

Title 760 Department of Insurance
Article 1. General Provisions
Rule 61. Viatical Settlements

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760 IAC 1-61-1 Purpose and scope

Sec. 1. (a) The purpose of this rule (760 IAC 1-61) is to effectuate IC 27-8-19.8 by establishing minimum standards and disclosure requirements to be met by viatical settlement providers with respect to:

- (1) viatical settlement contracts advertised, solicited, negotiated, or executed in Indiana; and
- (2) licensing requirements for viatical settlement providers, brokers, and agents.

(b) Except as otherwise specifically provided, this rule (760 IAC 1-61) applies to the following:

- (1) Every person acting as a viatical settlement agent, broker, and provider as defined in IC 27-8-19.8-4.3, IC 27-8-19.8-4.5, and IC 27-8-19.8-5, respectively, on or after January 1, 1999.
- (2) Every viatical settlement contract advertised, solicited, negotiated, or executed in Indiana on or after January 1, 1999.

760 IAC 1-61-2 Definitions

Sec. 2. In addition to the definitions in IC 27-8-19.8, the following definitions apply throughout this rule (760 IAC 1-61):

(1) "Affiliate of a specific person" means a person who directly, or indirectly through one (1) or more intermediaries:

(A) controls;

(B) is controlled by; or

(C) is under common control with;

the person specified.

(2) "Catastrophic or life threatening illness or condition" means an illness, disease, or condition that can reasonably be expected to result in death in thirty-six (36) months or less.

(3) "Commissioner" means the commissioner of the department of insurance.

(4) "Disclosure form" means a document containing the disclosures required by IC 27-8-19.8-23 and this rule (760 IAC 1-61).

(5) "Life expectancy" means the mean of the number of months the individual insured under the life insurance policy to be viaticated can be expected to live as determined by the viatical settlement provider or a third party considering medical records and appropriate experiential data.

(6) "Net death benefit" means the amount of the life insurance policy or certificate to be viaticated less any outstanding debts or liens.

(7) "Viatical settlement broker" means a person that represents only the viator and, for a fee, commission, or other valuable consideration, solicits, offers, or attempts to negotiate a viatical settlement contract between a viator and one (1) or more viatical settlement providers.

760 IAC 1-61-3 Licensure and regulation of viatical settlement agents and brokers

Sec. 3. (a) No person may act as a viatical settlement agent or a viatical settlement broker unless the person:

(1) is licensed as a life insurance agent under IC 27-1-15.5; and

(2) has filed with the commissioner a declaration that contains:

(A) a statement the person intends to act as a viatical settlement broker or a viatical settlement agent in Indiana;

(B) a list of the states in which the person is or has ever been licensed to act as, is acting as, or has acted as a viatical settlement agent or broker and the current status of any such license, including if the license has ever been revoked or suspended; and

(C) a report describing the nature and status of:

(i) any formal or informal disciplinary or other regulatory action by the federal government or any level of government in any state; or

(ii) any administrative, civil, or criminal action;

that is pending or has been taken against the applicant with respect to the business of viatical settlements or life insurance.

(b) A viatical settlement broker is deemed to represent only the viator's interests and shall owe a fiduciary duty to the viator to act according to the viator's instructions and in the viator's best

interests.

(c) A viatical settlement broker may not seek or obtain any compensation from the viator without the written agreement of the viator obtained before the broker performs any services in connection with the viatical settlement transaction.

(d) A viatical settlement agent is deemed to represent only the viatical settlement provider. A viatical settlement agent may not seek or obtain any compensation from the viator in connection with the viatical settlement transaction.

(e) In addition to the disclosure requirement set forth in subsection (a), a person who acts as a viatical settlement agent or broker shall comply with and be subject to all provisions of Indiana insurance law and rules applicable to a life insurance agent as defined in IC 27-1-15.5-2.

760 IAC 1-61-4 Licensure of viatical settlement providers

Sec. 4. (a) No person shall act as a viatical settlement provider unless the person has first obtained a license from the commissioner.

(b) An application for licensing as a viatical settlement provider must be submitted on an application form that may be obtained from the department of insurance at 311 West Washington Street, Suite 300, Indianapolis, Indiana 46204. The application form is adopted by reference.

(c) A licensing fee in the amount of one thousand dollars (\$ 1,000) shall accompany the completed application form.

(d) The application for license as a viatical settlement provider shall furnish all of the applicable information as follows:

(1) The name, address, and organizational structure of the applicant.

(2) Certified copies of the applicant's organization documents, including, but not limited to:

(A) articles of incorporation and any amendments thereto; and

(B) a certificate of incorporation and any amendments thereto.

(3) The identity of all of the following:

(A) Stockholders holding ten percent (10%) or more of the voting securities.

(B) Investors holding a ten percent (10%) or greater interest.

(C) Partners.

(D) Corporate officers.

(E) Trustees.

(F) If an association, all of the members.

(G) Any affiliates, together with a chart showing the relationship of the applicant to all affiliates. Any affiliate that is an insurance company licensed in Indiana shall be identified as such.

(4) Biographical affidavits of all of the following:

(A) Officers.

(B) Directors.

(C) Stockholders holding ten percent (10%) or more voting securities.

(D) Investors holding ten percent (10%) or greater interest.

(E) Partners.

(F) Trustees.

(G) Members, if an association.

(5) A list of states in which the viatical settlement provider is licensed on the date of application, a copy of each license, and a list of the states in which the viatical settlement provider is or has ever engaged in business as a viatical settlement provider.

(6) A list of all licenses from any level of federal government or government of any state applied for by or currently or previously held by the applicant, its officers, directors, trustees, stockholders holding ten percent (10%) or more of voting securities, investors holding a ten percent (10%) or greater interest, partners, or members (if an association), and a statement showing the current status of any such license, including whether it has ever been denied, revoked, or suspended.

(7) A report stating whether any formal or informal regulatory action by any level of government of any state or the federal government, including the Securities and Exchange Commission, has been taken or is pending against the applicant or its officers, directors, trustees, stockholders holding ten percent (10%) or more of voting securities, investors holding a ten percent (10%) or greater interest, partners, or members (if an association), and the status of the action.

(8) A report stating whether any criminal or civil action involving or alleging an offense that includes fraudulent acts or breach of contract has been taken or is pending against the applicant or its officers, directors, trustees, stockholders holding ten percent (10%) or more of voting securities, investors holding a ten percent (10%) or greater interest, partners, or members (if an association), and the status of the action.

(9) A copy of the applicant's most recent financial statement. A financial statement, for purposes of this rule (760 IAC 1-61), consists of a financial statement that is compiled in a manner consistent with generally accepted accounting principles (GAAP) and is accompanied by either an opinion by an independent accounting firm or a statement by an officer of the applicant,

representing that the financial statement was prepared in a manner consistent with GAAP and accurately reflects the financial condition of the applicant.

(10) Copies of any documents filed by the applicant with the Securities and Exchange Commission and any state securities regulator.

(11) A detailed plan of operations for the applicant's business, including, but not limited to, information regarding or identifying the following items:

(A) Escrow accounts and banks.

(B) Advertising and agents, brokers, or other distribution system to be used.

(C) Marketing techniques to be used.

(D) Market training program.

(E) Entities with whom the applicant will contract for services in connection with the acquisition, pricing, and servicing of viatical settlement contracts.

(12) Such other information as the commissioner reasonably may require.

(e) A viatical settlement provider must possess net worth in the amount of not less than one hundred fifty thousand dollars (\$ 150,000) to qualify for and maintain its license. For purposes of this subsection, in computing capital, the value of viaticated policies shall not be included.

(f) A viatical settlement provider may obtain financing for the execution, acquisition, or retention of a viatical settlement contract only:

(1) through the services of an individual licensed to sell investments in viatical settlement contracts under applicable state laws; or

(2) from an institutional lender, insurance company, or reinsurer whose sole activity related to the transaction is providing funds to effect the viatical settlement and who has an agreement in writing with the viatical settlement provider to finance viatical settlement contracts.

(g) A viatical settlement provider shall report any material change in the information in the application or renewal form referred to in this section and section 5 of this rule, including any change of a residential or business address, not later than the thirtieth day after the date on which the change takes effect.

(h) The application process shall be as follows:

(1) The department of insurance shall have thirty (30) days after receipt of an application to determine whether the application is complete. If an application is not complete, the department of insurance will give the applicant written notice of the required information necessary to complete the application. The department shall take no further action on the application until the required information is submitted.

(2) The department of insurance shall have thirty (30) days from the date the application is determined to be complete under subdivision (1) to process the application and approve or deny it.

(i) If the commissioner denies an application for a license, the commissioner shall notify the applicant and advise the applicant in writing of the reasons for the denial of the license. Not later than sixty (60) days after receiving a notice from the commissioner under this subsection, the applicant may make written demand upon the commissioner for a hearing to determine the reasonableness of the commissioner's action. Such hearing shall be held within thirty (30) days from the date of receipt of the written demand of the applicant and shall be conducted in accordance with IC 4-21.5-3.

760 IAC 1-61-5 Renewal and maintenance of viatical settlement provider license

Sec. 5. (a) A viatical settlement provider must apply to the department of insurance for a license renewal on or before June 1 of each year, commencing June 1, 2000. A renewal application may be obtained from the department of insurance at the address listed in section 4(b) of this rule (760 IAC 1-61-4). The renewal application is hereby adopted by reference.

(b) A renewal fee in the amount of five hundred dollars (\$ 500) must accompany the renewal application.

(c) If a complete renewal application and the renewal fee are received by the department of insurance on or before June 1 of each year, the provider may continue to operate under its current license until the renewal is denied or issued by the department of insurance.

(d) If a complete renewal application and fee are not received on or before June 1, the license shall terminate automatically on July 1. A licensee may not act as a viatical settlement provider until the department issues the license renewal.

(e) If a complete renewal application and fee are not received on or before December 31 of the year that a license terminates pursuant to subsection (d), a viatical settlement provider must submit a new application and application fee pursuant to section 4 of this rule (760 IAC 1-61-4) for a viatical settlement provider license.

(f) If the commissioner denies a renewal application for a license, the commissioner shall notify the applicant and advise the applicant in writing of the reasons for the denial of the renewal of the license. Not later than sixty (60) days after receiving a notice from the commissioner under this subsection, the applicant may make written demand upon the commissioner for a hearing to determine the reasonableness of the commissioner's action. Such hearing shall be held within thirty (30) days from the date of receipt of the written demand of the applicant and shall be conducted in accordance with IC 4-21.5-3.

(g) A viatical settlement provider must renew and maintain a license until either of the following events occurs:

(1) The date the viatical settlement provider properly assigns, sells, or otherwise transfers to another viatical settlement provider licensed in this state any viatical settlement contracts held by the provider that have not matured.

(2) The date that the last viatical settlement contract has matured.

(h) If the license of a viatical settlement provider who has contracts that have not yet matured is denied, suspended, revoked, or terminated, the provider shall appoint another viatical settlement provider licensed in Indiana to make all inquiries to the viator, or the viator's designee, regarding health status of the viator or any other matters.

760 IAC 1-61-6 Requirements for viatical settlement contracts

Sec. 6. The following requirements apply to any viatical settlement contract that will be advertised, solicited, negotiated, or executed in Indiana:

(1) The form of contract or any amendment to it shall not be used until it is filed with and approved by the commissioner.

(2) The contract shall require payment in a lump sum equal to the full amount of the proceeds to a trust or escrow account in a state or federally chartered financial institution whose deposits are insured by the Federal Deposit Insurance Corporation. Payment into the escrow account shall be made immediately upon receipt of a signed viatical settlement contract. A trustee or escrow agent independent of the parties to the viatical settlement contract shall manage the account. The proceeds shall be paid to the viator by wire transfer to the account of the viator, by certified check, or by cashier's check, in accordance with the time periods set forth in IC 27-8-19.8-24.2(b).

(3) The contract shall contain the following rescission provisions:

(A) It shall allow unconditional rescission by the viator in accordance with time periods no less favorable than those set forth in IC 27-8-19.8-21(b)(2).

(B) The rescission provision shall be prominently displayed on the first page of the contract and shall set forth the method for giving notice of rescission. If notice of rescission is given by mail, it shall be deemed to be given when deposited in the United States mail, first class postage prepaid.

(C) It shall provide that if the insured dies during the period of time allowed for rescission, the contract will be automatically rescinded, subject to repayment of all proceeds to the viatical settlement provider.

(4) If a viatical settlement provider enters into a viatical settlement contract that allows the viator to retain an interest in the policy that is being viaticated, the viatical settlement contract shall contain the following provisions:

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

(B) A provision that the viatical settlement provider will, upon acknowledgment of the completion of the assignment or transfer of the life insurance policy by its issuing company, either:

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

(ii) send to the viator a copy of the document sent from the insurance company to the viatical settlement provider that acknowledges the viator's nonviaticated interest in the policy.

(C) A provision that apportions the premiums to be paid by the viatical settlement provider and the viator. The viatical settlement contract may specify that all premiums shall be paid by the viatical settlement provider. The contract may also require that the viator reimburse the viatical settlement provider for the premiums attributable to the retained interest.

(5) With respect to policies containing a provision for double or additional indemnity for accidental death, the contract shall provide that the additional payment shall remain payable to the beneficiary last named by the viator prior to entering into the viatical settlement contract, or to such other beneficiary, other than the viatical settlement provider, as the viator may thereafter designate, or in the absence of a beneficiary, to the estate of the viator.

760 IAC 1-61-7 Disclosure forms

Sec. 7. The following requirements apply to each disclosure form that will be used in connection with a viatical settlement contract that is negotiated or executed in Indiana:

(1) The disclosure form shall be provided to the viator prior to the date the viator signs the viatical settlement contract.

(2) The disclosures required by IC 27-8-19.8-23 shall be prominently displayed.

(3) The disclosure required by IC 27-8-19.8-23(7) shall specifically address at least the following rights and benefits if available under the insurance policy to be viaticated:

(A) Guaranteed insurability options.

(B) Accidental death or accidental death and dismemberment benefits.

(C) Disability income or loss of income protection.

(D) Conversion rights.

(E) Waiver of premium benefits.

(F) Family, spousal, or children's riders or benefits, and any other comparable coverage for a life other than the insured's.

(4) The disclosure form shall set forth the procedures for contacts with the insured in compliance with IC 27-8-19.8-24.9. The disclosure form shall contain a statement that contacts for the purposes of determining the health status of the insured must be made by mail unless the parties agree to another method. If the insured agrees to contact by a method other than mail, the alternative method or methods of contact must be included in the contract.

(5) The disclosure form shall contain the following or substantially similar language, "All medical, financial, and personal information solicited or obtained by a viatical settlement agent, broker, or provider about a viator and an insured, including the identity of the viator and insured and the identity of their family members or significant other, is confidential. The information shall not be disclosed to any person unless disclosure is:

(A) necessary and the viator and insured have provided written consent to the disclosure;

(B) provided in response to an investigation or examination by the commissioner or other governmental officer or agency; or

(C) in connection with a transfer of the contract or policy to another licensed viatical settlement provider or to an entity that provides financing to effect the contract under a written agreement with a licensed viatical settlement provider."

(6) The disclosure form shall contain the following or substantially similar language: "Your insurance policy provides financial protection to your beneficiaries. If you sell your policy to a viatical settlement provider, your beneficiaries will no longer have that protection. Before you sell your policy, you should consider whether that protection is needed. Other financial options may be available to you. Consult your financial advisor or insurance company for more information."

(7) The viatical settlement provider must keep a copy of each disclosure statement used in connection with each executed viatical settlement contract. The provider must retain any disclosure statements and signed affidavits for at least five (5) years after the death of the insured.

760 IAC 1-61-8 Reporting requirements

Sec. 8. On or before March 1 of each calendar year, each viatical settlement provider licensed in Indiana shall make a report of all viatical transactions for the previous calendar year where the viator is a resident of Indiana or was a resident of Indiana at the time the contract was executed and for all states in the aggregate containing the following information:

(1) The following for each viatical settlement contract executed or acquired during the reporting period:

(A) Date of viatical settlement contract.

(B) Life expectancy of the insured at the time of contract, in months.

(C) Face amount of the policy viaticated.

(D) Net death benefit viaticated.

(E) Estimated total premiums to keep the policy in force for life expectancy.

(F) Net amount paid to viator.

(G) Source of policy:

(i) A-agent;

(ii) B-broker;

(iii) D-direct purchase; or

(iv) SM-secondary market.

(H) Type of coverage:

(i) I-individual; or

(ii) G-group.

(I) Within the contestable or suicide period, or both, at the time of viatical settlement (yes or no).

(J) Primary International Classification of Diseases (ICD) diagnosis code, in numeric format, as defined by the international classification of diseases, as most recently published by the United States Department of Health and Human Services.

(K) Type of funding:

(i) I-institutional; or

(ii) P-private.

(L) A copy of the pricing memorandum described in section 9 of this rule (760 IAC 1-61-9). At the time of submission of the pricing memorandum or any subsequent supporting documentation, the viatical settlement provider may request the commissioner to withhold that material from public inspection in order to preserve trade secrets in accordance with IC 5-24-3-4. Each page covered by such request shall be clearly marked "confidentiality requested", and all pages so marked shall be placed in a separate envelope.

(2) The following for each viatical settlement contract where death has occurred during the reporting period:

(A) Date of viatical settlement contract.

(B) Life expectancy of the insured at the time of contract, in months.

(C) Net death benefit collected.

(D) Total premiums paid to maintain the policy (or indicate WP--waiver of premium or NA--not applicable).

(E) Net amount paid to viator.

(F) Primary International Classification of Diseases (ICD) diagnosis code, in numeric format, as defined by the international classification of diseases, as most recently published by the United States Department of Health and Human Services.

(G) Date of death.

(H) Amount of time between the date of contract and the date of death, in months.

(I) Difference between the number of months that passed between the date of the contract and the date of death and the life expectancy, in months, as determined by the reporting company.

(J) Date policy was issued to viator.

(3) Name and address of each viatical settlement agent and broker through whom the reporting company purchased a policy from a viator who resided in Indiana at the time of the contract.

(4) Number of policies reviewed and rejected.

(5) Number of policies purchased in the secondary market as a percentage of total policies purchased.

760 IAC 1-61-9 Standards for evaluation of reasonable payments

Sec. 9. (a) A viatical settlement provider shall not enter into a viatical settlement that provides a payment to the viator that is unreasonable or unjust. In determining whether a payment is unreasonable or unjust, the commissioner may consider relevant factors, including any of the following:

(1) The life expectancy of the viator.

(2) The applicable rating by a rating service generally recognized in the insurance industry, regulators, and consumer groups of the insurance company that issued the viaticated policy.

(3) The prevailing discount rates in the viatical settlement market in this state, or, if insufficient data is available for Indiana, the prevailing rates nationally or in other states that maintain this data.

(b) A viatical settlement provider shall prepare and maintain a pricing memorandum providing a description of the method and assumptions used in determining the value to be paid to viators. The memorandum shall include a description, which may use reasonable ranges, of the following:

(1) The procedure used to determine the insured's life expectancy, including medical, evaluation, and use of health care professionals in such evaluation.

(2) The portion of the discount (difference between the death benefit of the viaticated policy or certificate and the proceeds paid by the viatical settlement provider to the viator) due to market value interest rate (current value of money) and how this interest rate is determined.

- (3) The portion of the discount due to agent or broker compensation paid by the viatical settlement provider.
- (4) The portion of the discount that is the viatical settlement provider's operating costs in connection with viatical settlement contracts, including acquisition and maintenance cost and risk charge.
- (5) The portion of the discount due to other overhead costs and profit margin.
- (6) The effect, if any, that policy loans, surrender charges, and the net cash surrender value in the insurance plan have on the pricing determination.
- (7) How provision is made in the settlement determination for future insurance policy premiums, dividends, or excess amounts, if any.
- (8) What provisions, if any, are made in the settlement determination for supplemental insurance benefits or riders.

760 IAC 1-61-10 Miscellaneous

Sec. 10. (a) A viatical settlement provider, agent, or broker shall not discriminate:

(1) in the solicitation or making of viatical settlements on the basis of race, age, sex, national origin, creed, religion, occupation, marital or family status, or sexual orientation; or

(2) between viators with dependents and without dependents.

(b) A viatical settlement provider, agent, or broker shall not pay or offer to pay any finder's fee, commission, or other compensation to any insured's physician, or to an attorney, accountant, or other person providing medical, legal, financial planning, or social services to the viator, or to any other person acting as an agent of the viator with respect to the viatical settlement.

(c) A viatical settlement provider shall not act also as a viatical settlement broker in the same viatical settlement, whether entitled to collect a fee, commission, or other compensation in the transaction.

(d) A viatical settlement provider shall not knowingly solicit investors who have treated or have been asked to treat the illness, disease, or condition of the insured whose coverage would be the subject of the investment.

(e) A viatical settlement agent, broker, or provider shall not disclose patient identifying information to any person, except in either of the following cases:

(1) With the written consent of the viator and insured obtained prior to the disclosure of the information. The written consent must refer to the particular disclosure to be made and must be retained by the agent, broker, or provider for at least five (5) years after receipt.

(2) In response to a subpoena provided that the viatical settlement agent, broker, or provider

shall notify the viator and the insured of the existence of the subpoena in writing at the viator's and the insured's last known addresses within five (5) business days after receiving notice of the subpoena.

(f) The following standards shall apply to any advertising regarding viatical settlement contracts:

(1) Advertising related to the viatical settlement shall be truthful and not misleading by fact or implication.

(2) If the advertiser emphasizes the speed with which the viatication will occur, 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.

(3) 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 advertiser during the previous six (6) months.

760 IAC 1-61-11 Insurance company practices

Sec. 11. (a) Life insurance companies authorized to do business in Indiana shall respond to a request for verification of coverage from a viatical settlement provider, agent, or broker within thirty (30) calendar days of the date a request is received, subject to the following conditions:

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

(2) In the case of an individual policy, submission of a form substantially similar to the standardized viatical settlement verification of coverage for individual policies set forth in section 12(a) of this rule, which has been completed by the viatical settlement provider, broker, or agent.

(3) In the case of group insurance coverage, submission of a form substantially similar to the standardized viatical settlement verification of coverage for group policies set forth in section 12(b) of this rule (760 IAC 1-61-12), which has been completed by the following:

(A) The viatical settlement provider, broker, or agent.

(B) The group policyholder, to the extent the information is available to the policyholder.

(b) A life insurance company and a viatical settlement provider, broker, or agent may use a verification of coverage form different from the form set forth in section 12(a) or 12(b) of this rule (760 IAC 1-61-12) if the alternative form has been mutually agreed upon in writing prior to the submission of the request for verification of coverage.

(c) A life insurance company may not charge a fee for responding to a request for verification of coverage from a viatical settlement provider, broker, or agent in compliance with this section in excess of any usual and customary charges to policyholders, certificate holders, or insureds for similar services.

(d) A life insurance company may send an acknowledgment of receipt of a request for verification of coverage to the policyholder or certificate holder and, where the policyholder or certificate holder is other than the insured, to the insured. The acknowledgment may contain a general description of any accelerated death benefit that is available under a provision of or rider to the life insurance contract.