

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 294
Committee Substitute Favorable 4/12/99
Senate Insurance Committee Substitute Adopted 7/7/99

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

(Public)

Sponsors:

Referred to:

March 4, 1999

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE LAW GOVERNING THE APPLICABILITY OF
3 PREEXISTING CONDITION LIMITATIONS TO CERTAIN TYPES OF HEALTH
4 INSURANCE POLICIES; TO PRESCRIBE STANDARDS FOR DISABILITY
5 INCOME INSURANCE; TO CONFORM NORTH CAROLINA'S 1997
6 POSTMASTECTOMY RECONSTRUCTIVE SURGERY LAWS TO THE
7 FEDERAL WOMEN'S HEALTH AND CANCER RIGHTS ACT OF 1998; TO
8 UPDATE THE LAW ON VIATICAL SETTLEMENTS; TO AUTHORIZE THE
9 WRITING OF FAMILY LEAVE CREDIT INSURANCE; TO CLARIFY THAT
10 LOCAL GOVERNMENT INSURANCE RISK POOLS ARE SUBJECT TO
11 INSURANCE LAWS IN CHAPTER 58 ONLY WHEN SPECIFICALLY
12 REFERRED TO IN THOSE LAWS; TO MAKE CONFORMING CHANGES IN
13 THE STATE HEALTH PLAN REIMBURSEMENT FOR PASTORAL
14 COUNSELORS; AND TO MAKE A TECHNICAL CHANGE CONCERNING THE
15 CLAIMS ACKNOWLEDGMENT STATUTE.

16 The General Assembly of North Carolina enacts:

17

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

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

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

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

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

9
10 **PART 2. DISABILITY INCOME INSURANCE.**

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

13 **"§ 58-51-130. Standards for disability income insurance policies.**

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

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

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

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

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

26 (1) Terms of renewability.

27 (2) Initial and subsequent conditions of eligibility.

28 (3) Nonduplication of coverage.

29 (4) Preexisting conditions.

30 (5) Probationary periods.

31 (6) Elimination periods.

32 (7) Requirements for replacement.

33 (8) Recurrent conditions.

34 (9) Definitions of terms.

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

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

- 1 (1) Using an application or enrollment form designed to elicit the medical
2 history of a prospective insured.
3 (2) Underwriting based on answers on the form according to the insurer's
4 established standards.
5 (3) Contesting the answers in accordance with G.S. 58-51-15(a)(2)a.
6 (f) Required Provisions. – Each policy shall include:
7 (1) A description of the principal benefits and coverage provided in the
8 policy.
9 (2) A statement of the exceptions, reductions, and limitations contained in
10 the policy.
11 (3) A statement of the renewal provisions, including any reservation by the
12 insurer of a right to change premiums.
13 (g) Other Applicable Provisions. – G.S. 58-51-95(f) applies to individual policies
14 and G.S. 58-51-80(g) applies to group policies.
15 (h) Other Income Sources. – If a policy contains a provision that provides for
16 integration of benefits with other income sources, it shall include a definition of what is
17 considered other income sources and a complete description of how benefits will be
18 reduced by other income sources, if at all. No disability income policy shall provide that
19 the amount of any disability benefit paid to the insured shall be reduced by reason of any
20 cost-of-living increase, designated as such under the federal Social Security Act, if the
21 cost-of-living increase occurs during the period for which benefits are payable."
22

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

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

25 "**§ 58-51-62. Coverage for reconstructive breast surgery ~~resulting from~~ following**
26 **mastectomy.**

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

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

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

- 1 (2) "Reconstructive breast surgery" means surgery performed as a result of a
2 mastectomy to reestablish symmetry between the two breasts, and
3 includes reconstruction of the mastectomy site, creation of a new breast
4 mound, and creation of a new nipple/areolar complex. "Reconstructive
5 breast surgery" also includes augmentation mammoplasty, reduction
6 mammoplasty, and mastopexy of the nondiseased breast.
- 7 (c) A policy, contract, or plan subject to this section shall not:
- 8 (1) Deny coverage described in subsection (a) of this section on the basis
9 that the coverage is for cosmetic surgery;
- 10 (2) Deny to a woman eligibility or continued eligibility to enroll or to renew
11 coverage under the terms of the contract, policy, or plan, solely for the
12 purpose of avoiding the requirements of this section;
- 13 (3) Provide monetary payments or rebates to a woman to encourage her to
14 accept less than the minimum protections available under this section;
- 15 (4) Penalize or otherwise reduce or limit the reimbursement of an attending
16 provider because the provider provided care to an individual participant
17 or beneficiary in accordance with this section; or
- 18 (5) Provide incentives, monetary or otherwise, to an attending provider to
19 induce the provider to provide care to an individual participant or
20 beneficiary in a manner inconsistent with this section.

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

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

25 **"§ 58-65-96. Coverage for reconstructive breast surgery following mastectomy.**

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

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

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

- 1 (2) "Reconstructive breast surgery" means surgery performed as a result of a
2 mastectomy to reestablish symmetry between the two breasts, and
3 includes reconstruction of the mastectomy site, creation of a new breast
4 mound, and creation of a new nipple/areolar complex. "Reconstructive
5 breast surgery" also includes augmentation mammoplasty, reduction
6 mammoplasty, and mastopexy of the nondiseased breast.
- 7 (c) A policy, contract, or plan subject to this section shall not:
- 8 (1) Deny coverage described in subsection (a) of this section on the basis
9 that the coverage is for cosmetic surgery;
- 10 (2) Deny to a woman eligibility or continued eligibility to enroll or to renew
11 coverage under the terms of the contract, policy, or plan, solely for the
12 purpose of avoiding the requirements of this section;
- 13 (3) Provide monetary payments or rebates to a woman to encourage her to
14 accept less than the minimum protections available under this section;
- 15 (4) Penalize or otherwise reduce or limit the reimbursement of an attending
16 provider because the provider provided care to an individual participant
17 or beneficiary in accordance with this section; or
- 18 (5) Provide incentives, monetary or otherwise, to an attending provider to
19 induce the provider to provide care to an individual participant or
20 beneficiary in a manner inconsistent with this section.

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

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

25 **"§ 58-67-79. Coverage for reconstructive breast surgery following mastectomy.**

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

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

- 40 (1) "Mastectomy" means the surgical removal of all or part of a breast as a
41 result of breast cancer or breast disease.
- 42 (2) "Reconstructive breast surgery" means surgery performed as a result of a
43 mastectomy to reestablish symmetry between the two breasts, and

1 includes reconstruction of the mastectomy site, creation of a new breast
2 mound, and creation of a new nipple/areolar complex. "Reconstructive
3 breast surgery" also includes augmentation mammoplasty, reduction
4 mammoplasty, and mastopexy of the nondiseased breast.

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

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

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

22 23 **PART 4. VIATICAL SETTLEMENTS.**

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

25 **"§ 58-58-42. Viatical settlements.**

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

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

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

42 (1b) 'Financing transaction' means a transaction in which a viatical
43 settlement provider or a financing entity obtains financing for viatical

1 settlement contracts, viaticated policies or interests therein including,
2 without limitation, any secured or unsecured financing, any
3 securitization transaction, or any securities offering either registered or
4 exempt from registration under federal and State securities law, or any
5 direct purchase of interests in a policy or certificate, if the financing
6 transaction complies with federal and State securities law.

7 (2) 'Policy' means an individual life insurance policy or a certificate under a
8 group life insurance policy.

9 (2a) 'Viatical settlement broker' means a person that on behalf of a viator and
10 for a fee, commission, or other valuable consideration, offers or
11 attempts to negotiate viatical settlements between a viator and one or
12 more viatical settlement providers. 'Viatical settlement broker' does not
13 include an attorney, accountant, or financial planner who is retained to
14 represent the viator and whose compensation is paid directly by or at the
15 direction of the viator.

16 (3) ~~"Provider" means a person who enters into a viatical settlement contract~~
17 ~~with a viator. "Provider" does not mean:~~

18 a. ~~A licensed lending institution that takes an assignment of a~~
19 ~~policy as collateral for a loan.~~

20 b. ~~The issuer of a policy providing accelerated benefits under 11~~
21 ~~NCAC 12.1200.~~

22 c. ~~A natural person who enters into no more than one agreement in~~
23 ~~a calendar year for the transfer of a policy for any value less than~~
24 ~~the expected death benefit.~~

25 (4) 'Viatical settlement contract' or 'contract' means a written agreement
26 entered into between a viatical settlement provider and a viator that
27 establishes the terms under which the viatical settlement provider will
28 pay consideration that is less than the expected death benefit of the
29 viator's policy in return for the viator's assignment, transfer, sale, devise,
30 or bequest of the death benefit or ownership of all or a portion of the
31 policy to the viatical settlement provider. A viatical settlement contract
32 also includes a contract for a loan or other financial transaction secured
33 primarily by an individual or group life insurance policy, other than a
34 loan by a life insurance company pursuant to the terms of the life
35 insurance contract, or a loan secured by the cash value of a policy.

36 (4a) 'Viatical settlement provider' means a person who enters into a viatical
37 settlement contract with a viator. 'Viatical settlement provider' also
38 means a person that obtains financing from a financing entity for the
39 purchase, acquisition, transfer, or other assignment of one or more
40 viatical settlement contracts, viaticated policies, or interests therein, or
41 otherwise sells, assigns, transfers, pledges, hypothecates, or otherwise
42 disposes of one or more viatical settlement contracts, viaticated policies,
43 or interests therein. 'Provider' does not mean:

- 1 a. A licensed lending institution that takes an assignment of a
2 policy as collateral for a loan.
3 b. The issuer of a policy providing accelerated benefits.
4 c. A natural person who enters into no more than one agreement in
5 a calendar year for the transfer of a policy for any value less than
6 the expected death benefit.
7 d. A financing entity (i) whose sole activity related to the
8 transaction is providing funds to effect the viatical settlement
9 provider and (ii) that has a written agreement with a licensed
10 viatical settlement provider to act as a participant in a financing
11 transaction.

12 (4b) 'Viatical settlement representative' means a person who is an authorized
13 agent of a viatical settlement provider or viatical settlement broker, as
14 applicable, who acts in any manner in the solicitation of a viatical
15 settlement. A viatical settlement representative is deemed to represent
16 only the viatical settlement provider or viatical settlement broker.

17 Viatical settlement representative does not include:

- 18 a. An attorney, accountant, or financial planner or any person
19 exercising a power of attorney granted by a viator.
20 b. Any person who is retained to represent a viator and whose
21 compensation is paid by or at the direction of the viator,
22 regardless of whether the viatical settlement is consummated.

23 (4c) 'Viaticated policy' means a policy that has been acquired by a viatical
24 settlement provider under a viatical settlement contract.

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

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

33 (b) Registration. – No person may act as a ~~provider~~ viatical settlement provider,
34 viatical settlement representative, or viatical settlement broker, or enter into or solicit a
35 contract without first registering with the Commissioner. The applicant shall register on a
36 form prescribed by the Commissioner. The Commissioner may require the applicant to
37 disclose fully the identity of all ~~stockholders~~, stockholders directly or indirectly holding
38 ten percent (10%) or more of the voting securities of the viatical settlement provider,
39 partners, officers, and employees. The Commissioner may refuse registration of any
40 partnership, corporation, or other business entity if not satisfied that any stockholder
41 directly or indirectly holding ten percent (10%) or more of the voting securities of the
42 viatical settlement provider, officer, employee, ~~stockholder~~, or partner who may materially
43 influence the applicant's conduct meets the standards of this section. Registration of a

1 partnership, corporation, or other business entity authorizes all members, officers, and
2 designated employees to act as viatical settlement providers under the registration; all of
3 those persons must be named in the application and any supplements to the application.
4 Before any registration is complete, the Commissioner shall investigate each applicant
5 and may register the applicant if the Commissioner finds that the applicant:

- 6 (1) Has provided a detailed plan of operation.
- 7 (2) Is competent and trustworthy and intends to act in good faith in the
8 capacity involved by the license applied for.
- 9 (3) Has a good business reputation and has had experience, training, or
10 education so as to be qualified in the business for which the license is
11 applied.
- 12 (4) If a corporation, is incorporated under the laws of this State or is a
13 foreign corporation authorized to transact business in this State.

14 No registration is complete for any nonresident applicant unless a written designation of
15 an agent for service of process is filed and maintained with the Commissioner or the
16 applicant has filed with the Commissioner the applicant's written irrevocable consent that
17 any action against the applicant may be commenced against the applicant by service of
18 process on the Commissioner.

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

- 21 (1) There was any misrepresentation in the application for registration;
- 22 (2) The viatical settlement provider has been guilty of fraudulent or
23 dishonest practices, is subject to a final administrative action, or is
24 otherwise shown to be untrustworthy or incompetent to act as a viatical
25 settlement provider;
- 26 (3) The viatical settlement provider demonstrates a pattern of unreasonable
27 payments to policy owners;
- 28 (4) The viatical settlement provider has been convicted of a felony or any
29 misdemeanor of which criminal fraud is an element; or
- 30 (5) The viatical settlement provider has violated a provision of this section.

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

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

41 (e1) Identity of Viator. – Except as otherwise allowed or required by law, a viatical
42 settlement provider, viatical settlement representative, viatical settlement broker,
43 insurance company, insurance company agent, insurance broker, information bureau,

1 rating agency or company, or any other person with actual knowledge of viator's identity,
2 shall not disclose that identity to any other person unless the disclosure:

3 (1) Is necessary to effect a viatical settlement between the viator and a
4 viatical settlement provider and the viator has provided prior written
5 consent to the disclosure.

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

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

10 (f) Examination. – The Commissioner may, when the Commissioner deems it to
11 be reasonably necessary to protect the public interest, examine the business and affairs of
12 any ~~provider~~viatical settlement provider, representative, or broker, or applicant for
13 registration. The Commissioner may order any ~~provider~~viatical settlement provider,
14 representative, or broker, or applicant to produce records, books, files, or other
15 information that is necessary to ascertain whether or not the ~~provider~~viatical settlement
16 provider, representative, or broker, or applicant is acting or has acted in violation of this
17 section or otherwise contrary to the public interest. The ~~provider~~viatical settlement
18 provider, representative, or broker, or applicant shall pay the expenses incurred in
19 conducting an examination. Names and individual identification data for all viators are
20 confidential and shall not be disclosed by the Commissioner. The viatical settlement
21 provider shall maintain records of all transactions of contracts and make the records
22 available to the Commissioner for inspection during reasonable business hours. A
23 viatical settlement provider shall maintain records of each viatical settlement until five
24 years after the death of the insured.

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

27 (1) Options other than the contract for a person with a catastrophic or life-
28 threatening illness, including, but not limited to, accelerated benefits
29 offered by the issuer of the policy.

30 (2) The fact that some or all of the contract consideration may be taxable,
31 and that assistance should be sought from a personal tax advisor.

32 (3) The fact that the contract consideration could be subject to the claims of
33 creditors.

34 (4) The fact that receipt of the contract consideration may adversely affect
35 the viator's eligibility for Medicaid or other government benefits or
36 entitlements; and that advice should be obtained from the appropriate
37 government agencies.

38 (5) The viator's right to rescind a contract ~~within 30 days after the date it is~~
39 ~~executed by all parties or~~ within 15 days after the receipt of the contract
40 consideration by the viator, ~~whichever is less, as provided~~ viator as
41 provided in subsection (h) of this section.

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

1 (7) Entering into a viatical settlement contract may cause other rights or
2 benefits, including conversion rights and waiver of premium benefits
3 that may exist under the policy, to be forfeited by the viator and that
4 assistance should be sought from a financial adviser.

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

8 (1) The affiliation, if any, between the viatical settlement provider and the
9 issuer of an insurance policy to be viaticated.

10 (2) If a policy to be viaticated has been issued as a joint policy or involves
11 family riders or any coverage of a life other than the insured, the viator
12 shall be informed of the possible loss of coverage on the other lives and
13 be advised to consult with his or her insurance producer or the company
14 issuing the policy for advice on the proposed viatication.

15 (3) The dollar amount of the current death benefit payable to the viatical
16 settlement provider under the policy. The viatical settlement provider
17 shall also disclose the availability of any additional guaranteed
18 insurance benefits, the dollar amount of any accidental death and
19 dismemberment benefits under the policy, and the viatical settlement
20 provider's interest in those benefits.

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

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

25 (2) A witnessed document in which the viator (i) consents to the contract,
26 (ii) acknowledges the catastrophic or life-threatening illness, (iii)
27 represents that the viator has a full and complete understanding of the
28 contract, (iv) represents that the viator has a full and complete
29 understanding of the benefits of the policy, and (v) releases the medical
30 records and acknowledges that the contract has been entered into freely
31 and voluntarily.

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

37 (i) Contract Consideration. – Immediately upon receipt from the viator of
38 documents to effect the transfer of the policy, the viatical settlement provider shall direct
39 the contract consideration to an escrow or trust account managed by a trustee or escrow
40 agent in a ~~bank approved by the Commissioner, pending acknowledgment of the transfer by the~~
41 ~~issuer of the policy.~~ State or federally chartered financial institution whose deposits are
42 insured by the Federal Deposit Insurance Corporation (FDIC). The account shall be
43 managed by a trustee or escrow agent independent of the parties to the contract. The

1 trustee or escrow agent shall transfer the proceeds that are due to the viator immediately
2 upon receipt of acknowledgment of the transfer from the insurer. Failure to tender the
3 viatical settlement contract consideration by the date disclosed to the viator renders the
4 contract null and void.

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

6 (1) Adopt rules to implement this section.

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

11 (3) Establish appropriate registration and other regulatory requirements for
12 brokers.

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

14 (k) Unfair Trade Practices. – A violation of this section is considered an unfair
15 trade practice under Article 63 of this Chapter."
16

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

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

20 **"§ 58-57-115. Family leave credit insurance standards; policy provisions.**

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

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

26 (2) 'Immediate family member' means a spouse, child (natural, adopted, or
27 foster), or parent of the insured person.

28 (3) 'Placement in the foster home' means physically residing with the
29 insured person appointed as the guardian or custodian of a foster child
30 or children as long as the insured person has assumed the legal
31 obligation for total or partial support of the foster child or children with
32 the intent that the foster child or children reside with the insured person
33 on more than a temporary or short-term basis.

34 (b) Coverage. – Insurers may provide coverage for loss of income because of a
35 voluntary, employer-approved leave of absence granted upon the occurrence of any of the
36 qualifying events in subsection (d) of this section. The insured person shall not be
37 required to meet any federal requirements in order to qualify for benefits provided by this
38 coverage. Benefits shall be paid to the creditor to reduce the insured person's
39 indebtedness.

40 (c) Eligibility. – Coverage may be provided or offered to any debtor who has not
41 yet reached his or her 71st birthday and has been working for wages for at least 30 hours
42 per week for the past five consecutive weeks.

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

3 (1) An accident involving sickness of, or incapacitation of, an immediate
4 family member that requires the insured person to attend to the family
5 member's needs.

6 (2) Birth of a child or children of the insured person.

7 (3) Adoption of a child or children of the insured person.

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

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

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

12 (7) The insured person is called to petit or grand jury duty.

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

14 (1) Retirement of the insured person from employment.

15 (2) Voluntary resignation of the insured person from employment.

16 (3) Seasonal unemployment of the insured person.

17 (4) Involuntary unemployment of the insured person.

18 (5) Disability of the insured person.

19 (6) Employment termination because of willful or criminal misconduct of
20 the insured person.

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

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

29 (h) Miscellaneous Provisions. – Any waiting period for benefits shall not exceed
30 30 days. The insured shall provide satisfactory evidence of employer approval of
31 qualified leave. Lump-sum benefits may be paid. Refunds of unearned single premiums
32 shall be equal to the pro rata unearned gross premium.

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

36 (j) Reports. – By March 31 of each year every insurer writing family leave
37 coverage shall file a statistical report of the past calendar year's actuarial experience for
38 that coverage. The report shall demonstrate the actual experience loss ratio for the
39 calendar year and shall include the: number of insureds, total earned premium, total
40 number of incurred claims, total incurred claims, total number of incurred claims for each
41 qualifying event, average monthly benefit per claim for each qualifying event, and
42 premium refunds."

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

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

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

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

15 "(6a) 'Family leave credit insurance' means insurance on a debtor in
16 connection with a specified loan or other credit transaction to provide
17 payment to a creditor of the debtor for the installment payments or other
18 periodic payments becoming due when the debtor suffers a loss of
19 income because of a voluntary, employer-approved leave of absence for
20 qualifying events specified in G.S. 58-57-115(d)."

21
22 **PART 6. LOCAL GOVERNMENT RISK POOL CLARIFICATION.**

23 Section 6. Article 23 of Chapter 58 of the General Statutes is amended by
24 adding a new section to read:

25 **"§ 58-23-45. Relationship to other insurance laws.**

26 Unless local government risk pools are specifically referenced in a particular section
27 of this Chapter, no provisions in this Chapter other than this Article apply to local
28 government risk pools."

29
30 **PART 7. CONFORMING CHANGES FOR STATE HEALTH PLAN**
31 **REIMBURSEMENT FOR PASTORAL COUNSELORS.**

32 Section 7. G.S. 135-40.7B(c1) reads as rewritten:

33 "(c1) Notwithstanding any other provisions of this Part, the following providers and
34 no others may provide necessary care and treatment for chemical dependency under this
35 section:

- 36 (1) The following providers with appropriate substance abuse training and
37 experience in the field of alcohol and other drug abuse as determined by
38 the mental health case manager, in facilities described in subdivision
39 (b)(2) of this section, in day/night programs or outpatient treatment
40 facilities licensed after July 1, 1984, under Article 2 of Chapter 122C of
41 the General Statutes or in North Carolina area programs in substance
42 abuse services are authorized to provide treatment for chemical
43 dependency under this section:

- 1 a. Licensed physicians including, but not limited to, physicians who
- 2 are certified in substance abuse by the American Society of
- 3 Addiction Medicine (ASAM);
- 4 b. Licensed or certified psychologists;
- 5 c. Psychiatrists;
- 6 d. Certified substance abuse counselors working under the direct
- 7 supervision of such physicians, psychologists, or psychiatrists;
- 8 e. Psychological associates with a masters degree in psychology
- 9 working under the direct supervision of such physicians,
- 10 psychologists, or psychiatrists;
- 11 f. Nurses working under the direct supervision of such physicians,
- 12 psychologists, or psychiatrists;
- 13 g. Certified clinical social workers;
- 14 h. Certified clinical specialists in psychiatric and mental health
- 15 nursing;
- 16 i. Licensed professional counselors; and
- 17 j. ~~Certified fee-based practicing pastoral counselors until July 1,~~
- 18 ~~1999; counselors.~~
- 19 (2) The following providers with appropriate substance abuse training and
- 20 experience in the field of alcohol and other drug abuse as determined by
- 21 the mental health case manager are authorized to provide treatment for
- 22 chemical dependency in outpatient practice settings:
- 23 a. Licensed physicians who are certified in substance abuse by the
- 24 American Society of Addiction Medicine (ASAM);
- 25 b. Licensed or certified psychologists;
- 26 c. Psychiatrists;
- 27 d. Certified substance abuse counselors working under the
- 28 employment and direct supervision of such physicians,
- 29 psychologists, or psychiatrists;
- 30 e. Psychological associates with a masters degree in psychology
- 31 working under the employment and direct supervision of such
- 32 physicians, psychologists, or psychiatrists;
- 33 f. Nurses working under the employment and direct supervision of
- 34 such physicians, psychologists, or psychiatrists;
- 35 g. Certified clinical social workers;
- 36 h. Certified clinical specialists in psychiatric and mental health
- 37 nursing;
- 38 i. Licensed professional counselors;
- 39 j. ~~Licensed-Certified~~ fee-based practicing pastoral ~~counselors until~~
- 40 ~~July 1, 1999; counselors;~~ and
- 41 k. In the absence of meeting one of the criteria above, the Mental
- 42 Health Case Manager could consider, on a case-by-case basis, a
- 43 provider who supplies:

- 1 1. Evidence of graduate education in the diagnosis and
2 treatment of chemical dependency, and
3 2. Supervised work experience in the diagnosis and
4 treatment of chemical dependency (with supervision by an
5 appropriately credentialed provider), and
6 3. Substantive past and current continuing education in the
7 diagnosis and treatment of chemical dependency
8 commensurate with one's profession.

9 Provided, however, that nothing in this subsection shall prohibit the Plan from
10 requiring the most cost-effective treatment setting to be utilized by the person undergoing
11 necessary care and treatment for chemical dependency."
12

13 **PART 8. TECHNICAL CHANGE/CLAIMS SETTLEMENT STATUTE.**

14 Section 8. If ratified Senate Bill 766 (1999 Session) becomes law, then G.S.
15 58-65-125(c), as enacted by Section 3 of that act, is repealed.
16

17 **PART 9. EFFECT OF HEADINGS.**

18 Section 9. The headings to the parts of this act are a convenience to the reader
19 and are for reference only. The headings do not expand, limit, or define the text of this
20 act.
21

22 **PART 10. EFFECTIVE DATE.**

23 Section 10. Sections 2, 4, 5.1, 5.2, and 5.3 of this act become effective October
24 1, 1999. Section 7 of this act is retroactively effective to June 30, 1999. The remainder
25 of this act is effective when it becomes law.