

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

Form #3

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2008 AUG 14 PM 3:56  
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-17, 33-13C-3(b), 33-13C-5(b) and 33-13C-12(d).

AMENDMENT TO AN EXISTING RULE: YES \_\_\_\_\_ NO X \_\_\_\_\_

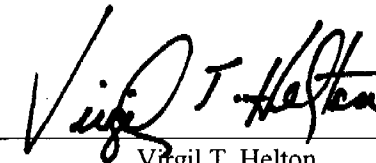
IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 80

TITLE OF RULE BEING PROPOSED: Viatical Settlements

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

**VIATICAL SETTLEMENTS**

**TITLE 114, SERIES 80**

**BRIEF SUMMARY OF RULE**

This proposed new legislative rule, which would regulate companies operating in the business of viatical settlements, is based on a model regulation adopted by the National Association of Insurance Commissioners in 2004. The rule

--establishes standards that are to be followed by viatical settlement companies conducting business in this state.

--recognizes the licensing requirements for a viatical settlement provider or broker to submit to the Insurance Commissioner before a license can be obtained.

--provides standards for reasonable payments to terminally or chronically ill insureds, requires that payouts be based on life expectancy, and sets out factors the Commissioner shall consider to determine whether a payment is unreasonable or unjust.

--lists the reporting requirements a viatical provider or viatical settlement broker must submit annually to the Insurance Commissioner 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.

--provides requirements regarding payments of viatical settlements as well as payments to a broker.

--provides the provisions required to be in a contract for a viatical settlement.

--prohibits any type of discrimination in making or soliciting settlements or between viators with or without dependents.

## 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:** August 14, 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

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

**1. Authorizing statute(s) citation:**

WV Code §§33-2-10, 33-13C-17, 33-13C-3(b), 33-13C-5(b) and  
33-13C-12(d)

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

June 13, 2008 - 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:**

Comment period ended July 14, 2008.

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

Attached   X   No comments received       

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

August 14, 2008 (following public comment period).

- 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  
West Virginia Insurance Commission  
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:

N/A

- 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

ATTACHMENT TO QUESTION 2 (d):

Multiple comments from multiple sources – 2 major industry groups, the Life Insurance Settlement Association (LISA) and the American Council of Life Insurers (ACLI), as well as individual providers and brokers -- were received regarding the newly proposed rule Title 114, Series 80 on Viatical Settlements. Below you will find the written responses of the Insurance Commissioner to the public comments received in regard to the newly proposed rule, which was filed with the West Virginia Secretary of State for public comment on June 13, 2008. The comments received by the interested parties were thoroughly reviewed, considered and addressed herein.

General Comments

- Comments were received pertaining to the use throughout the rule of the term “viatical settlement,” “viator,” and similar terms that the commenter sees as confusing to the average reader. It is suggested that the rule use plain language such as “life settlement,” or “owner” in place of such terms. The Commissioner believes that the rule should be consistent with the statutory language found in W.Va. Code §33-13C-1 *et. seq.* which uses the terms “viatical settlement,” “viator” and other similar terms that are defined in §33-13C-2. Therefore, the Commissioner does not propose to make the suggested definitional changes.

- Several comments were received about the imposition of criminal penalties in the statute solely against viators and requested clarification how this would be implemented. The Commissioner acknowledges that the use of the term “viator” in W. Va. Code 33-13C-16(a) was the result of a drafting error but that she is unable to use a rule to override it. It is, however, the intent of the Commissioner to revisit this area during the next legislative session and to propose amendments to the statute. Therefore, the Commissioner will not address this issue in the rule at this time.

§114-80-2. Definitions

- Comments were received with regard to the definition of “escrow agent” found in §114-80-2.1. One commenter contends that the proviso located in the definition makes the definition and the prohibited activity unclear and suggests that the proviso be struck. Another believed that a broker should be included as a party to the escrow agreement and that the broker’s commission be paid directly by the independent escrow agent according to the commission agreed to in writing by the viator. The Commissioner agrees that the definition is unclear and that the viatical settlement broker should be a party to this agreement as the broker is generally paid from the funds put into escrow by

the viatical settlement provider. The provisions regarding how the escrow procedures work will be addressed in section 8 and disclosures regarding escrow services will be addressed in section 10 of this rule. The Commissioner changes the definition to read as follows:

*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 ~~a~~ 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 ~~who is retained to represent the viator and~~ whose compensation is not paid directly or indirectly by the viatical settlement provider, ~~provided that the~~ 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).*

- 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.

- Comments were submitted that the references to a brochure to be distributed and approved in §114-80-8.1 needs to be clarified as to whether this brochure is the NAIC brochure, one West Virginia intends to adopt, or one required to be disclosed by Viatical Settlement Providers, along with a proposal, in §114-80-10. The Commissioner agrees that clarity is needed and states that the brochure to be distributed is the NAIC brochure format. The rule will be amended by adding a definition to the rule at §114-80-2.6 to read as follows:

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

- A comment was received that the term "proposal" used throughout the rule is not made clear until subsection 10.1 of the rule. The Commissioner feels that a definition of "proposal" in section 2 of this rule would eliminate confusion. The Commissioner adds a definition for "proposal" to read as follows:

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

- A comment was received that the term "viatical settlement contract" (which is defined in W. Va. Code §33-13C-2(13)) should be used throughout the rule in place of the term "viatical settlement." The Commissioner agrees that the suggested change should be made and will add "contract" after every reference to "viatical settlement."

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

- A comment was received regarding the evidence of minimum equity of not less than \$250,000 in cash or cash equivalents reflected in an applicant for licensee's audited financial statements or through a surety bond in the amount of \$250,000 found in subdivision 3.2(g) of this section. The suggestions by commenters are to lower the dollar threshold required or allow alternative means of satisfying this requirement by way of Errors & Omissions coverage, letters of credit, etc. The Commissioner declines to make this change due to the clarity of the statutory requirement that viatical settlement providers are required to have this financial requirement reflected in audited financial statements or a surety bond.

- A comment was made about the anti-fraud plan that has to be submitted by a broker (in subdivision 3.2(i)) and provider (in subdivision 4.2(e)) to the OIC in order to obtain a license. LISA feels that a safe-harbor should be offered to brokers and providers following these plans and suggests that "a good faith effort to review that plan will be a significant obligation of all parties as that may determine the outcome of potentially thorny and even criminal issues [and] that the meeting of the requirements of the law will involve judgments that are important and exceed routine review because of the penalties for consumers contained in statute.... Brokers filing such plans will need to do so with great care and consultation with the OIC." The Commissioner is not certain what LISA is suggesting, but believes that in essence it is a request for some sort of immunity. The Commissioner notes that the anti-fraud plan concept is similar to that contained in other laws such as the federal money laundering statutes, 31 U.S.C. §5318(h)(1), in which a plan is required without a concomitant grant of a "safe-harbor" of any sort. The Commissioner declines to amend this section.

- A broker commented that a subsection should be inserted in this section that clarifies the scope of the license as it is in the NAIC model act. The commenters felt that the statement "authorized to act under the license" wasn't clear as to who exactly that includes and therefore feel that clarification is needed. The Commissioner agrees that additional clarity is necessary as to who is covered by a license and agrees to add the recommended subsection to read as follows:

3.7. 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.

- Numerous comments were received regarding the evidence of minimum equity of not less than \$250,000 in cash or cash equivalents reflected in the audited

financial statements or through a surety bond in the amount of \$250,000 required for viatical settlement brokers in §114-80-4.2(d). The bond requirement is specifically established by statute and cannot be altered by rule. However, although the Commissioner declines to change the bond requirement, she notes that this is a topic that may be revisited during the next legislative session.

- One comment was received regarding the samples of advertising required to be filed with an application for viatical settlement brokers in subdivision 4.2(h). The commenter asks if this requires brokers to provide materials that have been given to them by a provider in the industry, what the criteria for review are or other facts to be considered in providing these samples, and what will qualify as an adequate sample. The commenter also states that it is not clear how such materials will be used in the context of broker activity and asks if it would be necessary that producers describing settlements and using materials provided by life insurers file such materials. The Commissioner notes that “advertising,” as defined in W. Va. Code §33-13C-2(1), applies to communications aimed at prospective viators, and the statutory provisions are sufficiently detailed. The Commissioner believes that a filing requirement is unnecessary for brokers and agrees to delete the subsection.

~~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 to be provided to prospective viators.~~

- Numerous comments were made pertaining to §114-80-4.3(b) that states that a life insurance producer who holds a life license for more than a year and whose viatical activities are only “incidental” to insurance business needs to be licensed. The comments are that the term “incidental” needs to be defined. One comment points out that there is a requirement that providers only deal with licensed brokers and wants to know how a provider will know with certainty whether a broker claiming an exemption is in fact exempt. Commenters found confusion in what parts of the rule such producers would be exempt from, all or part of the rule. For example, they want to know if producers under this exemption still have to take an exam, abide by reporting requirements, maintain anti-fraud plans or maintain a surety bond. They state that if they are still required to do these things then many producers would be disinclined to do so for a transaction that will only represent an incidental part of their business. Commenters felt clarity was needed on what number of viatical settlement cases a producer could involve themselves in and still fall within the incidental exemption.

One commenter suggests extending the amount of time a life insurance producer must have their license from one year to five before engaging in settlement activities without a viatical settlement license and training. They feel that these types of transactions have evolved into a rather complex transaction and that consumers in West Virginia would be better served by a producer who has a viatical settlement license and is thus familiar with the viatical settlements laws and disclosure requirements.

Another commenter states that they feel the public is better served when settlements are handled by or through firms that specialize in the business and that by allowing producers who make settlements only an incidental part of their business to broker settlements favors the life settlement provider to the disadvantage of the consumer. This commenter encourages the consideration of a licensing policy that would allow producers who intend to conduct settlements as an incidental part of their business to participate in brokering settlements only by registering and working with a licensed and insured settlement brokerage. They state that under this type of system, the licensed viatical settlement broker would be responsible for maintaining errors and omissions coverage to cover the producer thus satisfying the need to assure that participants in the transaction are financially responsible while, at the same time, removing a strong impediment to a producer's consideration of a settlement as a possible option for their client. Also, the licensed viatical settlement broker would bear responsibility for reporting the transaction to the OIC and thus better assure comprehensive reporting of settlements within the state.

The Commissioner agrees that clarity is needed with regard to the term "incidental" as well as what is required of a producer who falls within that exemption. The Commissioner also agrees that a longer period of licensure is needed for a producer involved in these transactions to ensure that consumers are receiving competent assistance. Therefore, the Commissioner will change the subsection as follows:

*4.3. (b) An applicant who holds or has held a life insurance producer's license for ~~more than one year~~ at least five years and is in good standing with the Insurance Commission shall be exempt from the licensing ~~and examination~~ continuing education requirements set forth in subsection 4.10 and W.Va. Code §33-13C-3(g) ~~so~~ 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.*

- Comments were received regarding subsection 4.4 as to what requirements the Commissioner will waive for an individual non-resident applicant. The commenter asks if only the examination requirement will be waived or will other requirements be waived as well. One commentor stated that the education provisions for non-residents in this subsection are misplaced and confusing, that only one state currently has any continuing education requirements, and that the requirement may confuse many potential applicants. The Commissioner believes that the intent of the Legislature was that all brokers, both resident and nonresident, be subjected to essentially equivalent measures of competency. The Commissioner changes the subsection to read as follows:

*4.4. The Insurance Commissioner may waive any ~~requirements~~ requirement for an individual's nonresident viatical settlement broker's*

license, including the examination and continuing education requirements, for an applicant with a valid license from his or her home state if the applicant's home state awards nonresident licenses to residents of this state on a reciprocal ~~the same~~ basis. For instance, an ~~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.

- Comments were received that a subsection should be inserted in this section that clarifies the scope of the license as it is in the NAIC model act. The commenters felt that the statement "authorized to act under the license" wasn't clear as to who exactly that includes and therefore feel that clarification is needed. They suggest adding a subsection to read as follows: "A license issued to a legal entity 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.*" The Commissioner agrees that confusion can be drawn as to who is authorized to act and agrees to add the recommended subsection to read as follows (all remaining subsections renumbered accordingly):

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.

- Comments were received regarding subsection 4.6 (now subsection 4.7 with the addition of a new subsection 4.6) of this rule, which provides that the Commissioner may ask for information other than that expressly set forth in the Code in order to determine whether the licensing criteria have been met. One commenter asks whether the additional information is limited to that required by subsection 4.2. Another states that the Commissioner should be required to issue a license to any individual qualified by meeting the requirements of this rule and that there should be no element of discretion, stating further that "other information" is too vague. The Commissioner responds that there may be instances, however rare, in reviewing application materials that additional information may be needed and she therefore wishes to clearly reserve the right to obtain such information. The Commissioner agrees to add language to this subsection to make it clearer and to perhaps alleviate concerns that this will happen with every applicant. The Commissioner changes the subsection to read as follows:

~~4.67.~~ *In addition to the information required in W.Va. Code §33-13C-2 and subsection 4.2 of this section, the Commissioner ~~may reserves~~ the right to ~~ask for~~ request other information, as determined necessary ~~to~~ determine for issuance of a license, to ensure ~~whether that~~ the applicant for a license as a viatical settlement provider or a viatical settlement broker complies with W.Va. Code §33-13C-3*

- A comment was received on subsection 4.9(a) (now subsection 4.10 with the addition of a new subsection 4.6) of this rule pertaining to the continuing education requirements for viatical settlement brokers. The commenter believes that the continuing education requirements are not available in the market for settlement-specific information and the rule is not clear as to the content of the continuing education requirement. W.Va. Code §33-13C-3(g) specifically requires that brokers complete 15 hours of viatical settlement training biennial. Due to the complexity of the field and the recent increase in the level of regulation across the country, the Commissioner believes a degree of flexibility is needed to provide an adequate the continuing education program in this field and therefore changes the rule to permit her to post the specific provisions of the program on her website rather than setting forth a more specific program in rule.

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

*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.~~*

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

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

- Two comments were received pertaining to this section. ACLI suggested deleting the words “terminally or chronically ill insureds,” stating that W.Va. Code §33-13C-1 *et. seq.* applies to *all* settlement transactions, not just those situations in which the consumer is terminally or chronically ill. LISA opposes these provisions in their entirety on the ground that the Code does not require them and these provisions have not benefited terminally ill consumers in states with similar laws. The Commissioner notes that the NAIC model on which this rule is based presents the reasonableness tests in subsection 5.1 and subsection 5.3 as options and also limits their applicability to contracts with terminally or chronically ill persons. The objective test in subsection 5.1 sets minimum benefit levels for viators with less than 25 months to live, while the more

subjective test in subsection 5.3 provides a laundry list of factors to consider whenever the reasonableness of any contract is called into question. The Commissioner recognizes that these two options, as written, cannot coexist; if a contract satisfied the objective criteria in subsection 5.1, it would presumably be deemed reasonable. The Commissioner also believes that the objective criteria provides a necessary protection to the most vulnerable group of viators, the chronically and terminally ill, and it will be retained.

*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 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;*~~

~~*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

• Comments were received regarding the reporting requirements of this section. One commenter noted that the provision requiring reporting of a settlement purchased from another party, found in paragraph 6.1(a)(8) of this rule, is not a viatical settlement as defined in the law. This commenter does not understand the merit of filing the type of funding for the purchase in an annual report found in paragraph 6.1(a)(12) and believes that there is no reason for the requirement that providers report to the OIC on the future maturity of the policy. This commenter also urges the OIC to reconsider the provisions regarding reporting by brokers because the costs of such reporting may be insurmountable and, further, that the NAIC model form referred to in the rule is not in conformance with the reporting of the transactions limited to West Virginia residents. Another commenter states that the requirement to disclose the source of a policy, including whether the source was a broker, should not be required and that the specific name and address of each such broker should not be included in the annual report as this information is considered competitive and confidential. This commenter suggests that instead providers be required to retain this information and to make it available to the OIC upon request in a separate and confidential filing. The Commissioner agrees that a settlement purchased from a party other than a viator would not constitute a “viatical settlement contract” as defined in the statute and therefore strikes the term “O – Purchased from individual or entity other than the original viator” in paragraph 6.1(a)(8). The Commissioner also agrees to revise the reference to the NAIC format and to instead to develop a form to be posted on the OIC website.

~~[6.1(a)]8. Source of policy (B-Broker, D-Direct Purchase, O-Purchased from individual or entity other than the original viator);~~

...

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 ~~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

- LISA commented that insurers make no provisions for assignment of additional benefits back to the account of the original owner and that in the current circumstances, such benefits simply vanish, benefiting no party. The Commissioner agrees that this provision, found in subsection 7.1, is unnecessary and it will be deleted in its entirety (remaining subsections renumbered accordingly).

~~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.~~

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

- Two comments were received in regard to subsection 8.1 of this section which states that “each contract, application, brochure, and proposal shall be filed with the commissioner for approval under W.Va. Code §33-13C-5.” The first comment was addressing what the term “proposal” meant; this has been addressed by adding a definition of “proposal” to section 2 of this rule. The second comment, which was from LISA, was that requiring every contract to be filed and approved would lead to an unreasonable level of micromanagement. LISA suggests that the rule require the filing of only contract and application forms. LISA also stated that it is unclear if brokers may file application forms. The Commissioner agrees with LISA’s comments and will change the subsection to require only the contract or application forms be filed for approval by providers. The subsection will be changed to read as follows:

~~8.1. Each~~ Every viatical settlement provider shall file for approval with the Commissioner each contract form, application form, brochure and proposal shall be filed with the Commissioner for approval under disclosure statement form pursuant to W.Va. Code §33-13C-5.

- A comment was received urging the OIC to allow brokers to be a party to the escrow agreement and to add provisions requiring that the brokers be paid directly out of escrow instead of directly by the provider. The commenter explained that, while the gross purchase price offered by a settlement provider for a policy is intended to provide sufficient funds to pay both the viator and broker, in practice providers routinely pay the

net proceeds payable to the viator into escrow and then hold back the broker's compensation. Allowing providers to pay brokers directly outside of the escrow process opens the door for the type of collusion and deal making alleged by the New York Attorney General in his suit against a leading settlement provider. The commenter believes that the broker should be a party to the escrow agreement and that the broker's commission be paid directly by the independent escrow agent according to the commission agreed to in writing by the viator. He notes that the Ohio law clearly spells out the escrow procedure that assures that provider and broker remain at arm's length. The Commissioner agrees to insert provisions that proceeds be paid into escrow and the broker be paid by the escrow agent.

[8.2]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.

#### §114-80-9. Advertising and Marketing

- Comments were received regarding the requirement that advertising be filed with and approved by the Commissioner before use and that marketing materials not directed towards viators be filed with the Commissioner prior to use but not subject to approval. Commenters state that the requirement to file advertising materials with the Commissioner applies only to advertising directed at prospective viators. They state that the requirement that any advertising be filed and approved is burdensome and unreasonable. The Commissioner agrees that "advertising" is by definition limited to communications aimed at prospective viators, and the rule will be changed accordingly. The Commissioner feels that the purpose behind W. Va. Code §33-13C-12(d) can be accomplished by the filing of advertising samples with the license and renewal applications and retention of all advertising for five years after last use. The section is changed to read as follows:

*A person may not use any advertising directed at prospective viators unless filed with ~~and approved by~~ 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 that ~~are~~ directed at brokers, financial advisors and ~~other~~ persons other than prospective viators ~~must do not have to~~ be filed with the Commissioner prior to use ~~but is not subject to prior approval; such~~*

~~marketing materials are subject to the same requirements applicable to advertisements as set forth in W.Va. Code §33-13C-13.~~

#### §114-80-10. Disclosure

A comment was received urging the OIC to allow brokers to be a party to the escrow agreement and to add provisions requiring that the brokers be paid directly out of escrow instead of directly by the provider. In doing so, additional disclosures will need to be made regarding escrow services. The commenter suggests adopting provisions recently enacted Ohio House Bill 404 which clearly spells out the escrow procedures so as to assure the provider and broker remain at arm's length. The Commissioner agrees that brokers should be a party to the escrow agreement and that change was added in section 2, "Definitions." The Commissioner also added provisions in section 8, "Contracts and Payments of Proceeds," which set out the escrow procedure. In keeping with these changes, the Commissioner adds the following subdivision h to subsection 10.1 with regard to the disclosure requirements to viators:

*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.*

#### 114-80-12. Insurance Company Practices

- Numerous comments were received pertaining to subdivision 12.1(a) which states that 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 broker within 30 days of the date a request is received, subject to certain conditions, one of which being that a "license signed by the policy owner or certificate holder" accompanies the request. The comments state that clarification is needed with regard to the term "license" as they are unsure what license this subdivision is referring to. The comments state that this must be an error as they do not foresee a viator being licensed. One commenter states that in the NAIC model regulation the term "certificate of authority" is used instead of the term "license" and question if that is what is meant here. The Commissioner agrees that this is a drafting error and the subsection will be changed to comply with the NAIC model:

*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 viatical settlement broker within thirty calendar days of the date a request is received, subject to the following conditions:*

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

- Two comments were received regarding subsection 12.2 which states that “nothing in this subsection shall prohibit a life insurance company and a viatical settlement provider or viatical settlement broker from using another verification of coverage form that has been mutually agreed upon in writing.” The commenters want to know what would qualify as a written agreement that a verification of coverage was acceptable to the life company and the provider and whether there even has to be an agreement in writing. The Commissioner responds by noting that a life insurance company *must* respond to a request that is in the format detailed in subdivision 12.1(b) (use of NAIC request form), but that a life insurance company is free to make different arrangements with respect to responding to requests from providers and brokers. The Commissioner changes the subsection to remove the requirement that such an arrangement be in writing.

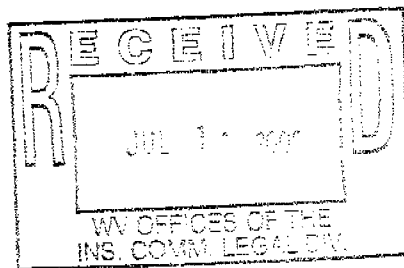
*12.2. Nothing in this section shall prohibit a life insurance company and a viatical settlement provider or a viatical settlement broker from using another verification of coverage form that has been mutually agreed upon ~~in writing~~.*



Leah J. Walters  
Counsel, State Relations

July 9, 2008

Mr. Timothy R. Murphy  
Associate Counsel  
Offices of the Insurance Commissioner  
P.O. Box 50540  
1124 Smith Street  
Charleston, WV 25305



RE: Proposed Series 80, Viatical Settlements

Dear Mr. Murphy:

This letter is submitted on behalf of the American Council of Life Insurers (ACLI), a national trade association of legal reserve life insurance companies whose 353 member companies account for 93 percent of total assets, 93 percent of the life insurance premiums, and 94 percent of annuity considerations in the United States. Two hundred and eighty four ACLI member companies are licensed to do business in West Virginia and account for 93 percent of life insurance premiums and 97 percent of annuity considerations. ACLI appreciates the opportunity to comment on the above-captioned proposed Rule regarding Viatical Settlements.

ACLI was a strong supporter of West Virginia Senate Bill 704 and applauds the Insurance Department for continuing to move forward regarding the implementation of this very important piece of legislation. ACLI does have a few comments regarding this proposed rule, which are listed below by section number.

§114-80-2: ACLI has noticed that West Virginia's definition of "escrow agent" is consistent with the Ohio definition of "escrow agent" (Ohio viatical settlement bill, HB404). ACLI agrees with that definition and recommends that West Virginia also use the Ohio definition of "life expectancy," with an expansion in it to include a portion of the Ohio definition of "life expectancy provider," as the two really do need to go together. So our recommended definition of "life expectancy" would look like the following:

"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.

§114-80-4.3(b): Subsection 4.3 exempts a life insurance producer from the viatical settlement license requirements if the producer has held a producer's license for more than one year and is in good standing. ACLI recommends that West Virginia go a bit further and either delete this section in its entirety or amend this section to provide that life insurance producers must have their license for five years before engaging in such settlement activities without a viatical settlement license and training

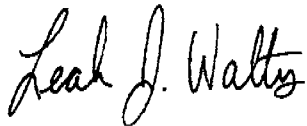
Viatical settlement transactions have evolved into a rather complex transaction since the days of life settlements for those terminally or chronically ill. Consumers in West Virginia would be better served by a producer who has a viatical settlement license and is thus familiar with the viatical settlements laws and disclosure requirements.

§114-80-5: ACLI recommends deleting the words "terminally or chronically ill" from this entire section. Senate Bill 704, which was signed by the Governor, applies to ALL settlement transactions, not just those situations in which the consumer is terminally or chronically ill. Thus, removing this language will make this regulation consistent with your new laws and thus applicable to all settlement transactions.

§114-80-12: Subsection 12.1(a) provides that the request sent to the life insurance company shall include "a license" signed by the policy owner. The NAIC Model provides that the request shall include "a current authorization." Is a "license" the same thing as a "current authorization?" If not, can you please explain what a "license" is?

Again, thank you for the opportunity to comment on this proposed Rule. If you have any questions regarding these comments, please feel free to call me directly at the number listed below.

Sincerely,

A handwritten signature in cursive script that reads "Leah J. Walters".

Leah J. Walters  
Legislative Director - Mid-Atlantic States

**ACLI**  
Financial Security For Life

420

AMERICAN COUNCIL OF LIFE INSURERS  
101 CONSTITUTION AVENUE NW, SUITE 700  
WASHINGTON, DC 20001-2133

Mr. Timothy R. Murphy  
Associate Counsel  
Offices of the Insurance Commissioner  
P.O. Box 50540  
1124 Smith Street  
Charleston, WV 25305



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J.G. WENTWORTH LIFE SETTLEMENTS, LLC  
40 MORRIS AVE.  
BRYN MAWR, PA 19010

July 14, 2008

Tim Murphy, Esq.  
West Virginia Insurance Department  
Financial Conditions Division  
1124 Smith Street  
Charleston, WV 25301

Mr. Murphy:

Below are comments to the Emergency Rule recently promulgated by the West Virginia Insurance Commissioner.

1. General Comment – the use throughout the rule and related documentation of the term “viatical settlement,” “viator,” and similar terms is language that confuses the average reader. Suggest the use of plain English terms.
2. General Comment – The Emergency Rule indicates that a provisional license may be issued to providers who have made an application prior to June 28, 2008. We would ask that this time period for application be extended through August 1, 2008 at a minimum to provide sufficient time to gather necessary application materials.
3. General Comment – The law and the rules require that the provider distribute an informational brochure to the viator. Please clarify if the NAIC version is acceptable, or alternatively if West Virginia intends to adopt its own version.
4. General Comment – §33-13C-16. Criminal provisions

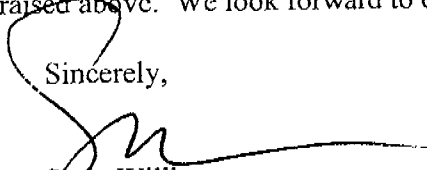
The criminal provision as drafted is very broad. The legislature has imposed criminal sanctions against viators and other constituents for violations of the statute regardless of intent or effect. It would be helpful for the Insurance Department to provide clarity as to enforcement of provisions so that consumers, advisors and other constituents can better weigh the consequences of a transaction.

5. §114-80-2 Definitions - Definition of life expectancy ("LE"):  

LE determination is a principles-based process. It is not a rules-based process that can be reduced to simple language. Citizens would be better served if West Virginia licensed those LE firms that evidence professional competence in this discipline.
6. §114-80-3 – 3.2(g) – Recommend that West Virginia accept Errors & Omissions coverage in the amount \$3,000,000.00 in lieu of cash or surety requirements.
7. §114-80-4.3(b) – States that a life insurance producer who holds a life license for more than a year and whose viatical activities are only incidental to insurance business need not be licensed. Need to define "incidental". There is a requirement that providers only deal with licensed brokers. How will a provider know with any certainty whether a broker claiming an exemption under this section is in fact exempt?
7. §114-80-12.1(a) – States that an Insurance Company must respond to verification of coverage (VOC) requests that are accompanied by a license signed by the viator. This appears to be an error as we do not anticipate that viators would have a license.

We would appreciate your guidance with respect to the questions and comments raised above. We look forward to doing business in West Virginia.

Sincerely,



Scott Willkomm

**Sarah Chapman**

---

**From:** Timothy Murphy  
**Sent:** Tuesday, June 24, 2008 2:06 PM  
**To:** Sarah Chapman; Joy Zirkle  
**Subject:** FW: West Virginia Viatical Settlement Rules Public Comment  
**Attachments:** Timothy Murphy (Timothy.Murphy@wvinsurance.gov).vcf

we'll consider these to be official comments

Timothy R. Murphy  
 Associate Counsel  
 West Virginia Insurance Commission  
 Legal Division  
 P.O. Box 50540  
 Charleston WV 25305-0540  
 phone 304-558-6279 ext 1210  
 fax 304-558-1362

---

**From:** Egrin, Stuart [mailto:EgrinS@invescor.com]  
**Sent:** Tuesday, June 24, 2008 1:55 PM  
**To:** Timothy Murphy  
**Cc:** Egrin, Stuart  
**Subject:** West Virginia Viatical Settlement Rules Public Comment

Tim,

It was good to speak with you yesterday. As requested, please consider this email as our "public comment" on the West Virginia Viatical Settlement Rules.

114CSR80  
 Title 114  
 Emergency Rule  
 Insurance Commissioner  
 Series 80  
 Viatical Settlements – Comments

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

4.1 Are cases in process prior to 6/28/2008 okay to complete or does this only apply to new cases on or after 6/29/2008? If a case is in process which may meet the definition of "incidental" and may only generate a commission of let's say \$5,000 it may deter a person from completing the transaction which may have been in the best interest of the West Virginia viator if they have to come up with a \$250,000 bond which may cost \$5,000 or more.

4.3 b. If the life insurance producer holds a license for more than one year and is in good standing what part(s) of the rule would they be exempt from, all or only part? If part which one(s)? Currently the wording says "exempt from licensing and examination". Would that mean exempt from the exam but would still have to comply with submitting items 4.2 a, b, c, g, and h?

How does one go about determining if viatical settlement activities of the producer are in fact "incidental" to the producer's insurance business activities? A viatical settlement is a complex transaction with many steps involved. It may take 4-6 months to complete. It has been suggested that only 1 in 5 cases submitted for settlement actually are funded. Would "incidental" be based on number of applications submitted, number of cases funded, or would

8/14/2008

it be based on some proportion of a producer's business? If based on a proportion of a producer's business, then would it be based on a percentage of the volume of business they produce, either as submitted or closed? How would this apply to new producers, for example if a relatively new producer sells 2 life insurance policies, then wants to conduct a life settlement, it would appear that this is 1/2 of their business?

4.4 Not all states require \$250,000 minimum equity or bonds in order to be in the viatical settlement business. Not all states require specific viatical settlement CE requirements. So if a particular state has less stringent licensing requirements for West Virginia non-resident agents to comply with will West Virginia expect compliance with even more stringent requirements by those non-resident agents?

What parts of the licensing requirements, if any, will the Insurance Commissioner waive? Will it be simply the examination requirement or will it also include the waiving of items 4.2 a, b, c, g, and h? (The second sentence of 4.4 should really be part of 4.10. and 4.5 should be part of 4.3 a.)

4.6 is just the filing of VSB-2 correct or is it more entailed than that?

#### 114-80-8 Contracts and Payment of Proceeds

8.1 "proposal" is not defined until 114-80-10 Disclosure 10.1 this caused us some concern until we found out that this was a provider document and not a broker document

#### 114-80-12 Insurance Company practices

12.2 would an insurance company and a viatical settlement broker have to have an agreement in writing in order for the broker to submit a Verification of Coverage form to the insurance company that is substantially similar to the format prescribed by the NAIC, or would any VOC form submitted and returned by the insurance company properly completed to the broker verify mutual agreement in writing?

#### Viatical Settlement Act Code

33-13c-5 states the commissioner may require the submission of advertising material, the emergency rule states in 114-80-4 4.2 g this must be done at the initial licensing stages. Are they in conflict or is this just a clarification?

33-13C-3 Licensing (a) (3) (g) At this time does your state require 15 hours of training related to viatical settlements and viatical settlement transactions? There are not many settlement CE programs available that I am aware through traditional continuing education vendors. There are industry sponsored conferences such as those conducted by the Life Insurance Settlement Association (LISA) or webinars conducted by viatical settlement providers such as Life Settlement Solutions which cover the subject matter. Would these meet your state's requirements?

33-13C-3 Licensing (a) (1) (f) a viatical settlement broker shall provide to the commissioner new or revised information about ... officers... or designated employees... the commissioner also has the authority to require the applicant to fully disclose the identity of all ... employees... is there a particular form that must be filled out or can it be sent in as a disclosure letter? What information would be necessary to include? Which employees would this requirement apply to? In our firm we do not conduct business directly with the public. We act as a "back office" to producers. We have internal sales people who interact with these producers, marketing people who interact with agencies and institutions such as broker dealers, legal and compliance people, operations people who handle the paperwork, interact with the settlement providers and producers, contracting and licensing people, people who input information into software to determine valuations and to produce illustrations, administrative people, financial people, and technology people. Would any of those be included or excluded from disclosure? Would it depend on how they were compensated or who they interacted with? It is unclear as to the application of the definition found in 33-13C-2 (2) Definitions – Business of viatical settlements. Would this only apply to the producer who directly interacts with West Virginia viators, or would it go beyond that?

33-13C-5 Forms - Your state requires the filing or submission of advertising material that a viatical settlement broker may use as 114-80-4 4.2 g states this must be done at the initial licensing stages. Is there a particular department that forms are filled with?

33-13C-8 (a) (9) Disclosure to Viator - is the brochure the NAIC brochure or does your state have a specific one they have created?

33-13C-3 Do viatical settlement brokers have to file with your state an antifraud plan or simply have one in place?

Other states have addressed consumer protection by requiring producers to have E & O coverage. In order to serve residents of the state of West Virginia it is possible that the \$250,000 bond requirement will be cost prohibitive for some producers. In order to be able to offer the settlement option to residents of the state of West Virginia has there been any discussions about replacing the bond requirement with an E & O requirement? Brokers are not in possession of viator's settlement funds. The settlement funds are sent directly from the escrow agent the provider uses. The only funds the broker receives are the commissions paid to them by the escrow agent after the rescission period has expired.

33-13C-16 Criminal Penalties- No other state imposes criminal penalties, felonies, on viators (policyowners) as does the current version of the West Virginia Viatical Settlement regulations. Have there been any discussions about addressing this?

33-13C-11 Prohibited Practices – In order to preserve and protect the policy owner's rights granted in the life insurance policy's provisions, that being the right to name a new owner on a revocable or irrevocable basis has there been any discussions about reducing the time period in which a West Virginia resident can settle a policy from 5 years to 2 years? In order to address insurable interest issues a life insurance company can invoke the contestable clause in the contract. Essentially, the life insurance company can challenge any claim or can void the policy for various reasons during this time period which is 2 years from policy issue. Since a licensed and insurance company appointed producer would first have to interact with a West Virginia resident, describe a policy, illustrate a policy, fill out an application, submit it to the insurance carrier, from there a the carrier goes through their underwriting process before deciding on whether they are willing to accept the risk and the pricing of the policy. Clearly this gives the insurance company time before the policy is issued plus an additional 2 years after issuance to challenge the policy to include insurance interest issues. An additional 3 years on top of what I have just delineated seems to be excessive and counter to the rights the policy owner acquired upon policy issuance.

33-13C-2 (5)(E) Fraudulent viatical settlement act – "Facilitating the change of state of ownership of a policy...or the state of residency of a viator to a state or jurisdiction that does not have a law *similar* (italics added for emphasis) to this article..." is this to be interpreted as simply having a viatical settlement act within a particular state or one that contains the same provisions as West Virginia's?

We look forward to viewing your responses.

Respectfully submitted,

Stuart Egrin  
Chief Compliance Officer  
Invescor, Ltd.

\* Securities wholesaled through Invescor Wholesale BD, Inc.

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SENT VIA EMAIL (timothy.murphy@wvinsurance.gov)

July 14, 2008

Mr. Timothy Murphy  
West Virginia Insurance Commission  
Legal Division  
1124 Smith Street  
P.O. Box 50540  
Charleston, WV 25305  
Facsimile (304) 558-1362

Re: Title 114, Draft Emergency Rule Amendment, Series 80 "Viatical Settlements"

Dear Mr. Murphy:

Please accept this comment letter concerning the above-captioned emergency rule (the "Rule") proposed by the West Virginia Insurance Commission (the "Commission"). Life Equity LLC ("Life Equity") is a leading life settlement provider and a founding member of the Life Settlement Institute, which advocates for legislation and regulation of the life settlement industry. I have provided information on both Life Equity and the Life Settlement Institute in the attachments to this letter.

Life Equity has the following concerns regarding the current draft of the Rule, in addition to concerns with certain provisions contained in Senate Bill No. 704, as expressed below.

1. Comments Regarding the Rule. We hereby submit the following comments with respect to the Rule:
  - a. §114-80-2 (Definitions), Subpara. 2.1. The definition of "Escrow Agent" contains a proviso that renders the definition and the prohibited activity unclear. We suggest that the proviso be struck.
  - b. §114-80-2 (Definitions), Subpara. 2.3. We suggest omitting the words "as determined by the viatical settlement provider" from the definition of "life expectancy." Life expectancies are performed, most often, by third party underwriters unaffiliated with life settlement providers and life settlement brokers.

- c. §114-80-4 (Viatical Settlement Broker Licensing and Renewal Requirements), Subpara. 4.2(d). We suggest that the Commission consider a lower dollar threshold for life settlement brokers or alternative means of satisfying the test (e.g., E&O insurance coverage, letter of credit, etc.). Experience in North Dakota has demonstrated that the financial requirement to post a \$250,000 bond had the effect of causing many life settlement brokers to relinquish their life settlement licenses, the net effect of which was to diminish for consumers the availability of the option of a life settlement.
  - d. §114-80-6 (Reporting Requirements), Subpara. 6.1(a). We note that the term "viatical settlement contract" should be substituted here and elsewhere in the Rule for the phrase "viatical settlement."
  - e. §114-80-6 (Reporting Requirements), Subpara. 6.1(c). The requirement to disclose the source of a policy is contained in Subpara. 6.1(a)(8), including whether the source was a broker. The Commission should not require disclosure in a viatical settlement provider's annual report of the specific name and address of each such viatical settlement broker, as this information is considered competitive and confidential. Instead, we would suggest that viatical settlement providers be required to retain this information and to make it available to the Commission upon request in a separate, and confidential, filing.
  - f. §114-80-9 (Advertising and Marketing). We question the requirement to file advertising materials with the Commission that is not intended to be directed at prospective viators. While the rule states that such materials are not subject to prior approval, the requirement is without precedent and unnecessarily restrictive on business.
  - g. §114-80-12 (Insurance Company Practices), Subpara. 12.1(a). The condition set forth in subparagraph (a) of paragraph 12.1 is unclear. This should be clarified.
2. Senate Bill No. 704. We would also like to bring to your attention certain provisions from Senate Bill No. 704 that give us significant concern. While the bill has been adopted as West Virginia law, we raise these points for future legislative consideration.
- a. §33-13C-2(5)(A) (Definition of "Fraudulent viatical settlement act"). The standard for finding fraud customarily requires both knowledge and intent. Subpara. (5)(A)'s disjunctive requirement of knowledge or intent should be corrected, as has been done in other states.

- b. §33-13C-2(12) (Definition of "Viatical settlement broker"). The final sentence of the definition makes clear that a viatical settlement broker cannot receive compensation directly or indirectly from the viatical settlement provider or viatical settlement purchaser. The proviso at the end of the definition would require that any lawyer, CPA or financial planner whose activities may be more than "incidental" (a term which, itself, is unclear) obtain a separate viatical settlement broker license for advisory services that they provide in the ordinary course to their clients and for which they are not being compensated by the provider or purchaser. This does not make sense and, accordingly, the proviso should be struck from the definition.
- c. §33-13C-2(13)(D)(vi) (Definition of "Viatical settlement contract"). We would suggest that §33-13C-2(D)(vi) be rephrased to omit the words "of the following" and to insert between the words "arrangements if" the phrase ", including the following".
- d. §33-13C-8 (Disclosure to viator) and §33-13C-10 (General Rules), subpara. (c). SB No. 704 requires that rescission rights run 60 days from the date of signing of the viatical settlement contract and 30 days post-closing. This requirement derives from the NAIC's Viatical Settlements Model Act. The provision was a last minute addition to the NAIC's model act that was advanced without discussion or any rationale. We would suggest that the standard should be 15 days post-closing, as is reflected in the Life Settlements Model Act adopted in November 2007 by the National Conference of Insurance Legislators and in nearly all states in which life settlement statutes have been enacted.
- e. §33-13C-8 (Disclosure to viator), subpara. (b)(3). The requirement to disclose contractual arrangements between viatical settlement providers and viatical settlement purchasers should be struck. Such arrangements do not bear on viators, except for the purpose of contacting the insured, which is already addressed in subpara. (a)(11) and §33-13C-10, subpara. (f).
- f. §33-13C-9 (Disclosure to insurer). It is unclear how this provision can be complied with by a broker or provider. We suggest that Section 33-13C-9 be struck in its entirety as vague and unenforceable. For these and other reasons, this provision has been struck in other states that have considered it.
- g. §33-13C-11 (Prohibited practices), subpara. (a). For many reasons which we will not elaborate on here, we firmly believe that West Virginia's

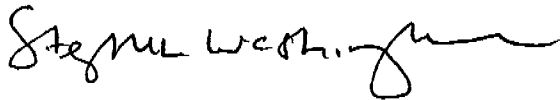
Mr. Timothy Murphy  
West Virginia Insurance Commission  
July 14, 2008  
Page 4

prohibition against the right of consumers to transfer their policies prior to five years is misplaced because it fails to address the problem of STOLI. We suggest that the Commission reconsider the five-year holding period in the next legislative session.

- h. §33-13C-12 (Prohibited practices and conflicts of interest), subparas. (a) and (b). We believe that the prohibitions against common ownership were well founded. However, there are instances where common ownership in certain organizations should not serve as a bar, provided that the consumer be provided full disclosure of any such affiliation between the viatical settlement provider or broker, as the case may be. This revision has been adopted in other jurisdictions that have considered this provision.
- i. §33-13C-16 (Criminal penalties). The criminal penalties provisions are excessive relative to the conduct committed. We would strongly urge the Commission to revisit these provisions in the next legislative session to make such provisions more consistent with prevailing laws.

Life Equity looks forward to continuing to work with you and other West Virginia Insurance Commission staff on the Rule and future amendments to SB No. 704. If you have any questions concerning our comments, please feel free to call me.

Sincerely,



Stephen L. Washington  
Managing Director of Business Development  
and Chief Counsel  
[swashington@lifeequity.net](mailto:swashington@lifeequity.net)  
(330) 342-7772 x241

## **About Life Equity LLC**

Life Equity was founded in August 2000 as an Ohio-based life settlement provider. The founders and principals of Life Equity came from large companies. Life Equity's CEO was the President and COO of \$1 billion+ NYSE-listed company. Life Equity's Chairman was a managing partner at Arthur Andersen in Cleveland until early 2000 and managed Arthur Anderson's Ohio and Kentucky offices.

The founders of Life Equity recognized in late 2000 that there was a need that was not being met by the insurance industry. People had changing insurance needs, but were often unable to change insurance coverage in a way that made economic sense because their policies offered cash surrender values that were substantially below market value, which made it uneconomic to alter coverage. To address this need, the founders started Life Equity.

Life Equity was established with two goals at its inception: First, to work exclusively with institutional investors because institutional investors, unlike individual investors; have the sophistication and financial wherewithal to be able to invest in life settlements; and, second, to promote regulation and introduce standards that have the effect of leveling the playing field among life settlement market participants and eliminating unscrupulous actors from the market. Life Equity has adhered to these goals since its inception. Today, Life Equity is recognized as a leader in the life settlement market and has developed a national reputation for its commitment to ethical and transparent practices.

## **About the Life Settlement Institute**

Life Equity is a founding member of the Life Settlement Institute, and Life Equity's Chief Executive Officer currently serves as its President. LSI is a not-for-profit corporation that was formed in December 2001 in order to present the viewpoint of institutionally funded life settlement providers to consumers, state regulators and other regulatory and legislative bodies such as the NAIC and NCOIL.

LSI has been the leading organization in the life settlement industry promoting and supporting sensible regulation of the life settlement market. We also work to develop and promote "best practices" within the industry and our members adhere to same. LSI's mission is to:

- Educate financial planning professionals and advisors about the life settlement industry;
- Increase the awareness amongst policyowners of the life settlement market and the value proposition offered thereby;
- Promote the use of institutional financing in the life settlement industry; and

Mr. Timothy Murphy  
West Virginia Insurance Commission  
July 14, 2008  
Page 6

- Support the development and adoption of sensible laws and regulations that facilitate the growth and evolution of the life settlement market while preventing fraudulent or dishonest life settlement transactions.

To achieve these objectives, LSI works closely with state regulators and others to promote regulation and develop public policy concerning life settlements. LSI has been at the forefront of efforts to ensure that sellers receive adequate compensation for their life insurance policies, guaranteeing that sellers receive full disclosure of broker compensation, and protecting the confidentiality of insureds' personal information.

LSI members have been responsible for the introduction of nearly all legislation that has been proposed since 2001. LSI has been very successful in shaping legislation that now governs in a majority of states. LSI's members have also actively participated in the development of model legislation since 2000 at both the NAIC and NCOIL.

July 14, 2008

West Virginia Department of Insurance  
Legal Division  
ATTN: Timothy Murphy, Associate Counsel  
1124 Smith Street  
P.O. Box 50540  
Charleston, WV 25305

Dear Mr. Murphy,

This comment is offered in response to the Emergency Amendment to the Emergency Rule of the Office of the Insurance Commissioner, Number 114.

The Life Insurance Settlement Association is the nation's oldest, largest and most diverse organization representing participants in the life insurance settlement industry. In the terminology of the West Virginia law, life settlements are Viatical Settlements. We have many reservations about the underlying law implemented by the rule and our members are, at this stage, questioning their ability to do business in West Virginia.

Our primary concerns with the proposal, Number 114, arise from our feeling that there should be a re-thinking of the approach taken to settlements by the West Virginia legislature in West Virginia Code §33-13C. Such a re-thinking will also entail significant revision to the proposed rule and a collaborative effort to work on a positive regulatory environment, which will allow the industry to operate effectively in West Virginia.

#### **Controversy**

We believe that the proposed legislation is highly controversial as a consequence of the requirements of the law, though there may be some room for improvement in addressing specific provisions of the law. The essential facts of the law and the unfortunate assumptions of the legislature in passing the law seem to us to provide barriers to the development of the settlement industry in West Virginia. Despite the best efforts of all parties, it is our basic impression that the law is not workable and should be reformed. Within the narrower context of the proposed rule, it is our impression that the rule has some errors, but that they can be resolved if there is the required effort from those responsible for possible modification and implementation of the regulation.

#### **Use of the NAIC Model**

It is noteworthy that the Agency questionnaire contains an explanation that the Model Rule of the NAIC was used as a template for this rule. The NAIC Regulation of 2004 was adopted three years *prior to* the adoption of the very controversial NAIC Model Viatical Settlements law of 2007, which served as a template for the West Virginia law. The 2004 Model Regulation was founded on a far less controversial NAIC Viatical Settlements Model Act, successfully implemented in many states, which was passed in 2000. Despite requests from our organization, the

NAIC Model Regulation has not been revisited in the wake of the adoption of the Model Act in 2007. Consequently it is out of date and inadequate in meeting the requirements imposed by the West Virginia Law based on a later version of the Model Act.

We note that LISA has voiced strong objection to the NAIC Model Act and that we feel that it is unworkable. We believe that the legislature was inadequately educated of the issues at hand in the rapid adoption of the underlying legislation and that this may result in a significantly impaired ability of the industry to serve the consumers of West Virginia. In conversations with a reporter covering the story, it is our impression that West Virginia Commissioner Cline indicated that the West Virginia Settlement Market in 2007 allowed for approximately 80 settlements to occur. It is our belief that this number will not be met in the year ahead and that, in fact, there may be no settlements at all under the new law. This cannot benefit the consumers of West Virginia seeking to access the current value of their insurance property. At this time, we are under the impression that most our members see the new Act as a significant, if not insurmountable barrier to entry to the West Virginia Market. Other states offer greater opportunities for business effort.

#### **Emergency Amendment**

We also note that the original proposed emergency rule was drafted in a manner that led to confusion concerning the dates of implementation. The current proposed amendment to the emergency rule is much clearer, but it will not offer the needed time to our members to be able to fully evaluate the risks of business in West Virginia. Those risks may only be resolved with clarity when the legislature reconvenes. We do believe that the extension and clarification of filing dates is helpful for members, but we also believe that the law imposes many burdens which must be reconciled if the industry is to be able to assist the citizens of West Virginia. In this regard, the effective date of the legislation imposed a significant hurdle for all parties. Despite the extensions of time, we are not confident that our member enterprises will find it possible to make application or that they will, when applying, have full and complete understanding of their status and the rules that they must follow for the foreseeable future.

#### **Fiscal Note**

The sums suggested in the fiscal note for implementation of the Act seem to not allow for a full and complete education of departmental personnel in the nuances of the settlement industry. As a consequence, we see little prospect that there will be the projected twenty applicants for Provider licensure and virtually no chance that there will be fifty licensed Brokers in the first year of implementation of the Act. Evidence of our doubts is also contained in our feeling that more than four documents will be required for filing in the year for each of the enterprises. Review of such documents under the requirements of the law will create further burdens for the Department. We believe that these considerations should lead to a significant revision of the Fiscal Note.

#### **Detailed Comments**

On the specifics of the proposed Emergency Rule Amendment, we make the following comments:

§14-80-3

The impact of the anti-fraud plan as required should offer some safe-harbor to persons following that plan. We would suggest that the good faith effort to review that plan will be a significant obligation of all parties as that may determine the outcome of potentially thorny and even criminal issues. We suggest that the meeting of the requirements of the law will involve judgments that are important and will exceed routine review because of the penalties for consumers contained in the law.

#### §14-80-4

We believe that the requirement for \$250,000 in the audited financial statement of a broker is excessive and may not be possible to provide. A requirement for an audited financial statement for an individual is burdensome. We suggest that an errors and omissions policy for Brokers is a reasonable alternative and should be considered.

The implications, as noted above, of an anti-fraud plan meeting the requirements of the law, are significant. Brokers filing such plans will have to do so with great care and consultation with the Department.

The requirement of filing of "samples" of advertising for Brokers is unclear. Is this a requirement that they provide materials which have been given to them by Provider in the industry? What criteria for review or other facts are to be considered in providing these samples and what will qualify as an adequate "sample"? Advertising is defined in the law and it is not clear how such materials will be used in the context of Broker activity. Is it necessary that agents describing settlements and using materials provided by Life Insurers file such materials? How will they be judged or will they not be judged? And if they are not judged, why will they be filed with the attached costs of filing?

What are "incidental" activities? We are unable to determine what criteria will affect determination of this essential criterion for exemption from licensure for an insurance producer.

We believe that the education provisions for non-residents in this section are misplaced and confusing. Only one state currently makes any continuing education requirements in this area of practice and the requirement may well confuse many potential applicants.

We believe that the Commissioner should be required to issue a license to any individual qualified by meeting the requirements of the rule. This should not be discretionary. The "other information" which the Commissioner is authorized to obtain in the course of issuing a license is a vague and confusing description in which we can have no confidence.

We believe that CE requirements are not available in the market for settlement-specific information, and the rule is not clear as to the content of the continuing education requirement.

#### §114-80-5

We oppose the provisions in this section and point to the fact that the legislation authorizes the Commissioner to set such provisions, but does not require this provision. In states where implemented, these provisions have not benefited consumers afflicted with terminal illness.

§114-80-6

While we regard the provisions of reporting to be generally reasonable for Providers, we are uncertain of the impact of the provisions of the rule for reporting on transactions after they are completed to the satisfaction of the interested parties. We do not understand the meaning of the provisions requiring reporting of a settlement purchased from another party, as this is not a viatical settlement as defined in the law. We do not understand the merit of filing the type of funding for the purchase in an annual report. And we do not believe that there is merit in reporting back to the Department on the future maturity of the policy. We urge reconsideration of the provisions regarding reporting by brokers. Costs of such reporting may be insurmountable and the NAIC Model form referred to in the rule is not in conformance with the reporting of the transactions limited to West Virginia residents.

§114-80-7

Insurers make no provisions for assignment of additional benefits back to the account of the original owner. If such a requirement is to be implemented, we urge that the department engage the carriers in a discussion that will allow for it. In the current circumstances, such benefits simply vanish, benefiting no party.

§114-80-8

Contracts vary substantially. We believe that the Department may wish to seek filing of contract FORMS, but the rule requires filing of EACH CONTRACT, APPLICATION, BROCHURE AND PROPOSAL, which is an unreasonable regulatory level of oversight. Since they must also be approved, this will lead to an unreasonable level of micro-management which is unsustainable in the industry or by the Department. We suggest that the rule describe this provision in much looser form seeking filing only (not approval for which the Department is inadequately staffed) and seeking filing of only contract or application FORMS. It is unclear if Brokers may file application forms. This should be clarified.

§114-80-9

The requirement that any advertising be filed and approved is burdensome and unreasonable. Marketing filings required of Providers and Brokers are not clearly defined as constrained to those directed at consumers in the state.

§114-80-11

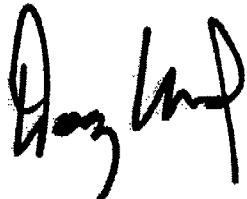
The requirement that the Life Insurance Company respond to a verification of coverage subject to the licensure of the "policy holder or certificate holder" is illogical and, on its face, must be an error. We seek clarification or modification. Is it the intent of the Department that policy sellers be licensed? What would qualify as written agreement that a verification of coverage was acceptable to the life company and the provider? Would simple use be proof of agreement or is there another required step involving filing?

**Conclusion**

It is the view of the Life Insurance Settlement Association that significant revision is required to this proposed rule and to the underlying law. We would seek, with the Department's assistance, to arrive at a reasonable regulatory

regime that would allow the benefits of the settlement market to flow to the consumers of West Virginia. We hope that such an end is a shared goal with the Insurance Commissioner. But we believe that the effort will have to involve significant revision of the approach contained in the law as it was so swiftly adopted, and in the rules suggested to date.

Sincerely,

A handwritten signature in black ink, appearing to read "Doug Head". The signature is stylized and cursive.

Doug Head  
LISA Executive Director



July 11, 2008

Commissioner Jane L. Cline  
Offices of the Insurance Commissioner  
State of West Virginia  
1124 Smith Street  
Charleston, West Virginia 25305-0540

Written Comments on Legislative Rule 114 CSR 80 (Viatical Settlements)

Dear Commissioner Cline:

Life Settlement Insights LLC of Cleveland, Ohio ("LSI") is pleased to submit written comments concerning proposed Legislative Rule, Title 114, Series 80 (Viatical Settlements).

LSI is a licensed life insurance settlement<sup>1</sup> brokerage founded in 2004 and headquartered in Cleveland, Ohio. LSI operates nationwide through a network of professional life insurance agents, financial planners and, by virtue of owning one of the only settlement companies registered with FINRA, broker-dealer firms as well. Since its inception, LSI has successfully brokered hundreds of life settlements creating millions of dollars of value for its clients. It is our core belief that, when properly executed, life settlements possess enormous potential for consumers to realize value from one of their most important assets, their life insurance policy. To that end we encourage the adoption of regulation that both protects the consumer and promotes a healthy settlement market. We are pleased to submit the following comments to West Virginia's proposed Legislative Rule concerning Viatical Settlements:

Section 114-80-2.1 (Definition of "Escrow agent"). The gross purchase price offered by a settlement provider for a policy is intended to provide sufficient funds to both pay the policyholder for the sale of his or her policy and to cover the broker's commission. In practice, however, providers routinely pay the net proceeds into escrow and then hold

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<sup>1</sup> The terms "life insurance settlement" and "life settlement" are used to mean a settlement transaction that does not involve a life insurance policy insuring an individual with a chronic or terminal illness. Settlements that involve policies covering chronically or terminally ill persons are generally referred to in the industry as "viatical settlements". Both types of transactions appear to be covered by the proposed Legislative Rule 114 CSR 80.

back the broker's compensation. Allowing providers to pay brokers directly outside of the escrow process opens the door for the type of collusion and deal making alleged by the New York Attorney General in his suit against a leading settlement provider. We believe this section should be amended to require that the broker be a party to the escrow agreement and that the broker's commission be paid directly by the independent escrow agent according to the commission agreed to in writing by the viator. Recently enacted Ohio House Bill 404 contains provisions which clearly spell out the escrow procedure so as to assure the provider and broker remain at arm's length. Those provisions are attached to this letter. As such provisions would not appear to be contrary to West Virginia's SB 704, we would encourage the adoption of those same provisions as part of this Legislative Rule.

Section 114-80-4.2 (Licensing Requirements for a Viatical Settlement Broker). We encourage the adoption of alternative means that may be used by brokers to satisfy the financial responsibility requirements of SB 704 in particular, the maintenance of errors and omissions coverage. Since settlement proceeds are paid to viators directly from escrow, no viator funds are handled by the broker. Thus there is no potential for the broker to default on a payment obligation to the viator. The broker's role in the settlement transaction is to represent and counsel the viator at the onset and throughout the course of the transaction, to work diligently to obtain the best price for the policy offered for sale and to assure accurate completion of all closing documents. Thus, the exposure posed by the broker's representation would be better addressed by requiring brokers to maintain errors and omissions coverage as opposed to a bond. We note that two states which have recently adopted new viatical settlement legislation (Kentucky – See House Bill 348 and Oklahoma – See Senate Bill 565) have opted to allow brokers to satisfy their financial responsibility requirement by maintaining errors and omissions coverage.

To clarify the scope of a license issued to a viatical settlement brokerage such as ours, we also encourage the addition in Section 4.2 of the following provision found in the NAIC Viatical Settlements Model Act but omitted from SB 704:

“A license issued to a legal entity 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.”

Section 114-80-4.3 (b) (Life Producer Exemption). Section 4.3(b) states “an applicant (for a viatical settlement broker's license) 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 producers are incidental to the producer's insurance business

activities". We are unsure what is meant by "incidental" and we would encourage clarification of that term in the Rule. For instance, what number of viatical settlement cases could a producer involve himself or herself in and still fall within the incidental exemption? Would one settlement transaction that results in 25% or more of that producer's annual revenue still be considered incidental?

Also, we would encourage clarification of which licensing provisions a producer falling within the incidental exemption would be exempt from. Would the producer be exempt from reporting under 6.2 and from the need to maintain an anti-fraud plan? Further, would the producer still need to maintain a bond or minimum equity of \$250,000? If so, it is unlikely that a producer would be willing to make such an investment to cover a type of transaction that will only represent an incidental part of his or her business. As a result, we believe that producers who only incidentally conduct settlements would be impeded from considering or recommending settlements to their clients in cases where such a transaction might be beneficial.

As a matter of policy, we believe the public is best served when settlements are handled by or through firms that specialize in the business. Allowing life insurance producers who make settlements only an incidental part of their business to broker settlements independently strongly favors the life settlement provider to the disadvantage of the consumer. Consumers are better served by being represented by firms, like ours, that specialize in brokering settlements. Firms like ours are better able to assess the marketability and fair value of the policy being offered for sale and to distinguish a good settlement offer from a bad one. We also have the access to and experience working with multiple providers which a life producer would typically lack. We are also much more familiar with the settlement transaction including the closing process which can be quite complex. Further, it is our experience that producers who are involved in settlements only on an infrequent basis lack the means or processes to comply with reporting requirements.

We encourage the consideration of a licensing policy that would allow producers who intend to conduct settlements as an incidental part of their business (as the term "incidental" may be defined) to participate in brokering settlements only by registering and working with a licensed and insured settlement brokerage. Under this type of system, the licensed viatical settlement broker would be responsible for maintaining errors and omissions coverage to cover the producer thus satisfying the need to assure that participants in the transaction are financially responsible while, at the same time, removing a strong impediment to a producer's consideration of a settlement as a possible option for his or her client. Also, the licensed viatical settlement broker would bear responsibility for reporting the transaction to your office thus better assuring comprehensive reporting of settlements within the state.

Section 114-80-8.1 (Filing Requirements). We believe clarification is needed with respect to the terms "brochure and proposal" under this section. It appears that reference is being made to the forms required to be provided by the provider under Section 10.1 and 10.2.

Section 114-80-12.1(a) (Request for Verification of Coverage). We believe clarification is needed with respect to the term “license” under this section. We are unsure what license this section refers to.

Respectfully submitted,

/SL/

Scott Lawson  
General Counsel  
Life Settlement Insights LLC

Offices of the Insurance Commissioner  
Legislative Rule  
Title 114, Series 80

**VIATICAL SETTLEMENTS**

**TITLE 114, SERIES 80**

**STATEMENT OF CIRCUMSTANCES**

SB 704, enacted during the 2008 regular session and made effective May 29, 2008, mandates for the first time that brokers and providers involved in the life settlement or viatical business be licensed by the Insurance Commissioner. An emergency rule which became effective on May 29, 2008 enables the Offices of the Insurance Commissioner to begin accepting applications for licenses. This legislative rule is intended to continue that regulatory function. The rule is based on a model regulation adopted by the National Association of Insurance Commissioners in 2004. This rule establishes licensing requirements for viatical settlement providers and brokers, provides standards of reasonable payments to terminally or chronically ill insureds, lists annual reporting requirements for a viatical provider and brokers regarding settlements entered into with all West Virginia residents and those who were residents at the time the contract was signed. The rule sets out provisions required to be in a contract for a viatical settlement, prohibits discrimination in making or soliciting settlements or between viators with or without dependents.

The bill expressly authorizes legislative rules as follows:

--WV Code § 33-13C-3(b) ("Application for a viatical settlement provider or viatical settlement broker license and for renewals of such licenses shall be made in the manner prescribed by the commissioner and shall be accompanied by fees established in legislative rules, including emergency rules, promulgated by the commissioner")

--§33-13C-5(b) ("Forms required to be filed are subject to the provisions of section eight, article six of this chapter and shall be deemed "forms for noncommercial insurance". The commissioner shall establish fees for form filings by rule, including emergency rule")

--§33-13C-12(d) ("No viatical settlement provider shall enter into a viatical settlement contract unless the viatical settlement promotional, advertising and marketing materials, as may be prescribed by rule, have been filed with the commissioner...") and

--§33-13C-17 ("The commissioner shall have the authority to promulgate legislative rules, including emergency rules, implementing this article, pursuant to article three, chapter twenty-nine-a of this code. Such rules may include standards for evaluating reasonableness of payments under viatical settlement contracts for persons who are terminally or chronically ill; regulation of discount rates used to determine the amount paid in exchange for assignment, transfer, sale, devise or bequest of a benefit under a life insurance policy insuring the life of a person that is chronically or terminally ill; and provisions governing the relationship and responsibilities of both insurers and viatical settlement providers and viatical settlement brokers during the viatication of a life insurance policy or certificate")

**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) 558-6279 x1210 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>			
<b>Effect of Proposal</b>	<b>Current Increase/Decrease (use "--")</b>	<b>Next Increase/Decrease (use "--")</b>	<b>Fiscal Year (Upon Full Implementation)</b>
<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: \_\_\_\_\_

Signature of Agency Head or Authorized Representative

\_\_\_\_\_  
Jane L. Cline, Insurance Commissioner

**114CSR80**

**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.

114CSR80

TITLE 114  
LEGISLATIVE RULE  
INSURANCE COMMISSIONER

SERIES 80  
VIATICAL SETTLEMENTS

FILED

2008 AUG 14 PM 3: 56

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.

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

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

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

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

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

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

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

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

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

- a. A fully completed Viatical Settlement Provider Application (VSP-2);
- b. A \$600.00 non-refundable application fee;
- c. A certificate of good standing from state of domicile;
- d. A West Virginia business license from the Secretary of State's Office;

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

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;

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 fees will be required.

3.4. 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,

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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.

3.5. 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 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.

3.6. 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.

3.7. 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:

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- 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 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 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 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 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

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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 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.

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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.

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

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

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

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

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

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

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

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

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

**§114-80-6. Reporting Requirements.**

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

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- a. For each viatical settlement contract entered into during the reporting period:
1. Date of viatical settlement contract;
  2. Viator's state of residence at the time of the contract;
  3. Life expectancy of the insured at the time of contract in months;
  4. Face amount of policy viaticated;
  5. Net death benefit viaticated;
  6. Estimated total premiums to keep policy in force for mean life expectancy;
  7. Net amount paid to viator;
  8. Source of policy (B-Broker, D-Direct Purchase);
  9. Type of coverage (I-Individual or G-Group);
  10. Whether or not the viatical settlement contract was entered into during the policy's contestable or suicide period, or both;
  11. Classification of the viator's or insured's diseases or injuries:
    - A. Cardiovascular diseases;
    - B. Diseases of the central nervous system;
    - C. Diseases of the peripheral nervous system;
    - D. Elders with nonspecific disease processes;
    - E. Infectious diseases and autoimmune diseases;
    - F. Liver and renal diseases;
    - G. Neoplasms;
    - H. Non-neoplastic pulmonary diseases;

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

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

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

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

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

3. Date of death;

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

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

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

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

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

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

**§114-80-7. General Rules.**

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

7.2. Payment of the proceeds payable to the viator pursuant to a viatical settlement contract shall be made in a lump sum except where the viatical settlement provider has purchased an annuity or similar financial instrument issued by a licensed insurance company, bank or an affiliate of either. Retention of a portion of the proceeds not disclosed or described in the viatical settlement contract by the viatical settlement provider or escrow agent is not permissible without written consent of the viator.

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

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

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

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

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

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

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

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

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

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

8.1. Every viatical settlement provider shall file for approval with the Commissioner each contract form, application form, brochure and disclosure state form pursuant to W. Va. Code §33-13C-5.

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

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

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

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

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

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

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

8.3. Every application for a contract shall:

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- a. Contain the viator's printed name and signature;
- b. Be notarized by a person who does not have a financial interest in the policy or viatical settlement contract; and
- c. Provide for an acknowledgment by the viator of receipt of the information booklet required by W. Va. Code §33-13C-8.

**§114-80-9. Advertising and Marketing.**

A person may not use any advertising directed at prospective viators unless filed with the Commissioner: *Provided, That* this requirement is met if the advertising used is substantially similar 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. 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:

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the benefit;

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

2. Disability income;

3. Waiver of premium or of monthly deduction waiver;

4. Guaranteed insurability options; or

5. Children or spouse coverage;

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

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

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

**§114-80-11. Prohibited Practices.**

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

11.2. A viatical settlement provider shall 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

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or obtain any compensation from the viator.

**§114-80-12. Insurance Company Practices.**

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

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

b. In the case of 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.