

PROJECT HISTORY - 2013

VIATICAL SETTLEMENTS MODEL REGULATION (#698)

1. Description of the Project, Issues Addressed, etc.

The guideline revisions to the *Viatical Settlements Model Regulation* (#698) were made to update the model for consistency with the 2007 revisions to the *Viatical Settlements Model Act* (#697). Specifically, the guideline revisions eliminate several reports that are no longer required as a result of the 2007 revisions to Model #697. The guideline revisions add a specific provision requiring viatical settlement providers and brokers to provide information about viatical settlements to a viator, and provide that, at a minimum, unless another form is developed or approved by the commissioner, the viatical settlement provider or broker must provide the consumer with a copy of the Viatical Settlement Informational Brochure in Appendix A to satisfy this requirement. The guideline revisions also clarify the policy owner's right to receive information about the insurance policy from the insurer either before or after completion of the viatical settlement contract. The guideline revisions also update the Viatical Settlement Informational Brochure in Appendix A.

2. Name of Group Responsible for Drafting the Model and States Participating.

The Viatical Settlements (A) Working Group was responsible for drafting the guideline revisions. The members of the Working Group were: Iowa, Chair; New Hampshire, Vice Chair; Florida; Georgia; Kansas; Louisiana; Nebraska; and Tennessee.

3. Project Authorized by What Charge and Date First Given to the Group.

The Viatical Settlements (A) Working Group was given an existing Life Insurance and Annuities (A) Committee charge in 2011 to review and consider revisions to the *Viatical Settlements Model Regulation* (#698) for consistency with the 2007 revisions made to the *Viatical Settlements Model Act* (#697), including reviewing and considering revisions to or replacement of, as appropriate, the Informational Brochure in Appendix A. *Important*

4. A General Description of the Drafting Process (e.g., drafted by a subgroup, interested parties, the full group, etc). Include any parties outside the members that participated.

The guideline revisions were drafted by the Viatical Settlements (A) Working Group, which developed four drafts of the proposed guideline revisions to Model #698 prior to its adoption. The Working Group discussed the drafts and the comments received on the drafts at in-person meetings during the 2012 Spring National Meeting, 2012 Summer National Meeting and 2012 Fall National Meeting. The Working Group also held conference calls Sept. 18, Nov. 7 and Dec. 18, 2012, during which the drafts and comments received on the drafts were discussed. The guideline revisions were adopted by the Working Group during the Dec. 18, 2012, conference call and adopted by the Life Insurance and Annuities (A) Committee at the 2013 Spring National Meeting. All drafts and comments were posted on the Working Group's Web page. Numerous interested parties participated in the drafting process, including consumer representatives and industry representatives.

5. A General Description of the Due Process (e.g., exposure periods, public hearings, or any other means by which widespread input from industry, consumers and legislators was solicited).

The Regulatory Framework (B) Task Force discussed the drafts and comments received on them during in-person meetings during the 2012 Spring National Meeting, 2012 Summer National Meeting and 2012 Fall National Meeting. The Working Group also held conference calls Sept. 18, Nov. 7 and Dec. 18, 2012, during which the drafts and comments received on the drafts were discussed. The guideline revisions were adopted by the

Working Group during the Dec. 18, 2012, conference call and adopted by the Life Insurance and Annuities (A) Committee at the 2013 Spring National Meeting. All drafts and comments were posted on the Working Group's Web page.

6. A Discussion of the Significant Issues (items of some controversy raised during the due process and the group's response).

There were no significant issues or items of controversy. However, there were some issues raised and resolved by the Working Group related to the guideline revisions clarifying the timeframe within which an insurer must provide a verification of coverage (VOC) and who may request the VOC. The Working Group decided to add a new provision that affirms that a policy owner has the right to request information about the policy at any time both before and after completion of the viatical settlement contract. In addition, the section in Model #698 related to the requirements for requesting a VOC was amended to specify that the parties involved in the initial viatical settlement transaction may request a VOC from the insurer and the insurer must respond to the request within 30 days under specified circumstances.

7. Any Other Important Information (e.g., amending an accreditation standard).

None

PROJECT HISTORY - 2004

VIATICAL SETTLEMENTS MODEL REGULATION (# 698)

1. Description of the Project, Issues Addressed, etc.

The viatical settlement industry has changed a great deal over the ten years since development of the initial model act by the NAIC. Revisions to the Viatical Settlements Model Act were prepared in 1998 and 2001 to reflect the new business model. The latest amendments broadened the scope of the model to cover sales of life insurance policies by those who were not terminally or chronically ill. The model regulation has been revised to match the scope of the model act.

2. Name of Group Responsible for Drafting the Model and States Participating

This model was developed by the Viatical Settlements Working Group, chaired by Lester Dunlap of Louisiana. Members of the working group are: Michael Bownes, Alabama; Rich Robleto, Florida; Bill McAndrew, Illinois; Roger Strauss, Iowa; Marlyn Burch, Kansas; Brian Staples, Kentucky; Paul Hanson, Minnesota; Anne Marie Narcini, New Jersey; Dennis Stapleton, Ohio; Dalora Schafer, Oklahoma; Carl Lundberg/David Ball, Oregon; Gwen Fuller, South Carolina; Maliaka Essameldin, Tennessee; and Bob Wright, Virginia.

3. Project Authorized by What Charge and Date First Given to the Group

Revisions to the Viatical Settlements Model Act were adopted in March 2001. As soon as those changes were adopted, the working group began work on revisions to the regulation to bring it into line with the amendments to the model act. The 2001 charge was: "Revise the Viatical Settlements Model Regulation to coordinate with the revised model act, including requirements regarding sales of the policies of healthy individuals and investor protections, to be completed by the Winter National Meeting."

4. A General Description of the Drafting Process (e.g., drafted by a subgroup, interested parties, the full group, etc). Include any parties outside the members that participated

The drafting process was open to comments and participation by all interested parties. Representatives from the life insurance industry, the viatical settlement industry and financial investors participated fully in the discussion. Comments were received on each draft of the model and considered by the working group in open meetings. Consumer representatives were also welcome and participated to a limited degree.

5. A General Description of the Due Process (e.g., exposure periods, public hearings, or any other means by which widespread input from industry, consumers and legislators was solicited)

Copies of every draft were posted on the NAIC website and ample time provided for comments on each draft. Comment letters were posted on the NAIC website. NAIC staff also maintains a list of interested parties, who received notice of each conference call and copies of drafts and comments by e-mail. After the working group adopted the model, a hearing was held at the A Committee.

6. A Discussion of the Significant Issues (items of some controversy raised during the due process and the group's response)

A number of issues were raised that required extensive discussion to resolve.

(1) Licensing issues related to brokers and providers: Several interested parties suggested that any licensed life insurance agent should be allowed to serve as a viatical settlement broker without additional licensing. The

working group did not agree with this reasoning because of concerns about the conflict of interest that could arise when a person got a commission for selling a policy to an individual and another commission for viaticating the policy. In addition, the working group added educational and testing requirements for viatical brokers to be sure they were knowledgeable about the business they were undertaking. The A Committee decided to amend the model to allow any licensed life insurance producer to serve as a viatical settlement broker without additional licensing, with a requirement that the producer notify the department and agree to comply with the requirements in the model.

(2) Standards for evaluation of reasonable payments: This issue has been controversial since the first model regulation was adopted in 1994. The model includes minimum payouts for those who are terminally or chronically ill. Segments of the viatical industry have urged the deletion of this section with the argument that it reduces the availability of offers by requiring a minimum payment. At the time of the last revision, an alternative was added to require “reasonable” payments, and this was revised to list specific factors for measuring reasonableness. Just before adoption of the model, the group voted to request a charge to develop guidelines with more detail to assist in administration.

(3) Requests for information: The viatical industry and the life insurance industry have been in conflict for many years in regard to the requests made by viatical providers and brokers for information in the possession of the insurer. During the last revision of the regulation, the two sets of interests sat down together and drafted a verification of coverage form. The use of the form has not helped the situation as much as hoped. Providers ask for more than is on the form and insurers note that some information is not available. The working group totally revamped the form to require significantly less information and to require that viatical settlement providers and brokers fill out some of the form prior to submitting it to the insurer. The working group decided that a provider should not be prepared to make an offer or express interest in a life insurance contract without gathering at least some basic information.

7. Any Other Important Information (e.g., amending an accreditation standard).

Congress has expressed interest in uniformity of state laws and has held hearings on the issue. Updates on state activity are requested frequently.