

Viatical Settlement Broker Report

Calendar year

20__

Viatical Settlement Broker's Name _____

All States and Territories

	1	2	3	4	5	6	7			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 viatication	Total number of policies where representation was refused	Total number of policies sold to a provider	Aggregate net death benefit viaticated	Aggregate net amount paid to viators	States	Are you doing business in this state? (Y/N)	Total number of policies reviewed for consideration	Total number of policies represented for viatication	Total number of policies where representation was refused	Total number of policies sold to a provider	Aggregate net death benefit viaticated	Aggregate net amount paid to viators	
Alabama								New Jersey								
Alaska								New Mexico								
Arizona								New York								
Arkansas								North Carolina								
California								North Dakota								
Colorado								Ohio								
Connecticut								Oklahoma								
Delaware								Oregon								
Dist. of Columbia								Pennsylvania								
Florida								Rhode Island								
Georgia								South Carolina								
Hawaii								South Dakota								
Idaho								Tennessee								
Illinois								Texas								
Indiana								Utah								
Iowa								Vermont								
Kansas								Virginia								
Kentucky								Washington								
Louisiana								West Virginia								
Maine								Wisconsin								
Maryland								Wyoming								
Massachusetts								American Samoa								
Michigan								Guam								
Minnesota								Puerto Rico								
Mississippi								U.S. Virgin Islands								
Missouri								Canada								
Montana																
Nebraska								Totals								
Nevada																
New Hampshire																

VSF 001

Initials of preparer: _____



MRVO
Commissioner of Securities & Insurance
Montana State Auditor
840 Helena Ave. • Helena, MT 59601
Phone: 406.444.2040 or 800.332.6148
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Viatical Settlement Broker Report 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: _____



Matt M. Rosendale

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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: _____

Viatical Settlement Provider/Broker Certification Form

This section should be completed by Viatical Settlement Providers.

Please check all forms submitted:

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

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

Signature of individual that prepared reports

Date: ____/____/____

Print or type name

Signature of Authorized Representative

Date: ____/____/____

Print or type name

This section should be completed by Viatical Settlement Brokers.

Please check all forms submitted:

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

I hereby certify that the information contained in the reports VSB 001, VSB 002 and VSPB 001 indicated above is true and accurate. I acknowledge that providing false and misleading information in the reports, or failing to divulge a fact material thereto, is sufficient grounds for administrative action by the commissioner and potentially, applicable criminal penalties.

Signature of individual that prepared reports

Date: ____/____/____

Print or type name

Signature of Authorized Representative

Date: ____/____/____

Print or type name

VSPB 001

MONTANA CODE ANNOTATED (MCA) 2011

TITLE 33. INSURANCE AND INSURANCE COMPANIES

CHAPTER 20. LIFE INSURANCE

Part 13. Viatical Settlements

33-20-1301. Short title. This part may be cited as the "Viatical Settlement Act".

History: En. Sec. 1, Ch. 298, L. 1997.

33-20-1302. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

- (1) "Financing entity" means an underwriter, placement agent, lender, or any entity, other than a nonaccredited investor, that has a direct ownership in a policy or certificate that is the subject of a viatical settlement contract, whose sole activity related to the transaction is the provision of funds to effect the viatical settlement contract, and who has an agreement in writing with one or more licensed viatical settlement providers.
- (2) "Related provider trust" means a trust established by a licensed viatical settlement provider or a financing entity for the sole purpose of holding the ownership or beneficial interest in purchased policies in connection with a financing transaction. The trust must have a written agreement with the viatical settlement provider under which the licensed viatical settlement provider is responsible for ensuring compliance with all statutory and regulatory requirements and under which the trust agrees to make all records and files related to viatical settlement transactions available to the commissioner.
- (3) "Special purpose entity" means a corporation, partnership, trust, limited liability company, or other similar entity formed solely to provide, either directly or indirectly, access to institutional capital markets for a financing entity or licensed viatical settlement provider.
- (4) (a) "Viatical settlement broker" means an individual who, for a fee, commission, or other consideration:
 - (i) offers or advertises the availability of viatical settlement contracts;
 - (ii) introduces holders of life insurance policies or certificates insuring the lives of individuals with a terminal illness or condition to viatical settlement providers; or
 - (iii) offers or attempts to negotiate viatical settlement contracts between the policyholders or certificate holders and one or more viatical settlement providers.(b) Viatical settlement broker does not mean an attorney, accountant, or financial planner retained to represent the policyholder or certificate holder unless compensation paid to the attorney, accountant, or consultant is paid by the viatical settlement provider.
- (5) (a) "Viatical settlement contract" means a written agreement establishing the terms under which compensation or anything of value will be paid, when the compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the viator's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of any portion of the insurance policy or certificate of insurance.
 - (b) The term includes:
 - (i) a contract for a loan or other financing transaction with a viator secured primarily by an individual or group life insurance policy, other than a loan by a life insurance company pursuant to the terms of the life insurance contract, or a loan secured by the cash value of a policy; or
 - (ii) an agreement with a viator to transfer ownership or change the beneficiary designation at a later date regardless of the date that compensation is paid to the viator.
 - (c) The term does not mean a written agreement entered into between a viator and a person having an insurable interest in the viator's life.
- (6) (a) "Viatical settlement provider" means a person who solicits, enters into, or negotiates viatical settlement contracts or offers to enter into or negotiate viatical settlement contracts.
 - (b) Viatical settlement provider does not mean:
 - (i) a bank, savings bank, savings and loan association, credit union, or other licensed lending institution that takes an assignment of a life insurance policy only as collateral for a loan;
 - (ii) an insurer issuing a life insurance policy providing accelerated benefits pursuant to [33-20-127](#) or pursuant to the

laws of the state to which the policy was subject when issued;

(iii) an individual who enters into a single agreement in a calendar year for the transfer of life insurance policies for any value less than the expected death benefit; or

(iv) any corporation, partnership, or partner that purchases a life insurance contract of an employee or retiree of the corporation or of a partner. The settlement made on any contract exempt under this section must be reasonable and subject to the standards imposed on licensees under [33-20-1304](#).

(7) (a) "Viatical settlement purchase agreement" means a contract or agreement entered into by a viatical settlement purchaser with a viatical settlement provider to purchase a life insurance policy or an interest in a life insurance policy for the purpose of deriving an economic benefit.

(b) A viatical settlement purchase agreement does not include a viatical settlement contract.

(8) (a) "Viatical settlement purchaser" means a person who, for the purpose of deriving an economic benefit:

(i) gives consideration for a life insurance policy or an interest in the death benefits of a life insurance policy; or

(ii) owns, acquires, or is entitled to a beneficial interest in a trust that owns a viatical settlement contract or that is the beneficiary of a life insurance policy that has been or will be the subject of a viatical settlement contract.

(b) A viatical settlement purchaser does not include a licensed viatical settlement provider, a licensed viatical settlement broker, a qualified institutional buyer as defined in 17 CFR 230.144A, a financing entity, a special purpose entity, or a related provider trust.

(9) (a) "Viator" means the owner of a life insurance policy or the certificate holder under a group policy who enters or seeks to enter into a viatical settlement contract.

(b) The term does not include a licensed viatical settlement provider, a licensed viatical settlement broker, a qualified institutional buyer as defined in 17 CFR 230.144A, a financing entity, a special purpose entity, or a related provider trust.

History: En. Sec. 2, Ch. 298, L. 1997; amd. Sec. 2, Ch. 295, L. 2001; amd. Sec. 7, Ch. 493, L. 2003.

33-20-1303. License requirements. (1) A person may not act as or purport to be a viatical settlement provider unless licensed as a viatical settlement provider under this part.

(2) (a) Except as provided in subsections (2)(b) and (2)(c), an individual may not broker, solicit, or negotiate viatical settlement contracts between a viator and one or more viatical settlement providers or otherwise act on behalf of a viator without first having obtained a license as a viatical settlement broker from the commissioner. An applicant for a viatical settlement broker's license shall:

(i) attend required viatical settlement broker training and pass a viatical settlement broker examination designated by the commissioner by rule; and

(ii) pay a fee for an original viatical settlement broker's license pursuant to [33-2-708](#). The fees for license renewal and lapsed license reinstatement for a viatical settlement broker's license are as provided in [33-2-708](#).

(b) A resident or nonresident insurance producer must be considered to meet the licensing requirements of a viatical settlement broker and must be permitted to operate as a viatical settlement broker if the insurance producer is licensed as an insurance producer with a life insurance line of authority in this state or in the insurance producer's home state and has been licensed for at least 1 year. In addition:

(i) not later than 30 days from the first day of operating as a viatical settlement broker, the insurance producer shall notify the commissioner, on a form or in a manner prescribed by the commissioner, that the insurance producer is acting as a viatical settlement broker and shall pay a fee pursuant to [33-2-708\(1\)\(b\)\(viii\)](#). The notification must include an acknowledgment by the insurance producer that the insurance producer will operate as a viatical settlement broker in accordance with this part.

(ii) regardless of the manner in which the insurance producer is compensated, the insurance producer must be considered to represent only the viator and owes a fiduciary duty to the viator to act according to the viator's instructions and in the best interests of the viator.

(c) If requested by the commissioner, a life insurance producer acting as a viatical settlement broker under this subsection (2) who has previously complied with subsection (2)(b)(i) shall report to the commissioner when renewing a resident or nonresident life insurance producer's license regarding the life insurance producer's intent to continue to act as a viatical settlement broker. The statement regarding an intent to continue acting as a viatical settlement broker must be made on the life insurance producer's license renewal form. An individual who makes a statement pursuant to this subsection (2)(c) may not be charged an additional fee.

(d) The provisions of subsections (2)(a) and (2)(b) do not prohibit an individual licensed as an attorney, certified public accountant, or certified financial planner who is accredited by a nationally recognized accreditation agency,

who is retained to represent the viator, and whose compensation is not paid directly or indirectly by the viatical settlement provider from negotiating viatical settlement contracts without having to obtain a license as a viatical settlement broker.

(3) Regardless of the manner in which a viatical settlement broker or insurance producer is compensated, the viatical settlement broker or insurance producer must be considered to represent only the viator and the viatical settlement broker or insurance producer owes a fiduciary duty to the viator to act according to the viator's instructions and in the best interests of the viator.

(4) (a) To obtain a license to transact business as a viatical settlement provider or as a viatical settlement broker, if required to obtain a viatical settlement broker's license under the provisions of subsection (2)(a), an applicant shall apply for the license in a form approved by the commissioner and shall pay the fee required for the application.

(b) The commissioner may request biographical, organizational, locational, financial, employment, and other information on the application form that the commissioner determines to be relevant to the evaluation of applications and to the granting of the license. The commissioner may require a statement of the business plan or plan of operation of the applicant. The commissioner shall require an applicant for a viatical settlement provider license to file with the application for the commissioner's approval a copy of the viatical settlement contract that the applicant intends to use in business under the license.

(c) If an applicant is a corporation, the corporation must be:

(i) incorporated or organized under the laws of this state; or

(ii) a foreign corporation authorized to transact business in this state.

(d) If the applicant is a partnership, the partnership must be organized under the laws of this state.

(e) If the applicant is a business entity other than a corporation or partnership, the business entity must be organized under the laws of this state.

(5) (a) An individual licensed as a viatical settlement broker must meet the continuing education requirements in [33-17-1203](#).

(b) The hours of continuing education required under subsection (5)(a) must be in the subjects of life insurance, viaticals, or ethics.

(c) For an individual licensed as a viatical settlement broker, the 24-month period for meeting the continuing education requirements must correlate with the broker's license renewal period.

(d) The viatical settlement broker's 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 [33-17-1203](#)(2) must be terminated and promptly surrendered to the commissioner.

History: En. Sec. 3, Ch. 298, L. 1997; amd. Sec. 2, Ch. 552, L. 2005; amd. Sec. 36, Ch. 44, L. 2007; amd. Sec. 11, Ch. 399, L. 2007; amd. Sec. 20, Ch. 271, L. 2009.

33-20-1304. Issuance of license. (1) The commissioner may issue a license to the applicant if the commissioner determines that the applicant:

(a) has satisfied all of the requirements for the license for which an application is made;

(b) has not engaged in conduct that would authorize the commissioner to refuse to issue a license under this part; and

(c) is financially responsible and has a good business reputation.

(2) The commissioner may issue a license to a nonresident applicant only if the nonresident applicant files with the commissioner in writing an appointment of the commissioner to be the agent of the applicant upon whom all legal process in any action or proceeding against the applicant may be served. In the appointment, the applicant shall agree that any lawful process against the applicant that is served upon the commissioner is of the same legal force and validity as if served upon the applicant and that the authority will continue in force as long as any liability remains outstanding in this state. An appointment under this subsection becomes effective on the date that the commissioner issues the license to the applicant.

(3) If the commissioner denies an application, the commissioner shall inform the applicant and state the grounds for the denial.

(4) An individual may act as a viatical settlement provider or viatical settlement broker under the authority of the license of a firm or of a corporate viatical settlement provider whether or not the individual holds a license as a viatical settlement provider if:

(a) the individual is a member or employee of the firm or is an employee, officer, or director of the corporation; and

(b) the individual is designated by the firm or corporation on its license application or on a form that amends or

supplements the application as being authorized to act as a viatical settlement provider under the authority of the license.

History: En. Sec. 4, Ch. 298, L. 1997.

33-20-1305. Expiration of license. (1) A license issued under this part expires on its expiration date unless it is renewed on or before its expiration date.

(2) Unless the commissioner designates another date, a license expires on the last day of the month in which the second anniversary of the initial issuance date of the license occurs and on the last day of the month of the second anniversary following each renewal.

History: En. Sec. 5, Ch. 298, L. 1997.

33-20-1306. Notification by licensee of material change affecting qualification for license. A licensee shall immediately notify the commissioner of any material change in ownership or control or in any other matter affecting the qualification of the licensee for the license in this state, including keeping the commissioner informed about personnel and address changes.

History: En. Sec. 6, Ch. 298, L. 1997.

33-20-1307. Suspension -- revocation -- refusal to issue or renew license. (1) The commissioner may suspend, revoke, refuse to issue, or refuse to renew a license if the commissioner determines that the licensee or applicant for a license is untrustworthy or incompetent to act as a licensee or is guilty of one or more of the following:

- (a) dishonesty, fraud, or gross negligence in the conduct of business as a licensee;
- (b) a pattern of unreasonable payments to policyholders or certificate holders;
- (c) falsification of an application for the license or renewal of the license or misrepresentation or engagement in any other dishonest act in relation to the application;
- (d) conduct resulting in a conviction of a felony under the laws of any state or of the United States;
- (e) conviction of any crime, an essential element of which is dishonesty or fraud, under the laws of any state or of the United States;
- (f) refusal to renew or cancellation, revocation, or suspension of authority to transact insurance or business as a viatical settlement provider, viatical settlement broker, or similar entity in another state;
- (g) failure to pay a civil penalty imposed by final order of the commissioner or to carry out terms of probation set by the commissioner;
- (h) refusal by a licensee to be examined or to produce accounts, records, or files for examination, refusal by any officers or employees to give information with respect to the affairs of the licensee, or refusal to perform any other legal obligation as to the examination, when required by the commissioner;
- (i) affiliation with or under the same general management or interlocking directorate or ownership as another viatical settlement provider, viatical settlement broker, or insurer, any of which unlawfully transacts business in this state;
- (j) failure at any time to meet any qualification for which issuance of the license could have been refused had the failure then existed and been known to the commissioner; or
- (k) violation of any rule or order of the commissioner or any provision of Montana law.

(2) The commissioner may suspend or refuse to renew a license immediately and without hearing if the commissioner determines that one or both of the following circumstances exist:

- (a) the licensee is insolvent;
- (b) the financial condition or business practices of the licensee otherwise pose an imminent threat to the public health, safety, or welfare of the residents of this state.

(3) The commissioner may refuse to issue a license in the name of any business entity if the commissioner believes that any member, officer, employee, stockholder, or partner who may materially influence the conduct of the applicant does not meet the standards of this section.

(4) A viatical settlement provider or viatical settlement broker holding a license that has not been renewed or that has been revoked shall surrender the license to the commissioner at the commissioner's request.

(5) The commissioner may take any other administrative action authorized under Montana law in addition to or in lieu of the actions authorized under this part.

History: En. Sec. 7, Ch. 298, L. 1997; amd. Sec. 21, Ch. 271, L. 2009.

33-20-1308. Terms of contract. (1) A viatical settlement contract must be in writing. A viatical settlement provider shall establish in the contract the terms under which the viatical settlement provider will pay compensation or anything of value in return for the policyholder's or certificate holder's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of the insurance policy or certificate to the viatical settlement provider.

(2) A viatical settlement provider may not use a viatical settlement contract in this state unless the viatical settlement provider has filed the contract form with the commissioner and the commissioner has approved the contract form according to the provisions set forth in [33-1-501](#). The commissioner shall disapprove a viatical settlement contract form if, in the commissioner's judgment, the contract or any provision of the contract is unreasonable, contrary to the interests of the public, or otherwise misleading or unfair to the policyholder or certificate holder.

(3) Each viatical settlement contract entered into in this state must contain a provision enabling the policyholder or certificate holder to rescind the contract not later than the 30th day after the date on which the contract is executed by all parties or not later than the 15th day after the policyholder or certificate holder receives the viatical settlement proceeds, whichever is the longer period. In order to rescind a contract, a policyholder or certificate holder who has received the proceeds shall return them to the viatical settlement provider or financing entity.

(4) 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 must contain all of the following provisions:

(a) that the viatical settlement provider shall 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 must be paid directly to the viator's beneficiary by the insurance company.

(b) that the premiums to be paid by the viatical settlement provider and the viator will be apportioned unless the viatical settlement contract specifies that all premiums must 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.

(c) that the viatical settlement provider shall, upon acknowledgment of the perfection of the transfer, either:

(i) advise the insured in writing that the insurance company has confirmed the viator's interest in the policy; or

(ii) provide the insured with a copy of the instrument provided by the insurance company to the viatical settlement provider that acknowledges the viator's interest in the policy.

History: En. Sec. 8, Ch. 298, L. 1997; amd. Sec. 5, Ch. 272, L. 2009.

33-20-1309. Annual report by provider. Unless the commissioner grants a time extension, a viatical settlement provider shall file a report for the preceding calendar year with the commissioner on or before March 1 of each year. The report must be in the form and must contain the information that the commissioner prescribes. The report must be verified as follows:

(1) if the viatical settlement provider is a corporation, by at least two principal officers of the viatical settlement provider;

(2) if the viatical settlement provider is a partnership, by two partners; or

(3) if the viatical settlement provider is not a corporation or a partnership, by the provider's owner and manager.

History: En. Sec. 9, Ch. 298, L. 1997.

33-20-1310. Examination of business and practices of licensee or applicant -- maintenance of business records. (1) The commissioner may examine the business and practices of any licensee or applicant for a license when the commissioner determines an examination to be necessary. The commissioner may order a licensee or applicant to produce any records, books, files, or other information reasonably necessary to ascertain whether the licensee or applicant is acting or has acted in violation of the law or contrary to the interests of the public. The licensee or applicant shall pay the expenses incurred in conducting an examination.

(2) A viatical settlement provider shall maintain records of all transactions of viatical settlement contracts of the viatical settlement provider and shall make the records available to the commissioner for inspection during reasonable business hours. The records must be maintained for a period of not less than 5 years from the date of their creation.

(3) The commissioner may at any time require a licensee to fully disclose the identity of all stockholders, partners,

officers, and employees.

(4) The names of and individual identification data for all policyholders and certificate holders who have entered viatical settlement contracts with viatical settlement providers are confidential and may not be disclosed except in cases in which the commissioner determines that the merits of public disclosure exceed the demands of individual privacy.

History: En. Sec. 10, Ch. 298, L. 1997; amd. Sec. 10, Ch. 416, L. 1999.

33-20-1311. Disclosure of information to policyholder. A viatical settlement provider shall disclose the information specified in this section to the policyholder or certificate holder entering the viatical settlement contract prior to the date on which the viatical settlement contract is signed by all parties. The disclosure must be in the form approved by the commissioner. The information must include the following:

- (1) possible alternatives to viatical settlement contracts for persons with terminal illnesses or conditions, including but not limited to accelerated benefits offered by the issuer of the life insurance policy;
- (2) the fact that some or all of the proceeds of the viatical settlement may be taxable and that assistance should be sought from a personal tax adviser. Viatical settlement brokers, viatical settlement providers, or their respective employees or agents may not act as personal tax advisers for purposes of this disclosure requirement.
- (3) the fact that the viatical settlement could be subject to the claims of creditors;
- (4) the fact that receipt of a viatical settlement may adversely affect the recipient's eligibility for medicaid or other government benefits or entitlement and that advice should be obtained from the appropriate agencies;
- (5) the right of a policyholder or certificate holder to rescind a viatical settlement contract as provided in [33-20-1308](#). The disclosure must state the deadlines for rescission and the return of proceeds received.
- (6) the date by which the funds will be available to the policyholder or certificate holder and the source of the funds; and
- (7) the fact that the viatical settlement contract is void if the viatical settlement provider or viatical settlement broker fails to tender payment of the proceeds as provided in the viatical settlement contract.

History: En. Sec. 11, Ch. 298, L. 1997; amd. Sec. 3, Ch. 295, L. 2001.

33-20-1312. Conditions precedent to entering into viatical settlement contract. (1) Before a viatical settlement provider enters into a viatical settlement contract with a policyholder or certificate holder who has a terminal illness or condition, the viatical settlement provider shall first obtain the following:

- (a) a written statement from an attending physician that the policyholder or certificate holder is of sound mind and not under constraint or undue influence; and
- (b) a witnessed document in which the policyholder or certificate holder:
 - (i) consents to the viatical settlement contract;
 - (ii) acknowledges that the illness or condition is terminal;
 - (iii) represents that the policyholder or certificate holder has a full and complete understanding of the viatical settlement contract;
 - (iv) confirms that the policyholder or certificate holder has a full and complete understanding of the benefits of the life insurance policy;
 - (v) releases the medical records of the policyholder or certificate holder relating to the terminal illness or condition; and
 - (vi) acknowledges that the policyholder or certificate holder has entered into the viatical settlement contract freely and voluntarily.
- (2) A viatical settlement provider may enter a viatical settlement contract only after the individual whose life would be the subject of the viatical settlement contract is determined to have a terminal illness or condition, as follows:
 - (a) if the individual is the policyholder or certificate holder, an attending physician of the policyholder or certificate holder shall make the determination; or
 - (b) if the individual is a person other than the policyholder or certificate holder, an attending physician of the individual or of the policyholder or certificate holder shall make the determination.
- (3) For purposes of this section, "attending physician" means a medical doctor, a doctor of osteopathy, or a naturopathic physician licensed in this state, who is primarily responsible for the treatment or a portion of treatment of the individual whose life would be the subject of the viatical settlement contract.

History: En. Sec. 12, Ch. 298, L. 1997.

33-20-1313. Requirements for entering into viatical settlement contract -- prohibitions on finder's fee -- solicitations -- discrimination -- false or misleading advertising or solicitation -- misuse of confidential information. (1) A person may not enter into a viatical settlement contract within a 2-year period from the date of issuance of an insurance policy or certificate unless the person certifies to the viatical settlement provider that one or more of the following conditions have been met within the 2-year period:

- (a) (i) the policy or certificate was issued upon the person's exercise of conversion rights arising out of a group or individual policy or certificate and the total of the time covered under the conversion policy or certificate plus the time covered by the policy or certificate prior to the conversion equal at least 24 months; and
- (ii) the time covered under a group policy or certificate was calculated without regard to any change in insurance carriers if the coverage was continuous and under the same group sponsorship; or
- (b) the person submits independent evidence to the viatical settlement provider that one or more of the following conditions have been met within the 2-year period:
 - (i) the person is terminally ill or chronically ill; or
 - (ii) the person has disposed of the person's ownership interest in a closely held corporation pursuant to the terms of a buyout agreement or similar agreement that was in effect at the time that the insurance policy or certificate was issued.
- (2) Copies of the certification and independent evidence required under subsection (1) must be submitted by the viatical settlement provider to the insurer when the viatical settlement provider submits a request to the insurer for verification of coverage. The copies must be accompanied by a letter of attestation from the viatical settlement provider that the copies are true and correct copies of the documents received by the viatical settlement provider.
- (3) A licensee may not pay or offer to pay a finder's fee, commission, or other compensation to a person described in this subsection (3) in connection with a policy insuring the life of an individual with a terminal illness or condition. The prohibition under this subsection (3) applies with respect to payments or offers of payment to:
 - (a) the physician, attorney, or accountant of the policyholder, the certificate holder, or the insured individual;
 - (b) any person other than a physician, attorney, or accountant described in subsection (3)(a) who provides medical, legal, or financial planning services to the policyholder, to the certificate holder, or to the insured individual when the individual is other than the policyholder or certificate holder; or
 - (c) any person other than one described in subsection (3)(a) or (3)(b) who acts as an agent of the policyholder, certificate holder, or insured individual.
- (4) A licensee may not solicit an investor who could influence the treatment of the illness or condition of the individual whose life would be the subject of a viatical settlement contract.
- (5) All information solicited or obtained from a policyholder or certificate holder by a licensee is subject to the confidentiality requirements set forth in Title 33, chapter 19. For purposes of this subsection, a licensee must be considered an insurance-support organization as defined in [33-19-104](#).
- (6) A licensee may not discriminate in the making of a viatical settlement contract on the basis of race, age, sex, national origin, creed, religion, occupation, marital or family status, or sexual orientation and may not discriminate between persons who have dependents and persons who do not have dependents.
- (7) A person licensed pursuant to [33-20-1304](#) may not engage in any false or misleading advertising, solicitation, or practice as described in [33-18-203](#).
- (8) A person licensed pursuant to [33-20-1304](#) may not sell another product of insurance to the contract holder unless approval is obtained from the commissioner.

History: En. Sec. 13, Ch. 298, L. 1997; amd. Sec. 3, Ch. 552, L. 2005.

33-20-1314. Payment to escrow or trust account -- lump-sum payment. (1) Within 3 business days after receipt of documents from the policyholder or certificate holder effecting the transfer of the insurance policy or certificate, the viatical settlement provider shall pay the proceeds of the settlement to an escrow or trust account managed by a trustee or escrow agent in a bank approved by the commissioner, pending acknowledgment of the transfer by the issuer of the life insurance policy. The trustee or escrow agent shall transfer the proceeds due to the policyholder or certificate holder immediately upon receipt of acknowledgment of the transfer from the insurer.

(2) A viatical settlement provider shall make payment of the proceeds of a viatical settlement contract in a lump sum except as provided in this subsection. A viatical settlement provider may not retain any portion of the proceeds. A viatical settlement provider may make installment payments only if the viatical settlement provider has

purchased an annuity issued by an authorized insurer or a similar financial instrument issued by a financial institution authorized to engage in the business of a financial institution in this state.

(3) Failure by the viatical settlement provider to tender the viatical settlement by the date disclosed to the policyholder or certificate holder renders the contract void.

History: En. Sec. 14, Ch. 298, L. 1997; amd. Sec. 6, Ch. 272, L. 2009.

33-20-1315. Rules -- standards -- bond. The commissioner may, in accordance with the provisions of [33-1-313](#), adopt rules for the purpose of carrying out this part. In addition, the commissioner:

(1) may establish standards for evaluating reasonableness of payments under viatical settlement contracts for insured individuals who are terminally ill or chronically ill. The authority includes but is not limited to regulation of discount rates used to determine the amount paid in exchange for assignment, transfer, sale, devise, or bequest of a benefit under a life insurance policy. For the purpose of the standards, the commissioner shall consider payments made in regional and national viatical settlement markets to the extent that this information is available, as well as model standards developed by the national association of insurance commissioners. When the insured is not terminally ill or chronically ill, the commissioner may not establish standards for evaluating the reasonableness of payments, except that a viatical settlement provider shall pay an amount greater than the greater of the cash surrender value or the accelerated death benefit then available.

(2) shall require a bond or other mechanism for financial accountability of viatical settlement providers and viatical settlement brokers; and

(3) shall adopt rules to establish:

(a) trade practice standards for the purpose of regulating advertising and solicitation of viatical settlement contracts;

(b) fees that are commensurate with fees charged pursuant to [33-2-708](#); and

(c) the continuing education program provided for in [33-20-1303\(5\)](#).

History: En. Sec. 15, Ch. 298, L. 1997; amd. Sec. 8, Ch. 493, L. 2003; amd. Sec. 4, Ch. 552, L. 2005; amd. Sec. 37, Ch. 44, L. 2007; amd. Sec. 12, Ch. 399, L. 2007.

33-20-1316. Service of process. (1) For viatical settlement providers, the provisions of Title 33, chapter 1, part 6, apply.

(2) For viatical settlement brokers, the provisions of [33-17-405](#) apply.

History: En. Sec. 6, Ch. 227, L. 2001.

33-20-1317. Disclosure of information to viatical settlement purchasers. (1) A viatical settlement provider shall disclose the information specified in this section to a viatical settlement purchaser prior to the date on which the parties sign the viatical settlement purchase agreement.

(2) The viatical settlement purchaser shall date and sign the information disclosure. The viatical settlement provider shall provide a copy of the information disclosure to the viatical settlement purchaser.

(3) The information disclosure must include the following:

(a) that the viatical settlement purchaser will not receive payment until the insured dies;

(b) that the actual annual rate of return on a viatical settlement purchase agreement is dependent upon an accurate projection of the insured's life expectancy and the actual date of the insured's death and that an annual guaranteed rate of return is not determinable;

(c) that the viatical insurance contract is not a liquid purchase since it is impossible to predict the exact timing of its maturity, that the funds are probably not available until the death of the insured, and that there is not an established secondary market for the resale of viatical settlement products by the viatical settlement purchaser;

(d) that the viatical settlement purchaser may lose all benefits or may receive substantially reduced benefits if the insurer goes out of business during the term of the viatical settlement investment;

(e) (i) that the viatical settlement purchaser is responsible for payment of the insurance premium or other costs related to the policy, if required by the terms of the viatical purchase agreement, and that these payments may reduce the viatical settlement purchaser's return and may continue beyond the insured's projected life expectancy; and

(ii) if a party other than the viatical settlement purchaser is responsible for the payment, that the name of that party must also be disclosed;

- (f) the amount of the premium that a purchaser is required to pay, if applicable;
- (g) that the viatical settlement purchaser may be responsible for payment of the insurance premium or other costs related to the policy if the insured returns to health;
- (h) the amount of any fees or other expenses to be charged to the viatical settlement purchaser;
- (i) whether or not the viatical settlement purchaser is entitled to a refund of all or part of the investment under the viatical settlement purchase agreement if the policy is later determined to be void;
- (j) that group policies:
 - (i) may contain limitations on conversion rights;
 - (ii) may require additional premiums to be paid if the group policy is converted; and
 - (iii) may be terminated and replaced by another group policy, with benefits under the new policy that may be substantially less than those in the original coverage;
- (k) for group policies, the name of the party responsible for the payment of any additional premiums;
- (l) that there are risks associated with policy contestability, including the risk that the viatical settlement purchaser may not have a claim or may have only a partial claim to death benefits if the insurer rescinds the policy within the contestability period;
- (m) whether or not the viatical settlement purchaser will be the beneficiary or owner of the policy and, if the viatical settlement purchaser is the beneficiary, the special risks associated with beneficiary status, including the risk that the beneficiary may be changed;
- (n) a description of:
 - (i) the experience and qualifications of the person who has determined the life expectancy of the insured, such as in-house staff, independent physicians, or specialty firms that weigh medical and actuarial data;
 - (ii) the information on which the projection of life expectancy is based; and
 - (iii) the relationship of the person who has made the determination of life expectancy to the viatical settlement provider, if any;
- (o) all of the life expectancies obtained in the process of determining the price paid to the policyholder or certificate holder;
- (p) a description and amount of any loan or other encumbrance against or in connection with the policy; and
- (q) that the viatical settlement purchaser is encouraged to consult with an attorney, accountant, or financial planner who is not affiliated with the viatical settlement broker or viatical settlement provider prior to purchase.

History: En. Sec. 4, Ch. 295, L. 2001; amd. Sec. 72, Ch. 114, L. 2003.

33-20-1318. Conflict of laws. (1) If there is more than one owner on a single life insurance policy and the owners are residents of different states, the viatical settlement contract is governed by the law of the state in which the owner having the largest percentage ownership resides or, if the owners hold equal ownership, the state of residence of one owner agreed upon in writing by all of the owners. The law of the state of the insured governs if equal owners fail to agree in writing upon a state of residence for jurisdictional purposes.

(2) (a) A viatical settlement provider from this state who enters into a viatical settlement contract with a viator who is a resident of another state that has enacted statutes or adopted regulations governing viatical settlement contracts is governed in the effectuation of that viatical settlement contract by the statutes and regulations of the viator's state of residence.

(b) A viatical settlement provider from this state who enters into a viatical settlement contract with a viator who is a resident of another state that has not enacted statutes or adopted regulations governing viatical settlement contracts is governed in the effectuation of that viatical settlement contract by the laws of this state. The viatical settlement provider shall give the viator notice that this state regulates the transaction into which the viator is entering. The viatical settlement provider shall maintain all records required by this state and use forms approved in this state.

(3) If there is a conflict in the laws that apply to a viator and a viatical settlement purchaser in any individual transaction, the laws of the state that apply to the viator take precedence and the viatical settlement provider shall comply with those laws.

History: En. Sec. 7, Ch. 272, L. 2009.