
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1296 Session of
2014

INTRODUCED BY CORMAN, WHITE, BROWNE, COSTA, MENSCH, FARNESE,
SOLOBAY AND WILEY, MARCH 31, 2014

REFERRED TO BANKING AND INSURANCE, MARCH 31, 2014

AN ACT

1 Amending Title 40 (Insurance) of the Pennsylvania Consolidated
2 Statutes, providing for definitions, for conversion of
3 viatical settlement benefits, for proceeds of viatical
4 settlement contract, for additional requirements of a
5 viatical settlement contract, for requirements regarding
6 viatical settlement contract proceeds, for viatical
7 settlement provider duties, for exemption, for claims, for
8 duties of department and for duties of Department of Public
9 Welfare.

10 The General Assembly of the Commonwealth of Pennsylvania
11 hereby enacts as follows:

12 Section 1. Title 40 of the Pennsylvania Consolidated
13 Statutes is amended by adding a chapter to read:

14 CHAPTER 35

15 CONVERSION OF

16 VIATICAL SETTLEMENT BENEFITS

17 Sec.

18 3501. Definitions.

19 3502. Conversion of viatical settlement benefits.

20 3503. Proceeds of viatical settlement contract.

21 3504. Additional requirements of a viatical settlement

1 contract.

2 3505. Requirements regarding viatical settlement contract
3 proceeds.

4 3506. Viatical settlement provider duties.

5 3507. Exemption.

6 3508. Claims.

7 3509. Duties of department.

8 3510. Duties of Department of Public Welfare.

9 § 3501. Definitions.

10 The following words and phrases when used in this chapter
11 shall have the meanings given to them in this section unless the
12 context clearly indicates otherwise:

13 "Long-term care services." The term includes, but is not
14 limited to, home health services, assisted living services,
15 skilled nursing services, adult day services and nursing home
16 services.

17 § 3502. Conversion of viatical settlement benefits.

18 The owner of a policy as defined in section 2 of the act of
19 July 4, 2002 (P.L.699, No.107), known as the Viatical
20 Settlements Act, with a face value in excess of \$10,000 may
21 enter into a viatical settlement contract as defined under
22 section 2 of the Viatical Settlements Act, provided the minimum
23 value for the policy is greater than its cash surrender value or
24 accelerated death benefit available at the time of the
25 application of the viatical settlement contract, in exchange for
26 payments directly to a health care provider for Medicaid-covered
27 long-term care services for the recipient of the services in
28 accordance with this chapter when the viatical settlement
29 contract takes effect.

30 § 3503. Proceeds of viatical settlement contract.

1 (a) Medicaid eligibility.--To the extent allowable under
2 Federal or State law, the proceeds of a viatical settlement
3 contract entered into under this chapter may not be considered
4 as a resource or asset in determining the eligibility of an
5 applicant for or recipient of Medicaid and shall only be used as
6 allowed for long-term care services in accordance with this
7 chapter, provided that Federal or State Medicaid funds may not
8 be used for the Medicaid recipient's care until the available
9 proceeds are expended, except for the amount provided for in
10 section 3504(a) (1) (relating to additional requirements of a
11 viatical settlement contract).

12 (b) Tax exemption.--The proceeds of a viatical settlement
13 contract entered into under this chapter may not be considered
14 income taxable under Article III of the act of March 4, 1971
15 (P.L.6, No.2), known as the Tax Reform Code of 1971.
16 § 3504. Additional requirements of a viatical settlement
17 contract.

18 (a) Contents.--In addition to the requirements of the act of
19 July 4, 2002 (P.L.699, No.107), known as the Viatical
20 Settlements Act, a viatical settlement contract entered into
21 under section 3502 (relating to conversion of viatical
22 settlement benefits) must include the following:

23 (1) That the lesser of 5% of the face value of the life
24 insurance policy or \$5,000 is reserved and payable to the
25 viator's estate or a named beneficiary upon the death of the
26 insured under the policy that is the subject of the viatical
27 settlement contract for burial or final expenses.

28 (2) That the balance of proceeds of the viatical
29 settlement contract that are unpaid at the death of the
30 insured must be paid to the viator's estate or a named

1 beneficiary.

2 (3) The total amount payable on behalf of the recipient
3 of such services pursuant to the viatical settlement
4 contract.

5 (b) Filing and approval.--A viatical settlement contract
6 form entered into under this chapter must be filed and approved
7 by the department.

8 § 3505. Requirements regarding viatical settlement contract
9 proceeds.

10 (a) Account and administration.--The proceeds of the
11 viatical settlement contract entered into under section 3502
12 (relating to conversion of viatical settlement benefits),
13 including any interest accrued, shall be held in an irrevocable
14 Federal or State insured account for the benefit of the
15 recipient of the services and administered in accordance with
16 this chapter.

17 (b) Choosing services and prohibition.--The type of long-
18 term care services payable from the irrevocable Federal or State
19 insured account shall be chosen only by the recipient of the
20 services. An attempt by a person to require the use of a
21 specific long-term care provider to obtain long-term care
22 services under this chapter is strictly prohibited and
23 constitutes a violation of the act of July 22, 1974 (P.L.589,
24 No.205), known as the Unfair Insurance Practices Act.

25 § 3506. Viatical settlement provider duties.

26 (a) Bond, insurance or deposit.--A viatical settlement
27 provider that enters into a viatical settlement contract under
28 section 3502 (relating to conversion of viatical settlement
29 benefits) shall maintain one of the following:

30 (1) A surety bond executed and issued by an insurer

1 authorized to issue bonds in the amount of \$500,000 in this
2 Commonwealth. A surety bond issued shall be in the favor of
3 the Commonwealth and shall specifically authorize recovery by
4 the commissioner on behalf of a person in this Commonwealth
5 who sustained damages as the result of an erroneous act, a
6 failure to act or a conviction of fraud or unfair practices,
7 by the viatical settlement provider.

8 (2) A policy of errors and omissions insurance covering
9 the legal liability resulting from a viatical settlement
10 provider's erroneous act or failure to act in the capacity of
11 a viatical settlement provider. The policy shall be in the
12 sum of no less than \$500,000 per occurrence and in the
13 aggregate.

14 (3) A deposit of cash or certificates of deposit or a
15 combination thereof in the amount of \$500,000 with the
16 department.

17 (b) Advertising and marketing materials.--Advertising and
18 marketing materials used by a viatical settlement provider under
19 this chapter shall be filed with the department.

20 § 3507. Exemption.

21 For purposes of this chapter, the provisions of section 10(g)
22 (1)(ii)(A) of the act of July 4, 2002 (P.L.699, No.107), known
23 as the Viatical Settlements Act, do not apply to a policy that
24 is the subject of a viatical settlement contract that has been
25 in force for two years or more.

26 § 3508. Claims.

27 A claim against a viatical settlement provider from an owner
28 of a policy, the owner's estate, a beneficiary or other person
29 regarding the viatical settlement contract may not exceed the
30 face amount of the policy less the proceeds paid under the

1 viatical settlement contract and the amount of premiums paid
2 subsequent to entering into the viatical settlement contract. A
3 payment of a claim by a viatical settlement provider shall be
4 made from the funds established under section 3506(a) (relating
5 to viatical settlement provider duties).

6 § 3509. Duties of department.

7 The department shall conduct periodic market examinations of
8 each viatical settlement provider regarding the viatical
9 settlement contracts entered into under this chapter in
10 accordance with section 16 of the act of July 4, 2002 (P.L.699,
11 No.107), known as the Viatical Settlements Act.

12 § 3510. Duties of Department of Public Welfare.

13 (a) Written notice.--The Department of Public Welfare shall,
14 as part of the application for enrollment in the Medicaid
15 program and other materials provided by the Department of Public
16 Welfare, provide written notice of the options provided under
17 this chapter.

18 (b) Rules.--The Department of Public Welfare may adopt rules
19 in consultation with the department to implement this chapter to
20 ensure that:

21 (1) the proceeds from the viatical settlement contract
22 are distributed directly to a health care provider providing
23 long-term care services in accordance with this chapter;

24 (2) eligibility for Medicaid is determined without
25 considering the balance of the viatical settlement proceeds
26 under section 3504(b) (1) (relating to additional requirements
27 of a viatical settlement contract); and

28 (3) Medicaid and applied income payments begin the day
29 following the exhaustion of the viatical settlement proceeds
30 as provided under this chapter.

1 Section 2. This act shall take effect in 60 days.