

LCB File No. R180-03

**PROPOSED REGULATION OF THE DIVISION OF INSURANCE
OF THE DEPARTMENT OF BUSINESS AND INDUSTRY**

**NOTICE OF WORKSHOPS TO SOLICIT COMMENTS ON
PROPOSED REGULATION**

The Department of Business and Industry, Division of Insurance (Division), is proposing new regulations pertaining to life insurance multiple policies, disclosure for small face amount life insurance policies, advertisement for individual health insurers, viatical/life settlements, and to repeal all regulations pertaining to the medical dental screening panel in chapter 41A of the Nevada Administrative Code (NAC). A workshop has been set for 9:00 a.m., on November 18, 2003, at the offices of the Division, 788 Fairview Drive, Suite 300, Carson City, Nevada 89701. Interested parties may also participate through a simultaneous video-conference conducted at the Bradley Building, 2501 East Sahara Avenue, Manufactured Housing Division Conference Room, 2nd Floor, Las Vegas, Nevada 89104. The purpose of the workshop is to solicit comments from interested persons on the following general topics addressed in the proposed regulations.

- 1. Life Insurance Multiple Policies. The proposed regulation would require insurers that are licensed to market life insurance to, upon receipt of a death claim, research their records to determine if there are other policies in their company for that person or alias names of that person. The proposed regulation will amend chapters 688A and 688B of the NAC.**
- 2. Disclosure for Small Face Amount Life Insurance Policies. The proposed regulation requires an insurer to disclose to the insured if the amount of premiums paid exceeds the death benefit of that policy. This applies to life insurance policies with a death benefit of \$15,000 or less. This regulation will amend chapters 688A and 688B of the NAC.**
- 3. Advertisement for Individual Health Insurers. The proposed regulation will extend the advertisement compliance to include licensed insurers marketing individual health insurance pursuant to chapter 689A by amending subsection 2 and adding subsection 3 to NAC 689A.270.**
- 4. Viatical/Life Settlements. The proposed regulation addresses requirements for viatical settlements regarding the standards for evaluation for reasonable payments, reporting requirements, requirements of insurers to coordinate policy benefit information and compensation to viatical entities.**
- 5. Medical Dental Screening Panel. The proposed regulation is needed to address the requirements of chapter 3, Statutes of Nevada, 2002 Special Session of the Nevada Legislature. This regulation repeals all sections of chapter 41A of the NAC that refer to the Medical Dental Screening Panel.**

A copy of this notice and the proposed regulations will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the proposed regulations will be available at the offices of the Division, 788 Fairview Drive, Suite 300, Carson City, Nevada 89701, and 2501 East Sahara Avenue, Suite 302, Las Vegas, Nevada 89104, and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulations are also available in the **State of Nevada Register of Administrative Regulations** which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653 and on the Internet at **www.leg.state.nv.us**. Copies will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

This Notice of Workshop to Solicit Comments on Proposed Regulations has been sent to all persons on the agency's mailing list for administrative regulations and posted at the following locations:

Department of Business and Industry
Division of Insurance
788 Fairview Drive, Suite 300
Carson City, NV 89701

Department of Business and Industry
Division of Insurance
2501 East Sahara Avenue, Suite 302
Las Vegas, NV 89104

Legislative Counsel Bureau
Capitol Complex
Carson City, NV 89710

Blasdel Building
Capitol Complex
Carson City, NV 89710

State Capitol
Capitol Complex
Carson City, NV 89710

Capitol Press Room
State Capitol Basement
Carson City, NV 89710

County Clerk
Courthouse
Carson City, NV 89710

Nevada State Library & Archives
Capitol Complex
Carson City, NV 89710

Carson City Library
900 North Roop Street
Carson City, NV 89701

Churchill County Library
553 South Maine Street
Fallon, NV 89406

Las Vegas Library
833 Las Vegas Blvd. North
Las Vegas, NV 89101

Douglas County Library
1625 Library Lane
P.O. Box 337
Minden, NV 89423

Elko County Library

Goldfield Public Library

720 Court Street
Elko, NV 89801

Fourth & Cook Street
P.O. Box 430
Goldfield, NV 89013

Eureka Branch Library
10190 Monroe Street
P.O. Box 293
Eureka, NV 89316

Humboldt County Library
85 East 5th Street
Winnemucca, NV 89445

Battle Mountain Branch Library
P.O. Box 141
Battle Mountain, NV 89820

Lincoln County Library
93 Main Street
P.O. Box 330
Pioche, NV 89043

Lyon County Library
20 Nevin Way
Yerington, NV 89447

Mineral County Library
First & A Street
P.O. Box 1390
Hawthorne, NV 89415

Tonopah Public Library
171 Central Street
P.O. Box 449
Tonopah, NV 89049

Pershing County Library
1125 Central Avenue
P.O. Box 781
Lovelock, NV 89419

Storey County Library
95 South R Street
P.O. Box 14
Virginia City, NV 89440

Washoe County Library
ATTN: Reference
P.O. Box 2151
Reno, NV 89505-2151

White Pine County Library
950 Campton Street
Ely, NV 89301

Clark County Library
1401 East Flamingo Road
Las Vegas, NV 89119

Members of the public who are disabled and require special accommodations or assistance at the hearing are requested to notify the Commissioner's secretary in writing at 788 Fairview Drive, Suite 300, Carson City, Nevada 89701, or by calling no later than 5 working days prior to the hearing, (775) 687-4270, extension 260.

DATED this _____ day of October, 2003.

By:

ALICE A. MOLASKY-ARMAN
Commissioner of Insurance

LCB File No. R180-03

**PROPOSED REGULATION OF THE DIVISION OF INSURANCE
OF THE DEPARTMENT OF BUSINESS AND INDUSTRY**

**NOTICE OF INTENT TO ACT UPON REGULATIONS
Notice of Hearing for the Adoption of Regulations
of the Department of Business and Industry, Division of Insurance**

The Department of Business and Industry, Division of Insurance (Division) will hold a public hearing at 9:00 a.m., on November 18, 2003, immediately following a public workshop, at the offices of the Division, 788 Fairview Drive, Suite 300, Carson City, Nevada 89701. Interested persons may also participate through a simultaneous video-conference conducted at the Bradley Building, 2501 East Sahara Avenue, Manufactured Housing Division Conference Room, 2nd Floor, Las Vegas, Nevada 89104. The purpose of the hearing is to receive comments from all interested persons regarding the adoption of:

REGULATION REGARDING VIATICAL/LIFE SETTLEMENTS

The following information is provided pursuant to the requirements of NRS 233B.0603:

1. The proposed regulation is needed to regulate the practices of viatical entities in order to ensure reasonable and fair treatment of insured persons.
2. The proposed regulation establishes practices for viatical entities and insurers regarding reasonable payment to viators, viatical entities reporting requirements, coordination of policy benefits between viatical and insurer and clarifies compensation benefits to viatical entities.

3. Estimated economic effect of the regulation:

On the business which is to be regulated: Minimal effect on the industry, both short and long term due to reporting requirements.

On the public: No direct adverse short or long term impact. There will be a long term beneficial economic effect on the members of the public who choose to engage in a viatical settlement.

4. The Division does not anticipate additional costs to enforce the regulation.
5. The Division is not aware of any overlap or duplication of the regulation with any state, local or federal regulation.
6. The proposed regulation is not required pursuant to federal regulation.
7. The proposed regulation does not include provisions that are more stringent than a federal regulation.

8. The proposed regulation does not establish a new fee or increase an existing fee.

Persons wishing to comment upon the proposed action of the Division may appear at the scheduled public hearing or may address their comments, data, views or arguments, in written form, to the Division, 788 Fairview Drive, Suite 300, Carson City, Nevada 89701. Written submissions must be received by the Division on or before November 12, 2003. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Division may proceed immediately to act upon any written submissions.

A copy of this notice and the proposed regulation will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the proposed regulation will be available at the offices of the Division, 788 Fairview Drive, Suite 300, Carson City, Nevada 89701, and 2501 East Sahara Avenue, Suite 302, Las Vegas, Nevada 89104, and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulation are also available in the **State of Nevada Register of Administrative Regulations** which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653 and on the Internet at <http://www.leg.state.nv.us>. Copies will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption, and incorporate therein its reason for overruling the consideration urged against its adoption.

This notice of hearing has been posted at the following locations:

Department of Business and Industry
Division of Insurance
788 Fairview Drive, Suite 300
Carson City, NV 89701

Department of Business and Industry
Division of Insurance
2501 East Sahara Avenue, Suite 302
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Legislative Counsel Bureau
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Suite 300, Carson City, Nevada 89701, or by calling no later than 5 working days prior to the hearing, (775) 687-4270, extension 260.

DATED this _____ day of October, 2003.

By:

ALICE A. MOLASKY-ARMAN
Commissioner of Insurance

LCB File No. R180-03

**PROPOSED REGULATION OF THE DIVISION OF INSURANCE
OF THE DEPARTMENT OF BUSINESS AND INDUSTRY**

Authority: NRS 679B.130

Section 1. Chapter 688C of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 12, inclusive, of this regulation.

Sec. 2. *“Insured” means the person covered under the policy being considered for viatication.*

Sec. 3. *“Life expectancy” means the mean of the number of months the individual insured under the life insurance policy to be viaticated can be expected to live as determined by the viatical settlement provider considering medical records and appropriate experiential data.*

Sec. 4. *“Net death benefit” means the amount of the life insurance policy or certificate to be viaticated less any outstanding debts or liens.*

Sec. 5. *“Patient identifying information” means an insured’s address, telephone number, facsimile number, electronic mail address, photograph or likeness, employer, employment status, social security number, or any other information that is likely to lead to the identification of the insured.*

Sec. 6. *“Investment agent” means a person that solicits the public for investment in viatical settlements.*

Sec. 7. *1. A viatical investment agent shall not act as an agent of a viatical settlement provider unless the investment agent becomes a viatical settlement broker licensed in this state.*

2. A viatical investment agent shall provide prospective viatical settlement investors with a list of licensed viatical settlement providers and brokers in this state.

Sec. 8. *1. Standards for Evaluation of Reasonable Return. The return of viaticating a policy shall be no less than the following payouts for insureds who are terminally or chronically ill:*

<i>Insureds Life Expectancy</i>	<i>Minimum Percentage of Face Value Less Outstanding Loans Received by Viator</i>
<i>Less than 6 months</i>	<i>80%</i>
<i>At least 6 months but less than 12 months</i>	<i>70%</i>
<i>At least 12 months but not less than 18 months</i>	<i>65%</i>
<i>At least 18 months but not less than 25 months</i>	<i>60%</i>
<i>Twenty five months or more</i>	<i>Viator must receive at least the greater of the cash surrender value or accelerated death</i>

benefit in the policy that would actually be available to the seller at the time of the transaction.

2. The viatical settlement contract shall not provide a payment to the viator for a terminally ill 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 this state, or, if insufficient data is available for this state, the prevailing rates nationally or in other states that maintain this data;*
- (l) Whether the policy is within the contestable period; and*
- (m) Other charges not explicitly noted in the above list.*

Sec. 9. 1. On March 1 of each calendar year, each viatical settlement provider licensed in this state shall make a report to the commissioner of all viatical settlement transactions where the viator is a resident of this state and containing the following information for the previous calendar year; the first report is due March 1, 2005 for calendar year 2004:

- (a) For viatical settlements contracted during the reporting period:*
 - (1) Date of viatical settlement contract;*
 - (2) Viator's state of residence at the time of contract;*
 - (3) Mean life expectancy of the insured at the time of contract in months;*
 - (4) Face amount of policy viaticated;*
 - (5) Net death benefit viaticated;*
 - (6) Estimated total premiums to keep policy in force for mean life expectancy;*
 - (7) Net amount paid to viator;*
 - (8) Source of policy purchased from individual or entity other than the original viator;*
 - (9) Type of coverage (individual or group);*
 - (10) If the settlement was during the contestable or suicide period, or both, at the time of viatical settlement;*
 - (11) Classification of diseases and injuries:*
 - (I) Cardiovascular diseases;*
 - (II) Diseases of the central nervous system;*

- (III) Diseases of the peripheral nervous system;*
 - (IV) Elders with non-specific disease processes;*
 - (V) Infectious diseases and autoimmune diseases;*
 - (VI) Liver and renal diseases;*
 - (VIII) Neoplasms;*
 - (IX) Non-neoplastic pulmonary diseases; or*
 - (X) Other.*
 - (12) Type of funding; and*
 - (13) Rating of insurer that issued the policy at the time the policy was viaticated.*
 - (b) For viatical settlements where death has occurred during the reporting period:*
 - (1) Date of viatical settlements contract;*
 - (2) Viator's state of residence at the time of the contract;*
 - (3) Mean life expectancy of the insured at time of contract in months;*
 - (4) Net death benefit collected;*
 - (5) Total premiums paid to maintain the policy, not to include waiver of premium benefit;*
 - (6) Net amount paid to viator;*
 - (7) Classification of diseases:*
 - (I) Cardiovascular diseases;*
 - (II) Diseases of the central nervous system;*
 - (III) Diseases of the peripheral nervous system;*
 - (IV) Elders with non-specific disease processes;*
 - (V) Infectious diseases and autoimmune diseases;*
 - (VI) Liver and renal diseases;*
 - (VII) Neoplasms;*
 - (VIII) Non-neoplastic pulmonary diseases; or*
 - (IX) Other;*
 - (8) Date of death;*
 - (9) Amount of time between date of contract and date of death in months;*
 - (10) Difference between the number of months that passed between the date of the contract and the date of death and the mean life expectancy in months as determined by the reporting company;*
 - (11) Type of coverage (individual or group);*
 - (12) If the death occurred within the contestable or suicide period, or both, at the time of viatical settlement.*
 - (c) Name and address of each viatical settlement broker through whom the reporting provider purchased a policy from a viator who resided in this state at the time of the contract;*
 - (d) Number of policies reviewed and rejected; and*
 - (e) Number of policies purchased from an individual or entity other than the original viator as a percentage of total policies purchased.*
- 2. Each viatical settlement broker licensed in this state shall make an annual report to the commissioner of all viatical settlement transactions where the viator is a resident of this state, which shall be due on March 1 of each year, reporting the prior year's business. The first report is due on March 1, 2005 for calendar year 2004. The reporting form must include the following:*
- (a) The title "Broker Reporting Form";*
 - (b) Complete name and license number or ID number of the reporting viatical settlement broker;*

- (c) Reporting calendar year;*
- (d) List of all viatical settlement providers with whom contracts were negotiated;*
- (e) Certification that the information provided in the report is true and accurate based upon the broker's best knowledge, information and belief; and*
- (f) Broker's signature and date of signature.*

Sec. 10. 1. For 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.

2. Payment of proceeds of a viatical settlement pursuant to chapter 688C of the Nevada Revised Statutes shall be by means of wire transfer to the account of the viator or by certified check or cashier's check.

3. Payment of the proceeds to the viator pursuant to the 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 the written consent of the viator.

4. A viatical settlement provider, viatical settlement broker or viatical settlement investment agent shall not discriminate in the making or solicitation of viatical settlements on the basis of race, age, sex, national origin, creed, religion, occupation, marital or family status or sexual orientation or discriminate between viators with dependents and without.

5. A viatical settlement provider, viatical settlement broker or viatical settlement investment agent 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 a viatical settlement.

6. 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 subject of the investment.

7. 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:

(a) A provision that the viatical settlement provider will effect the transfer of the amount of the death benefit only to the extent or portion of the amount viaticated. The insurance company shall pay benefits in excess of the amount viaticated directly to the viator's beneficiary;

(b) A provision that the viatical settlement provider will, upon acknowledgment of the perfection of the transfer, either:

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

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

(3) A provision that apportions the premiums to be paid by the viatical settlement provider and the viator. It is permissible for the viatical settlement contract to specify that all premiums

shall be paid by the viatical settlement provider. The contract may also require that the viator reimburse the viatical settlement provider for the premiums attributable to the retained interest.

8. In all cases where the insured is a minor child, disclosures to and permission of the parent satisfies the requirements of chapter 688C of the Nevada Revised Statutes and this regulation.

Sec. 11. 1. 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, he shall notify the viator and the insured in writing at their last known address within five (5) business days after receiving the notice of the subpoena.

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

3. A viatical settlement broker shall not, without the written agreement of the viator obtained prior to performing any services in connection with a viatical settlement, seek or obtain any compensation from the viator.

4. A viatical settlement provider shall not use a longer life expectancy than is reasonable in order to reduce the payout to the viator.

Sec. 12. 1. Life insurance companies licensed to market life insurance in this state shall respond to a request for verification of coverage from a viatical settlement provider or viatical settlement broker within thirty (30) calendar days of the date a request is received, provided the request includes the following:

(a) A current authorization consistent with applicable law, signed by the policy owner or certificate holder, accompanies the request; and

(b) In the case of an individual policy, submission of a form, completed by the viatical settlement provider or viatical settlement broker, that includes the following:

- (1) Name of insurance company;*
- (2) Applicable policy number;*
- (3) Name of insured;*
- (4) Insured's date of birth;*
- (5) Name of policy owner;*
- (6) Owner's social security number; and*
- (7) Policy owner's address.*

2. If the policy is in-force at the time of the inquiry requested in subsection 1 of section 12, response from the insurance company must include:

- (a) Face amount of the policy;*
- (b) Original effective date of the policy to include month, day and year;*
- (c) Changes in face amount of the policy since original date of issue;*
- (d) Type of policy:*
 - (1) Whole Life;*
 - (2) Term;*
 - (3) Universal Life; or*
 - (4) Variable Life;*

- (e) Verify if policy is participating or non-participating;*
 - (f) Current net death benefit, to include any additional insurance benefits, interest accumulation, paid-up insurance and dividends;*
 - (g) Complete information on outstanding loans and accelerated death benefits paid on the policy;*
 - (h) If the policy has lapsed due to non-payment of premium, whether coverage is continued under non-forfeiture option;*
 - (i) Amount of contracted scheduled premium and premium mode and next premium due date;*
 - (j) Whether premiums are being paid under waiver of premium benefit, and if so, effective date, how often waiver is reviewed and the next scheduled review date;*
 - (k) Accelerated death benefit information to include:*
 - (1) Method of benefit calculation;*
 - (2) If a lien method, the interest rate being applied; and*
 - (3) If remaining death benefit can be assigned;*
 - (l) Name and address of assignments under the policy;*
 - (m) Past and current listing of primary beneficiary(ies) and if any beneficiary(ies) are listed as irrevocable;*
 - (n) Current active policy riders; and*
 - (o) Reporting company must include:*
 - (1) Name and mailing address of company; and*
 - (2) Printed name, title and signature of person completing report.*
- 3. In the case of group insurance coverage:*
- (a) All information provided in subsections 1 and 2 of section 12;*
 - (b) If plan is self-insured or fully insured;*
 - (c) Amount and effective date of basic insurance;*
 - (d) Information regarding any supplemental insurance, to include the name of insurer for supplemental insurance if different than insurer for basic insurance; and*
 - (e) Premium information for basic and supplemental insurance, if basic and supplemental insurer are the same insurer, to include:*
 - (1) Amount paid by employer;*
 - (2) Amount paid by insured; and*
 - (3) Next premium due date.*
- 4. Nothing in this section shall prohibit a life insurance company or viatical settlement provider or a viatical settlement broker from using other verification information or a verification of coverage format that has been mutually agreed upon in writing in advance of submission of the request.*
- 5. 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 the policy holders, certificate holders or insureds for similar services.*
- 6. 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 acknowledgement may contain a general description of any accelerated death benefit that is available under a provision of or rider to the life insurance contract.*