

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.

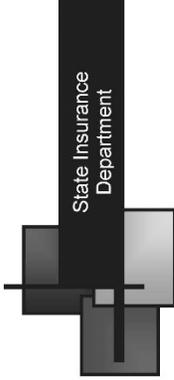
Always Check with Your State

- 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

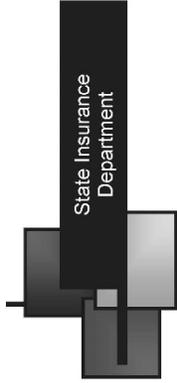
Primary Business Address
 Your Address Line 2
 Your Address Line 3
 Phone: 555-555-5555 Fax: 555-555-5555
 Email: xyz@microsoft.com
 Website

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 vatical settlement becomes the new owner of the life insurance policy, pays future premiums and collects the death benefit when the insured dies.</i></p>	<ul style="list-style-type: none"> • A vatical 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 vatical 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.
<p><i>At one time, most vatical 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>Need to pick an appropriate annuity.</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>		

Questions to Ask

- 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?

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.



Selling Your Life Insurance Policy

Always Check with Your State

Contact your state insurance or securities departments to learn about the issues and risks of viatical settlements *if*:

- you're considering selling your life insurance policy;
- you're asked to sell your life insurance policy *and* your health hasn't changed since you bought the policy;
- you're asked to buy a new life insurance policy *and* immediately sell it for cash.

Buying a Life Insurance Policy?

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

Understanding Viatical Settlements

STATE INSURANCE DEPARTMENT

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

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 VIACIAL 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 Illustration

APPENDIX C

Viatical Settlement Provider Report

All States and Territories

Calendar year
200 _____

Viatical Settlement Provider's Name _____

States	1 Are you doing business in this state? (Y/N)	2 Total number of policies reviewed for consideration	3 Total number of policies where an offer was made	4 Total number of policies where an offer was not made	5 Total number of policies purchased	6 Aggregate total net death benefit	7 Aggregate amount paid to viators	8 Secondary market transactions	
								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
All States and Territories

Calendar year
200 —

Viatical Settlement Broker's Name		Calendar year						
		1	2	3	4	5	6	7
States	Are you doing business in this state? (Y/N)	Total number of policies reviewed for consideration	Total number of policies represented for vocation	Total number of policies where representation was refused	Total number of policies sold to a provider	Aggregate net death benefit vaticated	Aggregate net amount paid to vators	
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								
Totals								
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								

Initials of preparer: _____

VSB 001

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: _____

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: _____

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.

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

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

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.

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

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

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).

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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.

Table of Contents

Section 1.	Authority
Section 2.	Definitions
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Section 6.	Reporting Requirement
Section 7.	General Rules
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Appendix B.	Verification of Coverage for Life Insurance Policies Form
Appendix C.	Provider Reporting Forms

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

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 Illustration

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—[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).

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VIATICAL SETTLEMENTS MODEL REGULATION

This chart is intended to provide readers with additional information to more easily access state statutes, regulations, bulletins or administrative rulings related to the NAIC model. Such guidance provides readers with a starting point from which they may review how each state has addressed the model and the topic being covered. The NAIC Legal Division has reviewed each state’s activity in this area and has determined whether the citation most appropriately fits in the Model Adoption column or Related State Activity column based on the definitions listed below. The NAIC’s interpretation may or may not be shared by the individual states or by interested readers.

This chart does not constitute a formal legal opinion by the NAIC staff on the provisions of state law and should not be relied upon as such. Nor does this state page reflect a determination as to whether a state meets any applicable accreditation standards. Every effort has been made to provide correct and accurate summaries to assist readers in locating useful information. Readers should consult state law for further details and for the most current information.

VIATICAL SETTLEMENTS MODEL REGULATION

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VIATICAL SETTLEMENTS MODEL REGULATION

KEY:

MODEL ADOPTION: States that have citations identified in this column adopted the most recent version of the NAIC model in a **substantially similar manner**. This requires states to adopt the model in its entirety but does allow for variations in style and format. States that have adopted portions of the current NAIC model will be included in this column with an explanatory note.

RELATED STATE ACTIVITY: Examples of Related State Activity include but are not limited to: older versions of the NAIC model, statutes or regulations addressing the same subject matter, or other administrative guidance such as bulletins and notices. States that have citations identified in this column **only** (and nothing listed in the Model Adoption column) have **not** adopted the most recent version of the NAIC model in a **substantially similar manner**.

NO CURRENT ACTIVITY: No state activity on the topic as of the date of the most recent update. This includes states that have repealed legislation as well as states that have never adopted legislation.

NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Alabama	NO CURRENT ACTIVITY	
Alaska	ALASKA ADMIN. CODE tit. 3, §§ 31.300 to 31.449 (2002/2012) (portions of model).	
American Samoa	NO CURRENT ACTIVITY	
Arizona	NO CURRENT ACTIVITY	
Arkansas		69 ARK. CODE R. (1998); Directive 1-2009 (2009).
California		CAL. CODE REGS. tit. 10, §§ 2548 (2007/2014); BULLETIN 20122 (2012).
Colorado		3 COLO. CODE REGS. 702-2:2-1-11 (2012).
Connecticut		CONN. AGENCIES REGS. §§ 38a-465-2 to 38a-465-10 (1998/2013).
Delaware	NO CURRENT ACTIVITY	
District of Columbia	NO CURRENT ACTIVITY	
Florida		Memorandum 2006-014 (2006).

VIATICAL SETTLEMENTS MODEL REGULATION

NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Georgia	NO CURRENT ACTIVITY	
Guam	NO CURRENT ACTIVITY	
Hawaii		HAW. REV. STAT. §§ 431C-31 to 34 (2012).
Idaho		IDAHO ADMIN. CODE r. 18.01.13.000 to 18.01.13.016 (2009).
Illinois	NO CURRENT ACTIVITY	
Indiana		760 IND. ADMIN. CODE 1-61-1 to 1-61-12 (1999/2005).
Iowa		IOWA ADMIN. CODE R. 191.48.1 to 191.48.13 (2002/2012); IOWA ADMIN. CODE r. 191-50.110 to 191-50.124 (2000/2007) (Investments in viatical settlements); BULLETIN 2011-5 (2011).
Kansas	NO CURRENT ACTIVITY	
Kentucky		806 KY. ADMIN. REGS. 9:310 to 9:320 (2001/2009); 806 KY. ADMIN. REGS. 15:050 (2001/2009).
Louisiana		LA. ADMIN. CODE tit. 37, §§ XIII.3901 to XIII.3919 (Regulation 58) (1995/2009).
Maine		02-031 ME. CODE R. § 931(2000); 02-032 ME. CODE R. § 539 (2007).
Maryland		MD. CODE REGS.31.09.11.01 to 31.09.11.02 (2007).
Massachusetts	NO CURRENT ACTIVITY	
Michigan	NO CURRENT ACTIVITY	
Minnesota	NO CURRENT ACTIVITY	

VIATICAL SETTLEMENTS MODEL REGULATION

NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Mississippi		Miss. CODE R. 19-2:15 §§ 1 to 14 (2012).
Missouri	NO CURRENT ACTIVITY	
Montana	MONT. ADMIN. R. 6.6.8501 to 6.6.8512 (2000/2006) (portions of model).	
Nebraska		210 NEB. ADMIN. CODE § 76 (2002).
Nevada		NEV. ADMIN. CODE § R180-03 (2004); R120-06 (2006); BULLETIN 2006-007 (2006); BULLETIN 2011-011 (2011).
New Hampshire	NO CURRENT ACTIVITY	
New Jersey		N.J. ADMIN. CODE §§ 11:4-35.1 to 11:4-35.18 (2001).
New Mexico		13 N.M. CODE R. §§ 13.9.15.1 to 13.9.15.20 (2000).
New York		N.Y. COMP. CODES R. & REGS. tit. 11, §§ 380.1 to 380.10 (Regulation 148) (1994/2003); §§ 381.1 to 381.3 (2010/2011); OGC 11-6-2006 (2006).
North Carolina		11 N.C. ADMIN. CODE §§ 12.1710 to 12.1720 (2002); Memorandum 2-3-2014 (2014).
North Dakota	NO CURRENT ACTIVITY	
Northern Marianas	NO CURRENT ACTIVITY	
Ohio		OHIO ADMIN. CODE 3901:9-01 (2010).
Oklahoma		OKLA. ADMIN. CODE §§ 365:25-11-1 to 365:25-11-6 (1999/2009); BULLETIN 11-1-2008 (2008); BULLETIN 4-9-2009 (2009).
Oregon		OR. ADMIN.R. 836-014-0200 to 836-014-0330 (1996/2006).

VIATICAL SETTLEMENTS MODEL REGULATION

NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Pennsylvania	NO CURRENT ACTIVITY	
Puerto Rico	NO CURRENT ACTIVITY	
Rhode Island	NO CURRENT ACTIVITY	
South Carolina	NO CURRENT ACTIVITY	
South Dakota	NO CURRENT ACTIVITY	
Tennessee		TENN. COMP. R. & REGS. 0780-1-71-.01 to 0780-1-71-.11 (2003).
Texas		28 TEX. ADMIN. CODE §§ 3.1701 to 1760 (2013); BULLETIN B-0028-08 (2008); BULLETIN B-0036-11 (2011).
Utah		UTAH ADMIN. CODE r. 590-222-1 to 590-222-14 (2003/2013).
Vermont		95 VT. CODE R. § 4 (1996).
Virgin Islands	NO CURRENT ACTIVITY	
Virginia		14 VA. ADMIN. CODE §§ 5-71-10 to 5-71-100 (1997/2003).
Washington		WASH. ADMIN. CODE 284-97-010 to 284-97-050 (1995/2013).
West Virginia		W. VA. CODE R. §§ 114-80-1 to 114-80-12 (2008/2009).
Wisconsin		WIS. ADMIN. CODE INS. § 2.18 (2012).
Wyoming	NO CURRENT ACTIVITY	

VIATICAL SETTLEMENTS MODEL REGULATION

Proceeding Citations

Cited to the Proceedings of the NAIC

As the Viatical Settlements Model Act was being developed, the drafters recognized that a regulation would be necessary. **1993 Proc. 2nd Quarter 715.**

A commissioner noted that he had received some comments that the Viatical Settlements Model Regulation was prepared by the insurance industry to benefit the insurance industry. He said nothing could be further from the truth. The draft was prepared by NAIC members with consumers in mind. Support would be needed by consumers and the good players in the viatical settlement industry so that the model law and regulation could be adopted in the states. He encouraged those who were in favor of this model to put that support in writing and to lend support when states introduced bills. **1994 Proc. 2nd Quarter 551.**

Late in 1998 a hearing was held on the viatical settlement industry and the appropriate direction for regulation. The president of the NAIC emphasized that there was a role for viatical settlements until all insurers offer accelerated death benefits, to meet the needs of people who were in desperate need of cash. However, he said viatical settlement transactions must be carefully regulated. He asked the committee to take a look at how this industry evolved and ask itself whether the regulators were comfortable with the direction the industry was going. He asked if it was appropriate to have life insurance turned into an investment contract—“death futures,” investing in a person’s death. He asked regulators to consider whether there were insurable interest concerns and to deal with the public policy questions. A member of his staff described four categories of viatical settlements that needed to be considered: 1) people with a life expectancy of no greater than two years; 2) the chronically ill, who did not have a normal life expectancy, but were expected to live more than two years; 3) persons with a normal life expectancy; and 4) people who did not now own life insurance. He said there was activity in all four of these categories that needed to be considered by the regulators. **1998 Proc. 4th Quarter II 609-610.**

The state regulator described a letter that he had recently received that was addressed to agents encouraging them to look at life insurance policies they had written to identify those who might be approached to viaticate the policies. He noted advertisements that encouraged people to buy life insurance and immediately viaticate the policies. He pointed out a newspaper article that said billions of dollars of insurance were being viaticated. It concluded that “homicide becomes more than a remote possibility.” He recommended several courses of action to the committee. He asked that an “Alert” be developed to describe for investors, regulators, the media and other interested parties the direction the market was going. He said that inaction on the part of the NAIC would endorse the direction of the market. **1998 Proc. 4th Quarter II 610.**

A representative from the viatical settlement industry noted that life insurance was a form of property and the owner had discretion about what to do with that property. He opined that there was a broad consumer need for viatical settlements or the industry would not have grown to the extent that it has. Another said his company would not buy policies that had just been issued and did not condone that practice. He said he believed it was being done by a few agents to generate commissions and it was not clear that many, if any, would actually be purchased by viatical settlement providers, because the viatical settlement provider would be betting against the underwriting of the insurer. He opined that this policy would have been taken out in bad faith as a wagering contract. **1998 Proc. 4th Quarter II 610-611.**

A state regulator said his state experienced viatication of thousands of contracts without incident. Unfortunately, the industry moved dramatically from the viatication of policies of ill individuals. He said that he has gotten numerous calls from investors who were told they would get huge returns. He opined that this would have a tremendous impact on the life insurance industry with a great potential for fraud. **1998 Proc. 4th Quarter II 612.**

The revisions adopted in 1999 were designed to accomplish several goals: (1) The definition of viator was expanded to include the chronically ill. (2) The licensing requirements were strengthened, updated and consolidated. (3) The model regulation was modified to contain two alternative methods of determining whether payments were reasonable and just. In conjunction with the second alternative, Section 6 was amended to provide for further reporting of information needed to help the insurance department evaluate whether the payment made was reasonable and just and to reduce the incidence of “gaming.” (4) The working group discussed the issue of privacy to a considerable length. The working group recognized the need to restrict access to information but also was cognizant of the need to make that information available to those providing funding for viatical settlements. The solution agreed upon by the working group was to make the viator’s personal information available only with his express consent. (5) The disclosure requirements were expanded. (6) A new Section 10 was added to respond to concerns of insurers and viatical settlement providers to standardize their interaction. **1999 Proc. 1st Quarter 505.**

VIATICAL SETTLEMENTS MODEL REGULATION

Proceeding Citations

Cited to the Proceedings of the NAIC

Section 1. Authority

This section was added during the drafting effort of 1998–1999. **1998 Proc. 2nd Quarter II 741.**

Section 2. Definitions

The whole definitions section was added in 1999. **1999 Proc. 1st Quarter 512-513.**

B. The draft of the revised regulation being discussed in 1998 contained a new definition of life expectancy. An interested party suggested adding to the end of the definition a phrase that said “...or as would be determined by a qualified actuary, considering available medical records and appropriate experience data applicable to disabled lives.” **1998 Proc. 2nd Quarter II 739.**

When the working group next met, the chair asked for comments on the definitions section. A representative of a viatical trade association said the definition of life expectancy causes him concern because of the suggestion to determine life expectancy by a “independent medical review board.” He asked if that was intended to be a governmental agency. He suggested that it was inappropriate for a governmental agency to define life expectancy to use as a criterion for pricing. A company looked at life expectancy in many ways, including the level of care being received, the life style of the potential viator, and many other factors. He said a medical review board would not likely look at all those factors. He also noted that this was the only reference to an independent medical review board. He also commented that the suggestion of another interested party to add review by an actuary was not commonly done by viatical settlement companies. He said most use a medical review, rather than an actuarial review. **1998 Proc. 2nd Quarter II 739.**

The chair noted that the purpose of including this definition was to set some standard for reasonable payments. The interested party responded that the one who was taking the risk should make the determination. A regulator commented that this discussion was related to the working group’s frustration with the marketplace determining minimum payouts. He expressed concern that companies could affect the payouts by changing the life expectancy. He also expressed frustration with the viatical settlement industry’s promise to provide pricing information, but that information was not forthcoming. The interested party who had pledged to provide information promised to submit data from four companies. He said that in the current marketplace, there were only four companies with independent financing; the rest solicited investors. **1998 Proc. 2nd Quarter II 739-740.**

The draft of the model regulation under review in the fall of 1998 defined life expectancy as determined by an independent medical review board or a qualified actuary. The viatical settlement trade associations suggested a different definition because the life expectancy was expressed by providers in a range rather than one single number. In addition the viatical industry representatives expressed concern about the concept of a review board. An interested party encouraged regulators to express life expectancy in a range of months. A regulator whose state required reporting noted that for his state’s data compilations, a single number rather than a range was required. He asked what number from that range was used in providers’ reports. The interested party said the top number in the range was used. The regulators discussed the pros and cons of using a range versus one number. The actuaries in attendance explained to the group that the number being used should be the mean of the number of months rather than the top number. The working group agreed to include the definition of life expectancy drafted by the industry trade groups and insert it as Section 2C. **1998 Proc. 3rd Quarter 534.**

An interested party asked about the definition of life expectancy in Section 2B. He questioned the use of the word “mean.” He said this required viatical settlement providers to obtain more than one estimate of life expectancy. Another interested party recommended that the term be removed from the definition. He said a provider might get two or three estimates, but one would be more appropriate to use. Another interested party said that he did not agree. If three underwriters were making estimates, without the word “mean” in the definition, it became very murky. He suggested that, for each person, the provider should look at the mean of the life expectancy, but if the provider got three estimates and each was different it can choose one. A representative from a viatical trade association said he recalled the discussion that led up to this language. At that time the working group discussed the fact that providers were getting life expectancies that covered a range, for example the individual might live from six to 18 months. The definition was an effort to fix a point in the range of one estimate; it was not intended to be a mean of various estimates. Prior to that change, the drafters had assumed that providers would receive an estimate with one firm number. He said that the language could be clarified to show that, if the life expectancy was provided

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Section 2B (cont.)

in a range, use the mean of that range. Taking out “mean” would dilute the meaning of the definition. **2002 Proc. 4th Quarter 263.**

Section 3. License Requirements

A. When a working group was assigned to redraft the model regulation, beginning in 2001, the chair stated that additional provisions might be added regarding broker education. He asked one regulator to lead a small group of fellow regulators, who would make recommendations on education. The lead regulator suggested that the working group recommend pre-licensing education requirements and a test. In his state the training was broken down to hours of life insurance education, viatical settlement education and ethics. The testing related only to viatical settlements. The state’s test was 60% life insurance, 16% state life insurance law, 16% state viatical settlements law, and 8% securities law. His state required 40 classroom hours of pre-licensing education and 24 hours of continuing education every two years. **2001 Proc. 1st Quarter 62.**

The lead regulator on the education issue asked the working group members whether it was their preference to require pre-licensing education or simply to require the broker to pass a test and let him or her decide whether to take a class prior to taking the test. An interested party encouraged regulators not to require classroom hours; the real requirement should be mastering the material. He encouraged regulators to treat traditional viatical settlements and life settlements differently. The skill set needed in education would be different. He also encouraged the regulators to differentiate between the “front end” of the transaction (the transaction between the viatical settlement provider and the viator) and the “back end” of the transaction (the transaction between the viatical settlement provider and the investor). The lead regulator said that, with regard to the securities side of the transaction, the broker should have some elementary knowledge of the rest of the process so that he can explain it to the viator. Securities regulators were generally responsible for regulating that side. **2001 Proc. 3rd Quarter 35.**

An interested party suggested that the working group prepare self-study materials. Another attendee noted that, once regulators made an outline, there were a number of vendors who would want to create materials for study. A regulator opined that there was a great deal of uniformity between the states in regard to the viatical settlement laws and she supported the idea of a national test and agreed this was the right time to set such standards. **2001 Proc. 3rd Quarter 35-36.**

The Viatical Settlements Model Act was drafted so that references to the securities side of the transaction were bracketed and states where the securities division handled this aspect of viatical settlements would not include the language in their insurance laws. A regulator asked if the securities division would create a test for the investment side of the transaction. The regulator taking the lead on education issues said he believed that everyone negotiating viatical settlements should have some concept of the investment side of the transaction. He said the questions on the test would be high level questions that should be known by all participants in viatical settlements. **2001 Proc. 4th Quarter 167.**

The chief drafter of the education amendments to the regulation outlined his proposal for changes to the requirements for an examination. He said there had been some discussion about life insurance agents who wished to become viatical settlement brokers. He said comments made to him after the meeting indicated a possible consensus on the idea of exempting life insurance agents from the viatical settlement brokers’ examination if the individual was in good standing. He noted that a sentence should be added to the drafting note to indicate that limited lines life insurance producers were not exempt from the examination, because someone who had a license as, for example, a credit insurance producer should not be exempted from the examination. **2002 Proc. 3rd Quarter 128.**

A regulator asked if a life insurance producer who wanted to become a viatical settlement broker needed additional knowledge to take the viatical broker test. The chief drafter of the amendments responded that the intent was to examine persons in regard to the law on viatical settlements. The working group decided to require that life insurance agents be required to take the portion of the examination regarding viatical settlements. An interested party said that the exemption had no meaning, because obviously the viatical settlement broker knew the life insurance material. The Viatical Settlement Act said the individual should go to his life insurance agent to learn more about viatical settlements, but if he was not licensed as a viatical settlement broker he could not respond. He opined that this was denying consumers access to information. A regulator asked what language in the model act precluded a viatical settlement broker from providing advice. He opined that

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Section 3A (cont.)

it was extreme to say he could not talk about viatical settlements. A person who was not licensed as a viatical settlement broker could not accept a commission, but nothing would prohibit him from providing information. Any life insurance producer could provide advice about the life insurance policy, but if he was going to facilitate a viatical settlement, he needed to be examined to determine his understanding of the process. **2002 Proc. 3rd Quarter 129.**

C. A regulator said that an issue came up in her state where a provider did not renew its license. She commented that the working group should include a provision that would clarify the status of viaticated policies belonging to a company that no longer was licensed. A representative from a viatical settlement trade association said this issue was discussed by the viatical industry in the context of companies that went out of business. **1998 Proc. 2nd Quarter II 740.**

An interested party suggested that the financing plan of a viatical settlement provider be disclosed to the commissioner. She recommended adding a new requirement to the licensing standards to mandate that provision. A representative from a viatical settlement provider said that in states with liberal freedom of information laws, the commissioner might not be able to keep this information confidential as a trade secret. Another pointed out that, as plans changed, the information would become out of date. The working group chair said this information would give the reviewer in the insurance department more information with which to evaluate the ability of the viatical settlement provider to manage its portfolio. An interested party said the source of the funds was extremely important and he asked what viatical settlement providers were trying to hide. A regulator noted that insurance companies provide public information about the sources of their funding and he suggested that it created instability for the viatical settlement provider if it did not have a steady source of funding. **2001 Proc. 4th Quarter 167.**

At the next meeting, another interested party again suggested that financing plans be submitted for review before a license was granted to a viatical settlement provider. He said his company believed that, as a matter of sound public policy, the details of the financing plan should be reviewed and approved before a license was provided or renewed by the state. He conceded that it took a great deal of effort to arrange financing and a company might view that as proprietary information. He asked if regulators could keep the financing plan confidential. A regulator responded that he was not sure what this documentation would mean at the time of the application. Another regulator asked if regulators would be in any way accountable for the solvency of the company because they had reviewed financing documents. He wondered if insurance regulators had the expertise to review and approve this type of information. **2002 Proc. 1st Quarter 132.**

Just prior to adoption of the model, an interested party commented that Section 3B was not clear because there was no methodology to use when the resident state did not license viatical settlement providers or brokers. A regulator said that there were already licensing requirements that were not the same in all states. For example, if a state did not license title agents, but a person wanted a license to do title business in another state, he usually had to fulfill the education and testing requirements just as if he were a resident of that state. The chair suggested raising the attention of the states to this issue so they could consider how to handle it on a state-by-state basis. He asked staff to insert a drafting note that alerted states to this issue. **2003 Proc. 4th Quarter 267.**

An interested party said there was some variation on how states addressed the phrase “letter of good standing.” Some states considered this to be from the insurance department of the state of domicile, while others requested a letter from the Secretary of State’s office in that state. One regulator said her state expected a certification from the state of domicile that the licensee was licensed there. A regulator suggested adding a drafting note to alert states to the issue. The working group also agreed to add a drafting note suggesting that states match the renewal period for a viatical license with that for other licenses. **2001 Proc. 3rd Quarter 36.**

D. An interested party from a viatical trade association said the viatical industry supported continuing education and he looked forward to participating in a dialog on this issue. Another participant asked if regulators were considering education for providers, brokers and investment agents. He asked if all participants would be included or just those typically regulated on the insurance department side. **2001 Proc. 1st Quarter 62.**

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Section 3 (cont.)

The lead regulator developing the education component said the working group needed to consider continuing education requirements. In his state the requirement was for 24 hours of education every two years for insurance producers and for viatical settlement brokers. The chair suggested that the working group could put a bracket in the model and let each state decide how many hours to require. An interested party encouraged the working group to include a number of hours because the states would look to the NAIC for a recommendation. A regulator said that the model regulation could have the number in brackets or could add a note that the required numbers could be changed as needed in the states. An interested party said that the requirement for a certain number of hours in life, viatical settlements and ethics was helpful. This requirement would ensure that brokers were better educated. **2001 Proc. 3rd Quarter 35-36.**

The chair suggested that reference to a specific number of hours in Paragraphs (1) and (2) be deleted, leaving the brackets for states to insert their own numbers. The person taking the lead on education drafting asked if the drafting note would remain and the chair agreed that it would. **2002 Proc. 2nd Quarter 140.**

E. The working group had previously discussed adding a requirement in Section 3 for errors and omissions coverage for brokers. An interested party commented that coverage was not widely available, which would be a barrier to licensing. A regulator commented that the availability and cost of the coverage was based on what insurers read in the newspapers. He opined that coverage would get cheaper when the papers were filled with good news about viatical settlements. An interested party said that, if a regulation contained a requirement that companies could not meet, regulators were precluding the industry from operating. The working group agreed to add a new subsection to Section 3 to include language based on one state statute. A regulator asked if the regulation should include language to clarify whether the bond was a benefit to the state or to the viator. The chair said that this was clearly for the protection of the broker's client. One regulator said that his state has alternatives of a bond, errors and omissions coverage or a cash deposit. The coverage also was not required to come from an "authorized insurer" because the companies offering it might be surplus lines carriers. **2001 Proc. 3rd Quarter 36.**

A regulator asked the working group to consider alternative language that included higher dollar amounts than what was currently in the draft, but he believed that as the industry turned away from terminal illness and purchased policies on persons who were not terminally or chronically ill, larger dollar amounts would be involved. He acknowledged that viatical settlement providers had difficulty getting errors and omissions coverage but said that the insurers providing the coverage may not understand viatical settlements and also had been influenced by the negative publicity surrounding the industry. Another regulator asked if this deposit was with the commissioner or in the licensee's personal account and the person who made the suggestion responded that the deposit would be with the commissioner. A representative from a viatical trade association said that the high amounts required in the draft would further narrow the number of brokers in the business. Another attendee asked if a broker licensed in several states needed separate coverage or a deposit in each state or whether one policy served for all states in which he was licensed. A regulator responded that generally it was one policy for all states and the interested party asked that the wording be clarified to express that. **2001 Proc. 4th Quarter 167-168.**

At the next working group meeting, the chair said the group had received a great deal of comment on Section 3E. A viatical trade association expressed opposition to the provision in its entirety, but the chair pointed out that the working group was required to include this in Section 15A of the Viatical Settlements Model Act. Another viatical trade association asked that the amount of the bond or financial responsibility be reduced. The chair suggested inserting brackets rather than dollar amounts so that states could decide for themselves what amount to include. The regulator who has suggested the amounts in the draft defended the numbers he had inserted and noted that the industry has asked that this amount serve nationwide. He did not believe smaller amounts would be helpful in that regard. Another member of the working group suggested leaving the amounts but putting them in brackets to alert states to the fact that they could make changes. Two commenters asked the regulators to consider fulfillment in one jurisdiction as fulfillment in others. He asked if it was a problem if one state's requirement was higher than another. **2002 Proc. 1st Quarter 132.**

A regulator asked whom the bond was designed to protect; would investors be protected under the bond? Another regulator responded that they would not in his state, because investors were under the purview of the securities division rather than the insurance division. One person asked about the cost of the bond and the regulator acknowledged that it was high. He said the marketplace for bonds might improve if viatical settlement brokers were required to be life agents appointed by an insurer. Then perhaps the errors and omissions coverage for the life business would cover the viatical settlement business too. He said

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Section 3E (cont.)

his greatest fear was that this provision might drive up the cost of errors and omissions coverage for a life insurance agent if it was perceived that all life agents were involved in viatical settlements. **2002 Proc. 1st Quarter 132.**

The chair suggested that the dollar amounts in the brackets be left blank for states to insert their own amounts. The working group agreed with that suggestion. Paragraph (2) was added to clarify that one bond or deposit would suffice for all states in which the provider or broker was licensed. **2002 Proc. 2nd Quarter 140.**

F. Subsection F was part of the original model, but was amended in 1999. **1999 Proc. 1st Quarter 573.**

G. The chief drafter of amendments related to education drafted a new Subsection G to address competency standards for investment agents. He suggested adding the language in brackets to indicate that it was for states that regulated the investment side of the transaction within the insurance department. **2002 Proc. 3rd Quarter 129.**

H. A regulator reported that her state's law contained a provision that a licensed life and health agent could act as a viatical broker without an additional registration. The chair noted that the law in his state required viatical settlement brokers to be licensed as insurance agents also. A representative from a viatical trade association objected to a requirement for a broker to be licensed as an insurance agent. He said one state's law did not allow anyone licensed as an insurance agent to be a viatical broker, which meant that brokers had to choose between certain states where they were required to be licensed or prohibited from being licensed. The chair responded that being licensed as an insurance agent demonstrated a certain level of knowledge and competence. The viatical trade representative disagreed, saying that the body of knowledge necessary to be a viatical settlement broker was not the same as the knowledge needed as an insurance agent. **1996 Proc. 2nd Quarter 650.**

When the group drafting amendments in 2001 looked at a proposal for educational standards, a regulator asked if this draft anticipated a separate license for viatical brokers, or whether it would be rolled into the producer license. The principal drafter of the educational standards responded that it would be a separate license. He said he was not in favor of combining the two licenses. The first regulator asked if reciprocity was required under the Gramm-Leach-Bliley Act (GLBA). NAIC staff responded that it was the legal division's opinion that reciprocity was not required because GLBA spoke of those who "sell, solicit and negotiate insurance sales." **2001 Proc. 4th Quarter 166.**

NAIC staff was asked to review and comment on a legal memorandum submitted on behalf of a viatical settlement provider that suggested that the Gramm-Leach-Bliley Act (GLBA) required reciprocity for viatical brokers. Therefore a determination of which states met the reciprocity requirements of GLBA should include some measurement of reciprocity for viatical brokers. The memo suggested that the way to achieve this was to allow all licensed life insurance producers to transact viatical settlements without additional licensing. This issue had been raised with another NAIC working group that focused on GLBA licensing issues, and that group decided that the reciprocity requirements of GLBA did not apply to viatical brokers. **2002 Proc. 2nd Quarter 112.**

The chair said that it was still possible for the Viatical Settlements Model Regulation to include provisions for reciprocity. He asked if anyone was interested in pursuing that issue. An interested party said that there would be a great value in allowing all life insurance producers to explain viatical settlements, especially if they were given the extra incentive of a commission. An interested party said his company was not proposing reciprocity for viatical settlement brokers, but rather believed that the definition of producer in GLBA meant that regulators must allow life insurance agents to negotiate viatical settlements as part as their life insurance license. **2002 Proc. 2nd Quarter 112.**

An interested party proposed a change to the regulation so that life insurance producers would be deemed to be viatical settlement brokers if they filled out a form stating that intent. He opined that this amendment would give the insurance department more information about viatical settlement brokers and more income through licensing fees. A regulator noted that, if a life insurance producer wanted to sell variable products, he needed another license so that concept was not unusual. The chair said that the working group was now talking about three separate concepts and suggested separating them for discussion. First, was the idea of reciprocity as a requirement under GLBA. Second was whether there was an interest in

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Section 3H (cont.)

modifying the Viatical Settlement Model Act to provide for reciprocal licensing and third was the approach to certify life insurance agents who want to broker viatical settlements. He asked that those providing comments separate these three ideas. **2002 Proc. 2nd Quarter 112.**

A regulator asked if the working group was discussing allowing life insurance producers to sell viatical settlements because it solved a GLBA problem or because it was a good idea. The chair responded that, if there was a benefit that would accrue from reciprocity, it should be considered. A regulator opined that there was no law in his state that said a life insurance producer could not discuss viatical settlements; it just said he could not get paid for it. If he wanted to be paid for suggesting a viatical settlement, he needed a viatical settlement broker's license. He suggested that, if lack of awareness was really a problem, the viatical settlement industry should be talking to agent groups to inform them of this option. The ability to negotiate a viatical settlement had never been considered part of a life insurance producer's license and he expressed concern that, if the proceeds of the viatical settlement were used to buy more insurance or an annuity, the replacement rules should apply. **2002 Proc. 2nd Quarter 112.**

Another regulator said he agreed that it was reasonable to allow life insurance producers a quick and easy route to become viatical settlement brokers. But they needed to understand that having such a license also carried with it a fiduciary duty. He opined that this went a long way past the issue of suitability. An interested party said that not all life insurance agents were interested in becoming viatical settlement brokers but these would be the best professionals to advise about life insurance issues. The chair said that there appeared to be no interest in moving forward on the issue on reciprocity, but he did hear some willingness to consider the suggestion for easy viatical broker licensing. The working group agreed to consider this issue further. **2002 Proc. 2nd Quarter 113.**

When the working group discussed a proposal to pay producers "finders fees" under Section 7E, one regulator opined that the discussion sounded like the working group was revisiting an issue that it has already decided. He opined that it appeared to be the hope of the viatical settlement industry to create an incentive for life insurance producers to viaticate their book of business. A viatical representative asked the working group to think about why a person would sell his policy. He would sell it because he no longer needed it. A producer would not be able to convince someone to sell a policy that he still needed. A representative of a life insurance trade association said that full licensing of the viatical settlement broker provided a valuable consumer protection. A viatical representative responded that the barriers to licensing were so great that consumers were not getting the information they needed. **2002 Proc. 4th Quarter 241-242.**

At the end of the drafting process an interested party asked the working group not to adopt the model at this time because some of its provisions did not provide helpful protection to consumers. He believed that the broker licensing requirement harmed consumers because it impaired their ability to get information about viatical settlements. The chair said that the working group took a tremendous amount of comment on Section 3 and the provisions were deliberated thoroughly. **2003 Proc. 4th Quarter 268.**

When the adopted model was presented to the parent life insurance committee, an insurance company representative said the working group has done an excellent job. He said that the model was correct in providing for a separate viatical settlement broker license because the model was replete with requirements for brokers. A consumer advocate said he supported the adoption of the model and expressed the hope that the committee would move forward without any changes. He said consumers wanted separate licensing for brokers. **2003 Proc. 4th Quarter 264.**

At the next meeting of the parent life insurance committee, a hearing was held on the amended Viatical Settlements Model Regulation adopted by the Viatical Settlements Working Group at the 2003 Winter National Meeting. A representative from a life insurance trade association expressed support for the model as it was drafted with no changes. She recognized that the discussion would focus on the issues related to broker licensing and testing for proficiency. She focused her comments on how this affected the life insurance industry. Her first point was that the insurance industry firmly believed there was a difference between the life insurance industry and the viatical settlement industry. There should be a clear line between them. **2004 Proc. 1st Quarter 326-327.**

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Her second point was that the NAIC has drafted a unique regulatory framework for viatical settlements. There were specific market conduct, advertising and disclosure requirements that applied to viatical settlements. She expressed concern that, if a consumer was led to an unsuitable transaction, he or she might hold the life insurance company liable if a life insurance producer was involved. Nothing in the model as it was drafted prevented a producer from telling his or her client about viatical settlements. The model just said that the person would need a license in order to get paid separately for that advice. She asked the committee to move the model with no changes. **2004 Proc. 1st Quarter 327.**

A representative from a producer trade association said that his organization was originally opposed to separate licensing. After a request from a member to review the policy, the association surveyed its members and found that the members did not feel equipped to be good advisors on viatical settlements. The membership believed that specialized training was needed to adequately protect consumers considering a viatical settlement transaction. Members had already been paid to advise about the insurance policy and did not expect additional compensation. When an individual crossed the line from advising to negotiating a viatical settlement, he was in a different business. The association supported a separate license so that those who wished to participate in that business were properly equipped. **2004 Proc. 1st Quarter 328.**

A commissioner member of the parent committee said people generally purchased life insurance as an investment. He said his investment advisor was supposed to advise him about the best way to use his life insurance policy. He asked how a viatical settlement was different from any other investment alternative. The producer trade association speaker replied that a life insurance producer needed a separate license to sell securities so that it was clear that he has been trained to do so. It should be the same with viatical settlements. **2004 Proc. 1st Quarter 328.**

One commissioner offered Subsection H as an amendment to the model drafted by the working group. A consumer advocate expressed support for the amendment and asked regulators not to impose a requirement for a separate license because it stood as a barrier between policyholders who now lapsed policies and those who sold the policy and reaped a benefit from it. He said the regulatory framework in the model—education, reporting, monitoring—would be retained with this amendment. The reporting requirement would be particularly useful because it would produce data to help regulators understand the industry. He said he did not see a separation between viatical settlements and insurers and did not believe that one should exist. The Viatical Settlements Model Act added credibility to the industry and the regulation as drafted added a barrier. In states with a separate license requirement only a handful of brokers sought licensure. **2004 Proc. 1st Quarter 328.**

A representative from the viatical industry spoke in favor of the amendment proposed by the commissioner. He said a consumer was most likely to speak to his insurance agent about uses of his insurance policy. The insurance agent was the one best able to advise the person because he understood the individual's life situation as well as the insurance policy. He emphasized that a viatical settlement was just another use of the insurance policy. Another viatical representative added that his main concern was that a consumer would not even know the option for a viatical settlement existed. He stated that the suggested amendment was consumer oriented and noted that the concern of the life insurance industry related to beneficiaries expecting to get the proceeds of the life insurance policy could be avoided by having the beneficiary waive the right to the benefit at the time of the viatical settlement transaction. **2004 Proc. 1st Quarter 328.**

A viatical representative said that the marketplace was changing while the working group developed this model. He said people today were outliving their need for insurance and their ability to pay for it. Another viatical participant said the issue was not whether a settlement was a better option than a lapse. The issue was whether a licensed life insurance producer was an appropriate facilitator. He opined that the producer was in the best position to assist a consumer. The protections in the model were in place no matter who assisted. He noted that the protections of the model would continue to apply if the suggested amendment were included. Another parent committee member asked what problems existed with a requirement for a separate license. The interested party responded that things happened very quickly. A policy was about to lapse; the producer did not have time to go out and get a separate license before helping the insurance policy holder. From a practical standpoint, it inhibited the advice to consumers to provide for a separate license. **2004 Proc. 1st Quarter 329.**

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Section 3H (cont.)

The working group chair noted that, since discussion at the working group level never went beyond a separate license, the group never dealt with the issue of what type of life insurance producer would be qualified. He asked if this amendment included credit life agents, home service, etc. The commissioner who made the motion to include the amendments said that he would want to know if the person was competent, but he did not believe that the type of license was really an issue. One state representative said his state allowed life insurance agents to participate in viatical settlements as long as they notified the state that they were doing so. He said that a person who indicated that he intended to do viatical settlements might be required to take continuing education on viatical settlements. The committee chair said some states, including hers, included viatical settlement questions on their life insurance test. **2004 Proc. 1st Quarter 329.**

When the model regulation came before the Plenary for a vote in June 2004, the issue of allowing a life insurance agent to act as a viatical settlement broker was again raised. The chair of the life insurance committee said that NAIC members had received a number of comment letters relative to an amendment to the model that allowed a licensed life insurance producer to broker viatical settlements without obtaining a separate broker's license, as long as he or she notified the department of the intent to broker viatical settlements and agreed to fulfill the obligations of a viatical settlement broker contained in the model. A commissioner asked for clarification that the amendment applied to the viatication side only, and not to the investment side of the transaction. The committee chair confirmed that understanding. **2004 Proc. 2nd Quarter 49.**

One regulator said he did not believe exempting brokers from the education and testing requirements was a good consumer protection. Another commissioner agreed, stating that her state enacted the model after substantial debate on this issue and concluded that a separate license was a good consumer protection because some life insurance producers were not well informed about viatical settlements. Another commissioner said he did not believe this was a consumer issue. If a person's life insurance policy was not doing what he wanted it to do, he would go to his life insurance agent for advice. That person should be able to advise on all the options, including a viatical settlement. Requiring him to have a separate license to talk about a viatical settlement as an option did consumers a disservice. Another commissioner said that he understood that the life insurance agents trade association was opposed to this amendment and favored a separate license. He asked why, since it would seem they would want as many of their members as possible involved in this. **2004 Proc. 2nd Quarter 49-50.**

Two more commissioners expressed agreement with the support for a requirement for a separate license. One opined that viatical settlements was a more specialized and risky area, so greater protection was warranted. Another commissioner pointed out that states were trying to reduce the number of licenses, not increase them. The complaints states were getting were on the investment side of the transaction. Another regulator said his state did not require a separate license, but was planning to include questions about viatical settlements in agents training and continuing education, because it was something that all producers should understand. Another commissioner asked if there was any reason to believe that policyholders did not get information about the viatical settlement option. A commissioner responded that, in states with a separate license, most producers did not get such a license, so they did not recommend viatical settlements. The life insurance committee chair noted that most producers did retirement planning without a special license. The motion to adopt the model as amended carried. **2004 Proc. 2nd Quarter 50.**

Section 4. Appointments

This section was added during the amendment process that lasted from 2001 to 2003. It was part of the optional amendments that regulated investment agents. **2004 Proc. 1st Quarter 324.**

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

When the working group began drafting a regulation, the chair asked members to list the most important features to include. One regulator said he thought the most important part of the regulation was to implement Section 15B on standards for payments. The chair said that a verbal communication had been received from the viatical settlement industry detailing its standards and he thought this was a good starting point for the working group's discussion. **1993 Proc. 4th Quarter 649.**

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Section 5 (cont.)

While reviewing the first draft of the model regulation, one regulator asked how the working group arrived at the percentages in Section 5. The chair replied that the working group had thought that a 10% return on a six-month investment seemed like a good return. Ms. Hughes asked if the drafters had thought of adding any limits to what a broker could receive as a commission. Another regulator suggested that, if there was a limit set on the amount of the discount, this indirectly set a cap on commissions. The chair recommended adding to the heading on the minimum discounts that the minimum percentage of face value should be less outstanding loans, and this was added to the draft. Another interested regulator said it seemed to him that the percentages were reversed. If a viator had a longer life span, he would have a greater need for money and the way the draft was structured he would actually get a smaller percentage if his life span was longer. Another responded that the person providing the funds has to get a return on his money and, if he was going to provide the money for a longer period of time, he should be compensated appropriately. One person questioned why the regulation referred to A.M. Best or other services because the insurance departments had actuaries and others available to them. The chair responded that it had seemed to the drafting group that there should be a deduction if the company was not highly rated and referring to one of the services was appropriate. **1994 Proc. 1st Quarter 360.**

An interested party said that it seemed to him that setting discount rates was a way of setting prices and expressing concern about being involved in price fixing. A commissioner asked why the commentators thought that the working group was engaged in price fixing. He said there were many instances where insurance regulators had set minimums on returns. A representative from a viatical settlement company asked what the impact would be if regulators set minimum rates. The chair responded that the impact would be that the viator would get a reasonable return for his policy. The interested party responded that the problem was that it would be difficult to get a physician to say how long someone would live. His company did business by having two physicians look at the medical records and give an opinion of how long the individual's life expectancy might be. He said a doctor would not give an exact number but rather a range. **1994 Proc. 1st Quarter 360.**

A regulatory actuary suggested that the viatical settlement companies were underwriting. He asked if they were making payments based on their own experience or industry experience. An industry representative responded that he only knew about the experience in his own company. A regulator opined that, if the working group was going to examine this section, it needed more information. The industry spokesperson asked what information the group needed and what it would do with the information and the chair responded that the information would help the working group decide if the numbers that had been included in the draft were reasonable. The working group had been told that there were industry standards but it had not received these in writing. Without having more information, the working group had to set rather arbitrary standards. He quoted a paragraph from a trade press article that said individuals with a life expectancy of six months generally got about 80% of the face value of their policy and viators with a four-year life expectancy generally received around 40%. **1994 Proc. 1st Quarter 360.**

The viatical industry representative said that in a mature industry he could see setting these kinds of limits, but not in a start-up industry. He said the best way to prevent market abuse was to have a lot of capital flowing into the industry. He encouraged the disclosure part of the regulation but did not feel it needed to go further than that. A commissioner asked how many players were in the market. An interested party responded that there were 54 viatical companies at the current time. The commissioner responded that one way to determine or to describe a mature market was that there was competition and that start-up markets did not have much competition. It seemed to him that there was a great deal of competition if there were 54 companies involved. He also had been led to understand that there was an international market for viatical settlements. **1994 Proc. 1st Quarter 360.**

A regulator described the bill that was pending in her state's legislature. The bill concentrated on disclosure and prior approval of contracts and licensed brokers and companies. She said that her state did not think there was enough information available to set minimum discounts. Her state planned to include in a regulation a mechanism to collect data on settlements and will then review whether it was necessary to set standards for the discounts on viatical settlements. **1994 Proc. 1st Quarter 360.**

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Working group members discussed whether it was appropriate to include the percentages with minimum payouts. The chair outlined three possibilities: (1) reporting requirement only; (2) leave the standards that were in an earlier draft; or (3) modify the percentages. After considerable discussion the group decided to leave a minimum payout provision in the draft, but to go back to the percentages that had been included in the original draft. **1994 Proc. 2nd Quarter 575.**

At the next meeting another interested party asked how the working group had arrived at the percentages contained in Section 5. The chair responded that the working group had been uncertain of what the appropriate percentages should be so had used numbers that had been provided by the industry as average payments. A commissioner commented that the working group did not intend to limit the availability of viatical settlements and because the data was not available to make clear what the minimum percentages should be, the working group lowered the minimums so as not to artificially interfere with the market. The working group had taken upon itself the burden of providing a method to collect data so that at some later point it would have correct information and could raise the percentages if appropriate. **1994 Proc. 2nd Quarter 572.**

A commissioner stated that, when dealing with an industry that had not been regulated before, he was not surprised to see individuals interested in zealous protection of their industry. He said they should not be surprised to find regulators trying to zealously protect the interests of the viators. He thought it was important to note that, on the issues of disclosure and enforcement, the industry and the regulators were in basic agreement. He said the three aspects of regulation were all important and he reinforced the desire of the working group to provide for disclosure, enforcement and minimum value. He invited the industry to tell the working group if it was wrong on how to measure minimum value. **1994 Proc. 1st Quarter 361.**

A representative from a trade association for viatical settlement providers said the area of greatest concern to his members was the minimum discount requirement included in the model regulation. He said it was not necessary to set minimums because the marketplace has actually set higher standards for viatical settlements. **1996 Proc. 2nd Quarter 649.**

A regulator brought up the issue of an actuarial method of determining the appropriate discount when marketing to seniors and others who were not terminally ill. He suggested that, rather than looking only at life expectancy, it would make more sense to establish mortality tables that would take into account premiums and other factors. He gave an example of a simplified formula that considered only two factors: the time value of money and the probability of death. He said even this simple formula involved difficult judgment calls, such as how to create the tables, how to decide which one to use, and how to determine the appropriate interest rate. He said that to get more accurate would require a more sophisticated formula reflecting more factors, and then the calculation was more complex. **1996 Proc. 2nd Quarter 651.**

The chair of the working group asked staff to provide information about individuals who viaticated a policy and died during 1995, as reported to one state insurance department. Staff pointed out that the average expected months until death was in most instances larger than the average actual months until death and pointed out the variation in the percentages of face amount that were paid. A representative from a viatical settlement provider commented that the projected life expectancy of purchasers shown in the chart was very typical of his company's experience. He said that on the chart 6% of the viators had less than six months to live, and his company's experience was that very few viators with that short a life span desired to viaticate a policy. He said the bulk of transactions were for people who had 12 to 18 months of life expectancy. He also noted that, since the state data used only included individuals who died in 1995, many of those who had exceeded the life expectancy that had originally been estimated would not have died and thus would not be included in the study. He also asked regulators to remember the risk involved in writing viatical settlement business. He gave as an example the development of protease inhibitors, which vastly changed the life expectancy of AIDS patients. He urged regulators not to develop a complex actuarial table. **1996 Proc. 4th Quarter 1040.**

A regulatory actuary noted that the pricing structure typically used in a viatical settlement was that the price quoted consisted of a dollar amount in exchange for assigning the policy. If the individual lived a short period of time, the company made more money than they had anticipated; if the individual lived longer, the company lost money. He said there was no participation of the viator in the risk. He asked if there was an alternative method of pricing that would offer participation in that risk. He suggested investigating a loan process so that, if the individual lived a short period of time, his beneficiary

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would receive some of the proceeds. An interested party said his company hoped to soon make one of its pricing options a loan on the face value. He said this method of pricing would make viatical settlements available to individuals with a longer life expectancy. **1997 Proc. 1st Quarter 683.**

When work was set to begin on a revised model regulation in 1998, an actuary explained that the original payout standards in the model regulation anticipated a relatively early demise after an individual viaticated a policy. There was little information available at that time so the table developed by the working group was probably a good option. He said it would be difficult to come up with a similar table for the chronically ill, but he was willing to work with the group to develop new tables. He emphasized the importance of information from the viatical settlement industry. He suggested, as an alternative to the minimum payout pricing structure, a participation plan where an initial payout was made and if the individual died relatively early, an additional payment would be made to the beneficiary. He compared this to the experience in the life insurance industry where an individual with a participating policy received a greater benefit if the insurer had higher earnings on the amounts invested. The chair responded that the working group may ultimately vote not to make any changes to the current set of discounts but emphasized that a modified set of discounts might be needed for the chronically ill. An interested party agreed that when the original discount provisions were written, most who viaticated policies were AIDS patients. He said those now served were much more diverse and this would require a further study of the pricing. **1998 Proc. 1st Quarter 699-700.**

The first draft of a revised Section 5 contained increased minimum percentages over those in the existing model regulation. Some consideration was given to inserting language to address the problem of companies knowingly assigning viators to an inappropriate life expectancy bracket, but the draft did not contain language to address that issue. An interested party asked why regulators were concerned with minimum payouts. He said viatical settlement providers were getting pressure in many states on minimum returns for investors. A regulator said that viators were at extremely vulnerable stages in their lives, and therefore needed protection. The interested party responded that the marketplace was competitive, and that payouts on the shorter duration life expectancies have risen as a result of competition. **1998 Proc. 2nd Quarter II 746.**

A regulatory actuary asked if it was possible for the industry to develop “participating” policies, where the payout varied depending upon how long the viator actually lived. A representative of the viatical settlement industry stated that, while participating policies might work in theory, in practice it would be difficult to implement the concept. A lengthy discussion then ensued regarding what sort of actuarial study should be performed to determine appropriate minimum payouts. An interested party stated that a key component of any logical approach to estimating life expectancies would be the development of factors for specific medical conditions to apply to standard mortality tables. The representative from a viatical trade association pledged that the industry would pool its resources and get regulators enough information to do the study. **1998 Proc. 2nd Quarter 746-747.**

During the discussion of a definition for “life expectancy” a regulator commented that this discussion was related to the working group’s frustration with the marketplace determining minimum payouts. He expressed concern that companies could affect the payouts by changing the life expectancy. He also pointed out the viatical settlement industry’s promise to provide pricing information, but that information had not been forthcoming. The interested party who had pledged to provide information promised to submit data from four companies. He said in the current marketplace there were only four companies with independent financing; the rest solicited investors. **1998 Proc. 2nd Quarter II 739-740.**

When considering amendments in 1998–1999, regulators reviewed a draft containing a provision that stated: “The minimum payout may not be reduced by the minimum premium required to keep the policy in force for the duration of the estimated life expectancy of the insured. If no future premium is due on the policy (i.e., paid up policy, disability waiver), the minimum amounts in Subsection A shall be increased by three percent (3%).” An interested party asked for clarification; noting that premiums must be taken into consideration. **1998 Proc. 2nd Quarter II 740.**

At an interim meeting the working group again discussed minimum pricing. An interested party said it was the industry’s position that there should not be minimum pricing for viatical settlements. He opined that so many factors were involved in setting a price for a viatical settlement that a price schedule did not work. A representative of the viatical settlement industry presented different models for funding sources. First was conventional financing; a few companies get financing from banks.

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He said his company's cost of funds was approximately 9.5%. Companies also varied as to the percentage they financed. He said his company put 15% of its own money in every viatical settlement. More companies had that model in the past, but had not done so since the advances in AIDS treatments. The second option was securitization of assets. In that case, a company would often find an insurer to insure against the possibility that the risk might be longer than expected. Third, some companies had their own funding. Fourth, some use the private investor marketplace, which provided two-thirds of the funding at the time of the meeting. The cost to raise funds was about 10% of the amount raised. Another interested party opined that a minimum payout scheme was the wrong direction to take if the regulators wanted to encourage institutional investors. **1998 Proc. 3rd Quarter 534.**

Regulators again discussed the minimum payout table at the next meeting. One regulator expressed concern that the working group was setting upper limits by the development of such a table. Another regulator opined that there was not enough information at this time to create an accurate table. Based on his state's data, he said that stopping at 24 months on the current NAIC table may be reasonable. He suggested it was also important to add some language to help regulators determine what was reasonable. He cautioned that the current table was not functional, reasonable or accurate. Another regulator recommended data collection now and reconsideration of the issue of adding a table later. The chair said that if regulators could not come up with a reasonable alternative, he would prefer to leave the table that was in the original model in place. **1998 Proc. 3rd Quarter 536.**

An actuarial regulator said there were two components to the price. The price was assigned based on the expectation of life so there was a flaw in the structure of the table because it did not put limits on the way the life expectancy was determined. He suggested designing Section 6 to enable regulators to monitor how the life expectancy was being assigned and to set consequences for being too optimistic. He said once the expectation of life had been contained, regulators could talk about expenses. He questioned a marketplace where an individual who had a life expectancy of less than a year could get 92% of the face value of his policy as an accelerated death benefit, but according to the table could only get 78% in a viatical settlement. He asked for the reason for such a large difference. Another regulator noted that not every policy offered accelerated death benefits. A third said it was important to improve the process so that more people could get accelerated death benefits, but where it was not available, he would prefer a lesser sum to none at all. One regulator remarked that his state's reporting data showed that not many individuals viaticated policies when their life expectancy was less than 12 months. **1998 Proc. 3rd Quarter 536.**

After the adoption of the revised Viatical Settlements Model Act by the Executive Committee and Plenary, the working group that drafted those amendments had a charge to review the model regulation. The chair opined that there are two "sacred cows": Section 5 regarding the reasonableness of payments and Section 10 regarding insurance company practices. **2001 Proc. 1st Quarter 62.**

The chair noted that the working group received comments on Section 5 regarding the standards for evaluation of reasonable payments from a number of interested parties. An interested party said that Section 15B of the model act limited the authority to those who were terminally or chronically ill and asked the working group to make that clear. He also stated that there was no need for pricing requirements in the life settlement market. The chair said that, as currently drafted, the model applied past 24 months, but interested parties recommended 24 months only. One person pointed out that the definition of terminally ill in the act was defined as 24 months, so this would only be referring to those who were chronically ill. One interested party opined that states with the chart of reasonable payments were damaging consumers. Another pointed out that for 24 months and under, the industry has generally beaten the price on the chart. At the longer life expectancies, it was very difficult to set a price because there were so many variables. The chair pointed out that a letter from a major accounting firm that concluded that the table of reasonable payments was acceptable for traditional viatical settlements, but not for sales of life insurance by persons who were not terminally or chronically ill. **2001 Proc. 3rd Quarter 36-37.**

The chair outlined the history and purpose of Section 5. He said that the authority for the standards in Section 5 flowed from Section 15B of the Viatical Settlements Model Act. The standards allowed regulators to evaluate the reasonableness of payments. He noted that these requirements only applied when the insured was terminally or chronically ill, but several comment letters did not seem to recognize that fact. Section 5 was drafted with two alternatives: Alternative I was a table of minimum discounts, which had been in the model since its beginning. Alternative II was added in 1999 as a compromise

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move. He suggested that the working group had three directions it could go in considering revisions to Section 5: 1) leave it as is; 2) delete Alternative I; or 3) modify Alternative I. An interested party said that an additional possibility would be to add language to the second alternative. He suggested that a list of factors could be added to Alternative II to help regulators decide if the payment was reasonable. The interested party noted that he had never favored Alternative I because it did not allow for a free marketplace. The chair said this section generated a considerable amount of written comment to the working group, with the most prevalent recommendation being to modify Alternative I. The comments suggested two possible ways to modify Alternative I. One would be to delete the line that said “24 months or more [50%].” A second option would be to say that for life expectancies of 24 months or more, the viator must receive at least the cash surrender value of the policy. A regulator suggested adding to that option that the minimum payment must be more than the accelerated death benefit that would be available. An interested party said that few accelerated death benefits went out beyond 12 months but he agreed that the viatical settlement provider could do better than that amount. **2002 Proc. 1st Quarter 150.**

An interested party pointed out that this section did not clearly state that it applied only to terminally or chronically ill. The chair instructed staff to add that language to the model. Another interested party suggested making what was labeled Alternative II, the reasonable payment standard, the first language and making the table the alternative. The first interested party responded that “reasonable” created uncertainty in the marketplace and expressed a preference for the model as it was drafted. He also wondered if Alternative II provided regulators with enough direction. **2002 Proc. 1st Quarter 150.**

The entire viatical industry expressed support of the idea of having no minimum payout for a chronically ill person with a life expectancy of 25 months or more, other than the cash surrender value. An interested party opined that it would be a mistake to keep the model provision because it eliminated the possibility of viatical settlement transactions for those chronically ill individuals. A suggestion from one interested party was added, as well as a drafting note as to the timing of the cash surrender value. A representative from a viatical trade association urged the working group to consider making Alternative I applicable only if there was not a competitive market. **2002 Proc. 2nd Quarter 113.**

A regulator asked whether the 5% reduction paragraph applied also to the cash surrender value. The working group agreed that would defeat the whole purpose of requiring cash surrender value. Another regulator asked why the 5% figure was in the model in the first place. The chair responded that it was the consensus at the time the original model was drafted to make an allowance if the insurer was not stable. An interested party urged the working group to leave the 5% provision in the model, but to make clear that it did not apply to cash surrender value. One working group member pointed out that, if the company became insolvent, the guaranty fund would cover the policy and suggested changing the paragraph to only allow a reduction if the policy exceeded the state’s amount of guaranty fund protection plus 5%. **2002 Proc. 3rd Quarter 129.**

[Alternative II]

A regulator suggested adding an additional paragraph to the draft to allow consideration of other circumstances. She noted that the settlement might be unfair or unjust even though it fit within the criteria of the table and her suggestion would allow consideration of these additional factors. **1998 Proc. 2nd Quarter II 740.**

One member of the working group suggested making the table optional and letting states decide if they wanted a table. His state chose not to include a table but determined reasonableness on a case-by-case basis. An interested party said the viatical industry was eager to provide data that would show its payments were reasonable. The regulator urged the working group to include the suggested language about reasonableness and let jurisdictions decide whether to use the table, the test or both. The actuary asked if he was recommending use of the table as a reasonableness standard and the other regulator responded that the table was not accurate. The actuary countered that the data showed that the table was reasonably accurate until 24 months, but not after that. The working group considered substituting the language from the state regulator for the current table and deleting reference to the table. The actuary said that, without the table, the regulation had no criteria for what was reasonable. He offered to create standards that were not in the form of a table. He opined that it is more important to know that the life expectancy assigned to the individual was really how long the average person had to live. He suggested requiring an actuarial report to certify that the company met the standards of “reasonable” payments. A regulator from another state responded that he would hate to use his small staff to review reasonableness and said he needed some standards. **1998 Proc. 3rd Quarter 536.**

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Section 5 Alternative II (cont.)

An interested party representing an insurance company expressed concern with the draft of the Viatical Settlements Model Regulation under review, which deleted the minimum payment requirement and replaced it with a “reasonable” standard. He pointed out the model contained no authority to change the viatical settlement if regulators found it to be unreasonable. He noted that in his experience insurance departments did not like to enforce “reasonable” standards. He opined that this would tie up insurance departments’ time in review. He said that his company also had experienced an increase in individuals buying policies and immediately turning around and selling them. He said none of the information on the application would have given the company a clue that the individual planned to immediately sell the policy. **1998 Proc. 4th Quarter II 611.**

At the next meeting an interested party reminded the working group that he had raised the issue at the parent committee hearing about the elimination of minimum payouts for those who had a life expectancy of 24 months or less. He recommended reinstating that table and using the “reasonableness” test for longer life expectancies. A representative from an insurance trade association said that the life insurance industry had just become interested in the Viatical Settlements Model Regulation because of their awareness of the viatication of policies by healthy individuals and the solicitation of uninsured individuals to buy life insurance and immediately viaticate the policy. The working group agreed to include the two alternatives in the model. **1998 Proc. 4th Quarter II 612.**

A representative from one viatical company asked the working group to include his suggestion for Alternative II, which delineated a list of considerations for a reasonable payment. He said that it was not clear when the commissioner had the authority to decide whether the payment was reasonable and this fact created an immense amount of uncertainty in the marketplace. **2002 Proc. 2nd Quarter 113.**

The working group review language that had been proposed for Alternative II. The new language was intended to take the structure of Alternative II that said to evaluate whether a payment was reasonable and replace it with a list of specific factors to include in the evaluation. One regulator questioned the wording of the introductory paragraph because it said that a commissioner *may* consider these factors. He suggested saying that he should consider the factors listed and might want to add more. An interested party spoke in favor of the list because he believed that a substantive list conveyed to the regulator the complexity of the issue. **2002 Proc. 3rd Quarter 129.**

Just prior to adoption of the model by the working group, a regulator stated that Alternative II was not readily administered and suggested deleting Alternative II with the agreement that it would be studied by the working group and provisions added that could be administered. An interested party spoke in favor of elimination of the entire section. He noted that it only referred to those who are terminally and chronically ill and it was unworkable in some unique situations. The chair said he appreciated the comments but agreed that, if the model were reopened, the working group would have to look at much more. He suggested working on procedures and standards to implement Alternative II. An interested party suggested that this issue might go to a market conduct group instead because it was really a market conduct issues. **2003 Proc. 4th Quarter 268-269.**

Section 6. Reporting Requirement

The chair noted that the issue that had received the largest volume of comment involved the section on reasonableness of payment. He suggested that one alternative was to put in a reporting requirement instead of minimum discounts and after information had been gathered a provision with percentage amounts could be added. He listed several items that he thought were important to include in any kind of reporting requirement: (1) the date the viatical settlement was entered into; (2) life expectancy at the time of the contract; (3) date of death; (4) face amount of policy; (5) amount paid by the viatical settlement company; and (6) premium payments required by the viatical settlement company before death occurred. One of the comments received had included a list of proposed information to be reported and the working group went through that list and added several more items: (1) breakdown of applications received, accepted and rejected by disease category; (2) breakdown of policies viaticated by issuer and policy type; (3) number of secondary market versus primary market transactions; (4) portfolio size in face value; and (5) amount of outside borrowings of the company. The working group considered whether it would be advisable to add a provision requiring disclosure of the amount paid in commissions but

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decided that it was not necessary to know the amount of individual expenses. The working group did not see that it was any more important to know the commissions paid than any of the other operating expenses of the viatical settlement provider. **1994 Proc. 2nd Quarter 575.**

A regulator asked the chair to explain why Section 6 was added to the draft. He responded that the working group members realized that the viatical settlement industry was a relatively new industry. He said there was not a lot of statistical information available, and the working group members thought the information required in this section would serve as a database of information on the new industry. **1994 Proc. 2nd Quarter 571.**

An interested party presented proposed language for the new Section 6, which included questions about whether the policy was within the contestability period. He said this would give regulators data to determine whether policies were being purchased specifically to viaticate them. The revised draft divided the data collection into two categories for the policies where the insured was still alive and when he had died. **1998 Proc. 3rd Quarter 521.**

The chair noted that, in order for a state to determine whether a payment was reasonable, the reporting requirements in Section 6 had been expanded considerably. Another regulator asked if there was a real connection between Sections 5 and 6. He opined that the minimum standards were only as valid as the assignment of expectation of life. The company could intentionally overstate the life expectancy to use a higher part of the table. The chair responded that a provision was added to address that concern. The first regulator responded that this provision gave an administrative recourse but he does not see how this could make the individual in the transaction whole. The chair agreed that this was not a perfect solution but it did allow the department to take action against the provider's license. **1999 Proc. 1st Quarter 509.**

When the model was being redrafted, beginning in 2001, the working group heard a number of comments about the specific information being requested in Section 6. Interested parties were interested in numerous changes to the specific information being requested. An interested party said that during the development of the model act, the working group had discussed reporting from brokers. He suggested using a simplified form that allowed regulators to match up what brokers reported with what providers submitted. **2001 Proc. 3rd Quarter 37.**

A. A representative from the viatical industry worked with a regulator to develop forms for Appendix C to gather information from providers and brokers. They suggested getting information from brokers on the individual state and all states activity and getting information from providers on individual states, all states, and an individual mortality report. They said that the information on these reports covered all of the issues in Section 6 and suggested that Section 6 just refer to the reports instead of the long list there. **2003 Proc. 2nd Quarter 179.**

B. The chair noted that Subsection B was new language. This reporting requirement for brokers was the result of a suggestion from a viatical trade association. Some parties providing comments suggested eliminating broker reporting as redundant. One comment suggested changing the quarterly reporting to annual. The chair opined that it did not make sense to have brokers report quarterly and providers report annually. A regulator said that broker reports would be helpful and also agreed that a yearly report was adequate. He said he wanted to know which providers the broker was dealing with and he wanted the providers report to show which brokers it used. **2002 Proc. 1st Quarter 151.**

An interested party asked why a broker's report was necessary. A regulator responded that it gave an opportunity to cross-reference reports. He said regulators did not understand how this business operated and would benefit from getting this information to understand the process. The interested party said that it was a new industry and many of the brokers were life insurance agents who were not used to this type of reporting. He asked if this report would be required before renewal of the license. **2003 Proc. 2nd Quarter 179.**

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Section 7. General Rules

A. The working group that began drafting amendments to the model in 2001 discussed the provisions of Subsection A. An interested party said the original idea behind the provision was that an accidental death benefit would go to some individual specifically designated and he suggested that was not possible to lock in without designating an irrevocable beneficiary. A regulator asked if that meant that the viatical settlement provider would get the entire benefit and then give the accidental death benefit to the original beneficiary. Another regulator pointed out that if the policy was transferred several times through the secondary market, that provision might not have been included in each contract. An interested party asked the working group to consider taking out the provision. If the provider was allowed to receive that additional benefit, the price will reflect that. He opined that it was an administrative nightmare in the few cases where it occurred. A regulator asked if it was typical for large face amount policies to have an accidental death benefit and a representative from the viatical industry responded that it was not common, but it did occur. He asked the working group to remember that the accidental death benefit required a supplemental premium, which was paid by the provider, but the provider did not get the benefit under the current regulation. **2001 Proc. 3rd Quarter 38.**

B. A representative from a viatical trade association suggested adding two phrases to Subsection B. He suggested that payment be made by means of wire transfer to the account of the viator *or to an account designated by the viator* by certified check, *trust account check* or cashier's check. Another viatical representative explained that some providers use a trust account check. A regulator said that the certified check or cashier's check was guaranteed not to bounce. He asked why the trust account could not use a cashier's check. The interested party said that trust account checks were used for real estate closings and other financial transactions and opined that it was unnecessary to have a certified check or a cashier's check. Another regulator asked if an escrow agent could set up a trust account. He said he was not comfortable with the idea of using a trust account check. **2002 Proc. 3rd Quarter 149.**

C. An interested party said his company occasionally had an individual ask if it was possible to have the money paid in installment payments. He asked how his company should respond to this request. The chair said the working group had been concerned that paying the proceeds in payments put the viatical settlement company in the position of acting as an insurer. A regulator pointed out that the normal practice for a structured settlement was to purchase an annuity. The interested party asked if there was any provision prohibiting the company from purchasing the annuity from a related company. The chair responded that regulators would be concerned if it were a mandatory provision that the annuity be purchased from a related company. **1994 Proc. 2nd Quarter 571-572.**

A representative of a viatical trade association suggested an addition to Subsection C. He said that the escrow agent needed to be able to keep some of the money if there was a price adjustment clause in the contract or other debts to be paid with the permission of the viator. A regulator asked if that would be put into the contract. He opined that it would not be included in the regulation in that case. The trade association representative responded that, if the model said that the escrow agent could not retain any of the proceeds, such a provision could not be put into the contract. Another interested party suggested using language that said proceeds could be kept with the written consent of the viator. **2002 Proc. 3rd Quarter 149.**

At the working group's next meeting, it again considered the suggested text for Subsection C. An interested party explained that sometimes there might be a lien against the policy that would need to be paid from the proceeds before paying the viator. One regulator said he was not in favor of adding the language and a second said he understood the need for this type of provision but he was uncomfortable that it could be buried in the paperwork. He would want it to be something that was brought to the attention of the viator. Another opined that the language said regulators were giving permission to not disclose certain things if they got written consent. **2002 Proc. 4th Quarter 241.**

D. The subsection changed little between 1994 and 1999. The changes were to add "solicitation" and reference to viatical settlement representatives. **1999 Proc. 1st Quarter 516.**

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Section 7 (cont.)

The group drafting amendments in 2001 again discussed this provision. An interested party noted that the subsection said that discrimination could not be made on the basis of age or sex, but these two factors were used all the time in setting the price. Another interested party opined that the language of the regulation was not specific enough. A regulator suggested adding the word “unfairly” in front of discrimination or, if there was discrimination, that it must be based on sound actuarial data. Another regulator suggested inserting the state reference to its unfair discrimination law. The working group agreed that was the best approach. **2001 Proc. 3rd Quarter 38.**

E. As the working group was reviewing the first model regulation draft, an interested party asked the purpose of denying a referral fee to a physician or attorney or accountant. He said that many people did not know about viatical settlements and a doctor would be doing a great service to explain viatical settlements to his patient. A commissioner responded that a doctor should be referring a patient to a viatical settlement company in the patient’s best interest, not the doctor’s. **1994 Proc. 1st Quarter 361.**

Representatives from the viatical settlement industry asked the working group to consider an amendment to Section 7E on the payment of finder’s fees. They recommended modifying the provision so that, instead of prohibiting payment of such fees, it required disclosure of that fact to the viator. A regulator said that this suggestion appeared to water down the protections of Section 7E. An interested party responded that the doctor could get a referral fee and the viator probably would want him or her to have that money. Another said the viatical settlement was not a well-known vehicle, and it would be helpful if doctors, accountants, and others suggested the product to those who would be interested. Another regulator responded that the provision did not prevent those individuals from telling about viatical settlements, it just prevented them from being paid for that information. The working group decided not to make a change to Section 7E. **1998 Proc. 3rd Quarter 535.**

The chair of the group drafting amendments in 2001 asked the working group to consider the last sentence of Subsection E and the definition of broker. The model said that the broker’s obligations were all to the viator and he opined that the language as drafted presented a conflict. An interested party suggested solving that problem by inserting the phrase “other than a viatical settlement broker” in that last sentence. Another pointed out that the language in Subsection E was developed before the broker had a fiduciary duty to the viator. Another person asked about the situation where a person was licensed as a broker but was working for a viatical settlement provider rather than representing the viator. A regulator said that the definition of broker required the person to have an obligation to the viator. Another regulator opined that in this situation the person might be licensed as a broker, but he was not acting as a broker in that certain circumstance. He opined that there was a need to disclose that information. **2001 Proc. 3rd Quarter 38.**

An interested party suggested including a provision that would allow payment to a physician for copying medical records. The chair said that that was not needed. It was clear from the provision that it was talking about a finder’s fee or commission rather than payment for copying services. **2002 Proc. 4th Quarter 242.**

Viatical trade organizations suggested adding language to Subsection E to allow a producer to accept a finder’s fee for providing information. One opined that, without this language, the trend would be that producers provided information only about options that would provide compensation. A regulator asked if the proposal from the organizations included the need to be licensed as viatical settlement brokers or perhaps as securities brokers because they were being paid for their advice. Another regulator said that converting or replacing a policy was part of the activities covered under the producer’s license. He said he had grave concerns about giving a finder’s fee, which he opined was the same as a commission with a new name. He expressed adamant disagreement with a concept of paying a fee to insurance agents to viaticate their business. **2002 Proc. 4th Quarter 241.**

A viatical representative said that producers were compensated for replacement activity and it created an ethical dilemma for them whether they should tell about a replacement for which they were compensated or whether they should tell about a viatical settlement for which they would receive no compensation. An advocate for the viatical industry said he regarded the suggestion as an anti-discrimination provision to create a level playing field. Producers needed to get paid for advising about the possibility of a viatical settlement. A regulator said that if producers wanted to do business with a viatical settlement provider, they should get licensed as viatical settlement brokers. Another added that one of the concerns was a producer offering advice like a viatical settlement broker. She suggested the working group could use the pattern from the Producer

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Section 7 (cont.)

Licensing Model Act and provide for the sharing of commissions between the viatical settlement broker and the life insurance producer. **2002 Proc. 4th Quarter 241.**

F. An interested party said Subsection F should eliminate the reference to viatical settlement brokers, added as a suggestion in the 1998 redraft, because brokers did not solicit investors. He said only providers solicited investors; brokers represented the viator. A regulator said individuals were operating in his state as brokers and in addition were soliciting investors. Another regulator said he also was aware of a person in his state who was involved on both sides of the viatical settlement. An interested party said that anyone buying a policy was, by definition, a provider and needed a provider license. The regulators decided to leave the subsection as drafted because it appeared necessary. **1998 Proc. 2nd Quarter II 740.**

G. During the 2003 amendment process, this provision was discussed further. An interested party opined that the last sentence of Paragraph (3) was not clear. He suggested revisions to Paragraph (3) that specified the procedures for when an individual did not pay the viatical settlement provider for the premiums attributable to the retained interest. One regulator said that he had a problem with a provision that said the viator who missed a payment lost the benefit. He opined that deducting the payment from the proceeds would be a much better result. The regulator and interested party agreed to work together to prepare acceptable language for the draft. **2002 Proc. 4th Quarter 242.**

At the next meeting the two reported on a proposal. The regulator said that he really did not like the whole concept and was only able to come up with language that provided a small amount of protection. Another participant in the meeting said that the proposed change did not address his concern. The second sentence set forth only two ways to address the issue, so it appeared to say that those were the only two ways. He suggested deleting the second and third sentences to avoid that impression. The working group agreed to a revised Paragraph (3) that does not include a list of possibilities. **2003 Proc. 1st Quarter 163.**

H. The working group agreed to add a new paragraph saying that, in all cases where the insured was a minor, the disclosure should be made to the parent. **2001 Proc. 3rd Quarter 38.**

Section 8. Prohibited Practices

All of Section 8 was new language added in 1999. **1999 Proc. 1st Quarter 517.**

A. When the parent committee was considering adoption of the model act, the issue of disclosure of the named insured to a financing entity was again raised. A regulator expressed concern about the confidentiality issue in the secondary market. She said that releasing the name of the insured served no purpose and opined that the working group should take a close look at this issue in developing the regulation. An interested party said the suggestion to review the confidentiality issue further during the regulation development process was a good one. Another viatical settlement provider representative said there was no evidence of any impropriety in regard to release of the names of viators. **1998 Proc. 1st Quarter 678.**

A regulator opined that individuals' identifying information should not be released under any circumstances. A representative of the viatical industry said this information needed to be given to persons who evaluated the medical condition and also was needed for soliciting investors. The regulator responded that his concerns were with releasing that information to investors. The chair said this issue was the heart of the privacy discussion; whether the person who benefited when a person died sooner should have personal information. Another regulator said that in a perfect world the investor would not know the identity, but in the real world investors used that information in the investment decision. They needed to know the medical details, although they perhaps did not need to know the name and address of that individual. The interested party said an individual who bought a policy needed to service that policy by paying premiums and sending in a death certificate, so he needed to know identifying information. **1998 Proc. 3rd Quarter 536.**

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Section 8A (cont.)

The first regulator expressed the grave concern that an individual who knew the identity of the person whose policy he has purchased might take action to shorten that individual's life. The other regulator responded that his state had problems with fraud and with disillusioned investors, but he was not aware of any instances where the investor had taken the life of the viator. He opined that it was philosophically a good point, but questioned the need to fashion a remedy without an evil. The working group decided to include disclosure information and to leave in the draft the ability to identify the viator of the insurance policy. **1998 Proc. 3rd Quarter 536.**

An interested party expressed concern with Subsection A, which dealt with the secondary market. He opined that most viators understood their policies were worth more if they were liquid. He suggested that the viator should decide whether he wanted a higher payment or whether he wanted to refuse to allow the transfer of the policy. He suggested the viator should hear all of the options and make his own decision. Another interested party spoke in opposition to the phrase in the draft that required a signed consent of the insured in each instance in which the information was to be divulged. He said that in a securitization a blanket consent should be allowed. Getting consent each time for each of the viatical settlements in the security would add great difficulty to a transfer. A regulator opined that a viatical settlement could be securitized without the patient identifying information. An interested party agreed that some of the information described as "patient identifying information" in Section 2D would not be necessary in this type of review, and he gave the example of telephone number, facsimile number and e-mail address, but he said the broad definition would limit the types of collateralization that could occur. **1998 Proc. 2nd Quarter II 741.**

The chair noted that the working group has a charge to consider issues related to the secondary market. An interested party pointed out that the term "secondary market" meant different things to different people. He said the secondary market to him meant transfers from one provider to another or one investor to another. The chair agreed that the working group needed to define what the secondary market was. An interested party asked the working group to consider the primary market as the initial transaction between the viator and the viatical settlement provider or, in the alternative, the first sale to an institutional or private investor. Then the secondary market would be any subsequent transaction. This could be a private placement between one investor and another or a corporation selling its entire inventory to another corporation. He favored a definition meaning something other than the first sale to an investor, which was protected under the Viatical Settlements Model Act. A regulator said that securities regulators in his state believed that they had authority over anything after the transaction between the viator and the viatical settlement provider so he would assume that "secondary market" would mean anything after that transaction. The regulators agreed that this should be their working definition. **2001 Proc. 2nd Quarter 81.**

At its next meeting, the working group continued discussion related to the secondary market. The chair had asked for assistance from the life insurance industry and a representative said insurers may not even be aware that a policy had been viaticated. She said that being aware that a policy was viaticated would assist the insurer in doing fraud prevention and consumer protection. A regulator responded that he sometimes heard stories implying that insurers tried to talk policyholders out of viaticating their policies. Another regulator said he heard that viatical settlement providers were "warehousing" policies until the two-year contestability period has expired before they are viaticated. The insurance company representative agreed that this was happening. She said insurers frequently saw a policy viaticated within days after the contestability period expired. **2001 Proc. 3rd Quarter 34.**

An interested party said that investors in viatical settlements appeared to be concentrated in Florida. She noted that recently many more solicitations were for international investors. She noted solicitations from Thailand, Columbia and others. The chair asked if these foreign investors were also investing in other American businesses, or predominantly in viaticals. He opined that this might represent a money laundering opportunity. A representative from the viatical industry said that all over the world investors were interested in investing in the United States. The working group asked the insurance company representative how the life insurance industry tracked viatical settlements of life insurance policies. She responded that there was no formal tracking. It was very difficult to track viatical settlement transactions because the providers often tried to veil the transactions by using individual employee's names rather than the company name as the new owner or beneficiary. A regulator asked what type of investigation an insurer would want to make when a policy was viaticated. The insurer representative responded that it would look to see if the application was truthful and might want to investigate for fraud. **2001 Proc. 3rd Quarter 34.**

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Section 8A (cont.)

At one time the model contained a subsection that stated that a provider could not use a longer life expectancy than was realistic. This provision was discussed extensively during the 2002 redraft. The chair said that when the model only covered terminal illness, there was concern raised that providers could “game” the minimum payout table by using a longer expectancy than realistic. Given that original application, he asked if the provision should now apply to all types of settlements or whether it should only apply to those who were chronically or terminally ill. An interested party asked the working group to delete the provision because it created confusion. One person said that the problem he saw with the language was that it affected the price paid to the viator on one hand, and on the other hand it affected the investor. What was reasonable on one side was not necessarily reasonable on the other side. Another interested party agreed that the environment had changed. He thought there was excessive attention to the viator and now he heard from those who wished to protect the investors. He urged the working group to delete the entire paragraph. **2002 Proc. 3rd Quarter 150.**

An interested party stated that the language formerly labeled Subsection E set up a mechanism to defraud investors by encouraging companies to use the shortest life expectancy. One suggestion was to limit the provision to the terminally or chronically ill. A regulator questioned that approach because it seemed to imply that others could be unreasonable. She suggested adding a broad general statement that all life expectancy must be reasonable and then to specify for the terminally and chronically ill what that meant. She was concerned about how the provision might be construed. An interested party said the provision had been added to keep people from manipulating the chart of life minimum payouts by changing the life expectancy. A regulator suggested striking the provision. She opined that it has already been addressed in Section 5. The working group agreed to strike the provision from the Viatical Settlements Model Regulation. **2002 Proc. 4th Quarter 243.**

Section 9. Insurance Company Practices

When the working group was reconstituted to review the model act and regulation, representatives from the viatical settlement industry commented on the difficulty in working with some insurers. Another interested party suggested the addition of a requirement that insurers disclose the possibility of a viatical settlement when they sent out a lapse notice. He said that this was comparable to a requirement that the viatical settlement company notify the potential viator of the possibility of an accelerated benefit from the insurer. He suggested that persons who might lapse their policy be directed to the viatical associations for further information. **1996 Proc. 2nd Quarter 650.**

Initially the suggestions for standards for life insurers to respond to requests for information were included in the draft of revisions to the model act. A recurring complaint from the viatical industry was the inability to get timely confirmation from insurers of the conditions of the life insurance policy being considered for viatication. The draft required that the insurer provide the information requested on the status of a viator’s insurance policy or certificate within ten business days following the receipt of the request to the insurer or its agent. **1997 Proc. 2nd Quarter 614.**

Representatives from the life insurance industry expressed concern about the requirements contained in the draft. One noted that it required insurers to respond within ten business days, but if a policy owner requested information, the laws in most states required a response within 30 to 90 days. Yet this entity with which the insurer has no contractual relationship could expect a response within ten days. She also noted that the provision did not contain any compensation for the insurer. Insurers sometimes received requests that were 50 or more questions long and contained requests for information that were inappropriate for the insurer to answer, but rather should have been directed at the viator. **1997 Proc. 3rd Quarter II 1221.**

A regulator expressed concern about putting insurer mandates into the viatical settlement law, because insurers would not necessarily look there. **1997 Proc. 3rd Quarter II 1222.**

At the next meeting the chair suggested that a group of interested parties from the viatical and insurance industries address these issues and make recommendations. An interested party suggested that the model act be changed to provide authority to promulgate regulations and then the group could draft language that was satisfactory to both the insurance industry and the viatical settlement industry. This would allow the timely adoption of the model act while this discussion took place. **1997 Proc. 3rd Quarter II 1213.**

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Section 9 (cont.)

The representatives from the viatical settlement industry and the insurance industry submitted a draft recommendation for Section 9 of the model regulation on insurer responsibilities and two forms to be used to verify policy information. They recommended two standardized forms, one for groups and one for individuals, as appendices to the model. Both industries' groups had agreed to the recommended regulation language. It set a timely response and prohibited exorbitant fees for filling out the form. A representative from the insurance industry confirmed that the insurer representatives felt the document contained the protection the insurers needed and they were in agreement with the recommendation. **1998 Proc. 3rd Quarter 520.**

After the adoption of the revised Viatical Settlements Model Act by the Executive Committee and Plenary, the working group that drafted those amendments had a charge to review the model regulation. The chair opined that there were two "sacred cows": Section 5 regarding the reasonableness of payments and Section 9 regarding insurance company practices. **2001 Proc. 1st Quarter 62.**

A. An interested party asked the working group also to consider a change to Subsection A to reduce the 30-day period for response to 15 days. He said that if all the information was not available, the insurer could at least provide what was available in that shorter time frame. **2002 Proc. 3rd Quarter 151.**

Interested parties urged the working group to add language to Subsection A that would allow the viator to receive the money more quickly by requiring an insurer to indicate whether it planned an investigation for fraud. One opined that these provisions fleshed out the Viatical Settlements Model Act. A regulator said he could not support the provisions in Subsection A that required the insurer to tell the provider if it was considering an investigation. He opined that no one shares information about an ongoing investigation. Another regulator agreed that a licensed insurer should not be required to tell of an investigation it was conducting. An interested party said the viatical settlement industry did not want insurers to be conducting an investigation at the time the policy was being viaticated and not tell the provider. He asked regulators to remember that there were two sets of consumers who need protection: potential investors as well as the viators. One working group member opined that the suggestion for amendments went beyond the model act and the original intent in the language "investigation of potential fraud." He said he did not know why regulators would want to repeat the language of the model act, but if something was needed, it should say the same thing. He opined that it should be enough of a warning to the viatical settlement provider just to say that an investigation was ongoing, without alluding to fraud. **2003 Proc. 1st Quarter 140.**

A fraud investigator from one state spoke on behalf of the Antifraud Task Force in opposition to the addition of any language that would require an insurer to notify the provider that it was conducting an investigation. He expressed concern about the safety of the investigators, witness intimidation, and concealing evidence, which were some of the dangers that could occur in that event. A viatical company representative said he supported those comments. His company was also concerned about the release of information. **2003 Proc. 1st Quarter 140-141.**

A regulator opined that the working group needed to spend some time in review of the verification of coverage form. He suggested that it asked for too much information. It would relieve the stress on the companies if some of the questions were deleted so that they could respond more quickly. **2003 Proc. 1st Quarter 141.**

An interested party suggested that Subsection A be revised to state that the insurer had an obligation to "complete" the request rather than to "respond." A representative from the viatical industry said that viatical settlements providers often had a problem in that insurers provided a minimal response without completing the form. He said he hoped it was the intent of the working group when the original language was drafted that the insurers would complete the form within the 30 days specified. The suggested language for Subsection A included a provision for what insurers should do if they could not complete some part of the form. A representative from a life insurance trade association responded to the suggestion as to whether to use "respond" or "complete." She opined that this change would require an insurer to do work that the viatical settlement provider should do. The viatical representative responded that the viatical settlement provider had no way to know if the policy was current and correct. The provider was asking for information to confirm what it had available. **2003 Proc. 1st Quarter 140.**

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Section 9A (cont.)

One regulator suggested having the insured send the verification of coverage form to the insurer with a request that it be sent back to him. Then if he chose to sell his policy, he would have information to give to the viatical settlement provider. The regulator expressed concern about release of that information to a third party. Another regulator responded that some of those viaticating a policy might be elderly or ill and would not understand what to do or how to get it done. An interested party agreed that consumers often did not know about their policies and he also expressed concern that, if the form was sent back to the insured, it might be changed before the viatical provider got it. A third regulator said that if someone wanted to sell a policy, he had to take some responsibility. He opined that the form was not a verification of coverage, but much more. He said that it would be much easier if the viatical settlement provider filled it out and the insurer merely verified the information was correct. **2003 Proc. 1st Quarter 141.**

A representative from a viatical trade association asked the working group to make some changes to Paragraph A to require that the insurer send notice to the policy owner, the viatical settlement provider and the broker that it had received a request for verification of coverage. He said this provision would assist viatical settlement providers in processing transactions. A regulator responded that this would increase administrative costs for life insurers, although he did like the idea of the viator being notified. Another regulator also approved of the idea of sending a notification to the policy owner but said that the response of sending the coverage form back ought to be enough verification to the viatical settlement provider. **2003 Proc. 1st Quarter 141.**

The working group made a change to Section 9A to delete Paragraph (3) and to insert language in Paragraph (2) about group insurance coverage after a decision was made to create one verification of coverage form instead of the separate forms for individual and group that had previously existed. An insurer representative said the language in Section 9A(2) needed to retain the concept that, for group coverage, insurers would provide the information they could, but many of the details needed to come from the group policyholder. He suggested inserting the words “where details with respect to the certificate holder’s coverage are maintained by the insurer” within Paragraph (2). The working group agreed to that recommendation. **2003 Proc. 4th Quarter 267-268.**

E. In response to a suggestion to add a Subsection E to the draft, a representative from a life insurance trade association said that insurers wanted to get the permission of the insured so the company was shielded from liability. The federal Patriot Act included further requirements related to money laundering. A viatical company representative said that, if the insured was asked to sign further documents, he might ask for additional money for his signature but he had no rights in the policy. Another representative said that, once the owner sold the policy, the new owner had rights and he opined that this issue had nothing to do with money laundering. **2002 Proc. 3rd Quarter 150-151.**

A representative from the viatical industry explained that the insurer sometimes required that the insured sign a form even though all rights in the policy had been transferred to the viatical settlement provider. A representative from the insurance industry said that he assumed that this comment did not include the purchase of additional coverage, which would require the insured’s signature in most states. The viatical representative said that in some cases insurance policies had a provision to allow an increase in coverage and if the viatical settlement provider purchased the entire interest, then it would have the right by contract to get that additional coverage. Another insurer representative said that the fact that the insured received notice was good and her association would not object to the language. However, she suggested adding two sentences at the end that stated: “In such a situation, the viatical settlement provider shall provide timely notice to the insured that a settlement transaction on the policy has occurred. Such timely notice shall be provided within fifteen (15) calendar days of the change in the policy or group certificate.” The working group agreed that it was appropriate to address the issue. **2003 Proc. 1st Quarter 143.**

Interested parties suggested adding new subsections to Section 9 that required an insurer to report an investigation to the viatical settlement provider, required the viatical settlement provider to report to the insurance department, and provided liability protection to the provider for its report. The chair asked if insurance departments wanted to be notified every time an insurer investigated the validity of a policy. A member of the working group agreed that the insurance department did not want to know about every action. He said that his state does not have a large fraud investigation unit and depended on insurers to investigate fraud themselves. The working group decided not to accept the suggestions. **2003 Proc. 1st Quarter 142.**

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Section 9E (cont.)

The working group received another suggestion from interested parties that requested the addition of a new paragraph that said: “Recognizing that the viatical option may be suitable for some individuals, insurers shall not prohibit their authorized producers from discussing this option with their clients. No insurer shall impose a penalty of any kind on any producer for explaining the viatical option to a client.” One of those making the suggestion said that this subsection raised a different issue. Carriers were trying to prohibit agents from telling insureds about the possibility of a viatical settlement. A regulator responded that insurance producer generally gave information about what was in the contract; the viatical settlement option was not part of the contract. If the agent was an employee of the insurer, regulators should not tell the employer what type of contract arrangement it could have with its employee. A regulator said the group was really talking about two different points here. The group could require insurers to tell about other options and he did not agree with that point. On the licensure side he expressed concerned about the fiduciary duty of a person who was brokering a policy. To tell a company agent who might also be a licensed viatical settlement broker that he could not tell about the possibility of a viatical settlement would mean that he could not fulfill his fiduciary duty. He was then placed in an untenable position. Another regulator said that he agreed with that. It should not be a mandatory requirement to disclose information about a viatical settlement, but there was some merit in not punishing an agent who did provide that information. **2003 Proc. 1st Quarter 142.**

A regulator reminded the working group that he had volunteered at the Spring National Meeting to draft language for regulator consideration that addressed a recommendation for a new subsection that would not allow insurers to prohibit their authorized producers from discussing viatical settlements with their clients. He opined that, if regulators want to add a provision, the Viatical Settlements Model Act and Regulation were not the place to regulate the relationship between insurers and their producers. Another regulator agreed, expressing the opinion that, if there needed to be a discussion of the relationship between producers and insurers, this working group was not the appropriate place for that discussion. **2003 Proc. 2nd Quarter 190.**

A representative from the viatical industry said that an insurer’s prohibition of its producers discussing viatical settlements was actually an unfair trade practice, monopoly or coercion. Another viatical representative opined that the Viatical Settlements Model Act very directly provided authority in Section 2E, the definition of a fraudulent viatical act. He said that section was about concealing material information. Another viatical representative opined that the fraud definition did not adequately to cover this situation. The chair expressed concern about using Section 2E of the Act as a vehicle for adopting such a provision. A regulator added that a broker negotiating a viatical settlement had a fiduciary responsibility. If an insurer decided to put up a wall prior to entering into a transaction, there was no fiduciary responsibility. The producer was not put in a position of being unable to fulfill his fiduciary duty. This would force a choice on a producer who also was a viatical settlement broker. He had to choose whether to continue to represent a company that did not want him to talk about viatical settlements. **2003 Proc. 2nd Quarter 190.**

A letter from a viatical trade association suggested adding a provision that required insurers to send written notice to the owner of a life insurance policy that a viatical settlement contract was an available alternative to the owner when the owner was considering surrendering or assigning a policy, lapsing the policy or requesting a policy loan. A representative from a life insurance trade association said that the viatical industry had proposed this language or similar language in various state legislatures, but it was always struck from the bills. She opined that insurers should not have to do sales work for the viatical settlement providers. She suggested that there could be a liability issue if the person turned out to be unhappy with the viatical settlement. The working group was not in favor of adding this provision. **2003 Proc. 1st Quarter 143.**

Section 10. Effective Date

Prior to adoption of the first version of the model regulation, the working group discussed a suggestion to put in a provision that a viatical settlement company with a pending application could continue to do business. The drafters hesitated to add this provision but did express interest in adding a drafting note that would grandfather in existing companies while their applications were being processed. **1994 Proc. 2nd Quarter 575.**

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Section 10 (cont.)

B. An interested party said that the regulation had included for some time the concept of grandfathering a license. He suggested that the forms also be grandfathered while they were being evaluated. He clarified that the intent was just to allow the use of forms while waiting for approval from the insurance department. A regulator said that another option would be to make the approval date for forms separate from the license approval. Another agreed that there should be two separate paragraphs because there were two concepts. Other regulators agreed with that approach and one member of the working group offered to prepare a draft. **2003 Proc. 1st Quarter 143.**

At the next meeting of the group, a draft was presented for review. The drafter explained that his suggested Subsection B gave a grace period of 90 days to continue use of existing forms. The intent was to allow time for the company to come into compliance with regulatory requirements. Another member of the working group asked if this new Section 10B was designed to address a situation where a state already has a law in place and now had adopted the regulation requiring approval of the forms. The drafter said it also could apply to a state where the company has been doing business but now the state had passed a law and the company was required to get a license. **2003 Proc. 2nd Quarter 190.**

Appendix A. Informational Brochure

The chair suggested that the working group consider development of an informational brochure on viatical settlements. He said the insurance department could serve as an unbiased source of information, and the booklet could incorporate some tax information as well. A state regulator said he had written a booklet for his state and would be interested in seeing copies of what else was available, and also requested comments on what he had prepared. **1997 Proc. 1st Quarter 684.**

When the model was being redrafted in 2002, the chair noted that one state had agreed to work with a consumer advocate to develop new informational brochures. The lead regulator said that the task before them was to take the considerable amount of information that was available and fit it into a brochure format. She said it was important that the information be presented in a way that would invite consumers to read it. The drafters noticed a great deal of duplication in the previous brochures and, in their efforts to make the information fit, they eliminated a great deal of that duplication and worked to simplify the text. One said that more information could probably be squeezed in the brochures, but some white space was needed for readability. The chair asked if these brochures should become part of the regulation. The drafters responded that they had worked with the assumption that the two brochures would replace Appendix A in the Viatical Settlement Model Regulation. The working group agreed to that approach. **2002 Proc. 2nd Quarter 111.**

Appendix B. Verification of Coverage for Life Insurance Policies

Representatives from the viatical settlement industry and the insurance industry met together and submitted a draft recommendation for Section 10 of the model regulation on insurer responsibilities and two forms to be used to verify policy information. They recommended two standardized forms, one for group and one for individual, as appendices to the model. **1998 Proc. 3rd Quarter 520.**

The working group reviewed the reporting forms that were designed to be appendices of the model regulation. The chair explained that the appendices were forms that were developed jointly by the viatical settlement industry and the life insurance industry and these forms were agreeable to both sides. They were designed to be used for a viatical settlement provider to obtain information about a life insurance policy. **1999 Proc. 2nd Quarter 492.**

A regulator said he has been looking at the Verification of Coverage forms and noted that they asked for a great deal of detailed information. He asked if viatical settlement providers always got a signed form from the viator requesting the insurer to share this confidential information. An interested party confirmed that viatical settlement providers did indeed provide a signed permission form to the insurer. A regulator asked if the viatical settlement provider would not already have a great deal of information that it was requesting from the insurer. **2003 Proc. 1st Quarter 140.**

A regulator opined that the working group needed to spend some time in review of the verification of coverage form. He suggested that it asked for too much information. It would relieve the stress on the companies if some of the questions were deleted so that they could respond more quickly. **2003 Proc. 1st Quarter 141.**

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Appendix B (cont.)

One member of the working group suggested that the form was not a verification of coverage, but much more. He said that it would be much easier if the viatical settlement provider filled it out and the insurer merely verified the information was correct. **2003 Proc. 1st Quarter 141.**

A representative from an insurance company said that many of the questions being suggested as additions to the verification of coverage form would increase the work of an insurer and be very costly. He suggested this information may be available through other means. A regulator added that many of the items being requested would already be known to the person submitting the form because the information was included in the policy or could be provided by the person viaticating the policy. He asked why the insurance company has to provide it again. A viatical representative said this gave the provider an opportunity to check the accuracy of its information. Another added that in 30% to 40% of cases, the people who wanted to viaticate a policy did not even have a copy of it. **2003 Proc. 2nd Quarter 191.**

The working group received numerous suggestions for other additions to the form. An insurer representative said that asking for historical information required the insurance companies to do a great deal of work. Another added that there was also an issue of privacy. He asked how much a viatical settlement provider was entitled to know about the history of the policy. The working group chair said that the purpose of the verification of coverage form was to give information about the current status of the policy, not to secure historical information. The working group considered the suggestion to add a question that asked if the policy had ever lapsed. The insurer representative said this would be very difficult for a company to determine because it would require a search of manual records in many cases. This would be costly and time consuming. Mr. Freeman said that the provider and broker need this information to check for fraud. A regulator said he did not think it was the regulators' intent to make the viatical settlement provider responsible for finding fraud that was committed years ago. **2003 Proc. 2nd Quarter 191-192.**

After the Summer National Meeting, a few regulators met and drafted a revised Verification of Coverage form for the working group to discuss. One of those regulators said that when he realized the working group was talking about *verifying* the coverage, the group decided to draft a different type of form. The philosophy of the new form was to limit the amount of information gathered during the initial verification period. If a provider or broker was gathering information, it should already have the policy and perhaps an illustration or an annual report. If the provider needed more information, he could have the insured request it. He suggested that it was unfair to require insurers to produce large amounts of information up front. The form contained enough information to make the initial decision about a purchase. The chair added that the group also tried to get away from open-ended questions that would be subject to interpretation, and to cull out questions that served other purposes than verification of coverage. A member of the working group said he had concerns about the form as it existed before but believed this is to be an improved document. **2003 Proc. 3rd Quarter 194.**

A representative from the viatical industry expressed appreciation for the two-column approach and the clean layout. He said that his group had been trying to gather other information besides verification to use in its fight against fraud. He suggested adding a copy of the annual report to the list of forms on the last page of the Verification of Coverage form. Another representative from the viatical industry said that the phrasing was unclear and suggested a longer paragraph to describe the expected procedure for the provider and the insurer. One of the drafters asked if this information was clear to insurers. A participant from a life insurance trade association said it was not hard to understand. **2003 Proc. 3rd Quarter 194-195.**

One interested party asked if it was the drafters' intent to combine group and individual coverage on one form and one of the drafters responded affirmatively. The interested party asked if an additional box could be added to indicate whether the policy was a group or an individual policy. A regulator opined that the viatical settlement provider or broker making the purchase would already know whether it was a group policy. A viatical representative expressed concern that the provider would not be able to get all the information it needed for a group policy on this form. One of the drafters pointed out that insurance regulators did not have authority over employers, so could not mandate that an employer provide other information. **2003 Proc. 3rd Quarter 195.**

A viatical representative said that many people who tried to sell their policies did not have anything except the billing statement; they had lost the policies. The chair responded that it would be a preliminary step for the viatical settlement provider to get a copy of the policy. He thought it inappropriate for a provider to consider bidding on a policy without even

VIATICAL SETTLEMENTS MODEL REGULATION

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Appendix B (cont.)

seeing the policy form. One regulator said that it seemed that the viatical settlement provider was shifting the burden of due diligence to the insurer by asking it to provide information when the provider did not have it. The Verification of Coverage form was not the way to get that information. One representative from the viatical community said that what had been described was the procedure in many companies, but it had always bothered him that a viatical settlement provider could consider buying a policy without reading it. He understood the interest in proceeding quickly, but a provider still needed to know what it was buying. The first commenter agreed that a viatical settlement provider would probably not buy the policy, but in order to get started, it wanted the Verification of Coverage form. A regulator said it might require a change in viatical settlement provider practices to get the policy first, but then the provider would have the information it needed to fill out the Verification of Coverage form and to make a decision. **2003 Proc. 3rd Quarter 195.**

One participant expressed concern that the information that said, “To be Completed by Insurance Company” could be confused with the forms request, which would be completed by the viatical settlement provider or broker. A regulator suggested putting the insurance department signature information in a box to clarify that. Another added that the information about where to send the forms will also be provided by the insurance company and should be included in that box. **2003 Proc. 3rd Quarter 196.**

The chair said that it had been suggested that the information to be filled out by the provider should be mandated in some cases. Some have expressed concern that the provider might submit the form in blank to the insurer. He said the idea is that the provider would have a copy of the policy and perhaps an illustration and policy statement so that most of this information would be available to the provider or broker. A member of the working group agreed that this was a good suggestion; he had not imagined that a provider would submit the form in blank. An interested party said that the provider or broker should fill out as much as it knew and let the insurer make corrections. He said the instructions to the form were clear that the insurer should correct any information that was wrong. A viatical company representative said that in many cases the person did not have a copy of the policy, did not know when the last payment was made and did not know the amount that would be due for the next payment. The chair responded that viatical settlement brokers and providers had a distinct disadvantage if they did not have this information when doing a preliminary review; he did not see how they could begin consideration without a policy in hand. It behooved those who submitted verification of coverage forms to be as complete as possible, since regulators had given the insurer only 30 days to respond. The working group went through the list of items and indicated which would be mandatory with an asterisk. **2003 Proc. 4th Quarter 320.**

An insurer representative expressed concern about an entry that asked if there were any pending withdrawals. He said the company would not have this information. A viatical representative suggested getting a signed statement from the viator that there were no pending withdrawals. The working group agreed to strike that request for information. The insurer representative said that if insurers had the capability to produce an illustration, they would like the ability to just send that rather than filling out the boxes on the form. The chair said that he did not believe that was an adequate response. He said it was good to send it in addition to the form, but the form should also be filled out. Another member of the working group said that, if he believed that was adequate, the verification of coverage form could be thrown out and the insurer could simply be required to send an illustration and copy of the policy. The chair said that the working group made drastic amendments to the form to cut down on the amount of information in a move to help insurers. The insurers should complete the form as it now existed. **2003 Proc. 4th Quarter 321.**

Appendix C Provider and Broker Reporting Forms

A representative from the viatical industry worked with a regulator to develop forms for Appendix C to gather information from providers and brokers. They suggested getting information from brokers on the individual state and all states activity and getting information from providers on individual states, all states, and an individual mortality report. They said that the information on these reports covered all of the issues in Section 6 and suggested that Section 6 just refer to the reports instead of the long list there. **2003 Proc. 2nd Quarter 179.**

The chief drafter of the forms asked the working group to review the reporting forms that would be attached to the regulation. Another drafter suggested that the working group consider amending the model regulation to reference the forms in the appendix rather than including all the detail in Section 6. He asked if it was the intent of the working group for a provider to

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Appendix C (cont.)

include on the all states form business conducted in a state even if that state did not license providers. The main drafter said he had changed the first question in the form to make it clear that was the intent. He agreed to add that information to the instructions. An interested party asked if all of the states had authority in their laws to ask for all of this information and one working group member responded that in most, if not all, states the commissioner could ask for additional information as needed. The drafter said that incorporation of the form in the regulation also would have the same effect. **2003 Proc. 3rd Quarter 196.**

An interested party expressing concern about the release to the public of the information in the reporting forms. She asked that providers and brokers be allowed to mark the reports as trade secrets and have the data on them released only in the aggregate. The chair pointed out that state laws varied a great deal on what could be designated a trade secret. Another regulator said that the Viatical Settlement Model Regulation should not include provisions that would affect the open records laws in the states. **2003 Proc. 4th Quarter 321.**

The working group received a request for clarification about the filing of the VSP 003 Form, which required reporting on deaths that had taken place during the year. An interested party asked what to do if the viatical settlement provider found out about the death and got proof of the death after the report had already been filed. Another interested party said this brought up a question about when the death occurred. Should it be recorded when the provider heard a rumor, when it saw an obituary, when it received a death certificate, or when it had actually collected the proceeds? One regulator said it seemed to him that the best evidence was when the death benefits were collected. He suggested putting the information on the year's report. The working group agreed with that suggestion and decided that no change to the form was necessary. **2003 Proc. 4th Quarter 268.**

Chronological Summary of Actions

September 1994: Model adopted.

June 1999: Amended model extensively in response to amendments adopted in 1998 to the Viatical Settlements Model Act.

December 1999: Appendices A, B and C added to the model regulation. Appendix A was an informational brochure and Appendices B and C were policy information verification forms for individual and group policies.

June 2004: Model revised to reflect changes in the model act adopted in March 2001. Deletion of portions now covered by the act. Complete revision of appendices included. New reporting forms created.