

**TITLE 365. INSURANCE DEPARTMENT
CHAPTER 25. OTHER LICENSEES**

SUBCHAPTER 11. VIATICAL SETTLEMENTS REGULATION

365:25-11-1. Approval of viatical settlement contracts by Commissioner pursuant to 36 O.S. § 4055.5

Viatical settlement contracts filings pursuant to 36 O.S. § 4055.5 shall be filed with the Rate and Form Compliance Division of the Insurance Department.

[**Source:** Added by emergency rule at 15 Ok Reg 4226, eff 7-24-98; Added at 16 Ok Reg 1147, eff. 4-26-99; Amended at 26 Ok Reg 180, eff 12-1-2008 (emergency); Amended at 26 Ok Reg 1654, eff 7-14-09]

365:25-11-2. License requirements for viatical settlement providers [REVOKED]

[**Source:** Added by emergency rule at 15 Ok Reg 4226, eff 7-24-98; Added at 16 Ok Reg 1147, eff. 4-26-99; Revoked at 26 Ok Reg 180, eff 12-1-2008 (emergency); Revoked at 26 Ok Reg 1654, eff 7-14-09]

365:25-11-2.1. Definitions

The following words and terms, when used in this subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"**Act**" means the Viatical Settlements Act of 2008.

"**Insured**" means the person covered under the policy being considered for viatication.

"**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.

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

"**Patient identifying information**" means an insured's 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.

[**Source:** Added at 26 Ok Reg 180, eff 12-1-2008 (emergency); Added at 26 Ok Reg 1654, eff 7-14-09]

365:25-11-3. License requirements

(a) In addition to the information required in Section 4055.3 of Title 36 of this state's statutes, the Commissioner may ask for other information necessary to determine whether the applicant for a license as a viatical settlement provider or viatical settlement broker complies with the requirements of that section.

(b) Applicants must complete an application form specified by the Commissioner for the license

they seek.

(c) The application shall be accompanied by the applicable fee. The license may be renewed yearly by payment of the applicable fee and a current copy of a letter of good standing obtained from the filing officer of the applicant's state of domicile. If a viatical settlement provider or viatical settlement broker fails to pay the renewal fee within the time prescribed, or a viatical settlement provider fails to submit the reports required in O.A.C. 365:25-11-5, the nonpayment or failure to submit the required reports shall, after notice and opportunity for hearing, result in lapse of the license. If a viatical settlement provider has, at the time of renewal, viatical settlements where the insured has not died, it shall do one of the following:

- (1) Renew or maintain its current license status until the earlier of the following events:
 - (A) The date the viatical settlement provider properly assigns, sells or otherwise transfers the viatical settlements where the insured has not died; or
 - (B) The date that the last insured covered by viatical settlement transaction has died.

- (2) Appoint, in writing, either the viatical settlement provider that entered into the viatical settlement, the broker who 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 health status of the insured or any other matters.

(d) An individual licensed as a viatical settlement broker or authorized to act under a license issued to a licensed entity as a viatical settlement broker shall complete 4 hours of department-approved continuing education during each renewal period.

- (1) The required continuing education hours shall include a minimum of:
 - (A) Three (3) hours in life insurance and viaticals; and
 - (B) One (1) hours in ethics.

- (2) A life insurance producer who is operating as a viatical settlement broker pursuant to Section 4055.3(A)(2) of the Act shall not be subject to the continuing education requirements of this subsection (d).

- (3) The license of an individual who fails to comply with this continuing education requirement shall terminate at the end of its current term and may not be renewed until the continuing education requirement for the prior license term has been satisfied.

(e) A viatical settlement broker or viatical settlement provider shall file with the Commissioner, and thereafter for as long as the license remains in effect shall keep in force, evidence of financial responsibility in the sum of not less than Fifty Thousand Dollars (\$ 50,000.00).

- (1) This evidence shall be in the form of an errors and omissions insurance policy issued in accordance with Oklahoma law by an insurer authorized to do business in Oklahoma, a surety executed and issued by an insurer authorized to issue surety bonds in Oklahoma, or a deposit of cash, certificates of deposits, or securities, or any combination of these evidences of financial responsibility. The policy, bond, deposit or combination thereof shall not be terminated without thirty (30) days prior written notice to the licensee and the commissioner.

- (2) The Commissioner may also accept as evidence of financial responsibility proof that a financial instrument in accordance with the requirements in Paragraph (1) has been filed with the Commissioner of any other state where the viatical settlement broker or viatical

settlement provider is licensed as a viatical settlement broker or viatical settlement provider.

(f) A person shall be deemed to meet the licensing requirements of this section and Section 4055.3 of the Act and shall be permitted to operate as a viatical settlement broker, as defined in Section 4055.2 of Title 36 of the Act, if that person is licensed as a resident or nonresident insurance producer with a life insurance line of authority pursuant to the Oklahoma Producer Licensing Act, 36 O.S. § 1435.1, et seq., for at least one year. Not later than thirty (30) days from the first day of operating as a viatical settlement broker, the producer shall notify the department that he or she is acting as a viatical settlement broker on a form or in a manner that may be prescribed by the department, and shall pay any applicable fees to be determined by the department. The notification shall include an acknowledgment by the producer that he or she will operate as a viatical settlement broker in accordance with the Act and this regulation.

[Source: Added by emergency rule at 15 Ok Reg 4226, eff 7-24-98; Added at 16 Ok Reg 1147, eff. 04-26-99; Amended at 22 Ok Reg 67, eff 8-23-04 (emergency); Amended at 22 Ok Reg 2045, eff 7-14-05; Amended at 26 Ok Reg 1654, eff 7-14-09]

365:25-11-4. Other requirements for brokers [Revoked]

[Source: Added by emergency rule at 15 Ok Reg 4226, eff 7-24-98; Added at 16 Ok Reg 1147, eff. 04-26-99; Revoked at 26 Ok Reg 180, eff 12-1-2008 (emergency); Revoked at 26 Ok Reg 1654, eff 7-14-09]

365:25-11-4.1. Standards for evaluation of reasonable payments for terminally ill insureds

In order to assure that viators receive a reasonable return for viaticating an insurance policy, the return for viaticating a policy shall be no less than the payouts set out in Appendix W of this chapter for insureds who are terminally ill.

[Source: Added at 26 Ok Reg 180, eff 12-1-2008 (emergency); Added at 26 Ok Reg 1654, eff 7-14-09]

365:25-11-5. Reporting requirement

On or before March 1 of each calendar year, each viatical settlement provider licensed in this state shall submit the following information related to the licensee's activities for the previous calendar year:

- (1) A report of the viatical settlement transactions related to Oklahoma viators, which shall be submitted on a form provided by the Insurance Commissioner;
- (2) A report of the individual mortality of Oklahoma insureds, which shall be submitted on a form provided by the Insurance Commissioner; and
- (3) A certification of the information contained in the reports, which shall be submitted on a form provided by the Insurance Commissioner and shall be filed with the reports.

[Source: Added by emergency rule at 15 Ok Reg 4226, eff 7-24-98; Added at 16 Ok Reg 1147, eff. 04-26-99; Amended at 17 Ok Reg 1706, eff 7-14-00; Amended at 26 Ok Reg 180, eff 12-1-2008 (emergency); Amended at 26 Ok Reg 1654, eff 7-14-09]

365:25-11-6. General rules

(a) Viatical settlement brokers, at the time of their first contact with a prospective viator, shall provide an informational brochure. Such brochure shall use the language and format set out in Appendix U.

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

(c) Payment of the proceeds of a viatical settlement pursuant to 4055.9(D) of the Act shall be by means of wire transfer to an account designated by the viator or by certified check or cashier's check.

(d) Payment of the proceeds pursuant to a viatical settlement shall be made 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. Retention of a portion of the proceeds not disclosed or described in the viatical settlement contract by the viatical settlement provider or escrow agent is not permissible without written consent of the viator.

(e) A viatical settlement provider or broker shall not discriminate in the making or soliciting 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, 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, other than a viatical settlement broker, with respect to the viatical settlement.

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

(h) 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 the following provisions;

(1) 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. Benefits in excess of the amount viaticated shall be paid directly to the viator's beneficiary by the insurance company;

(2) A provision that the viatical settlement provider will, upon acknowledgment of the perfection of the transfer, either;

(A) Advise the insured, in writing, that the insurance company has confirmed the viator's interest in the policy; or

(B) Send a copy of the instrument sent from the insurance company to the viatical settlement provider that acknowledges the viator's interest in the policy; and

(3) A provision that apports the premiums to be paid by the viatical settlement

provider and the viator, provided that the contract provides premium payment terms and nonforfeiture options no less favorable, on a proportional basis, than those included in the policy.

- (i) In all cases where the insured is a minor child, disclosures to and permission of a parent or legal guardian satisfy the requirements of the Act and this regulation.

[Source: Added by emergency rule at 15 Ok Reg 4226, eff 7-24-98; Added at 16 Ok Reg 1147, eff. 04-26-99; Amended at 26 Ok Reg 180, eff 12-1-2008 (emergency); Amended at 26 Ok Reg 1654, eff 7-14-09]

365:25-11-7. Requirement to file advertising

A viatical settlement licensee shall provide a copy of any advertisement intended for use in this state whether through written, radio, or television medium to the Commissioner for review and approval before the advertisement is disseminated within this state.

[Source: Added at 26 Ok Reg 1654, eff 7-14-09; Amended at 26 Ok Reg 180, eff 12-1-2008 (emergency); Amended at 26 Ok Reg 1654, eff 7-14-09]

365:25-11-8. Prohibited practices

(a) A viatical settlement provider or viatical settlement broker shall obtain from a person that is provided with patient identifying information a signed affirmation that the person or entity will not further divulge the information without procuring the express, written consent of the insured for the disclosure. Notwithstanding the foregoing, if a viatical settlement provider or viatical settlement 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 act also 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.

[Source: Added at 26 Ok Reg 180, eff 12-1-2008 (emergency); Added at 26 Ok Reg 1654, eff 7-14-09]

365-25-11-9. 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 a viatical settlement 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 or group insurance coverage where details with respect to the certificate holder's coverage are maintained by the insurer, submission of a

form substantially similar to Appendix V, which has been completed by the viatical settlement provider or the viatical settlement broker in accordance with the instructions on the form.

- (b) Nothing in this section shall prohibit a life insurance company and a viatical settlement provider or a viatical settlement broker from using 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 information from a viatical settlement provider or viatical settlement broker in compliance with this section in excess of any usual and customary charges to contract holders, certificate holders 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 policy owner or certificate holder 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.
- (e) A life insurance company shall not require the viator or insured to sign any request for change in a policy or a group certificate from a viatical settlement provider that is the owner or assignee of the insured's insurance coverage, unless the viator or insured has ownership, assignment or irrevocable beneficiary rights under the policy. In such a situation, the viatical settlement provider shall provide timely notice to the insured that a settlement transaction on the policy has occurred. Timely notice shall be provided within fifteen (15) calendar days of the change in a policy or group certificate.

[Source: Added at 26 Ok Reg 180, eff 12-1-2008 (emergency); Added at 26 Ok Reg 1654, eff 7-14-09]

365-25-11-10. Transition period for existing licenses

- (a) A viatical settlement provider, a viatical settlement broker, a life settlement provider, or a life settlement broker lawfully transacting business in this state pursuant to Sections 4045 and/or 4085 of Title 36 of the laws of this state on the effective date of this regulation may continue to transact such business if said provider's or broker's license was active prior to November 1, 2008, and the licensee submits a complete application as specified in O.A.C. 365-25-11-3 for a license pursuant to the Viatical Settlements Act of 2008, 36 O.S. § 1455.1, et seq., on or before December 31, 2008.
- (b) If an existing licensee's application pursuant to this subsection is approved, the new license will replace the prior license issued by the Commissioner pursuant to Sections 4045 and/or 4085 and will remain in force for the balance of the term of the prior license.
- (c) If an existing licensee's application for licensure pursuant to the Act and this section is denied, the prior license of the licensee issued pursuant to Sections 4045 and/or 4085 of Title 36 is no longer valid and shall be immediately surrendered to the Commissioner.

[Source: Added at 26 Ok Reg 180, eff 12-1-2008 (emergency); Added at 26 Ok Reg 1654, eff 7-14-09]