

**TITLE 13        INSURANCE**  
**CHAPTER 9     LIFE INSURANCE**  
**PART 15       VIATICAL SETTLEMENTS**

**13.9.15.1       ISSUING AGENCY:** Public Regulation Commission, Insurance Division.  
[13.9.15.1 NMAC – N, 7-1-00]

**13.9.15.2       SCOPE:** This rule applies to all persons soliciting, negotiating, financing, or transacting viatical settlements in New Mexico.  
[13.9.15.2 NMAC – N, 7-1-00]

**13.9.15.3       STATUTORY AUTHORITY:** NMSA 1978 Sections 59A-2-9 and 59A-20A-10.  
[13.9.15.3 NMAC – N, 7-1-00]

**13.9.15.4       DURATION:** Permanent.  
[13.9.15.4 NMAC – N, 7-1-00]

**13.9.15.5       EFFECTIVE DATE:** July 1, 2000, unless a later date is cited at the end of a section.  
[13.9.15.5 NMAC – N, 7-1-00]

**13.9.15.6       OBJECTIVE:** The purpose of this rule is to implement the Viatical Settlements Act, NMSA 1978 Section 59A-20A-1 et seq.  
[13.9.15.6 NMAC – N, 7-1-00]

**13.9.15.7       DEFINITIONS:** In addition to the definitions in NMSA 1978 Section 59A-20A-2, as used in this rule:

- A.       chronically ill** means:
- (1) being unable to perform at least two (2) activities of daily living (i.e., eating, toileting, transferring, bathing, dressing or continence);
  - (2) requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment; or
  - (3) having a level of disability similar to that described in paragraph (1) of subsection A of 13.9.15.7 NMAC as determined by the Secretary of Health and Human Services;
- B.       insured** means the person covered under the policy being considered for viatication;
- C.       life expectancy** means the mean of the number of months the individual insured under the life insurance policy to be viaticated can be expected to live as determined by the viatical settlement provider considering medical records and appropriate experiential data;
- D.       net death benefit** means the amount of the life insurance policy or certificate to be viaticated less any outstanding debts or liens;
- E.       patient identifying information** means an insured's name, address, telephone number, facsimile number, electronic mail address, photograph or likeness, employer, employment status, social security number, or any other information that is likely to lead to the identification of the insured; and
- F.       terminally ill** means having an illness or sickness that can reasonably be expected to result in death in twenty-four (24) months or less.  
[13.9.15.7 NMAC – N, 7-1-00]

**13.9.15.8       LICENSE REQUIREMENTS:**

- A.       A viatical settlement provider or broker transacting business in this state may continue to do so pending issuance of the provider or broker's license as long as its application for a license is filed with the Superintendent by July 1, 2000.**
- B.       The Superintendent may ask for all information necessary to determine whether the applicant for a license as a viatical settlement provider or broker complies with the requirements of NMSA 1978 Section 59A-20A-3.**

**C.** The license issued to a viatical settlement provider or broker shall be a limited license that allows the viatical settlement provider or broker to operate only within the scope of its license.

**D.** A viatical settlement provider or broker shall file with the Superintendent within thirty (30) days a supplement to its application showing any changes to the members, officers, representatives and designated employees authorized to act under its license.

[13.9.15.8 NMAC - N, 7-1-00]

#### **13.9.15.9 RENEWAL OF LICENSE:**

**A.** A viatical settlement provider or broker may renew its license yearly by filing an application for renewal no less than thirty (30) days before the anniversary date of licensure. The Superintendent shall refuse to renew a license if the licensee fails to:

(1) file a current copy of a letter of good standing obtained from the filing officer of the applicant's state of domicile;

(2) pay the renewal fee; and

(3) submit the reports required in NMSA 1978 Section 59A-20A-6.

**B.** If a viatical settlement provider has, at the time of renewal, viatical settlements for which the insured has not died, it shall do one of the following:

(1) renew or maintain its current license until the earlier of:

(a) the date the viatical settlement provider properly assigns, sells, or otherwise transfers the viatical settlements for which the insured has not died; or

(b) the date that the last insured covered by a viatical settlement transaction has died; or

(2) appoint, in writing, either the viatical settlement provider that entered into the viatical settlement, the broker that received commissions from the viatical settlement, if applicable, or any other viatical settlement provider or broker licensed in this state, to make all inquiries to the viator or the viator's designee regarding the health status of the viator or any other matters.

[13.9.15.9 NMAC - N, 7-1-00]

**13.9.15.10 STANDARDS FOR EVALUATION OF REASONABLE PAYMENTS:** A viatical settlement company or broker 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 Superintendent may consider, among other factors, the life expectancy of the viator, the applicable rating of the insurance company that issued the subject policy by a rating service generally recognized by the insurance industry, regulators and consumer groups, and the prevailing discount rates in the viatical settlement market in New Mexico, or if insufficient data is available for New Mexico, the prevailing rates nationally or in other states that maintain this data.

[13.9.15.10 NMAC - N, 7-1-00]

**13.9.15.11 REPORTING REQUIREMENTS:** On March 1 of each calendar year, each viatical settlement provider licensed in this state shall report all viatical settlement transactions for which the viator is a resident of this state, and for all states in the aggregate, containing the following information for the previous calendar year:

**A.** For viatical settlements contracted during the reporting period:

(1) date of viatical settlement contract;

(2) viator's state of residence at the time of the contract;

(3) mean life expectancy of the insured at time of contract, in months;

(4) face amount of policy viaticated;

(5) net death benefit viaticated;

(6) estimated total premiums to keep policy in force for mean life expectancy;

(7) net amount paid to viator;

(8) source of policy (B-Broker; D-Direct Purchase; SM-Secondary Market);

(9) type of coverage (I-Individual or G-Group);

(10) whether or not viatical settlement was within the contestable or suicide period, or both;

(11) primary international classification of diseases (ICD) Diagnosis Code, in numeric format, as published by the U.S. Department of Health and Human Services; and

(12) type of funding (I-Institutional; P-Private).

- B.** For viatical settlements for which death has occurred during the reporting period:
- (1) date of viatical settlement contract;
  - (2) viator's state of residence at the time of the contract;
  - (3) mean life expectancy of the insured at time of contract in months;
  - (4) net death benefit collected;
  - (5) total premiums paid to maintain the policy (WP-Waiver of Premium; NA-Not Applicable);
  - (6) net amount paid to viator;
  - (7) primary international classification of diseases (ICD) Diagnosis Code, in numeric format, as published by the U.S. Department of Health and Human Services;
  - (8) date of death;
  - (9) amount of time between date of contract and date of death, in months;
  - (10) difference between the number of months that passed between the date of contract and the date of death and the mean life expectancy in months as determined by the reporting company;
- C.** name and address of each viatical settlement broker through whom the reporting company purchased a policy from a viator who resided in this state at the time of contract;
- D.** number of policies reviewed and rejected; and
- E.** number of policies purchased in the secondary market as a percentage of total policies purchased.
- [13.9.15.11 NMAC - N, 7-1-00]

**13.9.15.12 PAYMENT OF PROCEEDS:**

- A.** A trustee or escrow agent shall pay the proceeds of a viatical settlement made pursuant to NMSA 1978 Section 59A-20A-9D by means of wire transfer to the account of the viator or by certified check or cashier's check made payable to the viator.
- B.** A viatical settlement provider shall pay the proceeds of a viatical settlement to the viator in a lump sum except where the viatical settlement provider has purchased an annuity or similar financial instrument issued by a licensed insurance company or bank, or an affiliate of either. Neither the viatical settlement provider nor the escrow agent may retain a portion of the proceeds.
- [13.9.15.12 NMAC - N, 7-1-00]

**13.9.15.13 ADVERTISING STANDARDS:**

- A.** Advertising related to the viatical settlement shall be truthful and not misleading by fact or implication.
- B.** If the advertising states 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.
- C.** If the advertising states 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 past six (6) months.
- [13.9.15.13 NMAC - N, 7-1-00]

**13.9.15.14 VIATOR RETENTION PROVISIONS:** If a viatical settlement provider enters into a viatical settlement that allows the viator to retain an interest in the policy, the viatical settlement contract shall contain a provision that:

- A.** the viatical settlement provider will effect the transfer of only the amount of the death benefit viaticated. Benefits in excess of the amount viaticated shall be paid directly to the viator's beneficiary by the insurance company;
- B.** the viatical settlement provider will, upon acknowledgment of the perfection of the transfer, either:
- (1) advise the insured, in writing, that the insurance company has confirmed the viator's interest in the policy; or
  - (2) send a copy of the instrument sent from the insurance company to the viatical settlement company that acknowledges the viator's interest in the policy; and
- C.** apportions the premiums to be paid by the viatical settlement company and the viator. The viatical settlement contract may specify that all premiums shall be paid by the viatical settlement company and may also

require that the viator reimburse the viatical settlement provider for the premiums attributable to the retained interest.  
[13.9.15.14 NMAC - N, 7-1-00]

**13.9.15.15 DISCLOSURE DOCUMENTS:**

**A.** A viatical settlement provider or broker shall provide a disclosure document containing the disclosures required in NMSA 1978 Section 59A-20A-8 and this section before or concurrent with taking an application for a viatical settlement contract.

**B.** The disclosure document shall contain the following language: "All medical, financial, personal, or patient identifying information solicited or obtained by a viatical settlement company or viatical settlement broker about a viator and insured, including the viator and insured's identity or the identity of family members, a spouse or a significant other, is confidential." The disclosure document shall advise the viator and the insured that such information may be provided to financing entities, including individual and institutional purchasers.

**C.** A viatical settlement provider or broker shall provide a copy of Appendix A, set forth in 13.9.15.18 NMAC, before or concurrent with taking an application for a viatical settlement contract.  
[13.9.15.15 NMAC - N, 7-1-00]

**13.9.15.16 PROHIBITED PRACTICES:**

**A.** A viatical settlement provider or broker shall obtain from a person that is provided with patient identifying information a signed affirmation that the person will not further divulge the information without procuring the express written consent of the insured for the disclosure, except that if a viatical settlement provider or broker is served with a subpoena and therefore compelled to produce records containing patient identifying information, it shall notify the viator and the insured in writing at their last known addresses within five (5) business days after receiving notice of the subpoena.

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

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

**D.** A viatical settlement provider shall not use a longer life expectancy than is realistic in order to reduce the payout to which the viator is entitled.

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

**F.** A viatical settlement provider 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 or financial planning services to the viator, or to any other person acting as an agent of the viator with respect to the viatical settlement.

**G.** A viatical settlement provider shall not knowingly solicit investors who have treated or have been asked to treat the illness of the insured whose coverage would be the subject of the investment.  
[13.9.15.16 NMAC - N, 7-1-00]

**13.9.15.17 INSURANCE COMPANY PRACTICES:**

**A.** Life insurance companies authorized to do business in this state shall respond to a request for verification of coverage from a viatical settlement provider or broker within thirty (30) calendar days of the date a request is received. The request shall be accompanied by:

(1) a current authorization consistent with applicable law, signed by the policyowner or certificateholder;

(2) in the case of an individual policy, a form substantially similar to Appendix B, which has been completed by the viatical settlement provider or broker in accordance with the instructions on the form.

(3) in the case of group insurance coverage a form substantially similar to Appendix C, which has been completed by the viatical settlement provider or broker in accordance with the instructions on the form, and which has previously been referred to the group policyholder and completed to the extent the information is available to the group policyholder.

**B.** A life insurance company and a viatical settlement provider or broker may use another verification

of coverage form that has been mutually agreed upon in writing in advance of submission of the request.

**C.** A life insurance company may not charge a fee for responding to a request for verification of coverage from a viatical settlement provider or broker in excess of any usual and customary charges to contractholders, certificateholders or insureds for similar services.

**D.** The life insurance company may send an acknowledgment of receipt of the request for verification of coverage to the policyowner or certificateholder and, where the policy owner or certificate owner 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.

[13.9.15.17 NMAC - N, 7-1-00]

## **13.9.15.18 APPENDIX A: BUYER'S GUIDE**

### **Selling Your Life Insurance Policy**

Today it's possible for you to sell your life insurance policy to someone else (a viatical settlement provider) for an immediate cash payment. This financial arrangement, known as a viatical settlement, is best suited for people who are living with an immediate life-threatening illness and facing tough financial choices.

It may not always be in your best interest to sell your life insurance policy. Before you take action, you want to be sure you understand:

1. What future benefits you may lose
2. What other options may be available

Selling your life insurance policy is a complex financial arrangement. This guide will help you make an informed decision.

We recommend that you:

1. Evaluate your needs
2. Check all your options
3. Understand how the process works
4. Know your rights
5. Check with your state insurance department.

#### **Step 1, Evaluate your needs**

Before you sell your policy and give up valuable insurance protection, think about whether your need for life insurance has changed since you bought the policy. If it hasn't, selling your policy may not be the right choice. If you sell your policy now, your beneficiaries **will not** be paid a benefit at your death.

If you sell your policy now, remember premiums go up a lot as you grow older. You may not want to pay the higher cost to replace your coverage later.

#### **Step 2, Check all of your options**

You may be able to get the cash you need now without selling your policy.

#### **Policy Cash Values**

Contact your current life insurance agent or company to see if you have any cash value in your policy. Ask if you can:

1. borrow from the cash value and still keep the insurance in force,
2. cancel the policy for its current cash value,
3. use the cash value as collateral to get a loan from a financial institution.

Your insurance company must tell you about your options if you ask.

### **Accelerated Death Benefits**

Find out if your policy has an “accelerated death benefit.” It may be your best option.

Many life insurance policies do have an accelerated death benefit. With that benefit, policyholders who are terminally ill, affected with certain diseases or permanently confined in a nursing home can access 50% or more of a policy’s death benefit while still living. An accelerated death benefit could pay you a large part of your policy’s death benefit and you could keep your policy.

A very important feature of the accelerated benefit is that when the policyholder dies, the beneficiaries get the remaining death benefit. This means that eventually 100% of the policy benefits will be paid out either to the insured or the beneficiary.

### **Other considerations**

Think about what it will mean if you do sell your policy. Check out the tax implications. Not all proceeds from a viatical settlement are tax-free.

Find out if creditors could claim any of the money you would get from a viatical settlement.

Find out if you will lose any public assistance benefits such as Medicaid or other government benefits if you accept a cash settlement for your life policy.

### **Comparison shop**

To learn the market value of your policy, it’s a good idea to contact three to five viatical settlement providers. Or you could use a viatical settlement broker who would contact several viatical settlement providers for you. Your financial advisor can help you decide whether to work with a viatical settlement provider or through a viatical settlement broker.

### **Summary**

Everyone’s financial situation is different. A viatical settlement may or may not be the best approach for you. Check it out for yourself. We recommend that you ask an advisor who is qualified to review your finances to help you review your options.

### **Step 3, How the process works**

If you decide to sell your life insurance policy to a viatical settlement provider, you will enter into a viatical settlement agreement with the provider. You, the seller, agree to accept a cash payment for your policy. The amount will be less than the face amount the policy would pay upon your death. (For example, you might agree to accept a \$75,000 cash payment for a \$100,000 policy.)

The viatical settlement provider buying your policy:

1. becomes the new owner of your policy,
2. names the beneficiary,

3. collects the full death benefit when you die,
4. begins paying premiums on the policy, and
5. may sell your policy again.

There are four basic phases required to complete a viatical transaction.

#### **Phase 1—Qualifying to sell your policy (underwriting)**

The viatical settlement provider will need information about you before making an offer. Usually it will take some preliminary information from you over the phone and send you this paperwork to sign:

1. a medical release form so the viatical settlement provider can get and review your medical records
2. an authorization form to contact your insurance company to confirm benefit, premium, and ownership of your policy.

To avoid delays, it's important that you give complete and accurate information about your medical history.

If you apply with more than one viatical settlement provider, each will contact your doctor for medical records and your insurance company for policy information.

#### **Phase 2—Calculating the offer**

The viatical settlement provider uses the information it gets in the underwriting phase to make an offer. To develop an offer, a viatical settlement provider takes into account various factors including:

1. Estimated life expectancy and medical condition of the insured. Generally, the shorter the life expectancy of the insured, the more the viatical settlement provider will offer for the policy.
2. The amount of life insurance coverage.
3. Loans or advances, if any, previously taken against the policy.
4. Amount of premiums necessary to keep the life insurance policy in force.
5. The rating of the issuing insurance company.
6. Prevailing interest rates.
7. State laws, if any, that require a minimum payment.

#### **Phase 3—Closing the agreement**

1. If you accept an offer, a closing package is forwarded to you, the seller, for approval and signature. Closing documents typically include an offer letter, a viatical settlement contract, and the forms the insurance company needs to transfer ownership of the policy to the viatical settlement provider.
2. The closing documents are then returned to the viatical settlement provider for its signature.
3. The viatical settlement provider will put the cash payment owed to you in escrow, if required, and send the signed insurance change forms to the insurance company to record the change.

#### **Phase 4—Receiving the payment**

Once the insurance company notifies the viatical settlement provider that the changes on the life insurance policy have been recorded, the payment is released to you, the seller, within two business days.

In many states, you may have the right to change your mind about the settlement AFTER you receive the money, provided you return all the money. Typically the law allows 15 days to review your settlement arrangement.

#### **Step 4, Know your rights**

## **State laws**

Many states have laws that provide important consumer protections. You'll want to contact your state insurance department to see which of the following consumer protections your state requires. Determine if:

1. A viatical settlement broker or viatical settlement provider arranging viatical settlements must be licensed with your insurance department.
2. The viatical settlement provider buying your policy must keep your identity and medical history confidential unless you give written consent to tell others.
3. To protect your proceeds, the viatical settlement provider buying your policy must put your money into an escrow account with an independent party during the transfer process.
4. You have the right to change your mind about the settlement AFTER you receive the money, provided you return all the money. You have 15 days to review your settlement arrangement.
5. The new owners of your policy are limited in how often they may contact you about your health status.

## **Federal tax laws**

Two groups of people may receive benefits from a viatical settlement without owing federal income tax:

1. persons who have been diagnosed with a terminal illness and with a life expectancy of 24 months or less and
2. certain chronically ill individuals.

If you qualify for this federal tax-free treatment, you also must use a viatical settlement provider that is licensed in the state where you live, or, in states where licensing is not required, that complies with the standards of the National Association of Insurance Commissioners' Viatical Settlements Model Act.

Remember that, as when interpreting any tax laws, it's always best to check with your own financial advisor.

## **Avoiding consumer fraud**

1. If you're in good health and someone asks you to sell your life insurance policy, proceed with caution. Remember that viatical settlements are intended for people living with life-threatening or chronic illnesses. Contact your state insurance department for more information.
2. If you've been contacted by someone who wants you to buy a policy and then sell it immediately, you should contact your state insurance department. You may be a target for fraud.
3. If you're asked to buy a life insurance policy for the sole purpose of selling it, you may be participating in fraud.
4. If you're asked to invest in a viatical settlement, we recommend you contact your state insurance department to learn more about the issues and risks that might be involved in such an investment.

## **Step 5, Check with your state insurance regulator**

### **State licensing**

Find out if your state licenses viatical settlement providers and brokers. For a complete list of authorized viatical settlement providers, brokers, and their representatives, call the Department of Insurance.

### **Seller checklist**

Before you sell your policy be sure you know the answers to these questions.



### **Evaluating your needs**

1. Do you still need life insurance?
2. Do you have dependents who might rely on your life insurance benefits should anything happen to you?
3. If you don't need life insurance protection now, what are the chances you'll need it in the future?

### **Current policy benefits**

1. Can you borrow from the cash value?
2. Can you cancel the policy for its current cash value?
3. Can you use the cash value as collateral to get a loan from a financial institution?
4. Do you have an accelerated death benefit feature?

### **Taxes and other financial considerations**

1. Is the money you get from selling the policy taxable?
2. Will the money you get from selling the policy affect your eligibility for government benefits?
3. Do you need the advice of a tax or estate planning specialist before you decide to sell your policy?
4. If you sell your policy, can any of your creditors claim the money?

### **Understanding the process**

1. If you sell your policy, who will be the legal owner?
2. Is the viatical settlement provider buying your policy licensed?
3. If you sell your policy, how will the value you get be calculated? What interest rate will be used?
4. If you sell your policy but then change your mind, can you get your money back?
5. Will investors have specific information about you, your family or your health status?
6. How are fees or commissions paid to the viatical settlement broker or provider?

### **Protections in your state**

Contact your state insurance department to find out if there are any laws governing viatical settlements.

[13.9.15.18 NMAC - N, 7-1-00]

#### **13.9.15.19 APPENDIX B: VERIFICATION OF COVERAGE FOR INDIVIDUAL POLICIES**

Appendix B

[13.9.15.19 NMAC - N, 7-1-00]

#### **13.9.15.20 APPENDIX C: VERIFICATION OF GROUP LIFE INSURANCE BENEFITS**

Appendix C

[13.9.15.20 NMAC - N, 7-1-00]

**HISTORY OF 13.9.15 NMAC:** Reserved.