

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 294
Committee Substitute Favorable 4/12/99

Short Title: Life & Health Ins. Amendments/AB.

(Public)

Sponsors:

Referred to:

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW GOVERNING THE APPLICABILITY OF
PREEXISTING CONDITION LIMITATIONS TO CERTAIN TYPES OF HEALTH
INSURANCE POLICIES; TO PRESCRIBE STANDARDS FOR DISABILITY
INCOME INSURANCE; TO CONFORM NORTH CAROLINA'S 1997
POSTMASTECTOMY RECONSTRUCTIVE SURGERY LAWS TO THE
FEDERAL WOMEN'S HEALTH AND CANCER RIGHTS ACT OF 1998; TO
UPDATE THE LAW ON VIATICAL SETTLEMENTS; AND TO AUTHORIZE
THE WRITING OF FAMILY LEAVE CREDIT INSURANCE.

The General Assembly of North Carolina enacts:

**PART 1. PREEXISTING CONDITIONS FOR SPECIFIED DISEASE AND
HOSPITAL INDEMNITY POLICIES.**

Section 1. G.S. 58-51-15(h) reads as rewritten:

"(h) Preexisting Condition Exclusion Clarification. – Sub-subdivision (a)(2)b. of
this section does not apply to:

(1) Policies issued to eligible individuals under G.S. 58-68-60.

(2) Excepted benefits as described in ~~G.S. 58-68-25(b)~~ G.S. 58-68-25(b)(1),
(2), and (4)."

1
2 **PART 2. DISABILITY INCOME INSURANCE.**

3 Section 2. Article 51 of Chapter 58 of the General Statutes is amended by
4 adding a new section to read:

5 **"§ 58-51-130. Standards for disability income insurance policies.**

6 (a) Definitions. – As used in this section:

7 (1) 'Disability income insurance policy' or 'policy' means a policy of
8 accident and health insurance that provides payments when the insured
9 is unable to work because of illness, disease, or injury.

10 (2) 'Policy' includes the certificates referred to in subsection (b) of this
11 section.

12 (b) Applicability. – This section applies to all policies used in this State, including
13 certificates issued under group policies that are used in this State. This section also
14 applies to a certificate issued under a policy issued and delivered to a trust or to an
15 association outside of this State and covering persons residing in this State.

16 (c) Disclosure Standards. – Every disability income insurance policy shall include
17 provisions, where applicable, addressing:

18 (1) Terms of renewability.

19 (2) Initial and subsequent conditions of eligibility.

20 (3) Nonduplication of coverage.

21 (4) Preexisting conditions.

22 (5) Probationary periods.

23 (6) Elimination periods.

24 (7) Requirements for replacement.

25 (8) Recurrent conditions.

26 (9) Definitions of terms.

27 (d) Preexisting Conditions. – If an insurer does not seek a prospective insured's
28 medical history in the application or enrollment process, the insurer shall not deny a
29 claim for disabilities that commence more than 24 months after the effective date of the
30 insured person's coverage on the grounds the disability is caused by a preexisting
31 condition. A policy shall not define a preexisting condition more restrictively than 'a
32 condition for which medical advice, diagnosis, care, or treatment was received or
33 recommended within the 24-month period immediately preceding the effective date of
34 coverage of the insured person.'

35 (e) Exceptions. – Nothing in this section prohibits an insurer from:

36 (1) Using an application or enrollment form designed to elicit the medical
37 history of a prospective insured.

38 (2) Underwriting based on answers on the form according to the insurer's
39 established standards.

40 (3) Contesting the answers in accordance with G.S. 58-51-15(a)(2)a.

41 (f) Required Provisions. – Each policy shall include:

42 (1) A description of the principal benefits and coverage provided in the
43 policy.

1 (2) A statement of the exceptions, reductions, and limitations contained in
2 the policy.

3 (3) A statement of the renewal provisions, including any reservation by the
4 insurer of a right to change premiums.

5 (g) Other Applicable Provisions. – G.S. 58-51-95(f) applies to individual policies
6 and G.S. 58-51-80(g) applies to group policies.

7 (h) Other Income Sources. – If a policy contains a provision that provides for
8 integration of benefits with other income sources, it shall include a definition of what is
9 considered other income sources and a complete description of how benefits will be
10 reduced by other income sources, if at all. No disability income policy shall provide that
11 the amount of any disability benefit paid to the insured shall be reduced by reason of any
12 cost-of-living increase, designated as such under the federal Social Security Act, if the
13 cost-of-living increase occurs during the period for which benefits are payable."
14

15 **PART 3. RECONSTRUCTIVE SURGERY CONFORMING CHANGES.**

16 Section 3.1. G.S. 58-51-62 reads as rewritten:

17 **"§ 58-51-62. Coverage for reconstructive breast surgery ~~resulting from~~ following**
18 **mastectomy.**

19 (a) Every policy or contract of accident and health insurance, and every preferred
20 provider benefit plan under ~~G.S. 58-50-60~~ G.S. 58-50-56 that is issued, renewed, or amended
21 ~~on or after January 1, 1998, and~~ that provides coverage for mastectomy shall provide
22 coverage for reconstructive breast surgery ~~resulting from~~ following a mastectomy. The
23 coverage shall include coverage for all stages and revisions of reconstructive breast
24 surgery performed on a nondiseased breast to establish symmetry ~~when if~~ reconstructive
25 surgery on a diseased breast is ~~performed~~ performed, as well as coverage for prostheses
26 and physical complications in all stages of mastectomy, including lymphademas. The
27 same deductibles, coinsurance, and other limitations as apply to similar services covered
28 under the policy, contract, or plan shall apply to coverage for reconstructive breast
29 surgery. Reconstruction of the nipple/areolar complex following a mastectomy is covered
30 without regard to the lapse of time between the mastectomy and the reconstruction,
31 subject to the approval of the treating physician.

32 (b) As used in this section, the following terms have the meanings indicated:

33 (1) "Mastectomy" means the surgical removal of all or part of a breast as a
34 result of breast cancer or breast disease.

35 (2) "Reconstructive breast surgery" means surgery performed as a result of a
36 mastectomy to reestablish symmetry between the two breasts, and
37 includes reconstruction of the mastectomy site, creation of a new breast
38 mound, and creation of a new nipple/areolar complex. "Reconstructive
39 breast surgery" also includes augmentation mammoplasty, reduction
40 mammoplasty, and mastopexy of the nondiseased breast.

41 (c) A policy, contract, or plan subject to this section shall not:

42 (1) Deny coverage described in subsection (a) of this section on the basis
43 that the coverage is for cosmetic surgery;

- 1 (2) Deny to a woman eligibility or continued eligibility to enroll or to renew
2 coverage under the terms of the contract, policy, or plan, solely for the
3 purpose of avoiding the requirements of this section;
- 4 (3) Provide monetary payments or rebates to a woman to encourage her to
5 accept less than the minimum protections available under this section;
- 6 (4) Penalize or otherwise reduce or limit the reimbursement of an attending
7 provider because the provider provided care to an individual participant
8 or beneficiary in accordance with this section; or
- 9 (5) Provide incentives, monetary or otherwise, to an attending provider to
10 induce the provider to provide care to an individual participant or
11 beneficiary in a manner inconsistent with this section.

12 (d) Written notice of the availability of the coverage provided by this section shall
13 be delivered to every individual person insured under the policy, contract, or plan upon
14 initial coverage under the policy, contract, or plan and annually thereafter."

15 Section 3.2. G.S. 58-65-96 reads as rewritten:

16 **"§ 58-65-96. Coverage for reconstructive breast surgery following mastectomy.**

17 (a) Every insurance certificate or subscriber contract under any hospital service
18 plan or medical service plan governed by this Article and Article 66 of this Chapter, and
19 every preferred provider benefit plan under G.S. 58-50-56 ~~that is issued, renewed, or~~
20 ~~amended on or after January 1, 1998,~~ that provides coverage for mastectomy shall provide
21 coverage for reconstructive breast surgery ~~resulting from following~~ a mastectomy. The
22 coverage shall include coverage for all stages and revisions of reconstructive breast
23 surgery performed on a nondiseased breast to establish symmetry ~~when if~~ reconstructive
24 surgery on a diseased breast is ~~performed.~~ performed, as well as coverage for prostheses
25 and physical complications in all stages of mastectomy, including lymphedemas. The
26 same deductibles, coinsurance, and other limitations as apply to similar services covered
27 under the policy, contract, or plan shall apply to coverage for reconstructive breast
28 surgery. Reconstruction of the nipple/areolar complex following a mastectomy is covered
29 without regard to the lapse of time between the mastectomy and the reconstruction,
30 subject to the approval of the treating physician.

31 (b) As used in this section, the following terms have the meanings indicated:

- 32 (1) "Mastectomy" means the surgical removal of all or part of a breast as a
33 result of breast cancer or breast disease.
- 34 (2) "Reconstructive breast surgery" means surgery performed as a result of a
35 mastectomy to reestablish symmetry between the two breasts, and
36 includes reconstruction of the mastectomy site, creation of a new breast
37 mound, and creation of a new nipple/areolar complex. "Reconstructive
38 breast surgery" also includes augmentation mammoplasty, reduction
39 mammoplasty, and mastopexy of the nondiseased breast.

40 (c) A policy, contract, or plan subject to this section shall not:

- 41 (1) Deny coverage described in subsection (a) of this section on the basis
42 that the coverage is for cosmetic surgery;

- 1 (2) Deny to a woman eligibility or continued eligibility to enroll or to renew
2 coverage under the terms of the contract, policy, or plan, solely for the
3 purpose of avoiding the requirements of this section;
- 4 (3) Provide monetary payments or rebates to a woman to encourage her to
5 accept less than the minimum protections available under this section;
- 6 (4) Penalize or otherwise reduce or limit the reimbursement of an attending
7 provider because the provider provided care to an individual participant
8 or beneficiary in accordance with this section; or
- 9 (5) Provide incentives, monetary or otherwise, to an attending provider to
10 induce the provider to provide care to an individual participant or
11 beneficiary in a manner inconsistent with this section.

12 (d) Written notice of the availability of the coverage provided by this section shall
13 be delivered to every individual person insured under the certificate, contract, or plan
14 upon initial coverage under the certificate, contract, or plan and annually thereafter."

15 Section 3.3. G.S. 58-67-79 reads as rewritten:

16 **"§ 58-67-79. Coverage for reconstructive breast surgery following mastectomy.**

17 (a) Every health care plan written by a health maintenance organization ~~and in~~
18 ~~force, issued, renewed, or amended on or after January 1, 1998,~~ that is subject to this Article
19 and that provides coverage for mastectomy shall provide coverage for reconstructive
20 breast surgery ~~resulting from~~ following a mastectomy. The coverage shall include
21 coverage for all stages and revisions of reconstructive breast surgery performed on a
22 nondiseased breast to establish symmetry ~~when~~ if reconstructive surgery on a diseased
23 breast is ~~performed~~ performed, as well as coverage for prostheses and physical
24 complications in all stages of mastectomy, including lymphademas. The same
25 deductibles, coinsurance, and other limitations as apply to similar services covered under
26 the policy, contract, or plan shall apply to coverage for reconstructive breast surgery.
27 Reconstruction of the nipple/areolar complex following a mastectomy is covered without
28 regard to the lapse of time between the mastectomy and the reconstruction, subject to the
29 approval of the treating physician.

30 (b) As used in this section, the following terms have the meanings indicated:

- 31 (1) "Mastectomy" means the surgical removal of all or part of a breast as a
32 result of breast cancer or breast disease.
- 33 (2) "Reconstructive breast surgery" means surgery performed as a result of a
34 mastectomy to reestablish symmetry between the two breasts, and
35 includes reconstruction of the mastectomy site, creation of a new breast
36 mound, and creation of a new nipple/areolar complex. "Reconstructive
37 breast surgery" also includes augmentation mammoplasty, reduction
38 mammoplasty, and mastopexy of the nondiseased breast.

39 (c) A policy, contract, or plan subject to this section shall not:

- 40 (1) Deny coverage described in subsection (a) of this section on the basis
41 that the coverage is for cosmetic surgery;

- 1 (2) Deny to a woman eligibility or continued eligibility to enroll or to renew
2 coverage under the terms of the contract, policy, or plan, solely for the
3 purpose of avoiding the requirements of this section;
- 4 (3) Provide monetary payments or rebates to a woman to encourage her to
5 accept less than the minimum protections available under this section;
- 6 (4) Penalize or otherwise reduce or limit the reimbursement of an attending
7 provider because the provider provided care to an individual participant
8 or beneficiary in accordance with this section; or
- 9 (5) Provide incentives, monetary or otherwise, to an attending provider to
10 induce the provider to provide care to an individual participant or
11 beneficiary in a manner inconsistent with this section.

12 (d) Written notice of the availability of the coverage provided by this section shall
13 be delivered to every individual person insured under the plan upon enrollment and
14 annually thereafter."

15
16 **PART 4. VIATICAL SETTLEMENTS.**

17 Section 4. G.S. 58-58-42 reads as rewritten:

18 **"§ 58-58-42. Viatical settlements.**

19 (a) Definitions. – As used in this section:

20 ~~(1) "Broker" means a person who, for consideration and on behalf of~~
21 ~~another, offers or advertises the availability of viatical settlements,~~
22 ~~introduces viators to providers, or offers or attempts to negotiate viatical~~
23 ~~settlement contracts between a viator and one or more providers; it does~~
24 ~~not mean an attorney, accountant, or financial planner retained to~~
25 ~~represent a viator and whose compensation is not paid by a provider.~~

26 (1a) 'Financing entity' means an underwriter, placement agent, lender,
27 purchaser of securities, purchaser of a policy or certificate from a
28 viatical settlement provider, credit enhancer, or any person that may be
29 a party to a viatical settlement contract and that has a direct ownership
30 in a policy or certificate that is the subject of a viatical settlement
31 contract but whose sole activity related to the transaction is providing
32 funds to effect the viatical settlement and who has an agreement in
33 writing with a licensed viatical settlement provider to act as a participant
34 in a financing transaction.

35 (1b) 'Financing transaction' means a transaction in which a viatical
36 settlement provider or a financing entity obtains financing for viatical
37 settlement contracts, viaticated policies or interests therein including,
38 without limitation, any secured or unsecured financing, any
39 securitization transaction, or any securities offering either registered or
40 exempt from registration under federal and State securities law, or any
41 direct purchase of interests in a policy or certificate, if the financing
42 transaction complies with federal and State securities law.

- 1 (2) 'Policy' means an individual life insurance policy or a certificate under a
2 group life insurance policy.
- 3 (2a) 'Viatical settlement broker' means a person that on behalf of a viator and
4 for a fee, commission, or other valuable consideration, offers or
5 attempts to negotiate viatical settlements between a viator and one or
6 more viatical settlement providers. 'Viatical settlement broker' does not
7 include an attorney, accountant, or financial planner who is retained to
8 represent the viator and whose compensation is paid directly by or at the
9 direction of the viator.
- 10 (3) ~~"Provider" means a person who enters into a viatical settlement contract~~
11 ~~with a viator. "Provider" does not mean:~~
- 12 a. ~~A licensed lending institution that takes an assignment of a~~
13 ~~policy as collateral for a loan.~~
- 14 b. ~~The issuer of a policy providing accelerated benefits under 11~~
15 ~~NCAC 12.1200.~~
- 16 c. ~~A natural person who enters into no more than one agreement in~~
17 ~~a calendar year for the transfer of a policy for any value less than~~
18 ~~the expected death benefit.~~
- 19 (4) 'Viatical settlement contract' or 'contract' means a written agreement
20 entered into between a viatical settlement provider and a viator that
21 establishes the terms under which the viatical settlement provider will
22 pay consideration that is less than the expected death benefit of the
23 viator's policy in return for the viator's assignment, transfer, sale, devise,
24 or bequest of the death benefit or ownership of all or a portion of the
25 policy to the viatical settlement provider. A viatical settlement contract
26 also includes a contract for a loan or other financial transaction secured
27 primarily by an individual or group life insurance policy, other than a
28 loan by a life insurance company pursuant to the terms of the life
29 insurance contract, or a loan secured by the cash value of a policy.
- 30 (4a) 'Viatical settlement provider' means a person who enters into a viatical
31 settlement contract with a viator. 'Viatical settlement provider' also
32 means a person that obtains financing from a financing entity for the
33 purchase, acquisition, transfer, or other assignment of one or more
34 viatical settlement contracts, viaticated policies, or interests therein, or
35 otherwise sells, assigns, transfers, pledges, hypothecates, or otherwise
36 disposes of one or more viatical settlement contracts, viaticated policies,
37 or interests therein. 'Provider' does not mean:
- 38 a. A licensed lending institution that takes an assignment of a
39 policy as collateral for a loan.
- 40 b. The issuer of a policy providing accelerated benefits.
- 41 c. A natural person who enters into no more than one agreement in
42 a calendar year for the transfer of a policy for any value less than
43 the expected death benefit.

1 (4b) 'Viatical settlement representative' means a person who is an authorized
2 agent of a viatical settlement provider or viatical settlement broker, as
3 applicable, who acts in any manner in the solicitation of a viatical
4 settlement. A viatical settlement representative is deemed to represent
5 only the viatical settlement provider or viatical settlement broker.

6 Viatical settlement representative does not include:

7 a. An attorney, accountant, or financial planner or any person
8 exercising a power of attorney granted by a viator.

9 b. Any person who is retained to represent a viator and whose
10 compensation is paid by or at the direction of the viator,
11 regardless of whether the viatical settlement is consummated.

12 (4c) 'Viaticated policy' means a policy that has been acquired by a viatical
13 settlement provider under a viatical settlement contract.

14 (5) "Viator" means the owner or holder of a policy insuring the life of an
15 individual who has a catastrophic or life-threatening an illness or condition
16 that is catastrophic, life-threatening, or chronic, and who enters into or
17 seeks to enter into a viatical settlement contract.

18 (a1) Fiduciary Duty. – Regardless of the manner in which a viatical settlement
19 broker is compensated, a viatical settlement broker represents only the viator and owes a
20 fiduciary duty to the viator to act according to the viator's instructions and in the best
21 interest of the viator.

22 (b) Registration. – No person may act as a ~~provider~~ viatical settlement provider,
23 viatical settlement representative, or viatical settlement broker, or enter into or solicit a
24 contract without first registering with the Commissioner. The applicant shall register on a
25 form prescribed by the Commissioner. The Commissioner may require the applicant to
26 disclose fully the identity of all stockholders, partners, officers, and employees. The
27 Commissioner may refuse registration of any partnership, corporation, or other business
28 entity if not satisfied that any officer, employee, stockholder, or partner who may
29 materially influence the applicant's conduct meets the standards of this section.
30 Registration of a partnership, corporation, or other business entity authorizes all
31 members, officers, and designated employees to act as viatical settlement providers under
32 the registration; all of those persons must be named in the application and any
33 supplements to the application. Before any registration is complete, the Commissioner
34 shall investigate each applicant and may register the applicant if the Commissioner finds
35 that the applicant:

36 (1) Has provided a detailed plan of operation.

37 (2) Is competent and trustworthy and intends to act in good faith in the
38 capacity involved by the license applied for.

39 (3) Has a good business reputation and has had experience, training, or
40 education so as to be qualified in the business for which the license is
41 applied.

42 (4) If a corporation, is incorporated under the laws of this State or is a
43 foreign corporation authorized to transact business in this State.

1 No registration is complete for any nonresident applicant unless a written designation of
2 an agent for service of process is filed and maintained with the Commissioner or the
3 applicant has filed with the Commissioner the applicant's written irrevocable consent that
4 any action against the applicant may be commenced against the applicant by service of
5 process on the Commissioner.

6 (c) Enforcement. – The Commissioner may issue a cease and desist order upon
7 any viatical settlement provider if the Commissioner finds that:

8 (1) There was any misrepresentation in the application for registration;

9 (2) The viatical settlement provider has been guilty of fraudulent or
10 dishonest practices, is subject to a final administrative action, or is
11 otherwise shown to be untrustworthy or incompetent to act as a viatical
12 settlement provider;

13 (3) The viatical settlement provider demonstrates a pattern of unreasonable
14 payments to policy owners;

15 (4) The viatical settlement provider has been convicted of a felony or any
16 misdemeanor of which criminal fraud is an element; or

17 (5) The viatical settlement provider has violated a provision of this section.

18 (d) Approval of Contracts. – No viatical settlement provider may use any viatical
19 settlement contract in this State unless it has been filed with and approved by the
20 Commissioner. Any contract form filed with the Commissioner is deemed to be approved
21 if it has not been disapproved within 90 days after the filing. The Commissioner shall
22 disapprove a contract form if, in the Commissioner's opinion, any provision of the
23 contract is unreasonable, contrary to the public interest, or otherwise misleading or unfair
24 to the policy owner.

25 (e) Reporting Requirements. – Each viatical settlement provider shall file with the
26 Commissioner on or before March 1 of each year a statement containing the information
27 required by the rules adopted by the Commissioner.

28 (e1) Identity of Viator. – Except as otherwise allowed or required by law, a viatical
29 settlement provider, viatical settlement representative, viatical settlement broker,
30 insurance company, insurance company agent, insurance broker, information bureau,
31 rating agency or company, or any other person with actual knowledge of viator's identity,
32 shall not disclose that identity to any other person unless the disclosure:

33 (1) Is necessary to effect a viatical settlement between the viator and a
34 viatical settlement provider and the viator has provided prior written
35 consent to the disclosure.

36 (2) Is provided in response to an investigation by the Commissioner or any
37 other governmental officer or agency.

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

40 (f) Examination. – The Commissioner may, when the Commissioner deems it to
41 be reasonably necessary to protect the public interest, examine the business and affairs of
42 any ~~provider~~ viatical settlement provider, representative, or broker, or applicant for
43 registration. The Commissioner may order any ~~provider~~ viatical settlement provider,

1 representative, or broker, or applicant to produce records, books, files, or other
2 information that is necessary to ascertain whether or not the ~~provider~~-viatical settlement
3 provider, representative, or broker, or applicant is acting or has acted in violation of this
4 section or otherwise contrary to the public interest. The ~~provider~~-viatical settlement
5 provider, representative, or broker, or applicant shall pay the expenses incurred in
6 conducting an examination. Names and individual identification data for all viators are
7 confidential and shall not be disclosed by the Commissioner. The viatical settlement
8 provider shall maintain records of all transactions of contracts and make the records
9 available to the Commissioner for inspection during reasonable business hours. A
10 viatical settlement provider shall maintain records of each viatical settlement until five
11 years after the death of the insured.

12 (g) Disclosure. – A viatical settlement provider shall disclose the following
13 information to the viator no later than the date the contract is signed by all parties:

- 14 (1) Options other than the contract for a person with a catastrophic or life-
15 threatening illness, including, but not limited to, accelerated benefits
16 offered by the issuer of the policy.
- 17 (2) The fact that some or all of the contract consideration may be taxable,
18 and that assistance should be sought from a personal tax advisor.
- 19 (3) The fact that the contract consideration could be subject to the claims of
20 creditors.
- 21 (4) The fact that receipt of the contract consideration may adversely affect
22 the viator's eligibility for Medicaid or other government benefits or
23 entitlements; and that advice should be obtained from the appropriate
24 government agencies.
- 25 (5) The viator's right to rescind a contract ~~within 30 days after the date it is~~
26 ~~executed by all parties or~~ within 15 days after the receipt of the contract
27 consideration by the viator, ~~whichever is less, as provided~~ viator as
28 provided in subsection (h) of this section.
- 29 (6) The date by which the contract consideration will be available to the
30 viator and the source of the consideration.
- 31 (7) Entering into a viatical settlement contract may cause other rights or
32 benefits, including conversion rights and waiver of premium benefits
33 that may exist under the policy, to be forfeited by the viator and that
34 assistance should be sought from a financial adviser.

35 (g1) Disclosure Before Contract Execution. – A viatical settlement provider shall
36 disclose the following information to the viator before the date the viatical settlement
37 contract is signed by all parties:

- 38 (1) The affiliation, if any, between the viatical settlement provider and the
39 issuer of an insurance policy to be viaticated.
- 40 (2) If a policy to be viaticated has been issued as a joint policy or involves
41 family riders or any coverage of a life other than the insured, the viator
42 shall be informed of the possible loss of coverage on the other lives and

1 be advised to consult with his or her insurance producer or the company
2 issuing the policy for advice on the proposed viatication.

3 (3) The dollar amount of the current death benefit payable to the viatical
4 settlement provider under the policy. The viatical settlement provider
5 shall also disclose the availability of any additional guaranteed
6 insurance benefits, the dollar amount of any accidental death and
7 dismemberment benefits under the policy, and the viatical settlement
8 provider's interest in those benefits.

9 (h) General Rules. – A viatical settlement provider entering into a contract with a
10 viator shall first obtain:

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

13 (2) A witnessed document in which the viator (i) consents to the contract,
14 (ii) acknowledges the catastrophic or life-threatening illness, (iii)
15 represents that the viator has a full and complete understanding of the
16 contract, (iv) represents that the viator has a full and complete
17 understanding of the benefits of the policy, and (v) releases the medical
18 records and acknowledges that the contract has been entered into freely
19 and voluntarily.

20 All medical information solicited or obtained by any viatical settlement provider is
21 subject to all State laws relating to confidentiality of medical information. All contracts
22 entered into in this State shall contain an unconditional refund provision for at least 30
23 days after the date of the contract, or 15 days after the receipt of the viatical settlement
24 proceeds, whichever is less.

25 (i) Contract Consideration. – Immediately upon receipt from the viator of
26 documents to effect the transfer of the policy, the viatical settlement provider shall direct
27 the contract consideration to an escrow or trust account managed by a trustee or escrow
28 agent in a ~~bank approved by the Commissioner, pending acknowledgment of the transfer by the~~
29 ~~issuer of the policy.~~ State or federally chartered financial institution whose deposits are
30 insured by the Federal Deposit Insurance Corporation (FDIC). The account shall be
31 managed by a trustee or escrow agent independent of the parties to the contract. The
32 trustee or escrow agent shall transfer the proceeds that are due to the viator immediately
33 upon receipt of acknowledgment of the transfer from the insurer. Failure to tender the
34 viatical settlement contract consideration by the date disclosed to the viator renders the
35 contract null and void.

36 (j) Authority to Adopt Standards. – The Commissioner may:

37 (1) Adopt rules to implement this section.

38 (2) Establish standards for evaluating reasonableness of payments under
39 contracts. This authority includes regulation of discount rates used to
40 determine the amount paid in exchange for assignment, transfer, sale,
41 devise, or bequest of a benefit under a policy.

42 (3) Establish appropriate registration and other regulatory requirements for
43 brokers.

1 (4) Repealed by Session Laws 1998-211, s. 32.

2 (k) Unfair Trade Practices. – A violation of this section is considered an unfair
3 trade practice under Article 63 of this Chapter."
4

5 **PART 5. FAMILY LEAVE CREDIT INSURANCE.**

6 Section 5.1. Article 57 of Chapter 58 of the General Statutes is amended by
7 adding a new section to read:

8 **§ 58-57-115. Family leave credit insurance standards; policy provisions.**

9 (a) Definitions. – As used in this section:

10 (1) 'Foster child' means a minor (i) over whom a guardian has been
11 appointed by the clerk of superior court of any county in North
12 Carolina; or (ii) the primary or sole custody of whom has been assigned
13 by order of a court of competent jurisdiction.

14 (2) 'Immediate family member' means a spouse, child (natural, adopted, or
15 foster), or parent.

16 (3) 'Placement in the foster home' means physically residing with a person
17 appointed as guardian or custodian of a foster child as long as that
18 guardian or custodian has assumed the legal obligation for total or
19 partial support of the foster child with the intent that the foster child
20 reside with the guardian or custodian on more than a temporary or short-
21 term basis.

22 (b) Coverage. – Insurers may provide coverage for loss of income because of a
23 voluntary, employer-approved leave of absence for specified reasons. The insured shall
24 not be required to meet any federal requirements in order to qualify for benefits provided
25 by this coverage. Benefits shall be paid to the creditor to reduce the insured's
26 indebtedness.

27 (c) Eligibility. – Coverage may be provided or offered to all debtors who have not
28 yet reached their 71st birthday and have been working for wages for a minimum of 30
29 hours per week for the past 12 consecutive months.

30 (d) Qualifying Events. – Benefits shall be paid only for the following qualifying
31 events:

32 (1) An accident involving sickness of, or incapacitation of, an immediate
33 family member that requires the insured to attend to the family
34 member's needs.

35 (2) Birth of a child or children.

36 (3) Adoption of a child or children.

37 (4) Placement in the foster home of a foster child or children.

38 (5) The insured's principal residence is in a federally declared disaster area.

39 (6) The insured is called to active military duty.

40 (7) The insured is called to jury duty.

41 (e) Exclusions. – Coverage shall not contain any exclusions except:

42 (1) Retirement of the insured from employment.

43 (2) Voluntary resignation of the insured from employment.

1 (3) Seasonal unemployment of the insured.

2 (4) Involuntary unemployment of the insured.

3 (5) Disability of the insured.

4 (6) Employment termination because of willful or criminal misconduct of
5 the insured.

6 (f) Notice. – The insurer shall send a notice to the insured at the insured's home
7 address to inform the insured that benefits have been paid, including the dates and the
8 amount of payment. The notice shall be sent to the insured within 60 days after the last
9 day of the benefit period.

10 (g) Minimum Amounts. – The minimum monthly benefit amount shall be level for
11 the entire benefit period. The minimum monthly benefit amount shall equal or exceed
12 the minimum monthly payment required by the creditor, plus the premium charge for the
13 coverage attributable to the benefit period.

14 (h) Miscellaneous Provisions. – Any waiting period for benefits shall not exceed
15 30 days. The insured shall provide satisfactory evidence of employer approval of
16 qualified leave. Lump-sum benefits are prohibited. Refunds of unearned single
17 premiums shall be equal to the pro rata unearned gross premium.

18 (i) Rates. – Premium rates shall be actuarially demonstrated to generate a sixty
19 percent (60%) loss ratio. Joint coverage rates shall be one and two-thirds (1 2/3) times
20 the approved single rate. Rates shall be filed for approval before they can be used.

21 (j) Reports. – By March 30 of each year every insurer writing family leave
22 coverage shall file a statistical report of the past calendar year's actuarial experience for
23 that coverage. The report shall demonstrate the actual experience loss ratio for the
24 calendar year and shall include the: number of insureds, total premium volume, total
25 number of claims, total claims volume, total number of claims for each eligible leave
26 event, average monthly benefit per claim for each event, and premium refunds."

27 Section 5.2. G.S. 58-57-1 reads as rewritten:

28 "**§ 58-57-1. Application of Article.**

29 All credit life insurance, all credit accident and health insurance, all credit property
30 insurance, all credit insurance on credit card balances, all family leave credit insurance,
31 and all credit unemployment insurance written in connection with direct loans, consumer
32 credit installment sale contracts of whatever term permitted by G.S. 25A-33, leases, or
33 other credit transactions shall be subject to the provisions of this Article, except credit
34 insurance written in connection with direct loans of more than 15 years' duration. The
35 provisions of this Article shall be controlling as to such insurance and no other provisions
36 of Articles 1 through 64 of this Chapter shall be applicable unless otherwise specifically
37 provided; nor shall such insurance be subject to the provisions of this Article where the
38 issuance of such insurance is an isolated transaction on the part of the insurer not related
39 to an agreement or a plan for insuring debtors of the creditor."

40 Section 5.3. G.S. 58-57-5 is amended by adding the following new subdivision
41 to read:

42 "(6a) 'Family credit leave insurance' means insurance on a debtor in
43 connection with a specified loan or other credit transaction to provide

1 payment to a creditor of the debtor for the installment payments or other
2 periodic payment becoming due when the debtor suffers a loss of
3 income because of a voluntary, employer-approved leave of absence for
4 qualifying events specified in G.S. 58-57-115(d)."
5

6 **PART 6. EFFECT OF HEADINGS.**

7 Section 6. The headings to the parts of this act are a convenience to the reader
8 and are for reference only. The headings do not expand, limit, or define the text of this
9 act.
10

11 **PART 7. EFFECTIVE DATES.**

12 Section 7. Sections 2, 4, 5.1, 5.2, and 5.3 of this act become effective October
13 1, 1999. The remainder of this act is effective when it becomes law.