

P.L. 1999, CHAPTER 211, *approved September 17, 1999*  
Senate Committee Substitute for  
Senate, No. 1515

1   **AN ACT** concerning life insurance viatical settlements.

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3       **BE IT ENACTED** *by the Senate and General Assembly of the State*  
4 *of New Jersey:*

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6       1. As used in this act:  
7       "Commissioner" means the Commissioner of Banking and  
8 Insurance.

9       "Financing entity" means an underwriter, placement agent, lender,  
10 purchaser of securities, purchaser of a policy or certificate from a  
11 viatical settlement provider, credit enhancer, or any person who may  
12 be a party to a viatical settlement contract and who has a direct  
13 ownership in a policy or certificate that is the subject of a viatical  
14 settlement contract but whose sole activity related to the transaction  
15 is providing funds to effect the viatical settlement and who has an  
16 agreement in writing with a licensed viatical settlement provider to act  
17 as a participant in a financing transaction.

18       "Financing transaction" means a transaction in which a licensed  
19 viatical settlement provider or a financing entity obtains financing for  
20 viatical settlement contracts, viaticated policies or interests therein  
21 including, without limitation, any secured or unsecured financing, any  
22 securitization transaction or any securities offering either registered or  
23 exempt from registration under federal and State securities law, or any  
24 direct purchase of interests in a policy or certificate, if the financing  
25 transaction complies with federal and State securities law.

26       "Viatical settlement broker" means a person who on behalf of a  
27 viator and for a fee, commission or other valuable consideration, offers  
28 or attempts to negotiate viatical settlements between a viator and one  
29 or more viatical settlement providers. Irrespective of the manner in  
30 which the viatical settlement broker is compensated, a viatical  
31 settlement broker is deemed to represent only the viator and owes a  
32 fiduciary duty to the viator to act according to the viator's instructions  
33 and in the best interest of the viator. The term does not include an  
34 attorney, accountant or financial planner retained to represent the  
35 viator whose compensation is paid directly by or at the direction of the  
36 viator.

37       "Viatical settlement contract" means a written agreement entered  
38 into between a viatical settlement provider and a viator. The  
39 agreement shall establish the terms under which the viatical settlement

1 provider will pay compensation or anything of value, which  
2 compensation or value is less than the expected death benefit of the  
3 insurance policy or certificate, in return for the viator's assignment,  
4 transfer, sale, devise or bequest of the death benefit or ownership of  
5 all or a portion of the insurance policy or certificate of insurance to the  
6 viatical settlement provider. A viatical settlement contract also  
7 includes a contract for a loan or other financial transaction secured  
8 primarily by an individual or group life insurance policy, other than a  
9 loan by a life insurance company pursuant to the terms of the life  
10 insurance contract, or a loan secured by the cash value of a policy.

11 "Viatical settlement provider" means a person, other than a viator,  
12 who enters into a viatical settlement contract. Viatical settlement  
13 provider also means a person who obtains financing from a financing  
14 entity for the purchase, acquisition, transfer or other assignment of one  
15 or more viatical settlement contracts, viaticated policies or interests  
16 therein, or otherwise sells, assigns, transfers, pledges, hypothecates or  
17 otherwise disposes of one or more viatical settlement contracts,  
18 viaticated policies or interests therein. Viatical settlement provider  
19 does not include:

20 (1) A bank, savings bank, savings and loan association, credit  
21 union or other licensed lending institution that takes an assignment of  
22 a life insurance policy as collateral for a loan;

23 (2) The issuer of a life insurance policy providing accelerated  
24 benefits pursuant to N.J.A.C.11:4-30.1 et seq. and pursuant to the  
25 policy; or

26 (3) A natural person who enters into no more than one agreement  
27 in a calendar year for the transfer of life insurance policies for any  
28 value less than the expected death benefit.

29 "Viatical settlement representative" means a person who is an  
30 authorized agent of a licensed viatical settlement provider or viatical  
31 settlement broker, as applicable, who acts or aids in any manner in the  
32 solicitation of a viatical settlement. Viatical settlement representative  
33 shall not include:

34 (1) An attorney, an accountant, a financial planner or any person  
35 exercising a power of attorney granted by a viator; or

36 (2) Any person who is retained to represent a viator and whose  
37 compensation is paid by or at the direction of the viator, regardless of  
38 whether the viatical settlement is consummated.

39 A viatical settlement representative shall represent only the viatical  
40 settlement provider or viatical settlement broker.

41 "Viaticated policy" means a life insurance policy or certificate that  
42 has been acquired by a viatical settlement provider pursuant to a  
43 viatical settlement contract.

44 "Viator" means the owner of a life insurance policy or a certificate  
45 holder under a group policy insuring the life of an individual, who has  
46 a catastrophic, life-threatening or chronic illness or condition and who

1 enters or seeks to enter into a viatical settlement contract.

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3 2. a. A person shall not operate as a viatical settlement provider,  
4 viatical settlement representative or viatical settlement broker without  
5 first having obtained a license from the commissioner.

6 b. Application for a viatical settlement provider, viatical settlement  
7 representative or viatical settlement broker license shall be made to the  
8 commissioner by the applicant on a form prescribed by the  
9 commissioner, and the application shall be accompanied by a fee, the  
10 amount of which shall be set by the commissioner by regulation.

11 c. Licenses may be renewed from year to year on the anniversary  
12 date upon payment of the annual renewal fee in an amount set by the  
13 commissioner by regulation. Failure to pay the fee by the renewal date  
14 shall result in expiration of the license.

15 d. The applicant shall provide information on forms required by  
16 the commissioner. The commissioner shall have authority, at any time,  
17 to require the applicant to fully disclose the identity of all  
18 stockholders, partners, officers, members and employees, and the  
19 commissioner may refuse to issue a license in the name of a legal entity  
20 if not satisfied that any officer, employee, stockholder, partner or  
21 member thereof who may materially influence the applicant's conduct  
22 meets the standards of this act.

23 e. A license issued to a legal entity authorizes all members,  
24 officers and designated employees to act as viatical settlement  
25 providers, viatical settlement brokers or viatical settlement  
26 representatives, as applicable, under the license, and all those persons  
27 shall be named in the application and any supplements to the  
28 application.

29 f. Upon the filing of an application and the payment of the license  
30 fee, the commissioner shall make an investigation of each applicant  
31 and issue a license if the commissioner finds that the applicant:

32 (1) Has provided a detailed plan of operation;

33 (2) Is competent and trustworthy and intends to act in good faith  
34 in the capacity of the license applied for;

35 (3) Has a good business reputation and has had experience,  
36 training or education so as to be qualified in the business for which the  
37 license is applied for; and

38 (4) If a legal entity, provides a certificate of good standing from  
39 the state of its domicile.

40 g. The commissioner shall not issue a license to a nonresident  
41 applicant unless a written designation of an agent for service of  
42 process is filed and maintained with the commissioner, or the applicant  
43 has filed with the commissioner the applicant's written irrevocable  
44 consent that any action against the applicant may be commenced  
45 against the applicant by service of process on the commissioner.

46 h. A viatical settlement provider, viatical settlement representative

1 or viatical settlement broker transacting business in this State prior to  
2 the effective date of this act may continue to do so pending approval  
3 or disapproval of the provider, representative or broker's application  
4 for a license as long as the application is filed with the commissioner  
5 on or before the 180th day after the effective date of this act.

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7 3. a. The commissioner may suspend, revoke or refuse to renew  
8 the license of a viatical settlement provider, viatical settlement  
9 representative or viatical settlement broker if the commissioner finds  
10 that:

11 (1) There was any material misrepresentation in the application for  
12 the license;

13 (2) The licensee or any officer, partner, member or key  
14 management personnel has been convicted of fraudulent or dishonest  
15 practices, is subject to a final administrative action or is otherwise  
16 shown to be untrustworthy or incompetent;

17 (3) The viatical settlement provider demonstrates a pattern of  
18 unreasonable payments to viators;

19 (4) The licensee has been found guilty of, or has pleaded guilty or  
20 nolo contendere to, any felony, or to a misdemeanor involving fraud  
21 or moral turpitude, regardless of whether a judgment of conviction has  
22 been entered by the court;

23 (5) The viatical settlement provider has entered into any viatical  
24 settlement contract that has not been approved pursuant to this act;

25 (6) The viatical settlement provider has failed to honor contractual  
26 obligations set out in a viatical settlement contract;

27 (7) The licensee no longer meets the requirements for initial  
28 licensure;

29 (8) The viatical settlement provider has assigned, transferred or  
30 pledged a viaticated policy to a person other than a viatical settlement  
31 provider licensed in this State or a financing entity; or

32 (9) The licensee has violated any provision of this act.

33 b. Before the commissioner shall deny a license application or  
34 suspend, revoke or refuse to renew the license of a viatical settlement  
35 provider, viatical settlement broker or viatical settlement  
36 representative, the commissioner shall conduct a hearing.

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38 4. A person shall not use a viatical settlement contract or provide  
39 to a viator a disclosure statement form in this State unless filed with  
40 and approved by the commissioner. The commissioner shall disapprove  
41 a viatical settlement contract or disclosure statement form if, in the  
42 commissioner's opinion, the contract or provisions contained therein  
43 are unreasonable, contrary to the interests of the public, or otherwise  
44 misleading or unfair to the viator.

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46 5. a. Each licensee shall file with the commissioner on or before

1 March 1 of each year an annual statement containing that information  
2 which the commissioner by regulation may prescribe.

3 b. Except as otherwise allowed or required by law, a viatical  
4 settlement provider, viatical settlement representative, viatical  
5 settlement broker, insurance company, insurance agent, insurance  
6 broker, information bureau, rating agency or company, or any other  
7 person with actual knowledge of a viator's identity, shall not disclose  
8 that identity as a viator to any other person unless the disclosure:

9 (1) Is necessary to effect a viatical settlement between the viator  
10 and a viatical settlement provider and the viator has provided prior  
11 written consent to the disclosure;

12 (2) Is provided in response to an investigation by the commissioner  
13 or any other governmental officer or agency; or

14 (3) Is a term of or condition to the transfer of a viaticated policy  
15 by one viatical settlement provider to another viatical settlement  
16 provider.

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18 6. a. The commissioner may, when he determines it reasonably  
19 necessary to protect the interests of the public, examine the business  
20 and affairs of any licensee or applicant for a license under this act. The  
21 commissioner shall have the authority to order any licensee or  
22 applicant to produce any records, books, files or other information  
23 reasonably necessary to ascertain whether or not the licensee or  
24 applicant is acting, or has acted in violation of the law or otherwise  
25 contrary to the interests of the public. The expenses incurred in  
26 conducting any examination shall be paid by the licensee or applicant.

27 b. Names and individual identification data for all viators shall be  
28 considered private and confidential information and shall not be  
29 disclosed by the commissioner, unless required by law.

30 c. Records of all transactions of viatical settlement contracts shall  
31 be maintained by the viatical settlement provider and shall be available  
32 to the commissioner for inspection during reasonable business hours.  
33 A viatical settlement provider shall maintain records of each viatical  
34 settlement for five years after the death of the insured.

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36 7. a. A viatical settlement provider, viatical settlement  
37 representative or viatical settlement broker shall disclose the following  
38 information to the viator no later than the time of application:

39 (1) Possible alternatives to viatical settlement contracts for  
40 individuals with catastrophic, life threatening or chronic illnesses or  
41 conditions, including any accelerated death benefits offered under the  
42 viator's life insurance policy;

43 (2) Some or all of the proceeds of the viatical settlement may be  
44 free from federal income tax and from state franchise and income  
45 taxes, and that assistance should be sought from a professional tax  
46 advisor;

1 (3) Proceeds of the viatical settlement could be subject to the  
2 claims of creditors;

3 (4) Receipt of the proceeds of a viatical settlement may adversely  
4 affect the viator's eligibility for Medicaid or other government benefits  
5 or entitlements, and that advice should be obtained from the  
6 appropriate government agencies;

7 (5) The viator's right to rescind a viatical settlement contract 15  
8 calendar days after the receipt of the viatical settlement proceeds by  
9 the viator, as provided in subsection c. of section 8 of this act;

10 (6) Funds will be sent to the viator within two business days after  
11 the viatical settlement provider has received the insurer or group  
12 administrator's acknowledgment that ownership of the policy or  
13 interest in the certificate has been transferred and the beneficiary has  
14 been designated pursuant to the viatical settlement contract; and

15 (7) Entering into a viatical settlement contract may cause other  
16 rights or benefits, including conversion rights and waiver of premium  
17 benefits that may exist under the policy or certificate, to be forfeited  
18 by the viator and that assistance should be sought from a financial  
19 adviser.

20 b. A viatical settlement provider shall disclose the following  
21 information to the viator prior to the date the viatical settlement  
22 contract is signed by all parties:

23 (1) The affiliation, if any, between the viatical settlement provider  
24 and the issuer of an insurance policy to be viaticated;

25 (2) If an insurance policy to be viaticated has been issued as a joint  
26 policy or involves family riders or any coverage of a life other than the  
27 insured under the policy to be viaticated, the viator shall be informed  
28 of the possible loss of coverage on the other lives and be advised to  
29 consult with his insurance producer or the company issuing the policy  
30 for advice on the proposed viatication; and

31 (3) The dollar amount of the current death benefit payable to the  
32 viatical settlement provider under the policy or certificate. The viatical  
33 settlement provider shall also disclose the availability of any additional  
34 guaranteed insurance benefits, the dollar amount of any accidental  
35 death and dismemberment benefits under the policy or certificate and  
36 the viatical settlement provider's interest in those benefits.

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38 8. a. A viatical settlement provider entering into a viatical  
39 settlement contract shall first obtain:

40 (1) If the viator is the insured, a written statement from a licensed  
41 attending physician that the viator is of sound mind and under no  
42 constraint or undue influence to enter into a viatical settlement  
43 contract;

44 (2) A witnessed document in which the viator consents to the  
45 viatical settlement contract, acknowledges that the insured has a  
46 catastrophic, life threatening or chronic illness or condition, represents

1 that the viator has a full and complete understanding of the viatical  
2 settlement contract, that he has a full and complete understanding of  
3 the benefits of the life insurance policy and acknowledges that he has  
4 entered into the viatical settlement contract freely and voluntarily; and

5 (3) A document in which the insured consents to the release of his  
6 medical records to a viatical settlement provider or viatical settlement  
7 broker.

8 b. All medical information solicited or obtained by any licensee  
9 shall be confidential.

10 c. All viatical settlement contracts entered into in this State shall  
11 provide the viator with an unconditional right to rescind the contract  
12 for at least 15 calendar days from the receipt of the viatical settlement  
13 proceeds. If the insured dies during the rescission period, the viatical  
14 settlement contract shall be deemed to have been rescinded, subject to  
15 repayment to the viatical settlement provider of all viatical settlement  
16 proceeds.

17 d. Immediately upon the viatical settlement provider's receipt of  
18 documents to effect the transfer of the insurance policy, the viatical  
19 settlement provider shall pay the proceeds of the viatical settlement to  
20 an escrow or trust account in a state or federally chartered financial  
21 institution whose deposits are insured by the Federal Deposit  
22 Insurance Corporation (FDIC). The account shall be managed by a  
23 trustee or escrow agent independent of the parties to the contract. The  
24 trustee or escrow agent shall transfer the proceeds to the viator  
25 immediately upon the viatical settlement provider's receipt of  
26 acknowledgment of the transfer of the insurance policy or interest  
27 therein.

28 e. Failure to tender consideration to the viator for the viatical  
29 settlement contract within the time disclosed pursuant to paragraph (6)  
30 of subsection a. of section 7 of this act renders the viatical settlement  
31 contract voidable by the viator for lack of consideration until  
32 consideration is tendered to and accepted by the viator.

33 f. Contacts with the insured for the purpose of determining the  
34 health status of the insured after the viatical settlement has occurred  
35 shall only be made by the viatical settlement provider or broker  
36 licensed in this State and shall be limited to once every three months  
37 for insureds with a life expectancy of more than one year, and to no  
38 more than one per month for insureds with a life expectancy of one  
39 year or less. The viatical settlement provider or broker shall explain  
40 the procedure for these contacts at the time the viatical settlement  
41 contract is entered into. The limitations set forth in this subsection  
42 shall not apply to any contacts with an insured under a viaticated  
43 policy for reasons other than determining the insured's health status.  
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45 9. The commissioner shall have the authority to:

46 a. Promulgate regulations implementing the provisions of this act;

e. Adopt rules governing the relationship and responsibilities of both insurers and viatical settlement providers, brokers and representatives during the viatication of a life insurance policy or certificate.

11. Section 9 of this act shall take effect immediately and the remainder shall take effect on the 180th day after enactment.

Provides for regulation of viatical settlement contracts and providers, brokers and representatives.