

Colorado

Title 10. Insurance
Life Insurance
Article 7. Life Insurance
Part 6. Viatical Settlements

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§ 10-7-601. Short title

This part 6 shall be known and may be cited as the “Viatical Settlements Act”.

§ 10-7-602. Definitions

As used in this part 6, unless the context otherwise requires:

(1) “Advertising” means any written, electronic, or printed communication or any communication by means of recorded telephone messages or transmitted on radio, television, the internet, or similar communications media, including film strips, motion pictures, and videos, published, disseminated, circulated, or placed directly before the public in this state for the

purpose of creating an interest in or inducing a person to sell, assign, devise, bequest, or transfer the death benefit or ownership of a policy pursuant to a viatical settlement contract.

(2) “Business of viatical settlements” means an activity that involves, but is not necessarily limited to, the offering, solicitation, negotiation, procurement, effectuation, purchasing, investing, financing, monitoring, tracking, underwriting, selling, transferring, assigning, pledging, or hypothecating of viatical settlement contracts.

(3) “Chronically ill”, with reference to an individual, means that the individual:

(a) Suffers from a disease or disability that prevents the individual from independently performing two or more routine but necessary activities of daily living, which activities include, without limitation, eating, toileting, transferring, bathing, dressing, or continence;

(b) Requires substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment; or

(c) Has a level of disability similar to that described in paragraph (a) of this subsection (3), as determined by the federal department of health and human services.

(4)(a) “Financing entity” means an underwriter, placement agent, lender, purchaser of securities, purchaser of a policy or certificate from a viatical settlement provider, credit enhancer, or entity that has a direct ownership in a policy that is the subject of a viatical settlement contract, and:

(I) Whose principal activity related to the transaction is providing funds to effect the viatical settlement or purchase of one or more viaticated policies; and

(II) Who has an agreement in writing with one or more licensed viatical settlement providers to finance the acquisition of viatical settlement contracts or to provide stop-loss insurance.

(b) “Financing entity” does not include a nonaccredited investor.

(5) “Fraudulent viatical settlement act” includes:

(a) An act or omission by a person who, knowingly or with intent to defraud, for the purpose of depriving another of property or for pecuniary gain, commits or engages in, or permits its employees or agents to commit or engage in, acts including:

(I) Presenting, causing to be presented, or preparing with knowledge or belief that it will be presented to or by a viatical settlement provider, financing entity, insurer, insurance producer, or other person, false material information, or concealing material information, as part of, in support of, or concerning a fact material to one or more of the following:

(A) An application for the issuance of a viatical settlement contract or policy;

(B) The underwriting of a viatical settlement contract or policy;

- (C) A claim for payment or benefit pursuant to a viatical settlement contract or policy;
- (D) Premiums paid on a policy;
- (E) Payments and changes in ownership or beneficiary made in accordance with the terms of a viatical settlement contract or policy;
- (F) The reinstatement or conversion of a policy;
- (G) The solicitation, offer, effectuation, or sale of a viatical settlement contract or policy;
- (H) The issuance of written evidence of a viatical settlement contract or policy; or
- (I) A financing transaction;
- (II) Employing any device, scheme, or artifice to defraud related to viaticated policies;
 - (b) In the furtherance of a fraud or to prevent the detection of a fraud a person commits or permits its employees or agents to:
 - (I) Remove, conceal, alter, destroy, or sequester from the commissioner the assets or records of a licensee or other person engaged in the business of viatical settlements;
 - (II) Misrepresent or conceal the financial condition of a licensee, financing entity, insurer, or other person;
 - (III) Transact the business of viatical settlements in violation of laws requiring a license, certificate of authority, or other legal authority for the transaction of the business of viatical settlements; or
 - (IV) File with the commissioner or the chief insurance regulatory official of another jurisdiction a document containing false information or otherwise conceal information about a material fact from the commissioner;
- (c) Embezzlement, theft, misappropriation, or conversion of moneys, funds, premiums, credits, or other property of a viatical settlement provider, life insurance producer, insurer, insured, viator, policyowner, or other person engaged in the business of viatical settlements or insurance;
- (d) Recklessly entering into, negotiating, or otherwise dealing in a viatical settlement contract, the subject of which is a policy that was obtained by presenting false information concerning a fact material to the policy, or by concealing, for the purpose of misleading another, information concerning a fact material to the policy, where the viator or the viator's agent intended to defraud the insurance company that issued the policy. "Recklessly" means engaging in the conduct in conscious and clearly unjustifiable disregard of a substantial likelihood of the existence of the relevant facts or risks, when such disregard involves a gross deviation from acceptable standards

of conduct.

(e) Attempting to commit, assist, aid or abet in the commission of, or conspiracy to commit, the acts or omissions specified in this subsection (5).

(6) “Life insurance producer” means a person licensed as a resident or nonresident insurance producer pursuant to article 2 of this title who has received qualification for life insurance coverage or a life line of coverage pursuant to section 10-2-407(1)(a).

(7) “NAIC” means the national association of insurance commissioners or any analogous successor organization.

(8) “Person” means a natural person or a legal entity including, but not limited to, an individual, partnership, limited liability company, association, trust, or corporation.

(9) “Policy” means an individual or group policy, group certificate, contract, or arrangement of life insurance affecting the rights of a resident of this state or bearing a reasonable relation to this state, regardless of whether delivered or issued for delivery in this state.

(10) “Related provider trust” means a titling trust or other trust established by a licensed viatical settlement provider or a financing entity for the sole purpose of holding the ownership or beneficial interest in viaticated policies in connection with a financing transaction. The trust shall have a written agreement with the licensed 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 as if those records and files were maintained directly by the licensed viatical settlement provider.

(11) “Special purpose entity” means a corporation, partnership, trust, limited liability company, or other similar entity formed only to provide, either directly or indirectly, access to institutional capital markets for a financing entity or licensed viatical settlement provider.

(12) “Terminally ill” means having an illness or sickness that is reasonably expected to result in death in twenty-four months or less.

(13) “Viatical settlement contract” means a written agreement establishing the terms under which compensation or anything of value is paid, which compensation or value is less than the expected death benefit of the policy, in return for the viator's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of any portion of the policy. “Viatical settlement contract” includes 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 policy, or a loan secured by the cash value of a policy. “Viatical settlement contract” also includes 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. “Viatical settlement contract” does not mean a written agreement entered into between a viator and a person having an insurable interest in the insured's life.

(14) “Viatical settlement provider” means a person, other than a viator, who enters into or effectuates a viatical settlement contract. “Viatical settlement provider” does not include:

- (a) A bank, savings bank, savings and loan association, credit union, or other licensed lending institution that takes an assignment of a policy as collateral for a loan;
- (b) The issuer of a policy providing accelerated benefits pursuant to the policy;
- (c) An authorized or eligible insurer that provides stop-loss coverage to a viatical settlement provider, financing entity, special purpose entity, or related provider trust;
- (d) A natural person who enters into or effectuates no more than one agreement in a calendar year for the transfer of policies for any value less than the expected death benefit;
- (e) A financing entity;
- (f) A special purpose entity;
- (g) A related provider trust; or
- (h) An accredited investor or qualified institutional buyer as defined, respectively, in regulation D, rule 501, or rule 144A of the federal “Securities Act of 1933”, [FN1] as amended, who purchases a viaticated policy from a viatical settlement provider.

(15) “Viaticated policy” means a policy that has been acquired by a viatical settlement provider pursuant to a viatical settlement contract.

(16) “Viator” means the owner of a policy who is a resident of this state and who enters or seeks to enter into a viatical settlement contract. For the purposes of this part 6, a viator is not limited to an owner of a policy insuring the life of an individual with a terminal or chronic illness or condition except where specifically addressed. If there is more than one owner on a single policy and the owners are residents of different states, the transaction shall be 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 owners. “Viator” does not include:

- (a) A licensee as provided by this part 6, including a life insurance producer;
- (b) An accredited investor or qualified institutional buyer as defined, respectively, in regulation D, rule 501, or rule 144A of the federal “Securities Act of 1933”, [FN1] as amended;
- (c) A financing entity;
- (d) A special purpose entity; or

(e) A related provider trust.

§ 10-7-603. Licensing

(1)(a) No person shall act on behalf of a viator or otherwise negotiate, as defined in section 10-2-103 (7.9), viatical settlement contracts between a viator and one or more viatical settlement providers unless such person is a life insurance producer and has been licensed as a resident producer with a life line of authority in his or her home state for at least one year.

(b) Not later than thirty days after the first day of negotiating a viatical settlement on behalf of a viator, the life insurance producer shall notify the commissioner of the activity on a form prescribed by the commissioner, and shall pay an applicable fee to be determined by the commissioner by rule. Notification shall include an acknowledgment by the life insurance producer that he or she will operate in accordance with this part 6.

(c) Irrespective of the manner in which the life insurance producer is compensated, a life insurance producer is deemed to represent only the viator, and the insurer that issued the policy being viaticated shall not be responsible for any act or omission of a life insurance producer or viatical settlement provider arising out of or in connection with the viatical settlement transaction, unless the insurer receives compensation from the viatical settlement provider or life insurance producer for the viatical settlement contract.

(d) Notwithstanding paragraph (a) of this subsection (1), a person licensed as an attorney, certified public accountant, or financial planner 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 may negotiate viatical settlement contracts without having to obtain a license as a life insurance producer.

(2)(a) No person may operate as a viatical settlement provider without first obtaining a viatical settlement provider license from the commissioner.

(b) Application for a viatical settlement provider license shall be made to the commissioner on a form prescribed by the commissioner, and an application shall be accompanied by a fee to be determined by the commissioner by rule.

(c) A license may be renewed from year to year, on the anniversary date of initial issuance, upon payment of an annual renewal fee as determined by the commissioner by rule. Failure to pay the fee by the renewal date shall result in expiration of the license.

(d) The applicant for a viatical settlement provider license shall provide information on forms prescribed by the commissioner. The commissioner may, at any time, require the applicant to fully disclose the identity of all stockholders, partners, officers, members, and employees, except stockholders owning fewer than five percent of the shares of an applicant whose shares are publicly traded, and the commissioner may refuse to issue a license in the name of a legal entity

if not satisfied that any officer, employee, stockholder, partner, or member of the entity who may materially influence the entity's conduct meets the standards of this article.

(e) A license issued to a legal entity authorizes all partners, officers, members, and designated employees to act as viatical settlement providers, as applicable, under the license, if all of those persons are named in the application and any supplements to the application.

(f) Upon the filing of an application and the payment of the license fee, the commissioner shall make an investigation of each applicant and issue a license if the commissioner finds that the applicant:

(I) Has provided a detailed plan of operation;

(II) Is competent and trustworthy and intends to act in good faith in the capacity involved by the license for which an application was submitted;

(III) Has a good business reputation and has had experience, training, or education so as to be qualified in the business for the license for which an application was submitted;

(IV) If a legal entity, provides a certificate of good standing from the state of its domicile; and

(V) Has provided an anti-fraud plan that meets the requirements of this part 6.

(g) The commissioner may not issue a license to a nonresident applicant unless a written designation of an agent for service of process is filed and maintained with the commissioner or unless the applicant has filed with the commissioner the applicant's written, irrevocable consent that any action against the applicant may be commenced against the applicant by service of process on the commissioner.

(h) A viatical settlement provider shall provide to the commissioner new or revised information about officers, stockholders who own ten percent or more of the provider's stock, and all partners, directors, members, and designated employees within thirty days after the change.

§ 10-7-604. Licensure--refusal to issue--suspension--revocation--refusal to renew

(1) The commissioner shall refuse to issue, suspend, revoke, or refuse to renew the license of a viatical settlement provider if the commissioner finds after compliance with subsection (3) of this section that:

(a) There was any material misrepresentation in the application for the license;

(b) The licensee or any of its officers, partners, members, or key management personnel has been convicted of fraudulent or dishonest practices, is subject to a final administrative action, or is otherwise shown to be untrustworthy or incompetent;

- (c) The licensee demonstrates a pattern of unreasonable payments to viators;
 - (d) The licensee or any of its officers, partners, members, or key management personnel has been found guilty of, or has pleaded guilty or nolo contendere to, any felony, or to a misdemeanor involving fraud or moral turpitude, regardless of whether a judgment or conviction has been entered by the court;
 - (e) The licensee has entered into any viatical settlement contract that has not been approved pursuant to this part 6;
 - (f) The licensee has failed to honor contractual obligations set out in a viatical settlement contract;
 - (g) The licensee no longer meets the requirements for initial licensure;
 - (h) The licensee has assigned, transferred, or pledged a viaticated policy to a person other than a viatical settlement provider licensed in this state; an accredited investor or qualified institutional buyer as defined, respectively, in regulation D, rule 501, or rule 144A of the federal "Securities Act of 1933", [FN1] as amended; a financing entity; a special purpose entity; or a related provider trust; or
 - (i) The applicant or licensee or any of its officers, partners, members, or key management personnel, or any life insurance producer acting on behalf of the applicant or licensee, has violated this part 6.
- (2) The commissioner may suspend, revoke, or refuse to renew the license of a life insurance producer if the commissioner finds that such life insurance producer has violated this part 6.
- (3) If the commissioner denies a license application or suspends, revokes, or refuses to renew the license of a viatical settlement provider, or suspends, revokes, or refuses to renew the license of a life insurance producer, the commissioner shall conduct a hearing in accordance with the "State Administrative Procedure Act", article 4 of title 24, C.R.S., and may use a hearing officer pursuant to section 10-1-127.

§ 10-7-605. Forms approval

A person may not use a viatical settlement contract or provide to a viator a disclosure statement form in this state unless such contract or form is first filed with and approved by the commissioner. Any settlement contract form or disclosure form filed with the commissioner shall be deemed approved if it has not been disapproved within sixty days after the filing. The commissioner shall disapprove a viatical settlement contract form or disclosure statement form if, in the commissioner's opinion, the contract or provisions contained in it are unreasonable, contrary to the interests of the public, or misleading or unfair to the viator.

§ 10-7-606. Annual reports

(1) Each viatical settlement provider shall file with the commissioner by March 1 of each year an annual statement containing such information as the commissioner prescribes by rule. This information is limited to only those transactions in which the viator is a resident of this state and does not include individual transaction data regarding the business of viatical settlements or data that compromises the privacy of personal, financial, or health information of the viator or insured.

(2) Except as otherwise allowed or required by law, a viatical settlement provider, life insurance producer, information bureau, rating agency or company, or other person with actual knowledge of a viator or insured's identity may not disclose that identity as a viator or insured or the viator's or insured's financial or medical information to another person unless the disclosure is:

(a)(I) Necessary to effect a viatical settlement contract between the viator and a viatical settlement provider; and

(II) The viator or insured or both, as may be required, have provided prior written consent to the disclosure;

(b) Provided in response to an investigation or examination by the commissioner or another governmental officer or agency or pursuant to this article;

(c) A term of or condition to the transfer of a policy by one viatical settlement provider to another viatical settlement provider;

(d) Necessary to permit a financing entity, related provider trust, or special purpose entity to finance the purchase of policies by a viatical settlement provider and the viator and insured have provided prior written consent to the disclosure;

(e) Necessary to allow the viatical settlement provider or its authorized representative to make contacts for the purpose of determining health status; or

(f) Required to purchase stop-loss coverage.

§ 10-7-607. Examinations

(1) **Authority, scope, and scheduling of examinations.** (a) The commissioner may conduct an examination under this part 6 of a licensee as often as the commissioner in his or her sole discretion deems appropriate.

(b) For purposes of completing an examination of a licensee under this part 6, the commissioner

may examine or investigate any person, or the business of any person, in so far as the examination or investigation is, in the sole discretion of the commissioner, necessary or material to the examination of the licensee.

(c) In lieu of an examination under this part 6 of any foreign or alien licensee licensed in this state, the commissioner may, at the commissioner's discretion, accept an examination report on the licensee as prepared by the commissioner for the licensee's state of domicile or port-of-entry state.

(2) **Record retention requirements.** (a) A person required to be licensed under this part 6 shall for five years retain copies of all:

(I) Proposed, offered, or executed contracts, underwriting documents, policy forms, and applications from the date of the proposal, offer, or execution of the contract, whichever is later;

(II) Checks, drafts, or other evidence and documentation related to the payment, transfer, deposit, or release of moneys from the date of the transaction; and

(III) Other records and documents related to the requirements of this part 6.

(b) This section does not relieve a person of the obligation to produce the documents listed in paragraph (a) of this subsection (2) to the commissioner after the retention period has expired if the person has retained the documents.

(c) Records required to be retained by this subsection (2) shall be legible and complete and may be retained in paper, photograph, microprocess, magnetic, mechanical, or electronic media, or by any process that accurately reproduces or forms a durable medium for the reproduction of a record.

(3) **Conduct of examinations.** (a) Upon determining that an examination should be conducted, the commissioner shall issue an examination warrant appointing one or more examiners to perform the examination and instructing the examiner as to the scope of the examination. In conducting the examination, the examiner shall observe those guidelines and procedures set forth in the examiner's handbook adopted by the NAIC. The commissioner may also employ such other guidelines or procedures as the commissioner may deem appropriate.

(b) Every licensee or person from whom information is sought, and its officers, directors, and agents, shall provide to the examiners timely, convenient, and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents, assets, and computer or other recordings relating to the property, assets, business, and affairs of the licensee being examined. The officers, directors, employees, and agents of the licensee or person shall facilitate the examination and aid in the examination so far as it is in their power to do so. The refusal of a licensee, by its officers, directors, employees, or agents, to submit to examination or to comply with any reasonable written request of the commissioner shall be grounds for suspension, refusal, or nonrenewal of any license or authority held by the licensee to engage in the viatical settlement business or other business subject to the commissioner's jurisdiction. Any proceedings for

suspension, revocation, or refusal of any license or authority shall be conducted pursuant to the “State Administrative Procedure Act”, article 4 of title 24, C.R.S.

(c) The commissioner shall have the power to issue subpoenas, to administer oaths, and to examine under oath any person as to any matter pertinent to the examination. Upon the failure or refusal of a person to obey a subpoena, the commissioner may petition a court of competent jurisdiction and, upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order shall be punishable as contempt of court.

(d) When making an examination under this part 6, the commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants, or other professionals and specialists as examiners. The reasonable cost of such examiners' services shall be borne by the licensee that is the subject of the examination.

(e) Nothing contained in this part 6 shall be construed to limit the commissioner's authority to terminate or suspend an examination in order to pursue other legal or regulatory action pursuant to the insurance laws of this state. Findings of fact and conclusions made pursuant to any examination shall be prima facie evidence in any legal or regulatory action.

(f) Nothing contained in this part 6 shall be construed to limit the commissioner's authority to use and, if appropriate, to make public any final or preliminary examination report, any examiner or licensee workpapers or other documents, or any other information discovered or developed during the course of any examination in the furtherance of any legal or regulatory action that the commissioner may, in his or her sole discretion, deem appropriate.

(g) The licensee shall pay the charges incurred in the examination, including the expenses of the commissioner or the commissioner's designee and the expenses and compensation of the commissioner's examiners and assistants. If a licensee believes that the fees assessed are unreasonable in relation to the examination performed, the licensee may appeal the assessments to and seek judicial review by the district court in and for the city and county of Denver pursuant to the “State Administrative Procedure Act”, article 4 of title 24, C.R.S. If no hearing is requested or, if after a hearing and appeal process, the licensee refuses or fails to pay, the commissioner or his designee shall promptly institute a civil action against the licensee to recover the expenses of examination.

(4) **Examination reports.** (a) Examination reports shall consist only of facts appearing upon the books, records, or other documents of the licensee, its agents, or other persons examined, or as ascertained from the testimony of its officers or agents or other persons examined concerning its affairs, and such conclusions and recommendations as the examiners find reasonably warranted from the facts.

(b) No later than sixty days following completion of the examination, the examiner in charge shall file with the commissioner a verified written report of examination under oath. Upon receipt of the verified report, the commissioner shall transmit the report to the licensee examined, together with a notice that shall afford the licensee examined a reasonable opportunity of not

more than thirty days to make a written submission or rebuttal with respect to any matters contained in the examination report.

(c) Within thirty days after the end of the period allowed for the receipt of written submissions or rebuttals, the commissioner shall fully consider and review the report, together with any written submissions or rebuttals and any relevant portions of the examiner's workpapers, and enter an order:

(I) Adopting the examination report as filed or with modification or corrections. If the examination report reveals that the licensee is operating in violation of any law, rule, or prior order of the commissioner, the commissioner may order the licensee to take any action the commissioner considers necessary and appropriate to cure the violation.

(II) Rejecting the examination report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation, or information and refile; or

(III) Calling for an investigatory hearing with no less than twenty days' notice to the licensee for purposes of obtaining additional documentation, data, information, and testimony.

(d) All orders entered pursuant to this subsection (4) shall be accompanied by findings and conclusions resulting from the commissioner's consideration and review of the examination report, the relevant examiner workpapers, and any written submissions or rebuttals. Any examination warrant issued pursuant to paragraph (a) of subsection (3) of this section shall be considered a final administrative decision, review of which may be sought in the district court in and for the city and county of Denver pursuant to the "State Administrative Procedure Act", article 4 of title 24, C.R.S., and shall be served upon the licensee by certified mail together with a copy of the adopted examination report. Within thirty days after the issuance of the adopted report, the licensee shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related orders.

(e) Hearings conducted pursuant to this section shall be subject to the following requirements:

(I) Any hearing conducted pursuant to this section by the commissioner or the commissioner's authorized representative shall be conducted as a nonadversarial, confidential investigatory proceeding as necessary for the resolution of any inconsistencies, discrepancies, or disputed issues apparent upon the face of the filed examination report or raised by or as a result of the commissioner's review of relevant workpapers or by the written submission or rebuttal of the licensee. Within twenty days after the conclusion of any hearing, the commissioner shall enter an order pursuant to subparagraph (I) of paragraph (c) of this subsection (4).

(II) The commissioner shall not appoint an examiner as an authorized representative to conduct the hearing. The hearing shall proceed expeditiously, with discovery by the licensee limited to the examiner's workpapers that tend to substantiate any assertions set forth in any written submission or rebuttal. The commissioner or the commissioner's representative may issue subpoenas for the attendance of any witnesses or the production of any documents considered relevant to the investigation, whether under the control of the commissioner, the company, or

other persons. The documents produced shall be included in the record, and testimony taken by the commissioner or the commissioner's representative shall be under oath and preserved for the record. Nothing contained in this section shall require the commissioner to disclose any information or records that would indicate or show the existence or content of any investigation or activity of a criminal justice agency.

(III) The hearing shall proceed with the commissioner or the commissioner's representative posing questions to the persons subpoenaed. Thereafter, the licensee and the division may present testimony relevant to the investigation. Cross-examination may be conducted only by the commissioner or the commissioner's representative. The licensee and the commissioner shall be permitted to make closing statements and may be represented by counsel of their choice.

(f) If the commissioner determines that regulatory action is appropriate as a result of an examination, the commissioner may initiate any proceedings or actions provided by law.

(g) No provision of this part 6 shall prevent or be construed as prohibiting the commissioner from disclosing the content of an examination report, a preliminary examination report or its results, or any related matter to the insurance division of this or any other state or country, to law enforcement officials of this or any other state, or to any agency of the federal government at any time, subject to the written agreement of the recipient to hold such information confidential and to treat it in a manner consistent with this part 6.

(5) Confidentiality of examination information. (a) Names and individual identification data for all viators shall be considered private and confidential information and shall not be disclosed by the commissioner unless required by law.

(b)(I) Except as otherwise provided in this part 6, all examination reports, working papers, recorded information, and documents, and copies thereof, produced by, obtained by, or disclosed to the commissioner or any other person in the course of an examination made under this part 6, or in the course of analysis or investigation by the commissioner of the financial condition or market conduct of a licensee, are:

(A) Confidential by law and privileged;

(B) Not subject to article 72 of title 24, C.R.S.;

(C) Not subject to subpoena; and

(D) Not subject to discovery or admissible in evidence in any private civil action.

(II) The commissioner is authorized to use the documents, materials, or other information described in subparagraph (I) of this paragraph (b) in the furtherance of any regulatory or legal action brought as part of the commissioner's official duties.

(III) For the purposes of this paragraph (b), "this part 6" includes the law of another state or jurisdiction that is substantially similar to this part 6.

(c) Documents, materials, or other information, including, but not limited to, all working papers and copies thereof in the possession or control of the NAIC and its affiliates and subsidiaries are:

(I) Confidential by law and privileged;

(II) Not subject to subpoena; and

(III) Not subject to discovery or admissible in evidence in any private civil action if they are:

(A) Created, produced, or obtained by or disclosed to the NAIC and its affiliates and subsidiaries in the course of assisting an examination made under this part 6, or assisting the commissioner in the analysis or investigation of the financial condition or market conduct of a licensee; or

(B) Disclosed to the NAIC or its affiliates and subsidiaries under paragraph (d) of this subsection (5) by the commissioner.

(d) The commissioner or any person that received the documents, material, or other information while acting under the authority of the commissioner, including the NAIC and its affiliates and subsidiaries, is permitted to testify in any private civil action concerning any confidential documents, materials, or information subject to paragraph (a) of this subsection (5).

(e) In order to assist in the performance of the commissioner's duties, the commissioner:

(I) May share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to paragraph (a) of this subsection (5), with other state, federal, and international regulatory agencies, with the NAIC and its affiliates and subsidiaries, and with state, federal, and international law enforcement authorities if the recipient agrees to maintain the confidentiality and privileged status of the document, material, communication, or other information;

(II) May receive documents, materials, communications, or information, including otherwise confidential and privileged documents, materials, or information, from the NAIC and its affiliates and subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information; and

(III) May enter into agreements governing the sharing and use of information consistent with this subsection (5).

(f) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in paragraph (e) of this subsection (5).

(g) A privilege established under the law of any state or jurisdiction that is substantially similar

to the privilege established under this subsection (5) shall be available and enforced in any proceeding in, and in any court of, this state.

(h) Nothing contained in this part 6 shall prevent or be construed as prohibiting the commissioner from disclosing the content of an examination report, a preliminary examination report or its results, or any related matter to the commissioner of any other state or country, to law enforcement officials of this or any other state or agency of the federal government at any time, or to the NAIC, if the person receiving the report or matters relating thereto agrees in writing to hold it confidential and in a manner consistent with this part 6.

(i) Nothing in this part 6 shall immunize a party who discloses information to the commissioner from disclosing that information pursuant to an independent inquiry or restrict the admissibility of such independently obtained information.

(6) **Conflict of interest.** (a) An examiner may not be appointed by the commissioner if the examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of, or owns a pecuniary interest in, any person subject to examination under this part 6. This section shall not be construed to automatically preclude an examiner from being:

(I) A viator;

(II) An insured in a viaticated policy; or

(III) A beneficiary in an insurance policy that is proposed to be the subject of a viatical settlement contract.

(b) Notwithstanding any provision of paragraph (a) of this subsection (6) to the contrary, the commissioner may retain from time to time, on an individual basis, qualified actuaries, certified public accountants, or other similar individuals who are independently practicing their professions, even though these persons may from time to time be similarly employed or retained by persons subject to examination under provisions of this part 6.

(7) **Cost of examinations.** The expenses incurred in conducting any examination shall be paid by the licensee or applicant.

(8) **Immunity from liability.** (a) No cause of action shall arise nor shall any liability be imposed against the commissioner, the commissioner's authorized representatives, or any examiner appointed by the commissioner for any statements made or conduct performed in good faith while carrying out the provisions of this part 6.

(b) No cause of action shall arise from, nor shall any liability be imposed against any person for, the act of communicating or delivering information or data to the commissioner, the commissioner's authorized representative, or an examiner pursuant to an examination made under this part 6, if the act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive. This paragraph (b) does not abrogate or modify in any way any common law or statutory privilege or immunity enjoyed by any person identified

in paragraph (a) of this subsection (8).

(c) A person identified in paragraph (a) or (b) of this subsection (8) shall be entitled to an award of attorney fees and costs if he or she is the prevailing party in a civil cause of action for libel, slander, or any other relevant tort arising out of activities in carrying out the provisions of this part 6, and the party bringing the action was not substantially justified in doing so. For purposes of this paragraph (c), a proceeding is substantially justified if it had a reasonable basis in law or fact at the time that it was initiated.

(9) **Investigative authority of the commissioner.** The commissioner may investigate suspected fraudulent viatical settlement acts and persons engaged in the business of viatical settlements.

§ 10-7-608. Disclosures

(1) With each application for a viatical settlement contract, a viatical settlement provider or life insurance producer shall provide the viator with at least the following information, in a separate document signed by the viator and the viatical settlement provider or life insurance producer, no later than the time the application for the viatical settlement contract is signed by all parties:

(a) That there exist possible alternatives to a viatical settlement contract, including any accelerated death benefits or policy loans offered under the viator's life insurance policy;

(b) That some or all of the proceeds of the viatical settlement contract may be taxable under federal income tax and state franchise and income taxes, and assistance may be sought from a professional tax advisor;

(c) That proceeds of the viatical settlement contract may be subject to the claims of creditors;

(d) That receipt of the proceeds of a viatical settlement contract may adversely affect the viator's eligibility for medicaid or other government benefits or entitlements, and advice may be obtained from the appropriate government agencies;

(e) That the viator has the right to rescind a viatical settlement contract before the earlier of thirty calendar days after the date upon which the viatical settlement contract is executed by all parties or fifteen calendar days after the receipt of the viatical settlement proceeds by the viator. Rescission, if exercised by the viator, is effective only if both notice of the rescission is given and repayment of all proceeds and any premiums, loans, and loan interest to the viatical settlement provider is made within forty-five days after the end of the rescission period. If the insured dies during the rescission period, the viatical settlement contract is deemed to have been rescinded, subject to repayment of all viatical settlement proceeds and any premiums, loans, and loan interest being made to the viatical settlement provider within the rescission period.

(f) That funds must be sent to the viator within three business days after the viatical settlement provider has received the insurer's or group administrator's acknowledgment that ownership of

the viaticated policy has been transferred and the beneficiary has been designated;

(g) That entering into a viatical settlement contract may cause other rights or benefits, including conversion rights and waiver of premium benefits that may exist under the policy, to be forfeited by the viator, and that the viator may seek assistance from an independent financial adviser;

(h) The following statement: “All medical, financial, or personal information solicited or obtained by a viatical settlement provider or a life insurance producer about an insured, including the insured's identity or the identity of family members, a spouse, or a significant other, may be disclosed as necessary to effect the viatical settlement contract between the viator and the viatical settlement provider. If you are asked to provide this information, you will be asked to consent to the disclosure. The information may be provided to someone who buys the policy or provides funds for the purchase. You may be asked to renew your permission to share information every two years.”

(i) That the insured may be contacted by either the viatical settlement provider or its authorized representative for the purpose of determining the insured's health status. This contact is limited to once every three months if the insured has a life expectancy of more than one year, and no more than once each month if the insured has a life expectancy of one year or less.

(2) In addition to the information described in subsection (1) of this section, the disclosure to a viator shall include distribution of a brochure, approved by the commissioner, describing the process of viatical settlements.

(3) No later than the date the viatical settlement contract is signed by all parties, the viatical settlement provider shall provide the viator with at least the following information, displayed conspicuously in the viatical settlement contract or in a separate document signed by the viator and the viatical settlement provider:

(a) The affiliation, if any, between the viatical settlement provider and the issuer of the insurance policy to be acquired pursuant to the viatical settlement contract;

(b) The name, address, and telephone number of the viatical settlement provider;

(c) If a policy to be acquired pursuant to a viatical settlement contract has been issued as a joint policy or involves family riders or any coverage of a life other than the insured under the policy to be acquired pursuant to a viatical settlement contract, the viator shall be informed of the possible loss of coverage on the other lives under the policy and advised to consult with his or her insurance producer or the insurer issuing the policy for advice on the proposed viatical settlement contract;

(d) The dollar amount of the current death benefit payable to the viatical settlement provider under the policy. If known, the viatical settlement provider shall also disclose the availability of additional guaranteed insurance benefits, the dollar amount of accidental death and dismemberment benefits under the policy or certificate, and the viatical settlement provider's interest in those benefits.

(e) The name, business address, and telephone number of the independent third-party escrow agent, and the fact that the viator may inspect or receive copies of the relevant escrow or trust agreements or documents.

(4) If the viatical settlement provider transfers ownership or changes the beneficiary of the policy, the viatical settlement provider shall communicate the change in ownership or beneficiary to the insured within twenty days after the change.

§ 10-7-609. General requirements

(1)(a) A viatical settlement provider entering into a viatical settlement contract shall first obtain:

(I) If the viator is the insured, a written statement from a licensed attending physician that the viator is of sound mind and under no constraint or undue influence to enter into a viatical settlement contract; and

(II) A document in which the insured consents to the release of his or her medical records to a viatical settlement provider or insurance producer and, if the policy was issued less than two years after the date of application for a viatical settlement contract, to the insurance company that issued the policy.

(b) The insurer shall respond to a request for verification of coverage submitted by a viatical settlement provider or life insurance producer not later than thirty calendar days after the date the request is postmarked. The request for verification of coverage shall be made on a form approved by the commissioner. The insurer shall complete and issue the verification of coverage or indicate in which respects it is unable to respond.

(c) Before or at the time of execution of the viatical settlement contract, the viatical settlement provider shall obtain a witnessed document in which the viator consents to the viatical settlement contract, represents that the viator has a full and complete understanding of the viatical settlement contract, acknowledges that the viator has a full and complete understanding of the benefits of the policy, acknowledges that the viator is entering into the viatical settlement contract freely and voluntarily, and, for persons with a terminal or chronic illness or condition, acknowledges that the insured has a terminal or chronic illness and that the terminal or chronic illness or condition was diagnosed after the policy was issued.

(d) If a life insurance producer performs any of the activities required of the viatical settlement provider by this subsection (1), the viatical settlement provider is deemed to have fulfilled the requirements of this section.

(2) Medical information solicited or obtained by a licensee is subject to the applicable provisions of state law relating to confidentiality of medical or protected health information.

(3) A viatical settlement contract entered into in this state shall provide the viator with an unconditional right to rescind the contract before the earlier of thirty calendar days after the date when the viatical settlement contract is executed by all parties or fifteen calendar days after the receipt of the viatical settlement proceeds by the viator. Rescission, if exercised by the viator, is effective only if both notice of the rescission is given and repayment of all proceeds and any premiums, loans, and loan interest to the viatical settlement provider is made within the rescission period. If the insured dies during the rescission period, the viatical settlement contract shall be deemed to have been rescinded if repayment of all viatical settlement proceeds and any premiums, loans, and loan interest to the viatical settlement provider is made within forty-five days after the end of the rescission period.

(4) The viatical settlement provider shall instruct the viator to send the executed documents required to effect the change in ownership, assignment, or beneficiary directly to an independent escrow agent. If the viator erroneously provides the documents directly to the viatical settlement provider, the viatical settlement provider shall immediately notify the escrow agent and shall pay or transfer the proceeds of the viatical settlement contract into an escrow or trust account maintained in a state or federally chartered financial institution whose deposits are insured by the federal deposit insurance corporation within three business days after the date the escrow agent receives the documents, or after the date the viatical settlement provider receives the documents. Upon payment of the viatical settlement proceeds into the escrow account, the escrow agent shall deliver the original change in ownership, assignment, or beneficiary forms to the viatical settlement provider or related provider trust. Upon the escrow agent's receipt of the acknowledgment of the properly completed transfer of ownership, assignment, or designation of beneficiary from the insurance company, the escrow agent shall pay the viatical settlement proceeds to the viator.

(5) Failure to tender consideration to the viator for the viatical settlement contract within the time required renders the viatical settlement contract voidable by the viator for lack of consideration until consideration is tendered to and accepted by the viator.

(6) A contact with the insured, for the purpose of determining the health status of the insured by the viatical settlement provider after the viatical settlement contract has been executed, may be made only by the licensed viatical settlement provider or its authorized representatives and is limited to once every three months for insureds with a life expectancy of more than one year, and not more than once each month for insureds with a life expectancy of one year or less. The viatical settlement provider shall explain the procedure for these contacts at the time of entry into the viatical settlement contract. The limitations provided for in this subsection (6) do not apply to a contact with an insured for reasons other than determining the insured's health status. A viatical settlement provider is responsible for the actions of his or her authorized representatives.

§ 10-7-610. Limited purchase in incontestability period

(1) It is a violation of this part 6 for a person to enter into a viatical settlement contract within a two-year period commencing with the date of issuance of the policy unless the viator certifies to

the viatical settlement provider that one or more of the following conditions has been met within the two-year period:

(a) The policy was issued upon the viator's exercise of conversion rights arising out of a group or individual policy, if the total of the time covered under the conversion policy plus the time covered under the prior policy is at least twenty-four months. The time covered under a group policy shall be calculated without regard to a change in insurance carriers if the coverage has been continuous and under the same group sponsorship.

(b) The viator submits independent evidence to the viatical settlement provider that one or more of the following conditions has been met within the two-year period:

(I) The viator or insured is terminally or chronically ill; or

(II) The viator or insured disposes of his or her ownership interests in a closely held corporation pursuant to the terms of a buyout or other similar agreement in effect at the time the insurance policy was initially issued.

(2) Copies of the independent evidence described in paragraph (b) of subsection (1) of this section and documents required must be submitted to the insurer when the viatical settlement provider submits a request to the insurer for verification of coverage. The copies shall 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) If the viatical settlement provider submits to the insurer a copy of independent evidence provided for in paragraph (b) of subsection (1) of this section when the viatical settlement provider submits a request to the insurer to effect the transfer of the policy to the viatical settlement provider, the copy is deemed to conclusively establish that the viatical settlement contract satisfies the requirements of this section and the insurer shall respond timely to the request.

§ 10-7-611. Advertising--legislative intent

(1) It is the intent of the general assembly that the purpose of this section is to provide a prospective viator with clear and unambiguous statements in the advertisement of a viatical settlement contract and to assure the clear, truthful, and adequate disclosure of the benefits, risks, limitations, and exclusions of a viatical settlement contract. This purpose is to be accomplished by the establishment of guidelines and standards of permissible and impermissible conduct in the advertising of a viatical settlement contract to assure that a product description is presented in a manner that prevents unfair, deceptive, or misleading advertising and is conducive to accurate presentation and description of a viatical settlement contract through the advertising media and material used by a licensee.

(2) This section applies to an advertising of a viatical settlement contract or a related product or

service intended for dissemination in this state, including internet advertising viewed by a person located in this state. Where disclosure requirements are established pursuant to federal regulation, this section shall be interpreted so as to minimize or eliminate conflict with federal regulation wherever possible.

(3) Each viatical settlement licensee shall establish and at all times maintain a system of control over the content, form, and method of dissemination of an advertisement of its contracts, products, and services. An advertisement, regardless of by whom written, created, designed, or presented, is the responsibility of the licensee, as well as of the individual who created or presented the advertisement. A system of control by the licensee shall include regular notification, at least once a year, to agents and others authorized to disseminate advertisements, of the requirements and procedures for approval before the use of an advertisement not furnished by the licensee.

(4) An advertisement shall be truthful and not misleading in fact or by implication. The form and content of an advertisement of a viatical settlement contract shall be sufficiently complete and clear so as to avoid deception. It may not have the capacity or tendency to mislead or deceive. Whether an advertisement has the capacity or tendency to mislead or deceive shall be determined by the commissioner from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence within the segment of the public to which it is directed.

(5)(a) The information required to be disclosed pursuant to the provisions of this section may not be minimized, rendered obscure, or presented in an ambiguous fashion or intermingled with the text of the advertisement so as to be confusing or misleading.

(b) An advertisement may not omit material information or use words, phrases, statements, references, or illustrations if the omission or use has the capacity, tendency, or effect of misleading or deceiving the public as to the nature or extent of any benefit, loss covered, or state or federal tax consequence. The fact that the viatical settlement contract offered is made available for inspection before consummation of the sale, or that an offer is made to refund the payment if the viator is not satisfied, or that the viatical settlement contract includes a “free look” period that satisfies or exceeds legal requirements, does not remedy misleading statements.

(c) An advertisement may not use the name or title of a life insurance company or a life insurance policy unless the advertisement has been approved in writing by the insurer.

(d) An advertisement may not state or imply that interest charged on an accelerated death benefit or a policy loan is unfair, inequitable, or in any manner an incorrect or improper practice.

(e) The words “free”, “no cost”, “without cost”, “no additional cost”, or “at no extra cost”, or words of similar import may not be used with respect to a benefit or service unless true. An advertisement may specify the charge for a benefit or service or may state that a charge is included in the payment or use other appropriate language.

(f)(I) Any testimonial, appraisal, or analysis used in an advertisement shall:

- (A) Be genuine;
- (B) Represent the current opinion of the author;
- (C) Be applicable to the viatical settlement contract, product, or service advertised, if any; and
- (D) Be accurately reproduced with sufficient completeness to avoid misleading or deceiving prospective viators as to the nature or scope of any testimonial, appraisal, analysis, or endorsement.
- (II) In using any testimonial, appraisal, or analysis, the viatical settlement licensee makes as its own all the statements contained in them, and the statements are subject to all the provisions of this section.
- (III) If the individual making a testimonial, appraisal, analysis, or endorsement has a financial interest in the viatical settlement provider or related entity as a stockholder, director, officer, employee, or otherwise, or receives a benefit, directly or indirectly, other than required union scale wages, that fact must be disclosed prominently in the advertisement.
- (IV) An advertisement may not state or imply that a viatical settlement contract, benefit, or service has been approved or endorsed by a group of individuals, society, association, or other organization unless that is the fact and unless any relationship between an organization and the licensee is disclosed. If the entity making the endorsement or testimonial is owned, controlled, or managed by the licensee or receives payment or other consideration from the licensee for making an endorsement or testimonial, that fact must be disclosed in the advertisement.
- (V) If an endorsement refers to benefits received under a viatical settlement contract, all pertinent information shall be retained for a period of five years after its use.
- (VI) An advertisement may not contain statistical information unless it accurately reflects recent and relevant facts. The source of all statistics used in an advertisement shall be identified.
- (VII) An advertisement may not disparage insurers, viatical settlement providers, insurance producers, policies, services, or methods of marketing.
- (VIII) The name of the viatical settlement licensee shall be identified clearly in all advertisements about the licensee or its viatical settlement contract, products, or services, and if any specific viatical settlement contract is advertised, the viatical settlement contract must be identified either by form number or some other appropriate description. If an application is part of the advertisement, the name of the viatical settlement provider shall be shown on the application.
- (IX) An advertisement may not use a trade name, group designation, name of the parent company of a licensee, name of a particular division of the licensee, service mark, slogan, symbol, or other device or reference without disclosing the name of the licensee if the

advertisement has the capacity or tendency to mislead or deceive as to the true identity of the licensee or to create the impression that a company other than the licensee has any responsibility for the financial obligation under a viatical settlement contract.

(X) An advertisement may not use any combination of words, symbols, or physical materials that by their content, phraseology, shape, color, or other characteristics are so similar to a combination of words, symbols, or physical materials used by a government program or agency or otherwise appear to be of such a nature that they tend to mislead prospective viators into believing that the solicitation is in some manner connected with a government program or agency.

(XI) An advertisement may state that a licensee is licensed in the state where the advertisement appears if it does not exaggerate that fact or suggest or imply that a competing licensee may not be so licensed. The advertisement may ask the audience to consult the licensee's web site or contact that state's division of insurance to find out if that state requires licensing and, if so, whether the licensee or any other company is licensed.

(XII) An advertisement may not create the impression that the viatical settlement provider or its financial condition or status; the payment of its claims; or the merits, desirability, or advisability of its viatical settlement contracts are recommended or endorsed by any government entity.

(XIII) The name of the actual licensee shall be stated in all of its advertisements. An advertisement may not use a trade name, group designation, name of any affiliate or controlling entity of the licensee, service mark, slogan, symbol, or other device in a manner that has the capacity or tendency to mislead or deceive as to the true identity of the actual licensee or create the false impression that an affiliate or controlling entity has any responsibility for the financial obligation of the licensee.

(XIV) An advertisement may not, directly or indirectly, create the impression that any division or agency of the state or of the United States government endorses, approves, or favors:

(A) A licensee or its business practices or methods of operation;

(B) The merits, desirability, or advisability of a viatical settlement contract;

(C) Any viatical settlement contract; or

(D) Any policy or life insurance company.

(XV) If the advertiser emphasizes the speed with which the viatical settlement contract occurs, the advertising must disclose the average time frame, from completed application to the date of offer and from acceptance of the offer to receipt of the funds by the viator.

(XVI) If the advertising emphasizes the dollar amounts available to viators, the advertising shall disclose the average purchase price as a percent of face value obtained by viators contracting with the licensee during the past six months.

§ 10-7-612. Fraudulent acts

(1)(a) A person shall not commit a fraudulent viatical settlement act.

(b) A person shall not knowingly or intentionally interfere with the enforcement of the provisions of this part 6 or investigations of suspected or actual violations of this part 6.

(c) A person in the business of viatical settlements shall not knowingly or intentionally permit a person convicted of a felony involving dishonesty or breach of trust to participate in the business of viatical settlements.

(2)(a) A viatical settlement contract and an application for a viatical settlement contract, regardless of the form of transmission, shall contain the following statement or a substantially similar statement: "Any person who knowingly presents false information in an application for insurance or viatical settlement contract is guilty of a crime and, upon conviction, may be subject to fines or confinement in prison, or both."

(b) The lack of a statement as provided for in paragraph (a) of this subsection (2) does not constitute a defense in any prosecution for a fraudulent viatical settlement act.

(3)(a) A person engaged in the business of viatical settlements having knowledge or a reasonable belief that a fraudulent viatical settlement act is being, will be, or has been committed shall provide to the commissioner the information required by, and in a manner prescribed by, the commissioner.

(b) Another person having knowledge or a reasonable belief that a fraudulent viatical settlement act is being, will be, or has been committed may provide to the commissioner the information required by, and in a manner prescribed by, the commissioner.

(4)(a) No civil liability shall be imposed upon, and no cause of action shall arise from the otherwise lawful conduct of, a person who furnishes information concerning suspected, anticipated, or completed fraudulent viatical settlement acts, or suspected or completed fraudulent insurance acts, if the information is provided to or received from:

(I) The commissioner or the commissioner's employees, agents, or representatives;

(II) Federal, state, or local law enforcement or regulatory officials or their employees, agents, or representatives;

(III) A person involved in the prevention and detection of fraudulent viatical settlement acts or that person's agents, employees, or representatives;

(IV) The NAIC, the national association of securities dealers, or the north American securities

administrators association, or their employees, agents, or representatives, or another regulatory body overseeing life insurance or viatical settlement contracts; or

(V) The insurer that issued the policy covering the life of the insured.

(b) Paragraph (a) of this subsection (4) does not apply to a statement made with actual malice. In an action brought against a person for filing a report or furnishing other information concerning a fraudulent viatical settlement act or a fraudulent insurance act, the party bringing the action shall plead specifically any allegation that paragraph (a) of this subsection (4) does not apply because the person filing the report or furnishing the information did so with actual malice.

(c) A person identified in paragraph (a) of this subsection (4) is entitled to an award of attorney fees and costs if the person is the prevailing party in a civil cause of action for libel, slander, or another relevant tort arising out of activities in carrying out the provisions of this part 6 and the party bringing the action was not substantially justified in doing so. For purposes of this section, a proceeding is substantially justified if it had a reasonable basis in law or fact at the time that it was initiated.

(d) This section does not abrogate or modify common law or statutory privileges or immunities enjoyed by a person described in paragraph (a) of this subsection (4).

(e) Paragraph (a) of this subsection (4) does not apply to a person's furnishing information concerning the person's own suspected, anticipated, or completed fraudulent viatical settlement acts or suspected, anticipated, or completed fraudulent insurance acts.

(5)(a) The documents and evidence provided pursuant to subsection (4) of this section or obtained by the commissioner in an investigation of suspected or actual fraudulent viatical settlement acts are privileged and confidential, are not a public record, and are not subject to discovery or subpoena in a civil or criminal action.

(b) Paragraph (a) of this subsection (5) does not prohibit release by the commissioner of documents and evidence obtained in an investigation of suspected or actual fraudulent viatical settlement acts:

(I) In administrative or judicial proceedings to enforce laws administered by the commissioner;

(II) To federal, state, or local law enforcement or regulatory agencies, to an organization established for the purpose of detecting and preventing fraudulent viatical settlement acts, or to the NAIC; or

(III) At the discretion of the commissioner, to a person in the business of viatical settlements that is aggrieved by a fraudulent viatical settlement act.

(c) Release of documents and evidence pursuant to paragraph (b) of this subsection (5) does not abrogate or modify the privilege granted in paragraph (a) of this subsection (5).

(6) This part 6 does not:

(a) Preempt the authority or relieve the duty of other law enforcement or regulatory agencies to investigate, examine, and prosecute suspected violations of law;

(b) Prevent or prohibit a person from voluntarily disclosing information concerning fraudulent viatical settlement acts to a law enforcement or regulatory agency other than the division; or

(c) Limit the powers granted elsewhere by the laws of this state to the commissioner or to an insurance fraud unit to investigate and examine possible violations of law and to take appropriate action against wrongdoers.

(7)(a) A viatical settlement provider shall adopt anti-fraud initiatives reasonably calculated to detect, assist in the prosecution of, and prevent fraudulent viatical settlement acts. The commissioner may order or, if a licensee requests, may grant modifications of the following initiatives as necessary to ensure an effective anti-fraud program. The modifications may be more or less restrictive than the initiatives if the modifications may reasonably be expected to accomplish the purpose of this section. Anti-fraud initiatives include:

(I) Fraud investigators, who may be viatical settlement providers or employees or independent contractors of those viatical settlement providers; and

(II) An anti-fraud plan that is submitted to the commissioner. The anti-fraud plan shall include, but not be limited to:

(A) A chart outlining the organizational arrangement of the anti-fraud personnel who are responsible for the investigation and reporting of possible fraudulent viatical settlement acts and investigating unresolved material inconsistencies between medical records and insurance applications; and

(B) A description of the procedures for detecting and investigating possible fraudulent viatical settlement acts and procedures for resolving material inconsistencies between medical records and insurance applications, a description of the procedures for reporting possible fraudulent viatical settlement acts to the commissioner, and a description of the plan for anti-fraud education and training of underwriters and other personnel.

(b) Anti-fraud plans submitted to the commissioner are privileged and confidential, are not public records pursuant to article 72 of title 24, C.R.S., and are not subject to discovery or subpoena in a civil or criminal action.

§ 10-7-613. Penalties

(1) In addition to the penalties and other enforcement provisions of this part 6, if a person violates the provisions of this part 6 or any rule implementing this part 6, the commissioner may

seek an injunction in a court of competent jurisdiction and may apply for temporary and permanent orders as the commissioner determines are necessary to restrain the person from committing the violation.

(2) A person damaged by the acts of a person in violation of this part 6 may bring a civil action against the person committing the violation in a court of competent jurisdiction.

(3) The commissioner may issue a cease-and-desist order to a person who violates any provision of this part 6 or of any rule or order promulgated by, or written agreement entered into with, the commissioner pursuant to this part 6.

(4) When the commissioner finds that an activity in violation of this part 6 presents an immediate danger to the public that requires an immediate final order, the commissioner may issue an emergency cease-and-desist order reciting with particularity the facts underlying the findings. The emergency cease-and-desist order is effective immediately upon service of a copy of the order on the respondent and remains effective for ninety days. If the commissioner begins nonemergency cease-and-desist proceedings, the emergency cease-and-desist order remains effective absent an order by a court of competent jurisdiction pursuant to the "State Administrative Procedure Act", article 4 of title 24, C.R.S.

(5) In addition to the penalties and other enforcement provisions of this part 6, a person who violates this part 6 is subject to civil penalties of up to ten thousand dollars for each violation pursuant to an order of the commissioner. The commissioner's order may require a person found to be in violation of this part 6 to make restitution to a person aggrieved by violations of this part 6.

(6)(a) A person who violates a provision of this part 6 after the commissioner has issued a cease-and-desist order to the person commits a class 2 misdemeanor and, upon conviction, shall pay restitution to a person aggrieved by the violation. Restitution shall be ordered in addition to a fine or imprisonment, but not instead of a fine or imprisonment.

(b) A person who violates paragraph (a) of this subsection (6), upon conviction, shall be sentenced based on the greater of the value of property, services, or other benefits wrongfully obtained or attempted to be obtained, or the aggregate economic loss suffered by any person as a result of the violation. A person shall be fined not more than:

(I) One hundred thousand dollars or imprisoned for not more than twelve months, or both, if the value of the viatical settlement contract is more than thirty-five thousand dollars;

(II) Twenty thousand dollars or imprisoned for not more than nine months, or both, if the value of the viatical settlement contract is more than two thousand five hundred dollars but not more than thirty-five thousand dollars;

(III) Ten thousand dollars or imprisoned for not more than six months, or both, if the value of the viatical settlement contract is more than five hundred dollars but not more than two thousand five hundred dollars; or

(IV) Three thousand dollars or imprisoned for not more than three months, or both, if the value of the viatical settlement contract is five hundred dollars or less.

(c) In a prosecution under paragraph (a) of this subsection (6), the value of a viatical settlement contract within a six-month period may be aggregated and the defendant charged accordingly in applying the provisions of this section. If two or more offenses are committed by the same person in two or more counties, the accused may be prosecuted in a county in which one of the offenses was committed for all of the offenses aggregated as provided by this section. The statutory limitation period does not begin to run until the insurance company or law enforcement agency is aware of the fraud, but the prosecution may not be commenced later than seven years after the act has occurred.

§ 10-7-614. Unfair trade practices

A violation of this part 6 shall constitute an unfair trade practice pursuant to part 11 of article 3 of this title and be subject to the penalties contained in such part 11.

§ 10-7-615. Rules

(1) The commissioner may:

(a) Promulgate rules implementing this part 6;

(b) Establish standards for evaluating the reasonableness of payments under a viatical settlement contract for a person who is terminally or chronically ill. This 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 policy. If the insured is not terminally or chronically ill, a viatical settlement provider shall pay an amount greater than the cash surrender value or accelerated death benefit then available.

(c) Establish appropriate licensing requirements, fees, and standards for continued licensure for a viatical settlement provider and a fee for life insurance producers;

(d) Require a bond or other mechanism for financial accountability for a viatical settlement provider; and

(e) Adopt rules governing the relationship and responsibilities of an insurer and a viatical settlement provider, a life insurance producer, and others in the business of viatical settlements during the period of consideration or effectuation of a viatical settlement contract.

§ 10-7-616. No preemption--Colorado Securities Act--authority of division of securities

Nothing in this part 6 preempts or otherwise limits the provisions of the “Colorado Securities Act”, article 51 of title 11, C.R.S., or any rules, orders, policy statements, notices, bulletins, or other interpretations issued by or through the commissioner of securities or the commissioner of securities' designee acting pursuant to the “Colorado Securities Act”. Compliance with this part 6 does not constitute compliance with any applicable provision of the “Colorado Securities Act” or any rules, orders, policy statements, notices, bulletins, or other interpretations issued by or through the commissioner of securities or the commissioner of securities' designee acting pursuant to the “Colorado Securities Act”.

§ 10-7-617. Application

A viatical settlement provider lawfully transacting business in this state may continue to do so pending approval or disapproval of the person's application for a license as long as the application is filed with the commissioner not later than thirty days after publication by the commissioner of an application form for licensure of viatical settlement providers. If the publication of the application form is prior to January 1, 2006, the filing of the application shall not be later than thirty days after January 1, 2006.

§ 10-7-618. Continuation of business

Notwithstanding any provision of this part 6 to the contrary, a person who has lawfully negotiated viatical settlement contracts between a viator and one or more viatical settlement providers for at least one year immediately prior to January 1, 2006, may continue to negotiate viatical settlements in this state for a period of one year from January 1, 2006, if such person registers with the commissioner on a form prescribed by the commissioner. Such registration form shall be published by the commissioner not later than thirty days after January 1, 2006, and shall require a person registering to evidence that he or she has lawfully negotiated viatical settlement contracts. The form shall also include an acknowledgment by such person that he or she will operate in accordance with and comply with this part 6.

§ 10-7-619. Viatical settlements cash fund--created

All direct and indirect expenditures of the commissioner and the division in administering this part 6 shall be paid from the viatical settlements cash fund, which fund is hereby created in the state treasury. All fees collected pursuant to this part 6 shall be transmitted to the state treasurer, who shall credit them to the viatical settlements cash fund. All moneys credited to the viatical settlements cash fund shall be used as provided in this section, shall not be deposited in or transferred to the general fund of this state or to any other fund, and shall be subject to annual

appropriation by the general assembly for the purpose of defraying the expenses of the commissioner and the division in administering this part 6. All interest derived from the deposit and investment of moneys in the viatical settlements cash fund shall be credited to the viatical settlements cash fund.

§ 10-7-620. Severability

If any provision of this part 6 is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining provisions of this part 6, and to this end the provisions of this part 6 are expressly declared to be severable.