

**PROPOSED REGULATION OF THE
COMMISSIONER OF INSURANCE**

LCB File No. R180-03

November 14, 2003

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§1-23, NRS 679B.130 and 688C.170.

Section 1. Chapter 688C of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 23, inclusive, of this regulation.

Sec. 2. *As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 3 to 13, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Broker of viatical settlements” has the meaning ascribed to it in NRS 688C.030.*

Sec. 4. *“Business of viatical settlements” has the meaning ascribed to it in NRS 688C.040.*

Sec. 5. *“Chronically ill” has the meaning ascribed to it in NRS 688C.050.*

Sec. 6. *“Information capable of identifying the insured” means any information capable of identifying the insured including, without limitation:*

- 1. The address of the insured.*
- 2. The telephone number of the insured.*
- 3. The number of the facsimile machine at which the insured can be contacted.*
- 4. The electronic mail address of the insured.*
- 5. A photograph or other likeness of the insured.*

6. *The employer of the insured.*

7. *The employment status of the insured.*

8. *The social security number of the insured.*

Sec. 7. *“Insured” means the person covered under a policy being considered for viatication.*

Sec. 8. *“Life expectancy” means the mean number of months the insured can be expected to live as determined by the provider of viatical settlements considering:*

1. *The medical records of the insured; and*

2. *Experiential data relevant to the condition of the insured.*

Sec. 9. *“Net death benefit” means the amount of benefit under a policy less any outstanding debts or liens on the policy.*

Sec. 10. *“Policy” has the meaning ascribed to it in NRS 688C.070.*

Sec. 11. *“Purchaser of viatical settlements” has the meaning ascribed to it in NRS 688C.090.*

Sec. 12. *“Terminally ill” has the meaning ascribed to it in NRS 688C.110.*

Sec. 13. *“Viatical settlement” has the meaning ascribed to it in NRS 688C.130.*

Sec. 14. 1. *If an insured is chronically ill or terminally ill, the minimum amount that may be paid to a viator under a viatical settlement is:*

(a) *If the life expectancy of the insured is less than 6 months, 80 percent of the net death benefit.*

(b) *If the life expectancy of the insured is at least 6 months but less than 12 months, 70 percent of the net death benefit.*

(c) If the life expectancy of the insured is at least 12 months but less than 18 months, 65 percent of the net death benefit.

(d) If the life expectancy of the insured is at least 18 months but less than 25 months, 60 percent of the net death benefit.

(e) If the life expectancy of the insured is 25 months or more, an amount equal to the greater of:

(1) The cash surrender value of the policy at the time the viator enters into the viatical settlement; or

(2) The accelerated death benefit of the policy at the time the viator enters into the viatical settlement.

2. In addition to the requirements pursuant to subsection 1 regarding the minimum amount that may be paid by a viator pursuant to a viatical settlement, a viatical settlement must not provide for a payment to a viator of an amount that is unjust or unreasonable.

3. To determine if a payment to a viator pursuant to a viatical settlement is unjust or unreasonable, the Commissioner will consider:

(a) The face value of the benefit of the policy being purchased;

(b) The value of any loan against the value of the benefit of the policy;

(c) The life expectancy of the insured at the time the viator enters into the viatical settlement;

(d) The age of the insured at the time the viator enters into the viatical settlement;

(e) The premiums that must be paid after the time the viator enters into the viatical settlement to maintain the policy;

(f) The cash surrender value or accelerated death benefit of the policy;

- (g) The costs that directly relate to the acquisition of the policy;*
- (h) The payment of any commission, fee or other compensation paid to a broker for viatical settlements or to any other third party;*
- (i) Any payments of interest on any loans against the value of the benefit of the policy that must be made after the time the viator enters into the viatical settlement;*
- (j) The applicable rating by a rating service recognized by the insurance industry of the insurance company that issued the policy at the time the viator enters into the viatical settlement;*
- (k) The prevailing rates of discount for viatical settlements in this state or, if insufficient data exists to determine the prevailing rates of discount in this state, the national prevailing rates of discount or the prevailing rates of discount for any other state that maintains data on the prevailing rates of discount for viatical settlements;*
- (l) Whether the policy is within the contestable period; and*
- (m) Any other charges or fees directly or indirectly related to the viatical settlement.*

Sec. 15. 1. *On or before March 1 of each year, a provider of viatical settlements shall submit a report to the Commissioner that must include:*

- (a) The viatical settlements that the provider of viatical settlements entered into during the previous calendar year with a viator who is a resident of this state; and*
- (b) The viatical settlements that the provider of viatical settlements entered into in which a death occurred during the previous calendar year.*

2. *For each viatical settlement that a provider of viatical settlements must report pursuant to paragraph (a) of subsection 1, the provider of viatical settlements shall submit to the Commissioner the following information:*

- (a) The date on which the viatical settlement was entered;*
- (b) The state in which the viator resided at the time of the viatical settlement;*
- (c) The mean life expectancy in months of the insured at the time of the viatical settlement;*
- (d) The face value of the benefit of the policy purchased;*
- (e) The net death benefit of the policy purchased;*
- (f) The estimated total of premiums that will be required to be paid to keep the policy in force for the mean life expectancy of the insured;*
- (g) The net amount paid to the viator;*
- (h) If the policy was purchased from a person other than the original viator, the name of the person from whom the policy was purchased;*
- (i) Whether the policy was issued as an individual policy or as part of a group policy;*
- (j) Whether the viatical settlement was entered into during the contestable period in the policy, the period for exclusion for deaths because of suicide in the policy or both the contestable period and the period for exclusion for deaths because of suicide in the policy;*
- (k) The type of funding used to pay the viatical settlement;*
- (l) The applicable rating by a rating service recognized by the insurance industry of the insurance company that issued the policy at the time the viator enters into the viatical settlement; and*
- (m) Whether the insured suffered from:*
 - (1) A disease of the cardiovascular system;*
 - (2) A disease of the central nervous system;*
 - (3) A disease of the peripheral nervous system;*
 - (4) A disease associated with old age;*

- (5) An infectious disease;*
- (6) A disease of the autoimmune system;*
- (7) A disease of the liver or renal system;*
- (8) Neoplasms;*
- (9) Non-neoplastic diseases of the pulmonary system; or*
- (10) A disease or injury not listed in subparagraphs (1) to (9), inclusive.*

3. For each viatical settlement that a provider of viatical settlements must report pursuant to paragraph (b) of subsection 1, the provider of viatical settlements shall submit to the Commissioner the following information:

- (a) The date upon which the viatical settlement was entered;*
- (b) The state in which the viator resided at the time of the viatical settlement;*
- (c) The mean life expectancy in months of the insured at the time of the viatical settlement;*
- (d) The net death benefit received by the provider of viatical settlements;*
- (e) The total of premiums paid to keep the policy in force before the death of the insured;*
- (f) The net amount paid to the viator;*
- (g) The date of death of the insured;*
- (h) The number of months between the date of the viatical settlement and the date of death of the insured;*
 - (i) The difference between:
 - (1) The number of months between the date of the viatical settlement and the date of death of the insured; and*
 - (2) The mean life expectancy in months of the insured as determined by the provider of viatical settlements;**

(j) Whether the policy was issued as an individual policy or as part of a group policy;

(k) Whether the viatical settlement was entered into during the contestable period in the policy, the period for exclusion for deaths because of suicide in the policy or both the contestable period and the period for exclusion for deaths because of suicide in the policy; and

(l) Whether the insured died from:

(1) A disease of the cardiovascular system;

(2) A disease of the central nervous system;

(3) A disease of the peripheral nervous system;

(4) A disease associated with old age;

(5) An infectious disease;

(6) A disease of the autoimmune system;

(7) A disease of the liver or renal system;

(8) Neoplasms;

(9) Non-neoplastic diseases of the pulmonary system; or

(10) A disease or injury not listed in subparagraphs (1) to (9), inclusive.

4. The first report required pursuant to subsection 1 must be filed with the Commissioner on or before March 1, 2005, for the period of January 1, 2004, to December 31, 2004.

Sec. 16. *1. On or before March 1 of each year, a broker of viatical settlements shall submit a report to the Commissioner detailing the business of viatical settlements conducted by the broker of viatical settlements during the previous calendar year.*

2. The report submitted pursuant to subsection 1 must contain:

(a) A title called "Broker Reporting Form";

(b) The complete name and license number of the broker of viatical settlements submitting the report;

(c) The calendar year for which the report is submitted;

(d) A list of all providers of viatical settlements with whom the broker arranged a viatical settlement;

(e) An attestation that the information contained in the report is true and accurate to the best knowledge, information and belief of the broker of viatical settlements submitting the report;

(f) The signature of the broker of viatical settlements submitting the report; and

(g) The date on which the broker of viatical settlements signed the report.

3. The first report required pursuant to subsection 1 must be filed with the Commissioner on or before March 1, 2005, for the period of January 1, 2004, to December 31, 2004.

Sec. 17. *If a policy subject to a viatical settlement contains a provision for an additional benefit for an accidental death, the viatical settlement must provide that the additional benefit will be payable to the beneficiary of the policy named by the viator pursuant to the provisions of the policy.*

Sec. 18. *1. A provider of viatical settlements shall pay the proceeds of the viatical settlement to the viator:*

(a) By wire transfer to an account of the viator;

(b) By a certified check made payable to the viator; or

(c) By a cashier's check made payable to the viator.

2. Except as otherwise provided in subsections 3 and 4, payment of the proceeds of a viatical settlement to a viator must be made in a single payment.

3. *A viatical settlement may provide that the provider of viatical settlements shall purchase an annuity or similar financial instrument naming the viator as the beneficiary as payment for the viatical settlement.*

4. *If the viator provides specific written consent, a viatical settlement may provide that the provider of viatical settlements may retain a portion of the proceeds of the viatical settlement.*

A viatical settlement that provides for the retention of a portion of the proceeds must state:

(a) The amount that will be retained;

(b) Whether the amount will be retained by the provider of viatical settlements or an independent escrow agent; and

(c) When the amount retained will be paid to the viator.

Sec. 19. 1. *A viatical settlement may provide that a viator retains an interest in the death benefit of the policy subject to the viatical settlement.*

2. *If a viatical settlement provides that a viator is to retain an interest in the death benefit of the policy, the viatical settlement must provide:*

(a) That the provider of viatical settlements will transfer to the provider of viatical settlements only the portion of the death benefit of the policy to which the provider of viatical settlements is entitled pursuant to the viatical settlement.

(b) That the insurer issuing the policy shall pay the portion of the death benefit of the policy to which the provider of viatical settlements is not entitled to the beneficiary identified pursuant to the provisions of the policy.

(c) That the provider of viatical settlements shall, upon acknowledgement by the insurer of the transfer of the death benefit of the policy to which the provider of viatical settlements is entitled:

(1) Notify the viator, in writing, that the insurer has transferred to the provider of viatical settlements only the portion of the death benefit of the policy to which the provider of viatical settlements is entitled; or

(2) Submit a copy of the instrument provided by the insurer to the provider of viatical settlements that confirms that the insurer has transferred to the provider of viatical settlements only the portion of the death benefit of the policy to which the provider of viatical settlements is entitled.

(d) The amount of the premium for the policy that the provider of viatical settlements shall pay and the amount of the premium for the policy that the viator shall pay.

Sec. 20. *If the insured of a policy that is the subject of a viatical settlement is a minor child, disclosures made to the parents or guardians of the minor child must satisfy any disclosures required pursuant to chapter 688C of NRS or chapter 688C of NAC.*

Sec. 21. *1. Except as otherwise provided in subsection 2, before disclosing to a person any information capable of identifying the insured, a provider of viatical settlements or a broker of viatical settlements shall obtain from the person a written agreement not to further disclose any information capable of identifying the insured without the written permission of the insured.*

2. Except as otherwise provided by law, if a provider of viatical settlements or a broker of viatical settlements is served with a subpoena for information capable of identifying the insured, the provider of viatical settlements or broker of viatical settlements shall notify the insured no later than 5 days after receiving the subpoena.

Sec. 22. *1. A provider of viatical settlements or a broker of viatical settlements shall not:*

(a) Discriminate in the making or solicitation of viatical settlements on the basis of race, age, sex, national origin, religion, occupation, marital or familial status or sexual orientation.

(b) Pay or offer to pay any fee, commission or other compensation to a physician, an attorney, an accountant, another person providing medical, legal or financial planning, or any other person acting as an agent for a viator for a referral of an insured to the provider of viatical settlements or broker of viatical settlements.

(c) Knowingly solicit a person who has provided health care services or has been asked to provide health care services to an insured to be a purchaser of viatical settlements involving the insured.

2. A person shall not act:

(a) As both a provider of viatical settlements and as a broker of viatical settlements for a viatical settlement.

(b) As a broker of viatical settlements without the written agreement of the viator.

3. A provider of viatical settlements shall not use a longer life expectancy for an insured than is reasonable.

Sec. 23. 1. Except as otherwise provided in subsection 3, a provider of viatical settlements or a broker of viatical settlements may submit a request for a verification of coverage of an insured to an insurer. The provider of viatical settlements or broker of viatical settlements shall provide to the insurer at the time the request is submitted:

(a) A signed statement from the viator authorizing the provider of viatical settlements or broker of viatical settlements to submit the request for the verification of coverage; and

(b) A form providing:

(1) The name of the insurer to whom the request is submitted;

- (2) The number of the policy for which verification of coverage is requested;*
- (3) The name of the insured;*
- (4) The date of birth of the insured;*
- (5) The name of the owner of the policy;*
- (6) The social security number of the owner of the policy; and*
- (7) The address of the owner of the policy.*

2. Except as otherwise provided in subsection 3, if an insurer receives a request for a verification of coverage of an insured that complies with the provisions of subsection 1, the insurer shall:

(a) Respond to the request no later than 30 days after the date of the receipt of the request.

(b) If the policy covering the insured is a policy of individual life insurance, submit to the provider of viatical settlements the following information:

- (1) The face value of the policy;*
- (2) The original effective date of the policy, including the month, day and year;*
- (3) A list of any changes made in the face value of the policy since the original effective date;*
- (4) Whether the policy is:*
 - (I) A policy of whole life insurance;*
 - (II) A policy of term life insurance;*
 - (III) A policy of universal life insurance; or*
 - (IV) A policy of variable life insurance;*
- (5) Whether the policy is participating or nonparticipating;*

(6) The current net death benefit of the policy, including, without limitation, any additional benefits provided by the policy, any interest accumulated under the policy, any premiums paid towards the policy and any dividends earned under the policy;

(7) Complete information on any loans that are outstanding against the policy;

(8) Complete information on any accelerated death benefits paid under the policy;

(9) Whether the policy has lapsed because of nonpayment of the premium due on the policy;

(10) The amount of the next premium scheduled to be paid on the policy;

(11) The date the next premium schedule to be paid on the policy is due;

(12) The mode of payment for the premiums on the policy;

(13) Whether premiums on the policy are being paid under a waiver of premium benefit provision of the policy;

(14) If the premiums on the policy are being paid under a waiver of premium benefit provision of the policy:

(I) The effective date of the waiver of premium benefit;

(II) When the waiver of premium benefit is reviewed; and

(III) The next date scheduled to review the waiver of premium benefit;

(15) Information regarding accelerated death benefits available under the policy including:

(I) The method for calculating the accelerated death benefit;

(II) If a lien method is used for calculating the accelerated death benefit, the interest rate applied to the accelerated death benefit;

(III) Whether there is an accelerated death benefit available to be paid under the policy; and

(IV) If there is an accelerated death benefit available under the policy, whether the accelerated death benefit is assignable;

(16) The name and address of the person for whom any assignment is made under the policy;

(17) The current listing of beneficiaries under the policy and if any beneficiaries are irrevocable;

(18) A list of all past beneficiaries under the policy and if any past beneficiaries are irrevocable;

(19) Any active riders on the policy;

(20) The name and address of the insurer responding to the request for a verification of coverage; and

(21) The printed name, title and signature of the person completing the response to the request for a verification of coverage.

(c) If the policy covering the insured is a policy of group life insurance or a certificate issued under a policy of group life insurance, submit to the provider of viatical settlements the following information:

(1) The face value of the policy;

(2) The original effective date of the policy, including the month, day and year;

(3) A list of any changes made in the face value of the policy since the original effective date;

(4) Whether the policy is:

- (I) A policy of whole life insurance;*
- (II) A policy of term life insurance;*
- (III) A policy of universal life insurance; or*
- (IV) A policy of variable life insurance;*
- (5) Whether the policy is participating or nonparticipating;*
- (6) The current net death benefit of the policy, including, without limitation, any additional benefits provided by the policy, any interest accumulated under the policy, any premiums paid towards the policy and any dividends earned under the policy;*
- (7) Complete information on any loans that are outstanding against the policy;*
- (8) Complete information on any accelerated death benefits paid under the policy;*
- (9) Whether the policy has lapsed because of nonpayment of the premium due on the policy;*
- (10) The amount of the next premium scheduled to be paid on the policy;*
- (11) The date the next premium schedule to be paid on the policy is due;*
- (12) The mode of payment for the premiums on the policy;*
- (13) Whether premiums on the policy are being paid under a waiver of premium benefit provision of the policy;*
- (14) If the premiums on the policy are being paid under a waiver of premium benefit provision of the policy:*
 - (I) The effective date of the waiver of premium benefit;*
 - (II) When the waiver of premium benefit is reviewed; and*
 - (III) The next date scheduled to review the waiver of premium benefit;*

- (15) Information regarding accelerated death benefits available under the policy including:*
- (I) The method for calculating the accelerated death benefit;*
 - (II) If a lien method is used for calculating the accelerated death benefit, the interest rate applied to the accelerated death benefit;*
 - (III) Whether there is an accelerated death benefit available to be paid under the policy; and*
 - (IV) If there is an accelerated death benefit available under the policy, whether the accelerated death benefit is assignable;*
- (16) The name and address of the person for whom any assignment is made under the policy;*
- (17) The current listing of beneficiaries under the policy and if any beneficiaries are irrevocable;*
- (18) A list of all past beneficiaries under the policy and if any past beneficiaries are irrevocable;*
- (19) Any active riders on the policy;*
- (20) Whether the policy is self-insured or fully funded;*
- (21) The amount of the basic insurance offered under the policy;*
- (22) The effective date of the basic insurance offered under the policy;*
- (23) Information on the premium for the basic insurance offered under the policy, including:*
- (I) The amount of the premium paid by the employer;*
 - (II) The amount of the premium paid by the insured; and*

(III) The date the next premium is due;

(24) Information on any supplemental insurance available under the policy, including the name of the insurer offering the supplemental insurance;

(25) Information on the premium for the supplemental insurance offered under the policy, including:

(I) The amount of the premium paid by the employer;

(II) The amount of the premium paid by the insured; and

(III) The date the next premium is due;

(26) The name and address of the insurer responding to the request for a verification of coverage; and

(27) The printed name, title and signature of the person completing the response to the request for a verification of coverage.

3. An insurer and a provider of viatical settlements or broker of viatical settlements may agree in writing to use a different process for the verification of coverage instead of the process provided in subsections 1 and 2.

4. An insurer shall not charge a fee to a provider of viatical settlements or broker of viatical settlements for responding to a request for a verification of coverage that exceeds any usual and customary charges that are applicable to an owner of the policy for similar services.

5. An insurer may notify the owner of a policy or the insured covered under a policy that a provider of viatical settlements has submitted a request for a verification of coverage.