

§ 58-58-260. Advertising for viatical settlements.

(a) The purpose of this section is to provide prospective viators with clear and unambiguous statements in the advertisement of viatical settlements and to assure the clear, truthful, and adequate disclosure of the benefits, risks, limitations, and exclusions of any contract. This purpose is intended to be accomplished by the establishment of guidelines and standards of permissible and impermissible conduct in the advertising of viatical settlements to assure that product descriptions are presented in a manner that prevents unfair, deceptive, or misleading advertising and is conducive to accurate presentation and description of viatical settlements through the advertising media and material used by viatical settlement licensees.

(b) This section shall apply to any advertising of contracts or related products or services intended for dissemination in this State, including Internet advertising viewed by persons located in this State. Where disclosure requirements are established pursuant to federal regulation, this section shall be interpreted so as to minimize or eliminate conflict with federal regulation wherever possible.

(c) Every viatical settlement licensee shall establish and at all times maintain a system of control over the content, form, and method of dissemination of all advertisements of its contracts, products, and services. All advertisements, regardless of by whom written, created, designed, or presented, shall be the responsibility of the viatical settlement licensee, as well as the individual who created or presented the advertisement. A system of control shall include regular routine notification, at least once a year, to agents and others, authorized by the viatical settlement licensee, who disseminate advertisements of the requirements and procedures for approval before the use of any advertisements not furnished by the viatical settlement licensee.

(d) Advertisements shall be truthful and not misleading in fact or by implication. The form and content of an advertisement of a contract shall be sufficiently complete and clear so as to avoid deception. It shall not have the capacity or tendency to mislead or deceive. Whether an advertisement has the capacity or tendency to mislead or deceive shall be determined by the Commissioner from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence within the segment of the public to which it is directed.

(e) All information required to be disclosed under this Part shall be set out conspicuously and in close conjunction with the statements to which such information relates or under appropriate captions of such prominence that it shall not be minimized, rendered obscure, or presented in an ambiguous fashion or intermingled with the context of the advertisement so as to be confusing or misleading.

(f) An advertisement shall not:

- (1) Omit material information or use words, phrases, statements, references, or illustrations if the omission or use has the capacity, tendency, or effect of misleading or deceiving viators as to the nature or extent of any benefit, loss covered, premium payable, or state or federal tax consequence. The fact that the contract offered is made available for inspection before consummation of the sale, or an offer is made to refund the payment if the viator is not satisfied or that the contract includes a "free look" period that satisfies or exceeds legal requirements, does not remedy misleading statements.
- (2) Use the name or title of a life insurance company or a policy unless the insurer has approved the advertisement.
- (3) State or imply that interest charged on an accelerated death benefit or a policy loan is unfair, inequitable, or in any manner an incorrect or improper practice.

- (4) State or imply that a contract, benefit, or service has been approved or endorsed by a group of individuals, society, association, or other organization unless that is the fact and unless any relationship between an organization and the viatical settlement licensee is disclosed. If the entity making the endorsement or testimonial is owned, controlled, or managed by the viatical settlement licensee, or receives any payment or other consideration from the viatical settlement licensee for making an endorsement or testimonial, that fact shall be disclosed in the advertisement.
- (5) Contain statistical information unless it accurately reflects recent and relevant facts. The source of all statistics used in an advertisement shall be identified.
- (6) Disparage insurers, providers, brokers, insurance producers, policies, services, or methods of marketing.
- (7) Use a trade name, group designation, name of the parent company of a viatical settlement licensee, name of a particular division of the viatical settlement licensee, service mark, slogan, symbol, or other device or reference without disclosing the name of the viatical settlement licensee, if the advertisement would have the capacity or tendency to mislead or deceive as to the true identity of the viatical settlement licensee, or to create the impression that a company other than the viatical settlement licensee would have any responsibility for the financial obligation under a contract.
- (8) Use any combination of words, symbols, or physical materials that by their content, phraseology, shape, color, or other characteristics are so similar to a combination of words, symbols, or physical materials used by a government program or agency or otherwise appear to be of such a nature that they tend to mislead prospective viators into believing that the solicitation is in some manner connected with a government program or agency.
- (9) Create the impression that the provider, its financial condition or status, the payment of its claims, or the merits, desirability, or advisability of its contracts are recommended or endorsed by any government entity.

(g) The words "free", "no cost", "without cost", "no additional cost", "at no extra cost", or words of similar import shall not be used with respect to any benefit or service unless true. An advertisement may specify the charge for a benefit or a service, may state that a charge is included in the payment, or use other appropriate language.

(h) Testimonials, appraisals, or analyses used in advertisements must be genuine; represent the current opinion of the author; be applicable to the contract, product, or service advertised, if any; and be accurately reproduced with sufficient completeness to avoid misleading or deceiving prospective viators as to the nature or scope of the testimonials, appraisals, analyses, or endorsements. In using testimonials, appraisals, or analyses, the viatical settlement licensee makes as its own all the statements contained therein, and the statements are subject to all the provisions of this section.

(i) If the individual making a testimonial, appraisal, analysis, or an endorsement has a financial interest in the provider or related entity as a stockholder, director, officer, employee, or otherwise, or receives any benefit directly or indirectly other than required union scale wages, that fact shall be prominently disclosed in the advertisement.

(j) When an endorsement refers to benefits received under a contract, all pertinent information shall be retained for a period of five years after its use.

(k) The name of the viatical settlement licensee shall be clearly identified in all advertisements about the licensee or its contracts, products, or services, and if any specific

contract is advertised, the contract shall be identified either by form number or some other appropriate description. If an application is part of the advertisement, the name of the provider or broker shall be shown on the application.

(l) An advertisement may state that a viatical settlement licensee is licensed in the state where the advertisement appears, provided it does not exaggerate that fact or suggest or imply that a competing viatical settlement licensee may not be so licensed. The advertisement may ask the audience to consult the licensee's web site or contact the Department to find out if the state requires licensing and, if so, whether the provider or broker is licensed.

(m) The name of the actual licensee shall be stated in all of its advertisements. An advertisement shall not use a trade name, any group designation, name of any affiliate or controlling entity of the licensee, service mark, slogan, symbol, or other device in a manner that would have the capacity or tendency to mislead or deceive as to the true identity of the actual licensee or create the false impression that an affiliate or controlling entity would have any responsibility for the financial obligation of the licensee.

(n) An advertisement shall not directly or indirectly create the impression that any state or federal governmental agency endorses, approves, or favors:

- (1) Any viatical settlement licensee or its business practices or methods of operation;
- (2) The merits, desirability, or advisability of any contract;
- (3) Any contract; or
- (4) Any policy or life insurance company.

(o) If the advertiser emphasizes the speed with which the viatication will occur, the advertising must disclose the average time frame from completed application to the date of offer and from acceptance of the offer to receipt of the funds by the viator.

(p) If the advertising emphasizes the dollar amounts available to viators, the advertising shall disclose the average purchase price as a percent of face value obtained by viators contracting with the licensee during the past six months. (2001-436, s. 3.)