

191—48.10(508E) Advertising for viatical settlements.

48.10(1) The purpose of this rule is to ensure that prospective viators are provided with clear and unambiguous statements in the advertisement of viatical settlements and to ensure the clear, truthful and adequate disclosure of the benefits, risks, limitations and exclusions of any viatical settlement 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 ensure that product descriptions are presented in a manner that prevents unfair, deceptive or misleading advertising and is conducive to accurate presentations and descriptions of viatical settlements through the advertising media and material used by viatical settlement providers or viatical settlement brokers. A viatical settlement investment contract is a “security” as set forth in Iowa Code section 502.102(19); therefore, the advertising requirements of rule 191—50.120(502) are applicable.

48.10(2) This rule shall apply to any advertising of viatical settlement 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 subrule shall be interpreted so as to minimize or eliminate conflict with federal regulation wherever possible.

48.10(3) Every viatical settlement provider or viatical settlement broker 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 provider or viatical settlement broker. A system of control shall include regular routine notification, at least once per year, to agents and others authorized by the viatical settlement provider or viatical settlement broker who disseminate advertisements of the requirements and procedures for approval prior to the use of any advertisements not furnished by the viatical settlement provider or viatical settlement broker.

48.10(4) An advertisement shall be truthful and not misleading in fact or by implication. The form and content of an advertisement of a viatical settlement contract shall be sufficiently complete and clear so as to avoid deception. An advertisement 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.

48.10(5) The information required to be disclosed under this rule shall not be minimized, rendered obscure, or presented in an ambiguous fashion or intermingled with the text of the advertisement so as to be confusing or misleading.

48.10(6) An advertisement shall not 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 prospective viators as to the nature or extent of any benefit, loss covered, premium payable, or state or federal tax consequence. The fact that the viatical settlement contract offered is made available for inspection prior to consummation of the sale, or that an offer is made to refund the payment if the viator is not satisfied, or that the viatical settlement contract includes a “free look” period that satisfies or exceeds legal requirements does not remedy misleading statements.

48.10(7) An advertisement shall not use the name or title of a life insurance company or a life insurance policy unless the advertisement has been approved by the insurer.

48.10(8) An advertisement shall not 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.

48.10(9) 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 or may state that a charge is included in the payment or use other appropriate language.

48.10(10) Testimonials, appraisals or analysis used in advertisements must: be genuine; represent the current opinion of the author; be applicable to the viatical settlement 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, appraisal, analysis or endorsement. In using testimonials, appraisals or analysis, the viatical settlement provider or viatical

settlement broker makes as its own all the statements contained therein, and the statements are subject to all the provisions of this subrule.

a. If the individual making a testimonial, appraisal, analysis or an endorsement has a financial interest in the viatical settlement 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.

b. An advertisement shall not state or imply that a viatical settlement 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 provider or viatical settlement broker is disclosed. If the entity making the endorsement or testimonial is owned, controlled or managed by the viatical settlement provider or viatical settlement broker, or receives any payment or other consideration from the viatical settlement provider or viatical settlement broker for making an endorsement or testimonial, that fact shall be disclosed in the advertisement.

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

48.10(11) An advertisement shall not contain statistical information unless it accurately reflects recent and relevant facts. The source of all statistics used in an advertisement shall be identified.

48.10(12) An advertisement shall not disparage insurers, viatical settlement providers, viatical settlement brokers, viatical settlement investment agents, insurance producers, policies, services or methods of marketing.

48.10(13) The name of the viatical settlement provider or viatical settlement broker shall be clearly identified in all advertisements about the viatical settlement provider or viatical settlement broker or its viatical settlement contract, products or services, and if any specific viatical settlement contract is advertised, the viatical settlement 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 viatical settlement provider shall be shown on the application.

48.10(14) An advertisement shall not use a trade name, group designation, name of the parent company of a viatical settlement provider or viatical settlement broker, name of a particular division of the viatical settlement provider or viatical settlement broker, service mark, slogan, symbol or other device or reference without disclosing the name of the viatical settlement provider or viatical settlement broker, if the advertisement would have the capacity or tendency to mislead or deceive as to the true identity of the viatical settlement provider or viatical settlement broker, or to create the impression that a company other than the viatical settlement provider or viatical settlement broker would have any responsibility for the financial obligation under a viatical settlement contract.

48.10(15) An advertisement shall not 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.

48.10(16) An advertisement may state that a viatical settlement provider or viatical settlement broker 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 provider or viatical settlement broker may not be so licensed. The advertisement may ask the audience to consult the viatical settlement provider's or viatical settlement broker's Web site or contact the department of insurance to find out if the state requires licensing and, if so, whether the viatical settlement provider or viatical settlement broker is licensed.

48.10(17) An advertisement shall not create the impression that the viatical settlement provider, its financial condition or status, the payment of its claims or the merits, desirability, or advisability of its viatical settlement contracts are recommended or endorsed by any government entity.

48.10(18) The name of the viatical settlement provider or viatical settlement broker 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 viatical settlement provider or viatical settlement broker, service mark, slogan, symbol or other device in a manner that would have the capacity or tendency to mislead

or to deceive as to the true identity of the viatical settlement provider or viatical settlement broker or to create the false impression that an affiliate or controlling entity would have any responsibility for the financial obligation of the viatical settlement provider or viatical settlement broker.

48.10(19) An advertisement shall not directly or indirectly create the impression that any division or agency of the state or of the U.S. government endorses, approves or favors:

- a.* Any viatical settlement provider or viatical settlement broker or its business practices or methods of operation;
- b.* The merits, desirability or advisability of any viatical settlement contract;
- c.* Any viatical settlement contract; or
- d.* Any life insurance policy or life insurance company.

48.10(20) 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.

48.10(21) 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 viatical settlement provider or viatical settlement broker during the prior six months.

48.10(22) In recommending a viatical settlement contract, viatical settlement brokers and viatical settlement providers shall make suitable recommendations.