

VIATICAL SETTLEMENTS MODEL REGULATION

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Section 1. Authority

This regulation is adopted by the commissioner pursuant to the authority in Section [insert reference to state statute equivalent to Section 15 of the Viatical Settlements Model Act].

Drafting Note: States considering adoption of this version of the regulation should be sure the corresponding elements contained in the current Viatical Settlements Model Act have been put in place.

Section 2. Definitions

In addition to the definitions in Section [insert reference to equivalent to Section 2 of the Viatical Settlements Model Act], the following definitions apply to this regulation:

- A. “Insured” means the person covered under the policy being considered for viatication.
- B. “Life expectancy” means the mean of the number of months the individual insured under the life insurance policy to be viaticated can be expected to live as determined by the viatical settlement provider considering medical records and appropriate experiential data.
- C. “Net death benefit” means the amount of the life insurance policy or certificate to be viaticated less any outstanding debts or liens.
- D. “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.

Section 3. License Requirements

- A.
 - (1)
 - (a) An applicant for a viatical settlement broker's license or an individual authorized to act as a viatical settlement broker under a license issued to a legal entity shall pass the Viatical Settlements Brokers Examination designated by the department.
 - (b) An applicant or an individual authorized to act as a viatical settlement broker under a license issued to a legal entity who holds or has held a life insurance producer's license for more than one year and is in good standing with the insurance department shall be exempt from the life insurance portion of the examination.
 - (2)
 - (a) No existing viatical settlement broker's license shall be renewed or reissued until the licensee or individual authorized to act as a viatical settlement broker under a license issued to a legal entity has passed the Viatical Settlement Brokers Examination.
 - (b) A viatical settlement broker or an individual authorized to act as a viatical settlement broker under a license issued to a legal entity who holds or has held a life insurance producer's license for more than one year and is in good standing with the insurance department shall be exempt from the life insurance portion of the examination.

Drafting Note: Paragraphs (1)(b) and (2)(b) are intended to exempt life insurance producers in good standing with the department from taking the life insurance portion of the examination. They would be subject to all other licensing requirements in Section 3. Individuals licensed only with a limited lines license associated with life insurance are not exempt from the examination procedure.

- (3) A passing score for the Viatical Settlements Brokers Examination shall be a minimum score of seventy percent (70%).
 - (4) If the individual passes the Viatical Settlement Brokers Examination that is administered by another state that is a participant in the Viatical Settlement Brokers Examination process, then the individual has satisfied the testing requirements of this state.
- B. In addition to the information required in Section [insert reference to state law equivalent to Section 3 of the Viatical Settlements Model Act], the commissioner may ask for other information necessary to determine whether the applicant for a license as a viatical settlement provider, viatical settlement broker [or viatical settlement investment agent] complies with the requirements of Section [insert reference to state law equivalent to Section 3 of Viatical Settlements Model Act].

Drafting Note: Throughout this document text related to investments in viatical settlements is in brackets. It should be considered for inclusion in states where securities regulators do not regulate the investment side of the transaction or adapted for inclusion in the securities code.

- C. The application shall be accompanied by a fee of \$[insert amount]. The license may be renewed yearly by payment of \$[insert amount] and a current copy of a letter of good standing obtained from the filing officer of the applicant's state of domicile. If a viatical settlement provider, viatical settlement broker [or viatical settlement investment agent] fails to pay the renewal fee within the time prescribed, or a viatical settlement provider or broker fails to submit the reports required in Section 6 of this regulation, the nonpayment or failure to submit the required reports shall result in lapse of the license. If a viatical settlement provider has, at the time of renewal, viatical settlements where the insured has not died, it shall do one of the following:

Drafting Note: States should consider whether they intend to seek a certification from the secretary of state of the domicile that the corporation is in good standing, or whether they intend to seek assurance from the domicile insurance department before non-resident licensing. The wording should be adjusted to reflect the procedures the state wishes to follow. If the state of residence of the applicant does not license viatical settlement providers or brokers, a state should consider what type of documentation to require.

Drafting Note: States should consider using a license renewal period that matches license renewals for insurance producers.

- (1) Renew or maintain its current license status until the earlier of the following events:
 - (a) The date the viatical settlement provider properly assigns, sells or otherwise transfers the viatical settlements where the insured has not died; or
 - (b) The date that the last insured covered by viatical settlement transaction has died.
- (2) Appoint, in writing, either the viatical settlement provider that entered into the viatical settlement, the broker who received commissions from the viatical settlement, if applicable, or any other viatical settlement provider or broker licensed in this state to make all inquiries to the viator, or the viator's designee, regarding health status of the insured or any other matters.

Drafting Note: If fees are covered in state law or a comprehensive fee regulation, delete reference to fees in Subsection C.

- D.
- (1) An individual licensed as a viatical settlement broker or authorized to act under a license issued to a licensed entity as a viatical settlement broker shall complete [insert number] hours of department-approved continuing education during each continuing education biennium.
 - (2) The required continuing education hours shall include a minimum of:
 - (a) [Insert number] hours in life insurance;
 - (b) [Insert number] hours in viaticals; and
 - (c) [Insert hours] hours in ethics.
 - (3) The same hours may be credited towards the individual's continuing education requirements for the viatical settlement broker license and the applicable producer license, if any.
 - (4) Each continuing education biennium shall begin on [insert time frame to begin] and end two (2) years later.

Drafting Note: States should insert numbers in Subsection D consistent with those required for insurance producers.

- (5) The license of an individual who fails to comply with this continuing education requirement and who has not been granted an extension of time to comply in accordance with Section [insert citation for continuing education laws] shall terminate and shall be promptly surrendered to the commissioner without demand.
- E.
 - (1) A viatical settlement broker or viatical settlement provider shall file with the commissioner, and thereafter for as long as the license remains in effect shall keep in force, evidence of financial responsibility in the sum of not less than \$[insert number] per occurrence, and the sum of \$[insert number] in the aggregate, for all occurrences within one year. This evidence shall be in the form of an errors and omissions insurance policy issued in accordance with the [cite state law for financial responsibility], a bond issued by an authorized corporate surety, a deposit, or any combination of these evidences of financial responsibility. The policy, bond, deposit or combination thereof shall not be terminated without thirty (30) days prior written notice to the licensee and the commissioner.
 - (2) The commissioner may also accept as evidence of financial responsibility proof that a financial instrument in accordance with the requirements in Paragraph (1) has been filed with the commissioner of any other state where the viatical settlement broker or viatical settlement provider is licensed as a viatical settlement broker or viatical settlement provider.
- F. The license issued to a viatical settlement provider, viatical settlement broker or [viatical settlement investment agent] shall be a limited license that allows it to operate only within the scope of its license.
- [G. An individual licensed as a viatical settlement investment agent shall be licensed by the appropriate regulatory agencies to engage in the business of securities in this state.]

Drafting Note: A state should identify which securities license will be required in the state and insert it in Subsection G.

- H. A person shall be deemed to meet the licensing requirements of this section and of Section 3 of the Act and shall be permitted to operate as a viatical settlement broker, as defined in Section 2K of the Act, if that person is licensed as a resident or nonresident insurance producer with a life insurance line of authority pursuant to [cite state producer licensing laws] for at least one year. Not later than thirty (30) days from the first day of operating as a viatical settlement broker, the producer shall notify the department that he or she is acting as a viatical settlement broker on a form or in a manner that may be prescribed by the department, and shall pay any applicable fees to be determined by the department. The notification shall include an acknowledgment by the producer that he or she will operate as a viatical settlement broker in accordance with the Act and this regulation.

[Section 4. Appointments

- A. A viatical investment agent shall not act as an agent of a viatical settlement provider unless the investment agent becomes an appointed agent of that provider.

- B. To appoint an investment agent as its agent, the appointing provider shall file, in a format approved by the insurance commissioner, a notice of appointment within fifteen (15) days from the date the agency contract is executed or the first contact with an investor on behalf of the provider.
- C. Upon receipt of the notice of appointment, the insurance commissioner shall verify within a reasonable time not to exceed thirty (30) days that the investment agent is determined to be eligible for appointment. If the investment agent is determined to be ineligible for appointment, the insurance commissioner shall notify the provider within five (5) days of its determination.
- D. A provider shall pay an appointment fee, in the amount and method of payment set forth in [the appropriate state law or regulation], for each investment agent appointed by the provider.
- E. A provider shall remit, in a manner prescribed by the insurance commissioner, a renewal fee in the amount set forth in [insert the appropriate state law or regulation].]

Section 5. Standards for Evaluation of Reasonable Payments for Terminally or Chronically Ill Insureds

Alternative I

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

Insured's Life Expectancy	Minimum Percentage of Face Value Less Outstanding Loans Received by Viator
Less than 6 months	[80%]
At least 6 but less than 12 months	[70%]
At least 12 but less than 18 months	[65%]
At least 18 but less than 25 months	[60%]
Twenty- five months or more	Viator must receive at least the greater of the cash surrender value or accelerated death benefit in the policy

Drafting Note: The cash surrender value or accelerated death benefit is that which would actually be available to the seller at the time of the transaction.

Except where the cash surrender value is paid, the percentage may be reduced by [5%] for viaticating a policy written by an insurer rated less than the highest [4] categories by A.M. Best, or a comparable rating by another rating agency.

Alternative II

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 this 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 this 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 this 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 [insert state], or if insufficient data is available for [insert 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.

Section 6. Reporting Requirement

- A. On or before March 1 of each calendar year, the licensed viatical settlement provider shall submit the following related to the licensee's activities for the previous calendar year:
 - (1) A report of the viatical settlement transactions in all states and territories, which shall be submitted on Form VSP 001;
 - (2) A report of the viatical settlement transactions related to [state] viators, which shall be submitted on Form VSP 002;
 - (3) A report of the individual mortality of [state] insureds, which shall be submitted on Form VSP 003; and
 - (4) A certification of the information contained in the reports, which shall be submitted on Form VSPB 001 and shall be filed with the reports.
- B. On or before March 1 of each calendar year, the licensed viatical settlement broker shall submit the following related to the licensee's activities for the previous calendar year:
 - (1) A report of the viatical settlement transactions in all states and territories, which shall be submitted on Form VSB 001; and

- (2) A report of the viatical settlement transactions related to [state] viators, which shall be submitted on Form VSB 002;
 - (3) A certification of the information contained in the reports, which shall be submitted on Form VSPB 001 and shall be filed with the reports.
- C. The following material is incorporated by reference:
- (1) Form VSP 001, “Viatical Settlement Provider Report-All States and Territories”;
 - (2) Form VSP 002, “Viatical Settlement Provider Report-[State] Insureds Only”;
 - (3) Form VSP 003, “Individual Mortality Report-[State] Insureds Only”;
 - (4) Form VSB 001, “Viatical Settlement Broker Report-All States and Territories”; and
 - (5) Form VSB 002, “Viatical Settlement Broker Report-[State] Insureds Only”;
 - (6) Form VSPB 001, “Viatical Settlement Provider/Broker Certification Form.”

Section 7. General Rules

- A. 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.
- B. Payment of the proceeds of a viatical settlement pursuant to [insert citation for Section 9E of Viatical Settlements Model Act] shall be by means of wire transfer to an account designated by the viator or by certified check or cashier’s check.
- C. Payment of the proceeds to the viator pursuant to a viatical settlement shall be made in a lump sum except where the viatical settlement provider has purchased an annuity or similar financial instrument issued by a licensed insurance company or 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.
- D. A viatical settlement provider, viatical settlement broker [or viatical settlement investment agent] shall not discriminate in the making or soliciting of viatical settlements as provided by [insert reference to state law prohibiting discrimination], or discriminate between viators with dependents and without.
- E. A viatical settlement provider or viatical settlement broker shall not pay or offer to pay any finder’s fee, commission or other compensation to any insured’s physician, or to an attorney, accountant or other person providing medical, legal or financial planning services to the viator, or to any other person acting as an agent of the viator, other than a viatical settlement broker, with respect to the viatical settlement.

- F. A viatical settlement provider [or viatical settlement investment agent] shall not knowingly solicit purchasers who have treated or have been asked to treat the illness of the insured whose coverage would be the subject of the investment.
- G. If a viatical settlement provider enters into a viatical settlement that allows the viator to retain an interest in the policy, the viatical settlement contract shall contain the following provisions;
 - (1) 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. Benefits in excess of the amount viaticated shall be paid directly to the viator's beneficiary by the insurance company;
 - (2) A provision that the viatical settlement provider will, upon acknowledgment of the perfection of the transfer, either;
 - (a) Advise the insured, in writing, that the insurance company has confirmed the viator's interest in the policy; or
 - (b) 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; and
 - (3) 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.
- H. In all cases where the insured is a minor child, disclosures to and permission of a parent or legal guardian satisfy the requirements of [insert reference to the Viatical Settlements Model Act] and this regulation.

Section 8. Prohibited Practices

- A. A viatical settlement provider, viatical settlement broker [or viatical settlement investment agent] 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, viatical settlement broker [or viatical settlement investment agent] 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 (5) business days after receiving notice of the subpoena.
- B. 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.
- C. A viatical settlement broker shall not, without the written agreement of the viator obtained prior to performing any services in connection with a viatical settlement, seek or obtain any compensation from the viator.

Section 9. Insurance Company Practices

- A. Life insurance companies authorized 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 (30) calendar days of the date a request is received, subject to the following conditions:
 - (1) A current authorization consistent with applicable law, signed by the policy owner or certificate holder, accompanies the request;
 - (2) In the case of an 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 Appendix B, which has been completed by the viatical settlement provider or the viatical settlement broker in accordance with the instructions on the form.
- B. 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 in advance of submission of the request.
- C. A life insurance company may not charge a fee for responding to a request for information from a viatical settlement provider or viatical settlement broker in compliance with this section in excess of any usual and customary charges to contract holders, certificate holders or insureds for similar services.
- D. The life insurance company may 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 owner is other than the insured, to the insured. The acknowledgment may contain a general description of any accelerated death benefit that is available under a provision of or rider to the life insurance contract.
- E. A life insurance company shall not require the viator or insured 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. Timely notice shall be provided within fifteen (15) calendar days of the change in a policy or group certificate.

Section 10. Effective Date

- A. This regulation is effective [insert date]. A viatical settlement provider, viatical settlement broker or [viatical settlement investment agent] transacting business in this state may continue to do so pending approval of the provider, broker or [investment agent's] application for a license as long as the application is filed with the commissioner by [insert date].
- B. Providers, brokers or [investment agents] that have applied to the commissioner for a license by no later than the effective date of this regulation and that are using forms subject to [insert statute requiring filing and approval of forms] may continue to use forms in use prior to licensure for up to ninety (90) days following the effective date of this regulation.

APPENDIX A

Questions to Ask

- Is the principal and return on my investment guaranteed?
- How is the return on my investment calculated?
- When is the principal and return on my investment paid?
- What fees or other cost am I required to pay?
- Will I ever be required to pay the premiums on the insurance policy?
- What happens if the insured outlives me?

Your state insurance department and the National Association of Insurance Commissioners want you to have the facts about viatical settlements before you invest. This pamphlet provides some of that information, but it's only a starting point. Consult your own professional financial advisor, attorney, or accountant to help you decide if this is the most suitable investment for you.

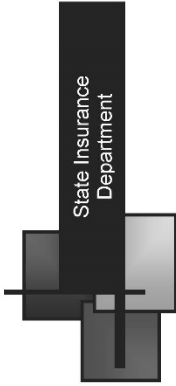
Always Check with Your State

- Your state may have a list of viatical settlement providers and brokers licensed to do business in the state. Make sure yours are on the list.
- Ask for a copy of regulations related to viatical settlements for your financial advisors to review.

Selling a Life Insurance Policy?

If you're interested in selling your life insurance policy, contact your state insurance department *before* you make a decision.

**STATE INSURANCE
DEPARTMENT**



Viatical Settlements

Buying Viaticals as Investments

Primary Business Address
Your Address Line 2
Your Address Line 3
Phone: 555-555-5555 Fax: 555-555-5555
Email: xyz@microsoft.com
Website

Before You Decide	Be an Informed Investor	Watch for These Special Risks
<p><i>Vitatical settlements allow life insurance policyholders to sell their policies to investors for an immediate cash benefit. In return, the buyer of the vitatical settlement becomes the new owner of the life insurance policy, pays future premiums and collects the death benefit when the insured dies.</i></p> <p><i>At one time, most vitatical settlements were from people with a life-threatening illness. Now, individuals who are not facing a health crisis may sell their life insurance policies to get cash.</i></p> <p><i>If you are asked to put your money into this type of investment, it is critical that you understand the risks involved, know how your investment will be used and know what the likely return will be. Contact your state insurance department if you need more information.</i></p>	<ul style="list-style-type: none"> A vitatical settlement is not a liquid investment. You can't "cash in" your principal if you change your mind. There is no return on your investment until the insured dies and the death benefit is paid. There is no guaranteed annual rate of return. The rate of return depends on when the insured dies and no one can perfectly predict a person's life expectancy. You should find out the life expectancy of the insured and how that determination was made. Remember that individuals who sell their policies in a vitatical settlement may not have a life-threatening illness. They may be selling the policy because they can't afford it or no longer need it. You are investing in a life insurance policy and premiums must be paid until the insured dies. Find out who is responsible for paying the premiums. Could you ever be responsible for paying the premiums? For example, if the insured lives longer than expected, will you have to pay the premiums? If so, this could decrease your rate of return. 	<ul style="list-style-type: none"> Group Insurance: The main risk under an employer provided group policy is that the employer or the insurance company could terminate the group policy. If that happens, the insured may have the right to change to an individual policy but the premium will usually be higher. You will want to ask if there are any special rules about changing from the group policy and who will be responsible for paying any additional premiums. Incontestable Clause: Insurance companies may refuse to pay death claims for policies less than two years old. In the first two years, the death benefit could be denied for various reasons including suicide or false medical information. Term Insurance: Term life insurance is issued for a certain number of years. An insurance company won't pay the death benefit if the insured outlives the term of the policy. Find out if it is possible to change the policy to a whole life policy. Retirement Funds: If you will be using money from retirement funds such as a 401(k), IRA, Keogh, or another qualified retirement plan, check with your tax advisor first to make sure you won't lose any tax advantages.



Need to pick an appropriate graphic

<h3>Questions to Ask</h3> <ul style="list-style-type: none"> • Do I still need life insurance protection? • If I sell my policy, how do they decide how much cash I get? • Is this an employer or other group policy? If so, do I need permission to sell it? • If I sell my policy, who will be the legal owner? • Do I need the advice of a tax or estate planning advisor before I decide to sell my policy? • Who will have specific information about me, my family or my health status? • After I sell my policy, can it be resold by the buyer? <p><i>Your state insurance department may have a list of viatical settlement providers and brokers that are licensed to do business in the state. Contact them to make sure yours are on the list.</i></p>	<h3>Always Check with Your State</h3> <p>Contact your state insurance or securities departments to learn about the issues and risks of viatical settlements <i>if</i>:</p> <ul style="list-style-type: none"> • you're considering selling your life insurance policy; • you're asked to sell your life insurance policy <i>and</i> your health hasn't changed since you bought the policy; • you're asked to buy a new life insurance policy <i>and</i> immediately sell it for cash. <h3>Buying a Life Insurance Policy?</h3> <p>If you're interested in buying a life insurance policy as an investment, contact your state insurance department <i>before</i> you make a decision.</p> <p>STATE INSURANCE DEPARTMENT</p> <p>Primary Business Address Your Address Line 2 Your Address Line 3 Phone: 555-555-5555 Fax: 555-555-5555 Email: xyz@microsoft.com Website</p>
<h2>Selling Your Life Insurance Policy</h2> <h3><i>Understanding Viatical Settlements</i></h3>	

What is a Viatical Settlement?

A viatical settlement is the sale of a life insurance policy to a third party. The owner (*viator*) of the life insurance policy sells the policy for an immediate cash benefit.

The buyer (the viatical settlement provider) becomes the new owner of the life insurance policy, pays future premiums, and collects the death benefit when the insured dies.

At one time, most viatical settlements were from people with a life-threatening illness. Now, individuals who are not facing a health crisis may sell their life insurance policies to get cash.

Your state insurance department and the National Association of Insurance Commissioners want you to have the facts before you sell your life insurance policy. This brochure provides some of that information, but it is only a starting point. Consult your own professional financial advisor, attorney, or accountant to help you decide if this is the most suitable arrangement for you.



Need to pick an appropriate graphic

Consider Your Options

If you're selling your policy to get cash to pay expenses, check all of your options. You may find a way to get more cash from your life insurance policy.

1. Ask your insurance agent or company if you have any cash value in your life insurance policy. You may be able to use some of the cash value to meet your immediate needs and keep your policy in force for your beneficiaries. You may also be able to use the cash value as security for a loan from a financial institution.
2. Find out if your life insurance policy has an *accelerated death benefit*. An accelerated death benefit typically pays some of the policy's death benefit before the insured dies. It may be a way for you to get cash from a policy without selling it to a third party.

Consumer tips

- Comparison shop. Get quotes from several companies to make sure you have a competitive offer.
- Find out the tax implications. Not all proceeds received from the sale of your life insurance policy are tax free.
- It's important to know that any of your creditors could claim your cash settlement.
- Find out if you will lose any public assistance benefits such as food stamps or Medicaid if you get a cash settlement.
- The buyer of your policy can periodically ask you about your health status. The buyer is required to give you a privacy notice outlining who will get this personal information. Be sure to read it.
- Check all application forms for accuracy, especially your medical history. All questions must be answered truthfully and completely.
- Make sure the viatical settlement provider agrees to put your settlement proceeds into an independent escrow account to protect your funds during the transfer.
- Find out if you have the right to change your mind about the settlement AFTER you get the money. If so, how many days do you have to reconsider and return the money?

APPENDIX B

VERIFICATION OF COVERAGE FOR LIFE INSURANCE POLICIES

SUBMITTED TO: _____ NAIC # _____

Name of Insurance Company

POLICY NUMBER: _____

SUBMITTED FROM: _____

Name of Viatical Settlement Broker/Provider

ADDRESS: _____

TELEPHONE NUMBER: _____

CONTACT: _____ TITLE: _____

IF INFORMATION IS CORRECT, INSURER REPRESENTATIVE MAY PLACE A CHECKMARK IN THE BOX. OTHERWISE PROVIDE CORRECTED INFORMATION THROUGHOUT THIS FORM. AN ASTERISK INDICATES INFORMATION THE VIATICAL SETTLEMENT PROVIDER/BROKER MUST PROVIDE.

POLICY OWNER'S AND INSURED'S INFORMATION

	This column to be completed by Viatical Settlement Broker/Provider	This column to be used by Insurance Company
Owner's name	*	
Address	*	
City, state, ZIP code	*	
Tax ID or social security number	*	
Insured's name	*	
Insured's date of birth	*	
Second insured's name (if applicable)	*	
Second insured's date of birth (if applicable)	*	

I hereby consent by my signature below to release of information requested by this form by the insurance company to the viatical settlement broker/provider.

Signature of policy owner_____
Date signed

Form VOC

IS THE POLICY IN FORCE? _____ **YES** _____ **NO**

IF NO, SIGN, AND DATE ON PAGE 4 AND RETURN TO THE VIATICAL SETTLEMENT BROKER OR PROVIDER THAT SUBMITTED THE VERIFICATION OF COVERAGE.

POLICY TYPE, RIDERS & OPTIONS:

* _____ **TERM** _____ **WHOLE LIFE** _____ **UNIVERSAL LIFE** _____ **VARIABLE LIFE**

If a question is not applicable to the type of policy, write N/A in the column.

	This column to be completed by Viatical Settlement Broker/Provider	This column to be used by Insurance Company
Original issue date	*	
Maturity date of policy		
State of issue	*	
Does the policy have an irrevocable beneficiary?	*	
Is the policy currently assigned?	*	
Was the policy ever converted or reinstated?		
Is the policy in the contestability period?	*	
Is the policy in the suicide period?	*	
Please list all riders and indicate if any are in the contestable or suicide period.	*	

POLICY VALUES

	This column to be completed by Viatical Settlement Broker/Provider	This column to be used by Insurance Company
Policy values as of (insert date)		
Current face amount of policy	*	
Amount of accumulated dividends		
Current face amount of riders		
Amount of any outstanding loans	*	
Amount of outstanding interest on policy loans		
Current net death benefit	*	
Current account value	*	
Current cash surrender value	*	
Is policy participating?	*	
If yes, what is the current dividend option?		

PREMIUM INFORMATION

	This column to be completed by Viatical Settlement Broker/Provider	This column to be used by Insurance Company
Current payment mode	*	
Current modal premium	*	
Date last premium paid	*	
Date next premium due	*	
Current monthly cost of insurance as of (insert date)		
Date of last cost of insurance deduction		

TO BE COMPLETED BY VIATICAL SETTLEMENT BROKER/PROVIDER

The information submitted for verification by the viatical settlement broker/provider is correct and accurate to the best of my knowledge and has been obtained through the policy owner and/or insured.

 Signature

 Printed Name

TO BE COMPLETED BY INSURANCE COMPANY

The information provided by verification by the insurance company is correct and accurate to the best of my knowledge as of _____ (date).

Insurance company: _____ NAIC # _____

Printed name: _____ Title: _____

Telephone number: _____ Fax number: _____

Signature: _____

Please provide information about where the forms listed below should be submitted for processing.

Name: _____ Title: _____

Company Name: _____

Mailing Address: _____

City, State, ZIP: _____

Overnight Address: _____

City, State, ZIP: _____

Telephone number: _____ Fax number: _____

FORMS REQUEST

Please provide the forms checked below:

- ☐ Absolute Assignment/Change of Ownership/Viatical Assignment
- ☐ Change of Beneficiary
- ☐ Release of Irrevocable Beneficiary (if applicable)
- ☐ Waiver of Premium Claim Form
- ☐ Disability Waiver of Premium Approval Letter
- ☐ Release of Assignment
- ☐ Change of Death Benefit Option Form (if UL)
- ☐ Allocation Change Form (if Variable)
- ☐ Annual Report
- ☐ Current In Force Illustratio

APPENDIX C

Viatical Settlement Provider Report

All States and Territories

Calendar year
200

Viatical Settlement Provider's Name

States	Are you doing business in this state? (Y/N)	1	2	3	4	5	6	7	Secondary market transactions		8
									pur	sold	
Alabama											
Alaska											
Arizona											
Arkansas											
California											
Colorado											
Connecticut											
Delaware											
Dist. of Columbia											
Florida											
Georgia											
Hawaii											
Idaho											
Illinois											
Indiana											
Iowa											
Kansas											
Kentucky											
Louisiana											
Maine											
Maryland											
Massachusetts											
Michigan											
Minnesota											
Mississippi											
Missouri											
Montana											
Nebraska											
Nevada											
New Hampshire											
New Jersey											
New Mexico											
New York											
North Carolina											
North Dakota											
Ohio											
Oklahoma											
Oregon											
Pennsylvania											
Rhode Island											
South Carolina											
South Dakota											
Tennessee											
Texas											
Utah											
Vermont											
Virginia											
Washington											
West Virginia											
Wisconsin											
Wyoming											
American Samoa											
Guam											
Puerto Rico											
U.S. Virgin Islands											
Canada											
TOTALS											

Initials of preparer: _____

VSP 001

Viatical Settlement Provider Report—All States and Territories Instructions

NOTE: This form must be accompanied by Viatical Settlement Provider/Broker Certification Form.

1. Indicate (Y or N); have you done business in this state during the calendar year being reported.
2. For that state or territory, indicate the total number of policies reviewed for consideration for that state or territory.
3. For that state or territory, indicate the total number of policies where an offer was made.
4. For that state or territory, indicate the total number of policies where an offer was refused.
5. For that state or territory, indicate the total number of policies purchased.
6. List the total aggregate net death benefit of the policies viaticated in that state or territory.
7. List the total aggregate amount paid to viators in that state or territory.
8. List the total number of policies purchased and/or sold in the secondary market for that state or territory.

VSP 001 Instructions

Initials of preparer: _____

Viatical Settlement Broker Report

Calendar year **200**—

All States and Territories

Viatical Settlement Broker's Name

States	Are you doing business in this state? (Y/N)	Total number of policies reviewed for consideration	Total number of policies represented for vatication	Total number of policies where representation was refused	Total number of policies sold to a provider	Aggregate net death benefit vlicated	Aggregate net amount paid to violators
Alabama							
Alaska							
Arizona							
Arkansas							
California							
Colorado							
Connecticut							
Delaware							
Dist. of Columbia							
Florida							
Georgia							
Hawaii							
Idaho							
Illinois							
Indiana							
Iowa							
Kansas							
Kentucky							
Louisiana							
Maine							
Maryland							
Massachusetts							
Michigan							
Minnesota							
Mississippi							
Missouri							
Montana							
Nebraska							
Nevada							
New Hampshire							
New Jersey							
New Mexico							
New York							
North Carolina							
North Dakota							
Ohio							
Oklahoma							
Oregon							
Pennsylvania							
Rhode Island							
South Carolina							
South Dakota							
Tennessee							
Texas							
Utah							
Vermont							
Virginia							
Washington							
West Virginia							
Wisconsin							
Wyoming							
American Samoa							
Guam							
Puerto Rico							
U.S. Virgin Islands							
Canada							
Totals							

WSB 001

Initials of preparer:

Viatical Settlement Broker Reporting—All States and Territories Instructions

NOTE: This form must be accompanied by “Viatical Settlement Provider/Broker Certification Form.”

1. Indicate (Y or N) to all the states and territories where you are currently doing business.
2. Indicate the total number of policies you reviewed for consideration for that state or territory.
3. Indicate the total number of policies you represented for viatication in that state or territory.
4. Indicate the total number of policies you refused to represent for that state or territory.
5. Total number of policies sold to a provider.
6. List the total aggregate net amount of the policies you transacted for viatication in that state or territory.
7. Regarding transaction where you functioned as a broker, list the total aggregate net amount paid to viators in that state or territory.

VSB 001 Instructions

Initials of preparer: _____

Viatical Settlement Provider Report [State] Insureds Only Instructions

NOTE: This form must be accompanied by Viatical Settlement Provider/Broker Certification Form.

1. List the settlement number, case number or unique identifying number used to identify the specific viatical settlement transaction.
2. List the date the viatical settlement contract was purchased by the provider during the current calendar year, whether or not the insured is still alive at the end of the calendar year.
3. List the net amount (in dollars) being viaticated.
4. List the age (in years) of the person insured by the policy being viaticated, at the time of the viatical settlement contract.
5. List the life expectancy (in months) of the insured individual at the time of the viatical settlement contract.
6. List the net amount (in dollars) paid to the viator.
7. Identify whether the policy was an individual policy (I) or a group policy (G).
8. List the type of funding for the transaction: "F" for a licensed financial institution (policies collateralized), "P" for private (purchaser) funding, "I" for internal funding, "T" for trust, and "RPT" for related provider trust.
9. Indicate the purchase source of the policy. Use "B" for viatical settlement broker, "D" for direct from the viator, "I" for insurance agent/producer, "SM" for a secondary market or viatical settlement provider, "P" for private (purchaser) funding or "O" for other.
10. List the amount of commissions (in dollars) paid to viator source involved in the transaction whether that be a viatical settlement broker, an insurance producer or other licensed entity authorized to be viator source.
11. List the name of the source of the viatical settlement transaction. If it is a broker, producer or other licensee, name that person; if it is direct, from a relative, from the corporation of the insured or any other entity that could possibly reveal the insured, designate by writing "Direct," "Relative," "Corporation," or other nondesignating word.

VSP 002 Instructions

Initials of preparer: _____

[illegible]

Viatical Settlement Broker Report—[State] Insureds Only Instructions

NOTE: This form must be accompanied by “Viatical Settlement Provider/Broker Certification Form.”

1. List the settlement number, case number, or unique identifying number used by the Viatical Settlement Provider to identify the specific viatical settlement transaction.
2. List the date sold of the viatical settlement contract to the Viatical Settlement Provider.
3. List the total net death benefit.
4. List the net amount (in dollars) paid to the viator.
5. List the amount of commissions (in dollars) paid to all viatical settlement brokers involved in the transaction.
6. List the name of the Viatical Settlement Provider involved in the viatical settlement transaction.

VSB 002 Instructions

Initials of preparer: _____

[illegible]

Individual Mortality Report—[State] Insureds Only Instructions

NOTE: This form must be accompanied by the Viatical Settlement Provider/Broker Certification Form.

1. List the settlement number, case number, or unique identifying number used to identify the specific viatical settlement transaction.
2. List the date of the viatical settlement contract.
3. List the age of the insured at the time of the contract.
4. List the life expectancy (in months) of the insured individual at the time of the viatical settlement contract. For first to die policies, use the shortest life expectancy of the two lives. For second to die policies, use the longest life expectancy of the two lives.
5. List the “Net” amount paid to the viator.
6. Indicate the insured’s date of death. For first to die policies, use the date of the first insured’s death. For second to die policies, use the date of the last insured’s death.
7. List the total amount of premiums (in dollars) required to be paid to the insurer to maintain the policy from the date of viatication to the date of death.
8. List the total death benefit collected from the insurer.
9. List the number of months between the date of contract and the insured’s date of death.
10. List the number of months between the life expectancy of the insured at the time of contract and the insured’s date of death. This should be noted as a plus (+) figure if the insured died after the estimated life expectancy or a minus (-) if the insured died prior to the estimated life expectancy.

VSP 003 Instructions

Initials of preparer: _____

Viatical Settlement Provider/Broker Certification Form

This section should be completed by viatical settlement providers.

Please check all forms submitted:

- ☐ Viatical Settlement Provider Reporting Form - All States and Territories (VSP 001)
- ☐ Viatical Settlement Provider Reporting Form - [State] Viators Only (VSP 002)
- ☐ Individual Mortality Report - [State] Insureds Only (VSP 003)

I hereby certify that the information contained in the reports indicated above is true and accurate. I acknowledge that providing false and misleading information in the reports, or failing to divulge a fact material thereto, is sufficient grounds for administrative action by the commissioner and potentially, applicable criminal penalties.

Signature of individual that prepared reports

Date: ____/____/____

Print or type name

Signature of Authorized Representative

Date: ____/____/____

Print or type name

This section should be completed by viatical settlement brokers.

Please check all forms submitted:

- ☐ Viatical Settlement Broker Reporting Form - [All States and Territories] (VSB 001)
- ☐ Viatical Settlement Provider Reporting Form - [State] Viators Only (VSB 002)

I hereby certify that the information contained in the reports indicated above is true and accurate. I acknowledge that providing false and misleading information in the reports, or failing to divulge a fact material thereto, is sufficient grounds for administrative action by the commissioner and potentially, applicable criminal penalties.

Signature of individual that prepared reports

Date: ____/____/____

Print or type name

Signature of Authorized Representative

Date: ____/____/____

Print or type name

VSPB 001

Chronological Summary of Actions (all references are to the Proceedings of the NAIC).

1994 Proc. 2nd Quarter 13, 39, 53, 550, 572-574 (adopted).

1999 Proc. 1st Quarter 8, 9, 506-507, 510, 511-518 (amended and reprinted).

1999 Proc. 3rd Quarter 25, 26, 746, 749, 750-758 (amended to add three appendices).

2003 Proc. 4th Quarter 267-269 (model amended by working group).

2004 Proc. 1st Quarter 329, 337-384 (model further amended and adopted by parent committee).

2004 Proc. 2nd Quarter 49-50 (adopted by Plenary).

2013 Proc. 2nd Quarter 113, 127-129, 346 (adopted Guideline Amendments).

VIATICAL SETTLEMENTS MODEL REGULATION

The NAIC amended this model during the 2013 Summer National Meeting. These amendments were adopted as guidelines under the NAIC’s model laws process. The 2013 3rd Quarter Guideline Amendments are highlighted in grey.

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Section 1. Authority

This regulation is adopted by the commissioner pursuant to the authority in Section [insert reference to state statute equivalent to Section 15 of the Viatical Settlements Model Act].

Drafting Note: States considering adoption of this version of the regulation should be sure the corresponding elements contained in the current Viatical Settlements Model Act have been put in place.

Section 2. Definitions

In addition to the definitions in Section [insert reference to equivalent to Section 2 of the Viatical Settlements Model Act], the following definitions apply to this regulation:

- A. “Insured” means the person covered under the policy being considered for viatication.
- B. “Life expectancy” means the mean of the number of months the individual insured under the life insurance policy to be viaticated can be expected to live as determined by the viatical settlement provider considering medical records and appropriate experiential data.
- C. “Net death benefit” means the amount of the life insurance policy or certificate to be viaticated less any outstanding debts or liens.
- D. “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.

Section 3. License Requirements

- A.
 - (1)
 - (a) An applicant for a viatical settlement broker's license or an individual authorized to act as a viatical settlement broker under a license issued to a legal entity shall pass the Viatical Settlements Brokers Examination designated by the department.
 - (b) An applicant or an individual authorized to act as a viatical settlement broker under a license issued to a legal entity who holds or has held a life insurance producer's license for more than one year and is in good standing with the insurance department shall be exempt from the life insurance portion of the examination.
 - (2)
 - (a) No existing viatical settlement broker's license shall be renewed or reissued until the licensee or individual authorized to act as a viatical settlement broker under a license issued to a legal entity has passed the Viatical Settlement Brokers Examination.
 - (b) A viatical settlement broker or an individual authorized to act as a viatical settlement broker under a license issued to a legal entity who holds or has held a life insurance producer's license for more than one year and is in good standing with the insurance department shall be exempt from the life insurance portion of the examination.

Drafting Note: Paragraphs (1)(b) and (2)(b) are intended to exempt life insurance producers in good standing with the department from taking the life insurance portion of the examination. They would be subject to all other licensing requirements in Section 3. Individuals licensed only with a limited lines license associated with life insurance are not exempt from the examination procedure.

- (3) A passing score for the Viatical Settlements Brokers Examination shall be a minimum score of seventy percent (70%).
 - (4) If the individual passes the Viatical Settlement Brokers Examination that is administered by another state that is a participant in the Viatical Settlement Brokers Examination process, then the individual has satisfied the testing requirements of this state.
- B. In addition to the information required in Section [insert reference to state law equivalent to Section 3 of the Viatical Settlements Model Act], the commissioner may ask for other information necessary to determine whether the applicant for a license as a viatical settlement provider, viatical settlement broker [or viatical settlement investment agent] complies with the requirements of Section [insert reference to state law equivalent to Section 3 of Viatical Settlements Model Act].

Drafting Note: Throughout this document text related to investments in viatical settlements is in brackets. It should be considered for inclusion in states where securities regulators do not regulate the investment side of the transaction or adapted for inclusion in the securities code.

- C. The application shall be accompanied by a fee of \$[insert amount]. The license may be renewed yearly by payment of \$[insert amount] and a current copy of a letter of good standing obtained from the filing officer of the applicant's state of domicile. If a viatical settlement provider, viatical settlement broker [or viatical settlement investment agent] fails to pay the renewal fee within the time prescribed, or a viatical settlement provider or broker fails to submit the reports required in Section 6 of this regulation, the nonpayment or failure to submit the required reports shall result in lapse of the license. If a viatical settlement provider has, at the time of renewal, viatical settlements where the insured has not died, it shall do one of the following:

Drafting Note: States should consider whether they intend to seek a certification from the secretary of state of the domicile that the corporation is in good standing, or whether they intend to seek assurance from the domicile insurance department before non-resident licensing. The wording should be adjusted to reflect the procedures the state wishes to follow. If the state of residence of the applicant does not license viatical settlement providers or brokers, a state should consider what type of documentation to require.

Drafting Note: States should consider using a license renewal period that matches license renewals for insurance producers.

- (1) Renew or maintain its current license status until the earlier of the following events:
 - (a) The date the viatical settlement provider properly assigns, sells or otherwise transfers the viatical settlements where the insured has not died; or
 - (b) The date that the last insured covered by viatical settlement transaction has died.
- (2) Appoint, in writing, either the viatical settlement provider that entered into the viatical settlement, the broker who received commissions from the viatical settlement, if applicable, or any other viatical settlement provider or broker licensed in this state to make all inquiries to the viator, or the viator's designee, regarding health status of the insured or any other matters.

Drafting Note: If fees are covered in state law or a comprehensive fee regulation, delete reference to fees in Subsection C.

- D.
- (1) An individual licensed as a viatical settlement broker or authorized to act under a license issued to a licensed entity as a viatical settlement broker shall complete [insert number] hours of department-approved continuing education during each continuing education biennium.
 - (2) The required continuing education hours shall include a minimum of:
 - (a) [Insert number] hours in life insurance;
 - (b) [Insert number] hours in viaticals; and
 - (c) [Insert hours] hours in ethics.
 - (3) The same hours may be credited towards the individual's continuing education requirements for the viatical settlement broker license and the applicable producer license, if any.
 - (4) Each continuing education biennium shall begin on [insert time frame to begin] and end two (2) years later.

Drafting Note: States should insert numbers in Subsection D consistent with those required for insurance producers.

- (5) The license of an individual who fails to comply with this continuing education requirement and who has not been granted an extension of time to comply in accordance with Section [insert citation for continuing education laws] shall terminate and shall be promptly surrendered to the commissioner without demand.
- E. (1) A viatical settlement broker or viatical settlement provider shall file with the commissioner, and thereafter for as long as the license remains in effect shall keep in force, evidence of financial responsibility in the sum of not less than \$[insert number] per occurrence, and the sum of \$[insert number] in the aggregate, for all occurrences within one year. This evidence shall be in the form of an errors and omissions insurance policy issued in accordance with the [cite state law for financial responsibility], a bond issued by an authorized corporate surety, a deposit, or any combination of these evidences of financial responsibility. The policy, bond, deposit or combination thereof shall not be terminated without thirty (30) days prior written notice to the licensee and the commissioner.
- (2) The commissioner may also accept as evidence of financial responsibility proof that a financial instrument in accordance with the requirements in Paragraph (1) has been filed with the commissioner of any other state where the viatical settlement broker or viatical settlement provider is licensed as a viatical settlement broker or viatical settlement provider.
- F. The license issued to a viatical settlement provider, viatical settlement broker or [viatical settlement investment agent] shall be a limited license that allows it to operate only within the scope of its license.
- [G. An individual licensed as a viatical settlement investment agent shall be licensed by the appropriate regulatory agencies to engage in the business of securities in this state.]

Drafting Note: A state should identify which securities license will be required in the state and insert it in Subsection G.

- H. A person shall be deemed to meet the licensing requirements of this section and of Section 3 of the Act and shall be permitted to operate as a viatical settlement broker, as defined in Section 2K of the Act, if that person is licensed as a resident or nonresident insurance producer with a life insurance line of authority pursuant to [cite state producer licensing laws] for at least one year. Not later than thirty (30) days from the first day of operating as a viatical settlement broker, the producer shall notify the department that he or she is acting as a viatical settlement broker on a form or in a manner that may be prescribed by the department, and shall pay any applicable fees to be determined by the department. The notification shall include an acknowledgment by the producer that he or she will operate as a viatical settlement broker in accordance with the Act and this regulation.

[Section 4. Appointments

- A. A viatical investment agent shall not act as an agent of a viatical settlement provider unless the investment agent becomes an appointed agent of that provider.

- B. To appoint an investment agent as its agent, the appointing provider shall file, in a format approved by the insurance commissioner, a notice of appointment within fifteen (15) days from the date the agency contract is executed or the first contact with an investor on behalf of the provider.
- C. Upon receipt of the notice of appointment, the insurance commissioner shall verify within a reasonable time not to exceed thirty (30) days that the investment agent is determined to be eligible for appointment. If the investment agent is determined to be ineligible for appointment, the insurance commissioner shall notify the provider within five (5) days of its determination.
- D. A provider shall pay an appointment fee, in the amount and method of payment set forth in [the appropriate state law or regulation], for each investment agent appointed by the provider.
- E. A provider shall remit, in a manner prescribed by the insurance commissioner, a renewal fee in the amount set forth in [insert the appropriate state law or regulation].]

Section 5. Standards for Evaluation of Reasonable Payments for Terminally or Chronically Ill Insureds

Alternative I

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

Insured's Life Expectancy	Minimum Percentage of Face Value Less Outstanding Loans Received by Viator
Less than 6 months	[80%]
At least 6 but less than 12 months	[70%]
At least 12 but less than 18 months	[65%]
At least 18 but less than 25 months	[60%]
Twenty- five months or more	Viator must receive at least the greater of the cash surrender value or accelerated death benefit in the policy

Drafting Note: The cash surrender value or accelerated death benefit is that which would actually be available to the seller at the time of the transaction.

Except where the cash surrender value is paid, the percentage may be reduced by [5%] for viaticating a policy written by an insurer rated less than the highest [4] categories by A.M. Best, or a comparable rating by another rating agency.

Alternative II

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 this 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 this 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 this 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 [insert state], or if insufficient data is available for [insert 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.

Section 6. Reporting Requirement

On or before March 1 of each calendar year, the licensed viatical settlement provider shall submit the following related to the licensee's activities for the previous calendar year:

- A. A report of the viatical settlement transactions related to [state] viators, which shall be submitted on Form **VSP 001**;
- B. A report of the individual mortality of [state] insureds, which shall be submitted on Form **VSP 002**; and
- C. A certification of the information contained in the reports, which shall be submitted on Form **VSP 003** and shall be filed with the reports.

Section 7. General Rules

- A. 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.

- B. Payment of the proceeds of a viatical settlement pursuant to [insert citation for Section 9E of Viatical Settlements Model Act] shall be by means of wire transfer to an account designated by the viator or by certified check or cashier's check.
- C. Payment of the proceeds to the viator pursuant to a viatical settlement shall be made in a lump sum except where the viatical settlement provider has purchased an annuity or similar financial instrument issued by a licensed insurance company or 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.
- D. A viatical settlement provider, viatical settlement broker [or viatical settlement investment agent] shall not discriminate in the making or soliciting of viatical settlements as provided by [insert reference to state law prohibiting discrimination], or discriminate between viators with dependents and without.
- E. A viatical settlement provider or viatical settlement broker shall not pay or offer to pay any finder's fee, commission or other compensation to any insured's physician, or to an attorney, accountant or other person providing medical, legal or financial planning services to the viator, or to any other person acting as an agent of the viator, other than a viatical settlement broker, with respect to the viatical settlement.
- F. A viatical settlement provider [or viatical settlement investment agent] shall not knowingly solicit purchasers who have treated or have been asked to treat the illness of the insured whose coverage would be the subject of the investment.
- G. If a viatical settlement provider enters into a viatical settlement that allows the viator to retain an interest in the policy, the viatical settlement contract shall contain the following provisions;
 - (1) 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. Benefits in excess of the amount viaticated shall be paid directly to the viator's beneficiary by the insurance company;
 - (2) A provision that the viatical settlement provider will, upon acknowledgment of the perfection of the transfer, either;
 - (a) Advise the insured, in writing, that the insurance company has confirmed the viator's interest in the policy; or
 - (b) 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; and
 - (3) 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.

- H. In all cases where the insured is a minor child, disclosures to and permission of a parent or legal guardian satisfy the requirements of [insert reference to the Viatical Settlements Model Act] and this regulation.
- I. No later than the time the application for the viatical settlement contract is signed by all parties, a viatical settlement provider or viatical settlement broker shall provide the viator information describing the process of a viatical settlement. At a minimum, the informational brochure in Appendix A shall be used unless another form is developed or approved by the commissioner.

Section 8. Prohibited Practices

- A. A viatical settlement provider, viatical settlement broker [or viatical settlement investment agent] 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, viatical settlement broker [or viatical settlement investment agent] 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 (5) business days after receiving notice of the subpoena.
- B. 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.
- C. A viatical settlement broker shall not, without the written agreement of the viator obtained prior to performing any services in connection with a viatical settlement, seek or obtain any compensation from the viator.

Section 9. Insurance Company Practices

- A. Life insurance companies authorized to do business in this state shall respond to a request for verification of coverage from the viatical settlement provider or the viatical settlement broker within thirty (30) calendar days of the date a request is received, subject to the following conditions:
 - (1) A current authorization consistent with applicable law, signed by the policy owner or certificate holder, accompanies the request;
 - (2) In the case of an 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 Appendix B, which has been completed by the viatical settlement provider or the viatical settlement broker in accordance with the instructions on the form.
- B. 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 in advance of submission of the request.
- C. Nothing in this section shall limit a policy owner's right to request information, consistent with applicable law, before or after completion of the viatical settlement contract about the policy from a life insurance company at any time.

- D. A life insurance company may not charge a fee for responding to a request for information from a viatical settlement provider or viatical settlement broker in compliance with this section in excess of any usual and customary charges to contract holders, certificate holders or insureds for similar services.
- E. The life insurance company may 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 owner is other than the insured, to the insured. The acknowledgment may contain a general description of any accelerated death benefit that is available under a provision of or rider to the life insurance contract.
- F. A life insurance company shall not require the viator or insured 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. Timely notice shall be provided within fifteen (15) calendar days of the change in a policy or group certificate.
- G. The format for the company report is demonstrated in Appendix B, i.e., Verification of Coverage.

Section 10. Effective Date

- A. This regulation is effective [insert date]. A viatical settlement provider, viatical settlement broker or [viatical settlement investment agent] transacting business in this state may continue to do so pending approval of the provider, broker or [investment agent's] application for a license as long as the application is filed with the commissioner by [insert date].
- B. Providers, brokers or [investment agents] that have applied to the commissioner for a license by no later than the effective date of this regulation and that are using forms subject to [insert statute requiring filing and approval of forms] may continue to use forms in use prior to licensure for up to ninety (90) days following the effective date of this regulation.

APPENDIX A

Selling Your Life Insurance Policy: Life and Viatical Settlements

Important Terms to Know
*The **viator** is the policy owner.*
*The **provider** buys the policy.*
*The **broker** finds providers to make offers on the policy.*

What is a Life Settlement?

A life settlement (also known as a viatical settlement) is the sale of a life insurance policy by you, the policy owner, to a life settlement provider. The **provider** buys your life insurance policy for cash. Once you sign a contract to sell your policy, the provider asks the life insurance company to transfer ownership of the policy from you to the new owner. You will then be known as the “**viator**.” The new owner then pays future premiums and collects the death benefit when the insured person dies.

You may choose to use the services of a life settlement broker to help you sell your insurance policy. The **broker** works for you and not for the provider or for the insurance company. You can expect the broker to search the market and find providers to make offers to buy your policy.

Your Rights and Responsibilities.

State laws protect you if you sell a life insurance policy.

- All providers and brokers must be licensed by your state insurance department. The insurance department also must approve all life settlement contract forms.
- Providers and brokers must give you certain information before you sign a life settlement contract. This information includes the amount your beneficiary would have received when you die, and the amount the broker will be paid.
- The amount a provider pays you for your policy must be greater than either the cash surrender value of the policy or, if available, the accelerated death benefit.
- The money paid for your policy will be put in an escrow account, and held by an independent third party while the life settlement is finalized.
- You have the right to change your mind about the settlement for a short period of time after you sign the contract. Be sure you understand how to cancel the sale.

Before You Sign a Contract, Be Sure You Can Answer These Questions.

Talk with your insurance agent and company and your other advisors such as an attorney, accountant or financial planner.

- How long have you had your policy? State law generally requires that you must have owned the life insurance policy for a certain period of time before you can sell it to a provider. Ask your broker if your policy qualifies.
- Can you get cash from your policy without selling it? Ask about the cash value of your policy. Find out if you can get a policy loan.
- If the insured person is ill, can you get accelerated death benefits under your policy?
- Can your beneficiaries still receive any life insurance benefit after you sell the policy?
- How much money will you get from the sale? When and how will you receive the money?
- How much is the broker's compensation?
- How many providers did the broker contact? How many offers were received?

Important Things to Know Before You Sell Your Policy.

- Creditors may claim some or all of the money you receive.

- The money you receive from the sale may be taxable.
- Once you receive the money, you may not be eligible for public assistance benefits such as food stamps or Medicaid.
- You may have to pay back loans you've taken against the insurance policy.
- If your policy is issued through an employer plan or other group policy, you may need permission from the employer or group to sell your policy.
- The provider can ask about the insured person's health from time to time. The provider must give notice explaining who will get personal information.
- If you give inaccurate information to a provider when selling your policy, you could be accused of fraud and the sale of your policy could be cancelled.

Always Check With Your State Insurance Department.

- To be sure the provider and broker are licensed to do business in the state.
- If someone asks you to buy a new life insurance policy and to immediately sell it for cash.
- If you are asked to buy a new life insurance policy and the insurance agent or some other person offers to pay the premiums for you.

APPENDIX B

VERIFICATION OF COVERAGE FOR LIFE INSURANCE POLICIES

SUBMITTED TO: _____ NAIC # _____
 Name of Insurance Company

POLICY NUMBER: _____

SUBMITTED FROM: _____
 Name of Viatical Settlement Broker/Provider

ADDRESS: _____

TELEPHONE NUMBER: _____

CONTACT: _____ TITLE: _____

IF INFORMATION IS CORRECT, INSURER REPRESENTATIVE MAY PLACE A CHECKMARK IN THE BOX. OTHERWISE PROVIDE CORRECTED INFORMATION THROUGHOUT THIS FORM. AN ASTERISK INDICATES INFORMATION THE VIATICAL SETTLEMENT PROVIDER/BROKER MUST PROVIDE.

POLICY OWNER'S AND INSURED'S INFORMATION

	This column to be completed by Viatical Settlement Broker/Provider	This column to be used by Insurance Company
Owner's name	*	
Address	*	
City, state, ZIP code	*	
Tax ID or social security number	*	
Insured's name	*	
Insured's date of birth	*	
Second insured's name (if applicable)	*	
Second insured's date of birth (if applicable)	*	

I hereby consent by my signature below to release of information requested by this form by the insurance company to the viatical settlement broker/provider.

 Signature of policy owner

 Date signed

Form VOC

IS THE POLICY IN FORCE? _____ **YES** _____ **NO**

IF NO, SIGN, AND DATE ON PAGE 4 AND RETURN TO THE VIATICAL SETTLEMENT BROKER OR PROVIDER THAT SUBMITTED THE VERIFICATION OF COVERAGE.

POLICY TYPE, RIDERS & OPTIONS:

* _____ **TERM** _____ **WHOLE LIFE** _____ **UNIVERSAL LIFE** _____ **VARIABLE LIFE**

If a question is not applicable to the type of policy, write N/A in the column.

	This column to be completed by Viatical Settlement Broker/Provider	This column to be used by Insurance Company
Original issue date	*	
Maturity date of policy		
State of issue	*	
Does the policy have an irrevocable beneficiary?	*	
Is the policy currently assigned?	*	
Was the policy ever converted or reinstated?		
Is the policy in the contestability period?	*	
Is the policy in the suicide period?	*	
Please list all riders and indicate if any are in the contestable or suicide period.	*	

POLICY VALUES

	This column to be completed by Viatical Settlement Broker/Provider	This column to be used by Insurance Company
Policy values as of (insert date)		
Current face amount of policy	*	
Amount of accumulated dividends		
Current face amount of riders		
Amount of any outstanding loans	*	
Amount of outstanding interest on policy loans		
Current net death benefit	*	
Current account value	*	
Current cash surrender value	*	
Is policy participating?	*	
If yes, what is the current dividend option?		

PREMIUM INFORMATION

	This column to be completed by Viatical Settlement Broker/Provider	This column to be used by Insurance Company
Current payment mode	*	
Current modal premium	*	
Date last premium paid	*	
Date next premium due	*	
Current monthly cost of insurance as of (insert date)		
Date of last cost of insurance deduction		

TO BE COMPLETED BY VIATICAL SETTLEMENT BROKER/PROVIDER

The information submitted for verification by the viatical settlement broker/provider is correct and accurate to the best of my knowledge and has been obtained through the policy owner and/or insured.

Signature

Printed Name

Page 3 of 4

TO BE COMPLETED BY INSURANCE COMPANY

The information provided by verification by the insurance company is correct and accurate to the best of my knowledge as of _____ (date).

Insurance company: _____ NAIC # _____

Printed name: _____	Title: _____
Telephone number: _____	Fax number: _____
Signature: _____	
<i>Please provide information about where the forms listed below should be submitted for processing.</i>	
Name: _____	Title: _____
Company Name: _____	
Mailing Address: _____	
City, State, ZIP: _____	
Overnight Address: _____	
City, State, ZIP: _____	
Telephone number: _____	Fax number: _____

FORMS REQUEST

Please provide the forms checked below:

- ☐ Absolute Assignment/Change of Ownership/Viatical Assignment
- ☐ Change of Beneficiary
- ☐ Release of Irrevocable Beneficiary (if applicable)
- ☐ Waiver of Premium Claim Form
- ☐ Disability Waiver of Premium Approval Letter
- ☐ Release of Assignment
- ☐ Change of Death Benefit Option Form (if UL)
- ☐ Allocation Change Form (if Variable)
- ☐ Annual Report
- ☐ Current In Force Illustration

APPENDIX C

Viatical Settlement Provider Report

Calendar year

Viatical Settlement Provider's Name

[State] Transactions Only

20_____

[illegible]

Initials of Preparer: _____

VSP 001

Viatical Settlement Provider Report [State] Insureds Only Instructions

1. List the settlement number, case number or unique identifying number used to identify the specific viatical settlement transaction.
2. List the date the viatical settlement contract was purchased by the provider during the current calendar year, whether or not the insured is still alive at the end of the calendar year.
3. List the net amount (in dollars) being viaticated.
4. List the age (in years) of the person insured by the policy being viaticated, at the time of the viatical settlement contract.
5. List the life expectancy (in months) of the insured individual at the time of the viatical settlement contract.
6. List the net amount (in dollars) paid to the viator.
7. Identify whether the policy was an individual policy (I) or a group policy (G).
8. List the type of funding for the transaction: "F" for a licensed financial institution (policies collateralized), "P" for private (purchaser) funding, "I" for internal funding, "T" for trust, and "RPT" for related provider trust.
9. Indicate the purchase source of the policy. Use "B" for viatical settlement broker, "D" for direct from the viator, "I" for insurance agent/producer, "SM" for a secondary market or viatical settlement provider, "P" for private (purchaser) funding or "O" for other.
10. List the amount of commissions (in dollars) paid to viator source involved in the transaction whether that be a viatical settlement broker, an insurance producer or other licensed entity authorized to be viator source.
11. List the name of the source of the viatical settlement transaction. If it is a broker, producer or other licensee, name that person; if it is direct, from a relative, from the corporation of the insured or any other entity that could possibly reveal the insured, designate by writing "Direct," "Relative," "Corporation," or other nondesignating word.

VSP 001 Instructions

Initials of preparer: _____

Individual Mortality Report

Calendar year

Viatical Settlement Provider's Name

[State] Insureds Only

20

[illegible]

Completed by Viatical Settlement Providers

Initials of preparer: _____

VSP 002

Individual Mortality Report—[State] Insureds Only Instructions

1. List the settlement number, case number, or unique identifying number used to identify the specific viatical settlement transaction.
2. List the date of the viatical settlement contract.
3. List the age of the insured at the time of the contract.
4. List the life expectancy (in months) of the insured individual at the time of the viatical settlement contract. For first to die policies, use the shortest life expectancy of the two lives. For second to die policies, use the longest life expectancy of the two lives.
5. List the "Net" amount paid to the viator.
6. Indicate the insured's date of death. For first to die policies, use the date of the first insured's death. For second to die policies, use the date of the last insured's death.
7. List the total amount of premiums (in dollars) required to be paid to the insurer to maintain the policy from the date of viatication to the date of death.
8. List the total death benefit collected from the insurer.
9. List the number of months between the date of contract and the insured's date of death.
10. List the number of months between the life expectancy of the insured at the time of contract and the insured's date of death. This should be noted as a plus (+) figure if the insured died after the estimated life expectancy or a minus (-) if the insured died prior to the estimated life expectancy.

VSP 002 Instructions

Initials of preparer: _____

Viatical Settlement Provider Certification Form

This section should be completed by viatical settlement providers.

Please check all forms submitted:

- ☐ Viatical Settlement Provider Reporting Form - [State] Viators Only (VSP 001)
- ☐ Individual Mortality Report - [State] Insureds Only (VSP 002)

I hereby certify that the information contained in the reports indicated above is true and accurate. I acknowledge that providing false and misleading information in the reports, or failing to divulge a fact material thereto, is sufficient grounds for administrative action by the commissioner and potentially, applicable criminal penalties.

_____	Date: ____/____/____
Signature of individual that prepared reports	

Print or type name	
_____	Date: ____/____/____
Signature of Authorized Representative	

Print or type name	

VSP 003

Chronological Summary of Actions (all references are to the Proceedings of the NAIC).

1994 Proc. 2nd Quarter 13, 39, 53, 550, 572-574 (adopted).
1999 Proc. 1st Quarter 8, 9, 506-507, 510, 511-518 (amended and reprinted).
1999 Proc. 3rd Quarter 25, 26, 746, 749, 750-758 (amended to add three appendices).
2003 Proc. 4th Quarter 267-269 (model amended by working group).
2004 Proc. 1st Quarter 329, 337-384 (model further amended and adopted by parent committee).
2004 Proc. 2nd Quarter 49-50 (adopted by Plenary).
2013 Proc. 2nd Quarter 113, 127-129, 346 (adopted Guideline Amendments).