

**WEST VIRGINIA  
SECRETARY OF STATE  
BETTY IRELAND  
ADMINISTRATIVE LAW DIVISION**

Form #8

Do not mark in this box  
Filing Date

Effective Date

**NOTICE OF AN EMERGENCY AMENDMENT TO AN EMERGENCY RULE**

AGENCY: Offices of the Insurance Commissioner TITLE NUMBER: 114

DATE EMERGENCY RULE WAS ORIGINALLY FILED: May 16, 2008

FIRST EMERGENCY AMENDMENT TO AN EXISTING RULE: YES  NO

SECOND EMERGENCY AMENDMENT TO AN EXISTING RULE: YES  NO

DATE OF FIRST EMERGENCY AMENDMENT: \_\_\_\_\_

SERIES NUMBER OF RULE: 80

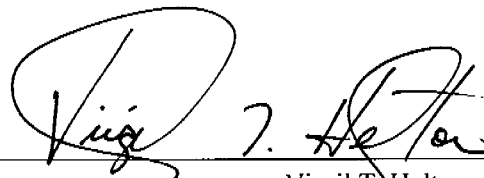
TITLE OF RULE: Viatical Settlements

THE ATTACHED IS AN EMERGENCY AMENDMENT TO AN EXISTING EMERGENCY RULE. THIS EMERGENCY AMENDMENT BECOMES EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY AMENDMENT ARE AS FOLLOWS:

**SEE ATTACHED**

Use additional sheets if necessary



Virgil T. Helton  
Cabinet Secretary  
West Virginia Department of Revenue

**Title 114, Series 80 - Emergency Rule Amendment  
Viatical Settlements**

**FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY  
AMENDMENT ARE AS FOLLOWS:**

The emergency rule regulates companies operating in the business of viatical settlements. This rule was adopted by the National Association of Insurance Commissioners as a model regulation in 2004. The rule establishes standards that are to be followed by viatical settlement companies conducting business in this state. The emergency amendment is to correct and change language found in emergency rule 114 CSR 80 filed on May 16, 2008. The language, found at §114-80-3.1 and §114-80-4.1 was placed in the emergency rule to allow for a period of time prior to the licensing requirement deadline for Viatical Settlement Providers and Viatical Settlement Brokers to submit applications and the Insurance Commission to process applications for licensure. The current language suggests Viatical Settlement Providers and Viatical Settlement Brokers must currently have a license and implies that after June 28, 2008 a Viatical Settlement Provider and Viatical Settlement Broker may operate without a license. This is not the intended purpose of these subsections. The intent was to give a grace period to Viatical Settlement Providers and Viatical Settlement Brokers to comply with the licensing requirement deadline and that after the grace period, Viatical Settlement Providers and Viatical Settlement Brokers would not be permitted to operate in this state without first obtaining a license from the Insurance Commission. The date of June 28, 2008 is also being changed to August 1, 2008 to provide more time to Viatical Settlement Providers and Viatical Settlement Brokers to pull together all of the required application information. This extension of time will also give the Insurance Commission more time to process the required application information and issue licenses. See revisions below:

Current Language in §114-80-3.1:

"A person shall not operate as a viatical settlement provider prior to June 28, 2008 without first obtaining a license from the commissioner pursuant to W. Va. Code §33-13C-3 and this rule."

Revision:

"A person shall not operate as a viatical settlement provider ~~prior to June 28, 2008~~ after August 1, 2008 without first obtaining a license from the commissioner pursuant to W. Va. Code §33-13C-3 and this rule."

Current Language §114-80-4.1:

"A person shall not operate as a viatical settlement broker prior to June 28, 2008 without first obtaining a license from the commissioner pursuant to W.Va. Code §33-13C-3 and this rule."

Revision:

"A person shall not operate as a viatical settlement broker ~~prior to June 28, 2008~~ after August 1, 2008 without first obtaining a license from the commissioner pursuant to W. Va. Code §33-13C-3 and this rule."

The amendment will change the words "prior to" to the word "after" so as to not suggest that a Viatical Settlement Provider or Viatical Settlement Broker may operate after a particular date without a license and will extend the time period for submitting an application from June 28, 2008 to August 1, 2008.

**Department of Revenue  
Agency Questionnaire**

**Re: Emergency Rule to be Filed**

**VIATICAL SETTLEMENTS**

**TITLE 114, SERIES 80**

**Question 1: Are regulations required?**

Yes. See W.Va. Code Sections §§33-2-10, 33-13C-3(b), 33-13C-5(b), 33-13C-12(d) & 33-13C-17.

**Question 2: Is the rule you are proposing controversial? If yes, what are the pros and the cons?**

The rule is not expected to be controversial. The rule will regulate viatical settlement companies conducting business in this state. The rule provides licensing requirements, standards for determining the reasonableness of a payment and other requirements to eliminate deceptive practices.

**Question 3: Is the rule you are proposing a copy of another state's rule? A model rule? Custom-drafted?**

The rule is a model regulation passed by the National Association of Insurance Commissioners in 2004.

**Question 4: What are the really important things you think the Secretary of the Department of Revenue should know about this rule and the issues that surround it?**

This rule was adopted by the National Association of Insurance Commissioners as a model regulation in 2004. The rule establishes standards that are to be followed by viatical settlement companies conducting business in this state. This rule recognizes the licensing requirements for a viatical settlement provider or broker to submit to the Insurance Commissioner before a license can be obtained. This rule provides the standards of reasonable payments to terminally or chronically ill insureds. It supplies the payouts to be based on life expectancy

and the factors the Commissioner shall consider to determine whether a payment is unreasonable or unjust. This rule lists the reporting requirements a viatical provider or viatical settlement broker must submit annually to the Insurance Commission regarding viatical settlements entered into for that year. A report is required for contracts entered into with all residents of this state and for those who were residents at the time the contract was signed. Additional requirements are required in the event the viator has become deceased during the reporting period. The rule provides requirements regarding payments of viatical settlements as well as payments to a broker. The rule provides the provisions required to be in a contract for a viatical settlement. The rule also prohibits any type of discrimination in making or soliciting settlements or between viators with or without dependents. The rule would provide a protection to insureds in the life insurance industry on these types of contracts.

The first part of the emergency amendment is for subsections 3.1 and 4.1 of the emergency rule and will change language pertaining to the licensing requirement deadline for Viatical Settlement Providers and Viatical Settlement Brokers. The current language suggests that Viatical Settlement Providers and Viatical Settlement Brokers must currently have a license and implies that after July 1, 2008 they will not need a license to operate in this state. This was not the intended purpose of this subsection. The intent was to give a grace period to Viatical Settlement Providers and Viatical Settlement Brokers to comply with the licensing requirements and not allow them to operate after July 1, 2008 without having a license. The amendment will change the language "prior to" to "after." The amendment of the emergency rule will also extend the time period for submitting a license from June 28, 2008 to August 1, 2008 to provide Viatical Settlement Providers and Viatical Settlement Brokers time to pull together required application information as well as provide the Insurance Commission more time to process the application information and issue licenses.

The second part of the amendment is for subsections 3.4 and 4.6 and will clarify that provisional licenses are only intended to be available to viatical settlement providers and viatical settlement brokers that have applied prior

to August 1, 2008 but which have not yet been acted upon by the Commissioner. The amendment will change the date from June 28, 2008 to August 1, 2008 to comply with the deadline for licensing applications to be submitted to the Insurance Commission.

## 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:** June 13, 2008

**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

**EMERGENCY RULE TITLE:** VIATICAL SETTLEMENTS  
(Title 114, Series 80)

**1. Date of Filing:**

June 13, 2008.

**2. Statutory authority for promulgating emergency rule:**

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

**3. Date of filing of proposed legislative rule:**

June 13, 2008

**4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?**

The emergency rule adds a new series, Series 80, to the Insurance Commission rules (Title 114 of the Code of State Rules). This rule is new.

**5. Has the same or similar emergency rule previously been filed and expired?**

No.

Viatical Settlements  
(Title 114, Series 80)  
Emergency Rule

6. **State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety and welfare.**

The emergency rule is not being promulgated for the immediate preservation of public peace, health, safety and welfare.

7. **If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.**

The emergency rule is not being promulgated in order to comply with a time limit established pursuant to a federal statute or regulation.

8. **State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to public interest.**

The emergency rule regulates companies operating in the business of viatical settlements. This rule was adopted by the National Association of Insurance Commissioners as a model regulation in 2004. The rule establishes standards that are to be followed by viatical settlement companies conducting business in this state. This rule recognizes the licensing requirements for a viatical settlement provider or broker to submit to the Insurance Commissioner before a license can be obtained. This rule provides the standards of reasonable payments to terminally or chronically ill insureds. It supplies the payouts to be based on life expectancy and the factors the Commissioner shall consider to determine whether a payment is unreasonable or unjust. This rule lists the reporting requirements a viatical provider or viatical settlement broker must submit annually to the Insurance Commission regarding viatical settlements entered into for that year. A report is required for contracts entered into with all residents of this state and for those who were residents at the time the contract was signed. Additional requirements are required in the event the viator has become deceased during the reporting period. The rule provides requirements regarding payments of viatical settlements as well as payments to a broker. The rule provides the provisions required to be in a contract

for a viatical settlement. The rule also prohibits any type of discrimination in making or soliciting settlements or between viators with or without dependents. The rule would provide a protection to insureds in the life insurance industry on these types of contracts. To delay the protections born by the rule would be detrimental to the public's interest.

The Commissioner's adoption of this emergency rule has been in a timely manner. Because the statute passed by the Legislature of West Virginia requires rules to be promulgated and the statute goes into effect before a legislative rule can be approved, it must be adopted as an emergency rule to be effective for June 1, 2008.

The emergency amendment of subsections 3.1 and 4.1 of the emergency rule will change language pertaining to the licensing requirement deadline for Viatical Settlement Providers and Viatical Settlement Brokers. The current language suggests that Viatical Settlement Providers and Viatical Settlement Brokers must currently have a license and implies that after June 28, 2008 they will not need a license to operate in this state. This was not the intended purpose of this subsection. The intent was to give a grace period to Viatical Settlement Providers and Viatical Settlement Brokers to comply with the licensing requirements and not allow them to operate after the grace period without having a license. The amendment will change the language "prior to" to "after." The amendment of the emergency rule will also extend the time period for submitting a license from June 28, 2008 to August 1, 2008 to provide Viatical Settlement Providers and Viatical Settlement Brokers time to pull together required application information as well as provide the Insurance Commission more time to process the application information and issue licenses.

**VIATICAL SETTLEMENTS**

**TITLE 114, SERIES 80**

**BRIEF SUMMARY OF EMERGENCY RULE**

The emergency rule regulates companies operating in the business of viatical settlements. This rule was adopted by the National Association of Insurance Commissioners as a model regulation in 2004. The rule establishes standards that are to be followed by viatical settlement companies conducting business in this state. This rule recognizes the licensing requirements for a viatical settlement provider or broker to submit to the Insurance Commissioner before a license can be obtained. This rule provides the standards of reasonable payments to terminally or chronically ill insureds. It supplies the payouts to be based on life expectancy and the factors the Commissioner shall consider to determine whether a payment is unreasonable or unjust. This rule lists the reporting requirements a viatical provider or viatical settlement broker must submit annually to the Insurance Commission regarding viatical settlements entered into for that year. A report is required for contracts entered into with all residents of this state and for those who were residents at the time the contract was signed. Additional requirements are required in the event the viator has become deceased during the reporting period. The rule provides requirements regarding payments of viatical settlements as well as payments to a broker. The rule provides the provisions required to be in a contract for a viatical settlement. The rule also prohibits any type of discrimination in making or soliciting settlements or between viators with or without dependents. The rule would provide a protection to insureds in the life insurance industry on these types of contracts.

The emergency amendment of subsections 3.1 and 4.1 of the emergency rule will change language pertaining to the licensing requirement deadline for Viatical Settlement Providers and Viatical Settlement Brokers. The current language suggests that Viatical Settlement Providers and Viatical Settlement Brokers must currently have a license and implies that after June 28, 2008 they will not need a license to operate in this state. This was not the intended purpose of this subsection. The intent was to give a grace period to Viatical Settlement Providers and Viatical Settlement Brokers to comply with the licensing requirements and not allow them to operate after June 28, 2008 without having a license. The amendment will change the language "prior to" to "after." The amendment of the emergency rule will also extend the time period for submitting a license from June 28, 2008 to August 1, 2008 to provide Viatical Settlement Providers and Viatical Settlement Brokers time to pull together required application information as well as provide the Insurance Commission more time to process the application information and issue licenses.

Insurance Commissioner  
Emergency Rule  
Title 114, Series 80

**VIATICAL SETTLEMENTS**

**TITLE 114, SERIES 80**

**STATEMENT OF CIRCUMSTANCES**

SB704, which was enacted during the 2008 regular session and which becomes effective May 29, 2008, requires that viatical providers and brokers be licensed by the Insurance Commissioner in order to operate in this state. The bill also expressly authorizes the Commissioner to promulgate emergency rules to implement the new requirements. See WV Code §33-13C-17.

The emergency amendment of subsections 3.1 and 4.1 of the emergency rule will change language pertaining to the licensing requirement deadline for Viatical Settlement Providers and Viatical Settlement Brokers. The current language suggests that Viatical Settlement Providers and Viatical Settlement Brokers must currently have a license and implies that after June 28, 2008 they will not need a license to operate in this state. This was not the intended purpose of this subsection. The intent was to give a grace period to Viatical Settlement Providers and Viatical Settlement Brokers to comply with the licensing requirements and not allow them to operate after June 28, 2008 without having a license. The amendment will change the language "prior to" to "after." The amendment of the emergency rule will also extend the time period for submitting a license from June 28, 2008 to August 1, 2008 to provide Viatical Settlement Providers and Viatical Settlement Brokers time to pull together required application information as well as provide the Insurance Commission more time to process the application information and issue licenses.

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: Viatical Settlements – Title 114, Series 80

Type of Rule:  Legislative  Interpretive  Procedural  Emergency

Agency: Offices of the Insurance Commissioner

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

Phone Number: (304) 558-0401 Email: Timothy.Murphy@wvinsurance.gov

**Fiscal Note Summary**

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

The net fiscal impact of the rule should be nominal to state government. After the initial implementation, the fees for assessments should be adequate to cover any on-going expenses.

**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.

<b>FISCAL YEAR</b>			
Effect of Proposal	Current Increase/Decrease (use “-“)	Next Increase/Decrease (use “-“)	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>	5,000	15,000	10,000
Personal Services	4,500	15,000	10,000
Current Expenses	500		
Repairs & Alterations			
Assets			
Equipment			
Other			
<b>2. Estimated Total Revenues</b>	0	19,000	11,000

**3. Explanation of above estimates (including long-range effect):**

Please include any increase or decrease in fees in your estimated total revenues.

It is projected that 20 Viatical Providers will be licensed each making 4 form filings the first year and 2 form filings subsequent years. Projections also include for the licensure of 50 brokers and 5 entities.

First year expenses consist of the PS and EB costs for the development of company/broker/entity applications, licenses and review processes. Additional PS expenses have been included to provide for system programming to incorporate viaticals in to the existing database systems. (\$4,500 PS + EB) and (\$500 for forms & supplies). Total \$5,000.

First Full Year Fees - \$19,000  
\$600 application X 20 = \$12,000  
4 Forms X \$50 X 20 companies = \$4,000  
50 Brokers X \$50 = \$2,500  
5 Entities X \$100 = \$500

Expenses are PS and EB costs from Fin Con, Rates & Forms and Agents Licensing Division allocated to the regulation of viaticals.

Subsequent Years Fees - \$11,000  
\$300 application X 20 = \$6,000  
2 Forms X \$50 X 20 companies = \$2,000  
50 Brokers X \$50 = \$2,500  
5 Entities X \$100 = \$500

Expenses are PS and EB costs from Fin Con, Rates & Forms and Agents Licensing Division allocated to the regulation of viaticals.

**MEMORANDUM**

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

Date: June 13, 2008

Signature of Agency Head or Authorized Representative

Jane L. Cline, Insurance Commissioner

**TITLE 114  
EMERGENCY RULE AMENDMENT  
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  
EMERGENCY RULE AMENDMENT  
INSURANCE COMMISSIONER**

2008 JUN 13 PM 2:35

**SERIES 80  
VIATICAL SETTLEMENTS**

**§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. -- June 13, 2008

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 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, affiliated with, or under the control of a person licensed under W.Va. Code §33-13C-3 or a person who is licensed as an attorney, certified public accountant or financial planner accredited by a nationally recognized accreditation agency who is retained to represent the viator and whose compensation is not paid directly or indirectly by the viatical settlement provider, provided that the 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.

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

2.3. "Life expectancy " means 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 considering medical records and appropriate experiential data.

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.

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

3.1. A person shall not operate as a viatical settlement provider ~~prior to June 28, 2008~~ after August 1, 2008 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 two hundred fifty thousand dollars 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 two hundred fifty thousand dollars;
- h. A detailed plan of operations;

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

- 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 settlements 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 fees will be required.

3.4. With respect to any person acting as a viatical settlement provider who has filed an application for a viatical settlement provider's license prior to ~~June 28, 2008~~ August 1, 2008, the commissioner may, as determined necessary, issue a provisional license to such an applicant. A provisional license issued pursuant to this section shall expire on the earlier of the expiration date set forth on the provisional license or the issuance of the commissioner's decision granting or denying the license applied for.

3.5. A viatical settlement provider license may be renewed annually by payment of \$300.00 on or before the thirty-first day of May next following the date of issuance. If the expiration date upon first occurrence shortens the period for which a license fee has been paid, no refund of unearned fee shall be made. If the expiration date upon first occurrence lengthens the period for which a license fee has been paid, the commissioner shall charge no additional fee for the lengthened period.

3.6. If a viatical settlement provider fails to pay the renewal fee or fails to submit the reports required in subsection 6.1 of this rule, the nonpayment or failure to submit required

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

reports 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 double the unpaid renewal fee shall be required for any renewal fee received after the due date.

3.7. If a viatical settlement provider has, at the time of renewal, viatical settlements 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 settlements where the insured has not died; or

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

b. Appoint, in writing, either the viatical settlement provider that entered into the viatical settlement, the broker who received commissions from the viatical settlement, 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.

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

4.1. A person or entity shall not operate as a viatical settlement broker ~~prior to June 28, 2008~~ after August 1, 2008 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 two hundred fifty thousand

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

dollars 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 two hundred fifty thousand dollars;

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 advertising and other solicitation materials the broker is using or plans to use in the state; and

h. Samples of all information brochures.

4.3.a. An individual applicant for a viatical settlement broker's license shall pass the Viatical Settlements Brokers Examination. An examination fee of twenty-five dollars 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 more than one year and is in good standing with the Insurance Commission shall be exempt from licensing and examination so long as the viatical settlement activities of the producer are incidental to the producer's insurance business activities.

4.4. The Insurance Commissioner may waive any requirements for an individual's nonresident viatical settlement broker's license 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 the same basis. 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 the same basis.

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

4.6. The commissioner may issue a provisional license to any person who has filed an application for a viatical settlement broker's license prior to ~~June 28, 2008~~ August 1, 2008. A

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

provisional license issued pursuant to this subsection shall expire on the earlier of the expiration date set forth on the provisional license or the issuance of the commissioner's decision granting or denying the license applied for.

4.7. In addition to the information required in W. Va. Code §33-13C-3, the commissioner may ask for other information necessary to determine whether 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 two hundred dollars for an entity license and fifty dollars 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. If the expiration date of the license would upon first occurrence shorten the period for which a license fee has been paid, no refund of unearned fee shall be made. If the expiration date of the license would upon first occurrence lengthen the period for which a license fee has been paid, the commissioner shall charge no additional fee for the lengthened period. The license may be renewed annually by payment of two hundred dollars for an entity license and fifty dollars 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. A viatical settlement broker that fails to pay the renewal fee or fails to submit the reports required in subsection 6.2 of this rule shall result in 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 double the unpaid renewal fee 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 biennium.

b. Each continuing education biennium shall begin on June 1, 2008 and end two years later, unless otherwise set by the commissioner to comply with uniformity standards established by the National Association of Insurance Commissioners.

c. An individual who fails to comply with this 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.**

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

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

- 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.

5.3. In order to assure that viators receive a reasonable return for viaticating an insurance policy, the viatical settlement contract shall not provide a payment to the viator for a terminally or chronically ill insured that is unreasonable or unjust. In determining whether a payment is unreasonable or unjust, the commissioner's consideration shall include, but not be limited to, the following factors:

- a. The face amount being purchased;
- b. Any policy loan in effect on the policy being purchased;
- c. The life expectancy of the insured at the time of purchase;
- d. The age of the insured at the time of purchase;
- e. The future premiums that must be paid to minimally keep the policy in force;
- f. The cash surrender value or accelerated death benefit available from the policy;

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

- g. An allocation of internal costs relating directly to the acquisition of the policy;
- h. The payment of any commission, fee and any other expense paid to a viatical settlement broker or any other external party;
- i. Any future interest payments for any borrowing of the funds needed to purchase the policy;
- j. The applicable rating at the time of purchase of the insurance company that issued the subject policy by a rating service generally recognized by the insurance industry, regulators and consumer groups;
- k. The prevailing discount rates in the viatical settlement market in this state, or if insufficient data is available for this state, the prevailing rates nationally or in other states that maintain this data;
- l. Whether the policy is within the contestable period; and
- m. Other charges not explicitly noted in the above list.

**§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 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 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;

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

7. Net amount paid to viator;
8. Source of policy (B-Broker, D-Direct Purchase, O-Purchased from individual or entity other than the original viator);
9. Type of coverage (I-Individual or G-Group);
10. Whether or not the viatical settlement 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 settlements (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

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

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 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 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 prescribed by the National Association of Insurance Commissioners in Appendix C of the model regulation. A copy of the format is available on the Insurance Commission website.

**§114-80-7. General Rules.**

7.1. With respect to policies containing a provision for double or additional indemnity for accidental death, the additional payment shall remain payable to the beneficiary last named by the viator prior to entering into the viatical settlement contract, or to such other beneficiary, other than the viatical settlement provider, as the viator may thereafter designate, or in the absence of a beneficiary, to the estate of the viator. This additional payment for accidental death shall not be purchased by or designated to the viatical settlement provider under any circumstances.

7.2. Payment of the proceeds of a viatical settlement 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.

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

7.3. Payment of the proceeds payable to the viator pursuant to a viatical settlement 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.

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

7.5. 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.

7.6. If a viatical settlement provider enters into a viatical settlement 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.

7.7. 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.**

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

8.1. Each contract, application, brochure and proposal shall be filed with the commissioner for approval under 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.

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 unless filed with and approved by the Commissioner. Marketing materials that are directed at brokers, financial advisors and other persons other than prospective viators must be filed with the Commissioner prior to use but is not subject to prior approval; such marketing materials are subject to the same requirements

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

applicable to advertisements as set forth in W. Va. Code §33-13C-13.

**§114-80-10. Disclosure.**

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.

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

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

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 shall not act also as a viatical settlement broker, whether entitled to collect a fee directly or indirectly, in the same viatical settlement.

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, 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 license 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 in writing.

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

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.