# VIATICAL SETTLEMENT CONTRACTS
# Act 386 of 1996

AN ACT to regulate the sale and purchase of viatical settlement contracts; to prescribe the powers and duties of certain state agencies and officials; and to prescribe penalties.

**History:** 1996, Act 386, Eff. Mar. 31, 1997.

*The People of the State of Michigan enact:*

## 550.521 Definitions.

Sec. 1. As used in this act:

(a) "Commissioner" means the commissioner of insurance.

(b) "Life insurance" means that term as defined in section 602 of the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being section 500.602 of the Michigan Compiled Laws.

(c) "Physician" means a person licensed in this or another state to practice medicine or osteopathic medicine.

(d) "Policy" means an individual life insurance policy or a certificate under a group life insurance policy.

(e) "Provider" means a person who enters into a viatical settlement contract with a viator. Provider does not mean any of the following:

(*i*) A financial lending institution that takes a policy as collateral for a loan.

(*ii*) The issuer of a policy providing accelerated benefits under section 602 of Act No. 218 of the Public Acts of 1956.

(*iii*) An individual who enters into no more than 1 viatical settlement contract in a calendar year for the transfer of a policy for any value less than the expected death benefit.

(f) "Viatical settlement contract" or "contract" means a written agreement entered into between a provider and a viator in which the provider will pay consideration that is less than the expected death benefit of the viator's policy in return for the viator's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of the policy to the provider.

(g) "Viator" means the owner or holder of a policy who has a terminal illness or condition and who enters into a viatical settlement contract.

**History:** 1996, Act 386, Eff. Mar. 31, 1997.

**Compiler's note:** For transfer of authority, powers, duties, functions, and responsibilities of the insurance bureau and the commissioner of insurance to the commissioner of the office of financial and insurance services and the office of financial and insurance services, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

## 550.522 Records; production; maintenance; availability for inspection; payment of expenses.

Sec. 2. (1) The commissioner may order a provider to produce records, books, files, or other information that is necessary to determine the qualifications of the provider or whether the provider is or has acted in violation of this act.

(2) The provider shall maintain records of all transactions of contracts and make the records available to the commissioner for inspection during reasonable business hours.

(3) The provider shall pay the expenses incurred in conducting an examination under this section.

**History:** 1996, Act 386, Eff. Mar. 31, 1997.

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## 550.523 Disclosure of information.

Sec. 3. A provider shall disclose all of the following information to the viator no later than the date the contract is signed by the viator:

(a) Options other than the contract for a person with a terminal illness or condition, including accelerated benefits offered by the issuer of the policy.

(b) That some or all of the contract consideration may be taxable, and that assistance should be sought from a personal tax advisor.

(c) That the contract consideration could be subject to the claims of creditors.

(d) That receipt of the contract consideration may adversely affect the viator's eligibility for government benefits or entitlements.

(e) The viator's right to rescind the contract within 30 days after the date the contract is executed or within 15 days after the receipt of the contract consideration by the viator, whichever is less.

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(f) The date by which the contract consideration will be available to the viator and the source of the consideration.

**History:** 1996, Act 386, Eff. Mar. 31, 1997.

**Compiler's note:** For transfer of authority, powers, duties, functions, and responsibilities of the insurance bureau and the commissioner of insurance to the commissioner of the office of financial and insurance services and the office of financial and insurance services, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

### 550.524 Documents to be obtained by provider; right to avoid or rescind contract.

Sec. 4. (1) A provider entering into a contract with a viator shall obtain both of the following:

(a) A written statement from a physician that the viator is of sound mind and under no constraint or undue influence.

(b) A signed document by the viator stating:

(*i*) Consent to the contract.

(*ii*) Acknowledgment of the terminal illness or condition.

(*iii*) Representation that the viator has a full and complete understanding of the contract.

(*iv*) Representation that the viator has a full and complete understanding of the benefits of the policy.

(*v*) A release of the medical records and acknowledgment that the contract has been entered into freely and voluntarily. The provider shall keep all medical records received under this subparagraph confidential.

(2) A viatical settlement contract entered into in this state shall contain a provision giving the viator the right to void the contract for at least 30 days after the date the contract is signed, or 15 days after the receipt of the viatical settlement contract consideration, whichever is less. The provider shall notify the insurer of the policy of a rescission within 30 days of the date that a contract is rescinded under this subsection.

**History:** 1996, Act 386, Eff. Mar. 31, 1997.

**Compiler's note:** For transfer of authority, powers, duties, functions, and responsibilities of the insurance bureau and the commissioner of insurance to the commissioner of the office of financial and insurance services and the office of financial and insurance services, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

### 550.524a Agreement to commit suicide; payment prohibited.

Sec. 4a. A provider shall not offer to provide or provide any payment to a viator that is conditioned on the viator's agreement to commit suicide.

**History:** Add. 1999, Act 163, Imd. Eff. Nov. 4, 1999.

**Compiler's note:** For transfer of authority, powers, duties, functions, and responsibilities of the insurance bureau and the commissioner of insurance to the commissioner of the office of financial and insurance services and the office of financial and insurance services, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

### 550.525 Disposition of contract consideration.

Sec. 5. (1) Upon receipt from the viator of the documents to effect the transfer of the policy, the provider shall deposit the contract consideration in an escrow or trust account managed by a state or federal chartered financial institution, pending acknowledgment of the transfer by the issuer of the policy. The financial institution shall transfer the contract consideration to the viator immediately upon receipt of acknowledgment of the transfer from the insurer.

(2) Failure by the provider to tender the contract consideration as required by this act renders the contract void.

**History:** 1996, Act 386, Eff. Mar. 31, 1997.

**Compiler's note:** For transfer of authority, powers, duties, functions, and responsibilities of the insurance bureau and the commissioner of insurance to the commissioner of the office of financial and insurance services and the office of financial and insurance services, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

### 550.526 Double or additional indemnity.

Sec. 6. If a policy provides for double or additional indemnity in case of accidental death and accidental death occurs, the provider shall be entitled only to the face amount of the policy. Any amounts payable under the policy that exceed the face amount shall be paid to the beneficiary designated by the viator or, if no beneficiary has been designated, to the viator's estate.

**History:** 1996, Act 386, Eff. Mar. 31, 1997.

**Compiler's note:** For transfer of authority, powers, duties, functions, and responsibilities of the insurance bureau and the commissioner of insurance to the commissioner of the office of financial and insurance services and the office of financial and insurance services, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

### 550.527 Offer to purchase policy or certificate; notice to insurer.

Sec. 7. An offer to purchase a life insurance policy or certificate from the viator shall be transmitted to the

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insurer providing the life insurance policy, who may advise the viator of other alternatives which may be available under the policy. The notice required by this section shall be transmitted by the provider of the viatical settlement contract.

**History:** 1996, Act 386, Eff. Mar. 31, 1997.

**Compiler's note:** For transfer of authority, powers, duties, functions, and responsibilities of the insurance bureau and the commissioner of insurance to the commissioner of the office of financial and insurance services and the office of financial and insurance services, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

## 550.528 Order prohibiting provider from entering viatical settlement contract; additional orders.

Sec. 8. (1) The commissioner may issue an order prohibiting the provider from entering into a viatical settlement contract in this state if the commissioner finds any of the following:

(a) The provider has been fraudulent or engaged in dishonest practices.

(b) The provider demonstrates a pattern of unreasonable payments to policy owners.

(c) The provider has been convicted of a felony or any misdemeanor that involved criminal fraud.

(d) The provider has violated a provision of this act.

(2) In addition to the order under subsection (1), the commissioner may order any of the following:

(a) Payment of a civil fine of not more than $500.00 for each violation.

(b) If the provider knew or reasonably should have known that the provider was in violation of this act, the repayment of all consideration paid by or on behalf of a viator for a viatical settlement contract affected by the violation and a civil fine of not more than $2,500.00 for each violation.

(c) A cease and desist order.

**History:** 1996, Act 386, Eff. Mar. 31, 1997;—Am. 1997, Act 189, Imd. Eff. Dec. 30, 1997.

**Compiler's note:** For transfer of authority, powers, duties, functions, and responsibilities of the insurance bureau and the commissioner of insurance to the commissioner of the office of financial and insurance services and the office of financial and insurance services, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

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