule as receiving a commission or other remuneration as a result of more than one viatical contract completed in one calendar year. This is bizarre and would only prevent the individuals who are in the best position to assist consumers with selling their policies from being able to do so. West Virginia already suffers from a lack of vital participants in its viatical settlement market. We are confused to why the Commissioner is erecting further barriers to participate in this market. Such a threshold for participation is outlandishly severe and the entire second sentence of Section 114-80-4(4.3)(b) should be deleted.

We request that the provision regarding reporting requirements be amended to clarify that the Commissioner is requesting only information that is covered under the West Virginia Act: transactions that were conducted with West Virginia residents. As the rule currently reads, transactions are required to be reported even if the transaction rightfully took place outside of West Virginia’s borders and the viator later moves to West Virginia. Such a transaction is not covered by West Virginia’s Viatical Settlements Act and should not be reported to the Commissioner. We suggest amending the first sentence of Section 114-80-6(6.1) of the rule to read:

“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 were residents at the time the contract was initiated.”

The rule would also require that samples of all advertising and other solicitation materials that the provider is currently using and samples of the same that the provider plans to use in West Virginia be submitted during the application process. This provision of the rule would require that all advertising material in all states be submitted to West Virginia. Again, the Commissioner’s need for such information escapes us. We believe that the Commissioner should only require the materials that are going to be used in West Virginia. Therefore, we request that Section 114-80-3(m) be amended to read:

“Samples of all advertising and other solicitation materials the provider plans to use in this state.”

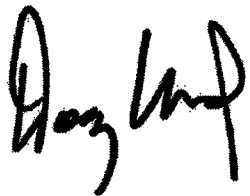
The definition of “life expectancy” as found in the proposed rule is superfluous and confusing. We request that the definition found in the proposed rule be deleted in its entirety and substituted with the following, generally accepted definition that is being used in multiple states:

'Life expectancy' means the arithmetic mean of the number of months the viator under the life insurance policy to be viaticated can be expected to live as determined by a life expectancy company considering medical records and appropriate experiential data.

Lastly, the Rule would require that viatical settlement providers distribute the NAIC's informational brochure that explains viatical settlement contracts. After a review of the NAIC's most appropriate brochure regarding viatical settlement contracts ("Selling Your Life Insurance Policy"), we find that it is light on information regarding selling one's policy. The NAIC brochure, which is part of the NAIC Model law, has not been updates since the NAIC last visited it in 2004 and contains substantial inaccurate information. Therefore, we suggest that licensees be allowed to use *The Basics of Life Settlements*, an informational brochure on life settlements created by LISA that is geared towards consumers, instead of the brochure required. We also would request that the definition of "brochure" found in Section 114-80-2 be amended to include the use of *The Basics of Life Settlements*. *The Basics of Life Settlements* is attached as Attachment A.

LISA appreciates the opportunity to comment on the proposed rule. We trust that our comments will be duly considered by the Department and look forward to working with the Department in helping to strengthen the proposed Rule.

Sincerely,



Doug Head
Executive Director
Life Insurance Settlement Association

LISA is the nation's oldest and largest organization representing participants in the Settlement Industry with a current membership of over 145 Companies, doing business in all fifty states and the District of Columbia and Puerto Rico and the U.S. Virgin Islands. We were founded in 1995. Our membership consists of Brokers, Providers, Financing Entities, and service providers to the industry. Our mission is to promote the development, integrity and reputation of the life settlement industry and to promote competition in the market we serve.

Sarah Chapman

From: Gunthorpe, Susan [susan.gunthorpe@westernsouthernlife.com]
Sent: Wednesday, June 03, 2009 1:43 PM
To: Timothy Murphy
Subject: West Virginia: Proposed Rule 114-80 (Viatical Settlements)
Attachments: WV-114-80-12 (Proposed Rule-Pages 13 and 14).pdf; WV-114-80-12 (Emergency Rule-Page 15).pdf

Mr. Murphy:

This is to follow our telephone conversation of June 2, 2009, regarding the above-captioned proposed rule, specifically, Section 12 - Insurance Company Practices and the use of the term "certificate of authority" in Subsection a.

From an insurer's standpoint, certificate of authority, essentially means a license or authorization to transact lines of insurance business in a state.

When used in Subsection a.: "A certificate of authority signed by a policy owner or certificate holder, accompanies the request;" it is unclear as to what this really means within in the context of an insurer's definition of a certificate of authority; particularly when it requires a signature of the policy owner or certificate holder.

What made it more confusing, was the term used in the Emergency Rule, which was "license."

In our discussion, you felt it was the legislative intent to mean an "authorization" or some type of "release statement" signed by the policy owner or certificate holder. To an insurer, this made perfectly sense and provided a clear understanding of the requirement.

Therefore, we are requesting the Department to revise the language that would provide a clear understanding of the legislative intent of an authorization.

For your reference, am attaching a copy of the section (Page 13) from the **Proposed Rule** using the terms certificate of authority and a copy of the section (Pages 13 and 14) from the **Emergency Rule**, using the term license. (Refer to highlights and red underscores.)

Should you have any questions or concerns, please do not hesitate to contact me at 1-800-926-1195, x-1486.

Thank you in advance for taking the time to discuss this matter and for your assistance.

CONFIDENTIAL NOTICE

This email message and any attachments to it are intended solely for the individual or entity to which it is addressed, and may contain confidential and/or privileged material. Any unauthorized review, use, disclosure or distribution is prohibited. If you have received this email in error, please notify the sender by reply email and destroy all copies of the original message.

7/17/2009

Insurance Commissioner
Legislative Rule
Title 114, Series 80

VIATICAL SETTLEMENTS

TITLE 114, SERIES 80

BRIEF SUMMARY OF RULE

SB 284, enacted in 2009 and effective July 10, 2009, amended the viatical broker licensing provisions to permit, as an alternative to the pre-amendment requirement of the filing of a \$250,000 surety bond, evidence of an errors and omissions policy in the amount of \$100,000 per occurrence and \$300,000 annual limit. The rule amendment simply reflects this change.

Insurance Commissioner
Legislative Rule
Title 114, Series 80

VIATICAL SETTLEMENTS

TITLE 114, SERIES 80

STATEMENT OF CIRCUMSTANCES

SB 284, enacted in 2009 and effective July 10, 2009, amended the viatical broker licensing provisions to permit, as an alternative to the pre-amendment requirement of the filing of a \$250,000 surety bond, evidence of an errors and omissions policy in the amount of \$100,000 per occurrence and \$300,000 annual limit. The rule amendment simply reflects this change.

APPENDIX B
FISCAL NOTE FOR PROPOSED RULES

Rule Title: Viatical Settlements (Title 114, Series 80)

Type of Rule: X Legislative Interpretive Procedural Emergency

Agency: Insurance Commissioner

Address: Post Office Box 50540
1124 Smith Street, Greenbrooke Building
Charleston, West Virginia 25305-0540

Phone Number: (304) 558-0401 Email:

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The rule will have no additional fiscal impact upon state government.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "--")	Next Increase/Decrease (use "--")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	N/A	N/A	N/A
Personal Services	N/A	N/A	N/A
Current Expenses	N/A	N/A	N/A
Repairs & Alterations	N/A	N/A	N/A
Assets	N/A	N/A	N/A
Other	N/A	N/A	N/A
2. Estimated Total Revenues	N/A	N/A	N/A

Rule Title: Viatical Settlements (Title 114, Series 80)

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

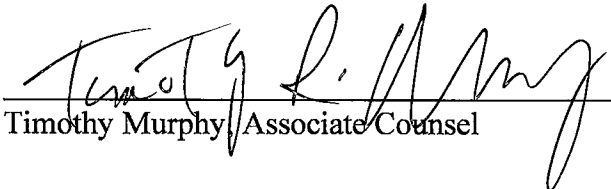
N/A

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

Date: July 24, 2009

Signature of Agency Head or Authorized Representative



Timothy Murphy, Associate Counsel

**TITLE 114
LEGISLATIVE RULE
INSURANCE COMMISSIONER**

**SERIES 80
VIATICAL SETTLEMENTS**

Section

- 114-80-1. General.
- 114-80-2. Definitions.
- 114-80-3. Viatical Settlement Provider Licensing and Renewal Requirements.
- 114-80-4. Viatical Settlement Broker Licensing and Renewal Requirements.
- 114-80-5. Standards for Evaluation of Reasonable Payments for Terminally or Chronically Ill Insureds.
- 114-80-6. Reporting Requirements.
- 114-80-7. General Rules.
- 114-80-8. Contracts and Payments of Proceeds.
- 114-80-9. Advertising and Marketing.
- 114-80-10. Disclosures.
- 114-80-11. Prohibited Practices.
- 114-80-12. Insurance Company Practices.

**TITLE 114
LEGISLATIVE RULE
INSURANCE COMMISSIONER**

**SERIES 80
VIATICAL SETTLEMENTS**

FILED

2009 JUL 24 PM 3: 19

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§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~~ the

Title 114, Series 80
Legislative Rule
Insurance Commissioner

~~arithmetic mean 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 an~~ informational brochure, ~~in the NAIC format~~, that is distributed to viators by viatical settlement providers explaining viatical settlement contracts. The brochure shall be in the National Association of Insurance Commissioners' (NAIC) format unless the Commissioner develops or adopts another version and makes it available on the Insurance Commission's website: *Provided*, That a licensed provider may apply to the Commissioner for permission to use a specific brochure in lieu of the NAIC brochure or other one approved by the Commissioner.

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;

**Title 114, Series 80
Legislative Rule
Insurance Commissioner**

- d. A West Virginia business license ~~from the Secretary of State's Office;~~
- e. A copy of the last certified public accountant audit and if any, the latest financial and market conduct examination report reports 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

**Title 114, Series 80
Legislative Rule
Insurance Commissioner**

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;

**Title 114, Series 80
Legislative Rule
Insurance Commissioner**

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

**Title 114, Series 80
Legislative Rule
Insurance Commissioner**

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

**Title 114, Series 80
Legislative Rule
Insurance Commissioner**

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;

**Title 114, Series 80
Legislative Rule
Insurance Commissioner**

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

**Title 114, Series 80
Legislative Rule
Insurance Commissioner**

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.

**Title 114, Series 80
Legislative Rule
Insurance Commissioner**

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.

**Title 114, Series 80
Legislative Rule
Insurance Commissioner**

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

**Title 114, Series 80
Legislative Rule
Insurance Commissioner**

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 to 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;

**Title 114, Series 80
Legislative Rule
Insurance Commissioner**

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

**Title 114, Series 80
Legislative Rule
Insurance Commissioner**

conditions:

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

b. In the case of 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.