

VIATICAL AND LIFE SETTLEMENTS
CHAPTER 48
VIATICAL AND LIFE SETTLEMENTS

191—48.1(508E) Purpose and authority. The purpose of this chapter is to provide for the administration of viatical and life settlements in this state by providing rules under which viatical and life settlements may be made, disclosures and other provisions by which viators may be protected, and safeguards by which viatical settlement providers may be monitored and remain in good standing. These rules are adopted by the commissioner pursuant to the authority in Iowa Code chapter 508E. [ARC 7729B, IAB 4/22/09, effective 4/3/09]

191—48.2(508E) Definitions. For purposes of this chapter, the definitions in Iowa Code chapter 508E are incorporated by reference. In addition, the following definitions shall apply:

“*Commissioner’s Web site*” means the Web site of the commissioner and of the Iowa insurance division, www.iid.state.ia.us.

“*Life settlement*” means a viatical settlement in which the viator has not been diagnosed as terminally or chronically ill. For purposes of these rules, unless otherwise distinguished, the term “life settlement” shall be synonymous with viatical settlement. [ARC 7729B, IAB 4/22/09, effective 4/3/09]

191—48.3(508E) License requirements.

48.3(1) Viatical settlement provider:

a. To be considered for licensure as a viatical settlement provider pursuant to Iowa Code section 508E.3, a person must complete the viatical settlement provider application form found at the commissioner’s Web site, file with the commissioner the completed application in the format prescribed by the commissioner, and include the payment of an application fee in the amount of \$100. An application shall not be deemed filed until all information necessary to process the application has been received by the commissioner. In addition to complying with Iowa Code section 508E.3, the applicant also shall provide the following:

(1) Copies of the provider’s audited financial statements for the current year and each of the previous five years. At the commissioner’s discretion, the applicant also shall provide a copy of the current year’s consolidated annual audited financial statement with a financial guarantee from the provider’s ultimate controlling person, and copies of the provider’s unaudited financial statements for the current year and each of the previous five years;

(2) Evidence that the applicant maintains books and records in compliance with generally accepted accounting principles;

(3) If a legal entity intending to have any partners, officers, members, and designated employees act as viatical settlement providers or viatical settlement brokers under the legal entity’s license pursuant to Iowa Code section 508E.3, all completed forms, fees, and information required to be filed under subrule 48.3(2) for each such person named in the application and any supplements to the application;

(4) Biographical affidavits, in a form prescribed by the commissioner, for the following: officers and directors (as listed on the most recent financial statement), key managerial personnel (including any vice presidents or other individuals who will control the operations of the applicant), and individuals with a 10 percent or more beneficial ownership in the applicant who will exercise control over the applicant;

(5) An independent business character report on the individuals listed in subparagraph (4). The business character report shall be filed directly with the commissioner by the independent third party that certified the report. The business character report shall be in a format prescribed by the commissioner and shall not be older than one year prior to the date the application is filed. For purposes of subparagraph (5), “business character report” means a statement certified by an independent third party which has conducted a comprehensive review of the applicant’s background and has indicated that the biographical information provided in the report, as completed by the applicant, has no inaccurate or conflicting information. An independent third party is one that has no affiliation with the applicant and is in the business of providing background checks or investigations. Business character reports must

be current and shall not be older than one year prior to the date the application is filed. The business character report shall be in the format prescribed by the commissioner;

(6) Initial viatical settlement contracts, disclosure statements, and advertising material that have been or are being submitted for approval and that have been approved or that are approved during the course of the application process pursuant to Iowa Code section 508E.5;

(7) A copy of the provider trust, pursuant to 48.3(1)“c”; and

(8) A report of any civil, criminal or administrative actions taken or pending against the viatical settlement provider in any state or federal court or agency, regardless of outcome.

b. A form for the antifraud plan that is required to be submitted with an application pursuant to Iowa Code section 508E.3, to meet the requirements of Iowa Code section 508E.15, can be found on the commissioner’s Web site.

c. The provider trust that is required to be submitted with an application, pursuant to subparagraph 48.3(1)“a”(7), shall be in a format acceptable to the commissioner and shall include the following provisions:

(1) The provider trust cannot be terminated without the prior written consent of the commissioner.

(2) The provider trust is subject to the prior approval of the commissioner.

(3) The provider trust funds shall not be intermingled.

(4) The provider trust funds held shall be identified based on individual policyholders.

(5) The provider trust trustee is obligated to indemnify the provider or the policyholder or both for any lost funds.

(6) The agreement can only be amended or terminated with the prior written consent of the commissioner.

(7) The provider trust trustee shall be a bank or trust company, having its principal place of business in the United States.

(8) The provider trust trustee shall be audited annually by independent public accountants and complete the audit report, related financial statements, and opinion on internal controls. All reports shall be available for review by the commissioner.

d. In addition to the information required in this subrule, the commissioner may ask for other information necessary to determine whether the applicant for a license as a viatical settlement provider complies with the requirements of this subrule and Iowa Code subsection 508E.3(7).

48.3(2) Viatical settlement broker.

a. To be considered for licensure as a viatical settlement broker pursuant to Iowa Code section 508E.3, a person must complete the viatical settlement broker application form found at the commissioner’s Web site, file the completed application in the format prescribed by the commissioner, and include the payment of an application fee in the amount of \$100. In addition to finding compliance with Iowa Code section 508E.3, the commissioner also shall find that the applicant:

(1) Has provided proof of one of the following:

1. The applicant is a licensed insurance producer with a life line of authority for at least the 12 months preceding the date of application; or

2. The applicant has taken and passed an examination on viatical and life settlement contracts required by another state insurance department and currently holds a license as a viatical settlement broker from that state; or

3. The applicant has passed the viatical settlement examination required by the commissioner. Examination results are valid for 90 days after the date of the examination. If the applicant fails to apply for licensure within 90 days after passing the examination, the examination results shall be void;

(2) Has provided a report of any civil, criminal or administrative actions taken or pending against the viatical settlement broker in any state or federal court or agency, regardless of outcome, excluding misdemeanor traffic citations and juvenile offenses; and

(3) Has provided proof that the applicant is covered by an errors and omissions policy for an amount of not less than \$100,000 liability per occurrence and not less than \$100,000 total annual aggregate for all claims during the policy period.

b. A form for the antifraud plan that is required to be submitted with an application pursuant to Iowa Code section 508E.3, to meet the requirements of Iowa Code section 508E.15, can be found on the commissioner's Web site.

c. In addition to the information required in this subrule, the commissioner may ask for other information necessary to determine whether the applicant for a license as a viatical settlement broker complies with the requirements of this subrule and has made a filing pursuant to Iowa Code subsection 508E.3(7).

48.3(3) *Governing law where viators are residents of different states.* For purposes of this subrule, if there is more than one viator on a single policy and the viators are residents of different states, the viatical settlement contract shall be governed by the law of the state in which the viator having the largest percentage ownership resides or, if the viators hold equal ownership, the state of residence of one viator agreed upon in writing by all viators. If another state does not have a statute or rule substantially similar to Iowa Code chapter 508E and this rule, the actions related to the viatical settlement contract shall be governed by the law of this state.

48.3(4) *License term.*

a. A viatical settlement provider or viatical settlement broker who meets the requirements of this rule, unless otherwise denied licensure pursuant to rule 48.10(508E), shall be issued a license.

b. A viatical settlement provider license is valid for one year and automatically terminates on the last day of the month of the anniversary of the issue date unless renewed pursuant to subrule 48.3(6).

c. A viatical settlement broker license is valid for an initial term of one year from the last day of the applicant's anniversary month following the issuance of the license, and automatically terminates on the last day of the month of the initial term unless renewed pursuant to subrule 48.3(6).

d. A viatical settlement provider license or a viatical settlement broker license may remain in effect for the term of the license plus any renewals, unless the license is revoked or suspended, as long as all required fees are paid in the time prescribed by the commissioner.

e. The license issued to a viatical settlement provider or viatical settlement broker shall be a limited license that allows the licensee to operate only within the scope of its license.

48.3(5) *Continuing education for viatical settlement broker.*

a. An individual licensed as a viatical settlement broker shall complete 15 credits of approved continuing education during every two license terms. A license term is as set forth in paragraph 48.3(4) "c," and, for purposes of this rule, the two-term continuing education requirement shall be called the "CE reporting term."

b. The required continuing education credits shall include a minimum of:

- (1) Thirteen credits related to viatical settlements and viatical settlement transactions; and
- (2) Two credits in ethics.

c. The viatical settlement broker may submit the same completed credits to the commissioner both to meet the continuing education requirements for the viatical settlement broker license and to meet the continuing education requirements for an applicable insurance producer license.

d. The license of a viatical settlement broker who fails to comply with this continuing education requirement shall terminate.

e. An instructor of an approved continuing education course shall be granted the same credit as a student who completes the continuing education course, and the instructor may receive such credit once during a license term.

f. A viatical settlement broker cannot carry over from one CE reporting term to the next continuing education credits earned in excess of the viatical settlement broker's CE reporting term requirements.

g. A viatical settlement broker may receive continuing education credit for self-study courses. A self-study course is considered completed when the continuing education provider receives the completed examination from the viatical settlement broker.

(1) A viatical settlement broker may receive continuing education credit for self-study courses that are part of a recognized national designation program as described in 191—subrule 11.5(5).

(2) A viatical settlement broker may receive continuing education credits for self-study courses that do not meet the requirement of subparagraph (1) if the viatical settlement broker:

1. Submits an affidavit to the continuing education provider that the examination was independently proctored and was completed without any outside assistance, and

2. Correctly answers at least 70 percent of the questions presented.

h. A viatical settlement broker shall not receive continuing education credit for courses taken prior to the issuance of an initial license.

i. A viatical settlement broker cannot receive continuing education credit for the same course twice in one CE reporting term. A viatical settlement broker cannot receive continuing education credit both for the classroom portion and for the examination portion of a national designation program as defined in 191—subrule 11.5(5).

j. A viatical settlement broker may elect to comply with the continuing education requirements by taking and passing the viatical settlement broker licensing examination within 90 days prior to the date on which the renewal application is submitted.

k. A viatical settlement broker shall demonstrate compliance with the continuing education requirements at the time of license renewal. A viatical settlement broker shall maintain a record of all continuing education courses completed by keeping the original certificates of completion for four years after the end of the year of course completion.

l. For purposes of rule 191—48.3(508E), “credit” means continuing education credit. One credit is 50 minutes of instruction or reading material in an acceptable topic.

m. Viatical settlement broker continuing education courses will be approved in the same manner that insurance continuing education courses are approved pursuant to 191—Chapter 11. The approval of continuing education providers, the responsibilities of continuing education providers, the prohibited conduct for continuing education providers, and the fees for approval and renewal of continuing education providers and courses shall be the same as those for insurance continuing education courses, continuing education providers, and insurance producers set forth in rules 191—11.9(505,522B) to 191—11.11(505,522B) and 191—11.14(505,522B). The commissioner may enter into a contractual arrangement with a qualified outside vendor to assist the commissioner with any or all continuing education services in the same manner as the commissioner may for insurance continuing education services pursuant to rule 191—11.12(505,522B). The commissioner may audit any continuing education course in the same manner as the commissioner may for insurance continuing education courses pursuant to rule 191—11.13(505,522B).

48.3(6) License renewal. A viatical settlement provider license or a viatical settlement broker license may be renewed as follows:

a. A viatical settlement provider license may be renewed by payment of \$100 within 60 days prior to the expiration date of the license and by demonstration that the viatical settlement provider continues to meet the requirements of Iowa Code section 508E.3 and subrule 48.3(1), has provided biographical affidavits not older than one year prior to the renewal date on all persons listed in subparagraph 48.3(1)“a”(4), has provided business character reports for any new persons listed in subparagraph 48.3(1)“a”(4), and has provided the reports required by rule 48.7(508E).

(1) If renewal is approved, the license will be renewed effective the last day of the month of the anniversary of the issue date in the renewal year, will be valid for one year, and will automatically terminate on the last day of the month of the anniversary of the issue date in the following renewal year unless renewed pursuant to subrule 48.3(6).

(2) Viatical settlement providers that had licenses prior to January 1, 2009, shall have a renewal date of January 1.

b. A viatical settlement broker license may be renewed by demonstration of completion of continuing education as required in subrule 48.3(5) and payment of \$100 within 60 days prior to the expiration date of the license. If renewal is approved, the license will be renewed effective the last day of the month of the anniversary of the issue date in the renewal year, will be valid for one year, and will automatically terminate on the last day of the month of the anniversary of the issue date in the following renewal year unless renewed pursuant to subrule 48.3(6).

c. If a legal entity has any partners, officers, members, or designated employees acting as viatical settlement providers or viatical settlement brokers under the legal entity’s license pursuant to Iowa Code

section 508E.3, the legal entity must provide all completed forms, fees, and information required to be filed under paragraphs 48.3(6) “a” and “b” for each such person named in the application, or in any supplements to the application, and must provide any deletions to the list of names that was provided with the original application. If there are any new partners, officers, members, and designated employees that the legal entity intends will act as viatical settlement providers or viatical settlement brokers under the legal entity’s license, the legal entity shall provide for each such person the forms, information and fees required by subrule 48.3(2).

d. If a viatical settlement provider or viatical settlement broker fails to comply with the renewal procedures within the time prescribed, or a viatical settlement provider fails either to meet the requirements of Iowa Code section 508E.3 and subrule 48.3(1) or to submit the reports required in rule 48.7(508E), such nonpayment or failure shall result in lapse of the license.

e. A licensed viatical settlement broker who is unable to comply with license renewal procedures due to military service or some other extenuating circumstance may request from the commissioner a waiver of renewal procedures. Such viatical settlement broker may also request a waiver of any examination requirement or any other penalty or sanction imposed for failure to comply with renewal procedures.

48.3(7) License reinstatement.

a. A viatical settlement broker may reinstate an expired license up to 12 months after the license expiration date by proving that during the CE reporting term the viatical settlement broker met the CE requirements found in subrule 48.3(5), and by paying to the commissioner a reinstatement fee and license renewal fee. A viatical settlement broker who fails to apply for license reinstatement within 12 months of the license expiration date must apply for a new license.

b. A viatical settlement broker who has surrendered a license for a nondisciplinary reason and stated an intent to exit the viatical settlement business may file a request to reactivate the license. The request must be received by the commissioner within 90 days of the date the license was placed on inactive status. The request will be granted if the former viatical settlement broker is otherwise eligible to receive the license. If the request is not received within 90 days, the viatical settlement broker must apply for a new license.

48.3(8) Reinstatement or reissuance of a license after suspension, revocation or forfeiture in connection with disciplinary matters; and forfeiture in lieu of compliance.

a. The term “reinstatement” as used in this subrule means the reinstatement of a suspended license. The term “reissuance” as used in this subrule means the issuance of a new license following either the revocation of a license or the forfeiture of a license in connection with a disciplinary matter. This subrule does not apply to the reinstatement of an expired license.

b. Any viatical settlement broker whose license has been revoked or suspended by order, or who forfeited a license in connection with a disciplinary matter, may apply to the commissioner for reinstatement or reissuance in accordance with the terms of the order of revocation or suspension or the order accepting the forfeiture.

(1) All proceedings for reinstatement or reissuance shall be initiated by the applicant who shall file with the commissioner an application for reinstatement or reissuance of a license.

(2) An application for reinstatement or reissuance shall allege facts which, if established, will be sufficient to enable the commissioner to determine that the basis of revocation, suspension or forfeiture of the applicant’s license no longer exists and that it will be in the public interest for the application to be granted. The burden of proof to establish such facts shall be on the applicant.

(3) A viatical settlement broker may request reinstatement of a suspended license prior to the end of the suspension term.

(4) Unless otherwise provided by law, if the order of revocation or suspension did not establish terms upon which reinstatement or reissuance may occur, or if the license was forfeited, an initial application for reinstatement or reissuance may not be made until at least one year has elapsed from the date of the order of the suspension (notwithstanding 191—paragraph 10.10(2) “c”), revocation, or acceptance of the forfeiture of a license.

c. All proceedings upon the application for reinstatement or reissuance, including matters preliminary and ancillary thereto, shall be held in accordance with Iowa Code chapter 17A. Such application shall be docketed in the original case in which the original license was suspended, revoked, or forfeited, if a case exists.

d. An order of reinstatement or reissuance shall be based upon a written decision which incorporates findings of fact and conclusions of law. An order granting an application for reinstatement or reissuance may impose such terms and conditions as the commissioner or the commissioner's designee deems desirable, which may include one or more of the types of disciplinary sanctions provided by this chapter or by Iowa Code chapter 508E. The order shall be a public record, available to the public, and may be disseminated in accordance with Iowa Code chapter 22.

e. A request for voluntary forfeiture of a license shall be made in writing to the commissioner. Forfeiture of a license is effective upon submission of the request unless a contested case proceeding is pending at the time the request is submitted. If a contested case proceeding is pending at the time of the request, the forfeiture becomes effective when and upon such conditions as required by order of the commissioner. A forfeiture made during the pendency of a contested case proceeding is considered disciplinary action and shall be published in the same manner as is applicable to any other form of disciplinary order.

f. A license may be voluntarily forfeited in lieu of compliance with an order of the commissioner or the commissioner's designee with the written consent of the commissioner. The forfeiture becomes effective when and upon such conditions as required by order of the commissioner, which may include one or more of the types of disciplinary sanctions provided by this chapter or by Iowa Code chapter 508E.

g. When a viatical settlement broker's license has been suspended for a period of time which extends beyond the viatical settlement broker's license expiration date, the license will terminate at the license expiration date, and the viatical settlement broker must request reinstatement pursuant to subrule 48.3(7). If suspension for a period of time ends prior to the viatical settlement broker's license expiration date, the commissioner shall reinstate the license at the end of the suspension period pursuant to paragraph 48.3(8) "b." The commissioner is not prohibited from bringing an additional immediate action if the viatical settlement broker has engaged in misconduct during the period of suspension.

48.3(9) Duty to notify commissioner of cessation of business in the state. If a viatical settlement provider intends to cease business in Iowa, it must notify the commissioner of those intentions and of its plan of operation for such cessation at least 180 days before the cessation shall occur. This requirement is not meant to imply that a company must continue to accept new viatical or life settlement business during the 180-day period.

48.3(10) Duty to notify commissioner of changes.

a. A viatical settlement provider shall provide to the commissioner any new or revised information about officers, stockholders holding 10 percent or more of the stock of the company, partners, directors, members or designated employees within 30 days of the date the addition or revision occurred.

b. A viatical settlement provider or viatical settlement broker shall inform the commissioner in writing of any change of name or address within 30 days of the date of such change. In addition, a viatical settlement provider shall provide the commissioner with 30 days' notice of the cancellation or nonrenewal of a fidelity bond required for licensure under subrule 48.3(1) and the name of the carrier that will be providing coverage subsequent to such cancellation or nonrenewal.

c. A viatical settlement provider or viatical settlement broker shall report to the commissioner any administrative action taken against the viatical settlement provider or viatical settlement broker in another state or federal jurisdiction or by another governmental agency in this state within 30 days of the final disposition of the matter. This report shall include a copy of the order, consent to the order, or other relevant legal documents. Within 30 days of the initial pretrial hearing date, a viatical settlement provider or viatical settlement broker shall report to the commissioner any criminal prosecution of the viatical settlement provider or viatical settlement broker taken in any jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing, and any other relevant legal documents.

48.3(11) *Commissioner may use outside assistance.* In order to assist with the commissioner's duties, the commissioner may contract with a nongovernmental entity, including, but not limited to, the National Association of Insurance Commissioners (NAIC) or any affiliate or subsidiary the NAIC oversees, to perform any ministerial functions related to licensing of viatical settlement providers or viatical settlement brokers that the commissioner deems appropriate including, but not limited to, the collection of fees.

48.3(12) *Fees.*

- a. Fees shall be paid by check.
- b. The fee for an examination shall be set by the outside testing service under contract with the division and approved by the division.
- c. The annual fee for issuance or renewal of a viatical broker, legal entity or provider license is \$100.
- d. The fee for reinstatement of a viatical broker, legal entity or provider license is the sum of the renewal fee plus \$100.
- e. The division may charge a reasonable fee for the compilation and production of viatical broker, legal entity or provider licensing records.

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191—48.4(508E) Disclosure statements.

48.4(1) If a viatical settlement provider enters into a viatical settlement contract that allows the viator to retain an interest in the policy, the viatical settlement contract shall contain the following:

a. A provision that the viatical settlement provider will effect the transfer of the amount of the death benefit only to the extent or portion of the amount viaticated and that benefits in excess of the amount viaticated shall be paid directly to the viator's beneficiary by the insurance company;

b. A provision that the viatical settlement provider will, upon acknowledgment of the perfection of the transfer, either:

(1) Advise the insured, in writing, that the insurance company has confirmed the viator's interest in the policy; or

(2) Send to the insured a copy of the document(s) sent from the insurance company to the viatical settlement provider that acknowledges the viator's interest in the policy; and

c. A provision that apportions the premiums to be paid by the viatical settlement provider and the viator. It is permissible for the viatical settlement contract to specify that all premiums shall be paid by the viatical settlement provider. The viatical settlement contract also may require that the viator reimburse the viatical settlement provider only for the premiums attributable to the retained interest.

48.4(2) With each application for a viatical settlement contract, a viatical settlement provider or viatical settlement broker shall provide the viator with at least the following disclosure no later than the time the application for the viatical settlement contract is signed by the viator and the viatical settlement broker. The disclosure shall be provided in a separate document that is signed by the viator and the viatical settlement provider or viatical settlement broker, and shall advise the viator that, when entering into a viatical settlement contract, having a recent physical examination is in the viator's best interest, since an accurate life expectancy can be best calculated based on current medical records.

48.4(3) If the viator is not the insured, then these disclosures must be affirmatively made to the insured, as well as to the viator, and written consent to the viatication must be received from both parties.

191—48.5(508E) Contract requirements. In order to ensure that viators receive a reasonable return for viaticating an insurance policy when life expectancy is less than 25 months, a viatical settlement provider shall pay to a viator a discounted amount of the face value of the policy which amount shall be calculated at least at the following rates:

Insured's Life Expectancy	Minimum Percentage of Face Value Less Outstanding Loans Received by Viator
Less than 6 months	80%
At least 6 but less than 12 months	70%
At least 12 but less than 18 months	65%
At least 18 but less than 25 months	60%
25 months or more	Cash surrender value of policy

The percentage may be reduced by 5% for viaticating a policy written by an insurer rated less than the highest four categories by A.M. Best, or a comparable rating by another rating agency.

For a viatical settlement in which the viator has a life expectancy of 25 months or more, a viatical settlement provider or broker shall not enter into a viatical settlement contract that provides a payment to the viator that is unreasonable or unjust. As listed above, such payment must at least be equal to the cash surrender value of the policy. In determining whether a payment is unreasonable or unjust, the commissioner may consider, among other factors, the life expectancy of the insured; the applicable rating of the insurance company that issued the subject policy by a rating service generally recognized by the insurance industry, regulators and consumer groups; and prevailing discount rates in the viatical and life settlement market in Iowa or, if insufficient data is available for Iowa, the prevailing rates nationally or in other states that maintain this data.

191—48.6(508E) Filing of forms. If a viatical settlement provider subsequently desires to change the viatical settlement contract documents or disclosure statements approved at the time of licensure, or to use new ones, the provider shall submit the new or modified contract documents or disclosure statements to the commissioner for approval in triplicate, along with a postage-paid return envelope. The viatical settlement provider shall identify its name and address in the cover letter and also reference the form number of the modified viatical settlement contract document or disclosure statement. Black-lining the modifications made within the document(s) should expedite the form review and approval process.

191—48.7(508E) Reporting requirements.

48.7(1) On March 1 of each calendar year, the secretary and either the president or the vice president of each viatical settlement provider licensed in this state shall submit, under oath, the following: the annual statement required by Iowa Code section 508E.6; a report of all viatical settlement transactions in which the viator is a resident of this state; and a report for all states in the aggregate. The report shall contain the following information for the previous calendar year:

- a. For viatical settlements contracted during the reporting period:
 - (1) Date of viatical settlement contract;
 - (2) Viator's state of residence at the time of the contract;
 - (3) Mean life expectancy, in months, of the insured at time of contract;
 - (4) Face amount of policy viaticated;
 - (5) Net death benefit viaticated;
 - (6) Estimated total premiums to keep policy in force for mean life expectancy;
 - (7) Net amount paid to viator;
 - (8) Source of policy (B-Broker; D-Direct Purchase; SM-Secondary Market);
 - (9) Type of coverage (I-Individual; G-Group);
 - (10) Within the contestable or suicide period, or both, at the time of viatical settlement (yes or no);
 - (11) If the insured is diagnosed as terminally or chronically ill, the general disease classification applicable to such insured; and
 - (12) Type of funding (I-Institutional; P-Private).
- b. For viatical settlements in which death of the insured has occurred during the reporting period:
 - (1) Date of viatical settlement contract;

- (2) Viator's state of residence at the time of the contract;
- (3) Mean life expectancy, in months, of the insured at time of contract;
- (4) Net death benefit collected;
- (5) Total premiums paid to maintain the policy (WP-Waiver of Premium; NA-Not Applicable);
- (6) Net amount paid to viator;
- (7) If the insured was diagnosed as terminally or chronically ill, the general disease classification applicable to such insured;
- (8) Date of death of insured;
- (9) Amount of time, in months, between date of contract and date of death of insured;
- (10) Difference between the number of months that passed between the date of contract and the date of death of insured and the mean life expectancy in months as determined by the reporting company;
- c. Name and address of each viatical settlement broker through whom the reporting company purchased a policy from a viator who resided in this state at the time of contract;
- d. Number of policies reviewed and rejected; and
- e. Number of policies purchased from persons other than a viator (on the secondary market) as a percentage of total policies purchased.

48.7(2) On or before March 1 of each year, the secretary and either the president or the vice president of each viatical settlement provider licensed in this state shall make a report under oath of the following or shall provide the following documentation:

- a. That the viatical settlement provider has at all times maintained books and records in compliance with generally accepted accounting principles;
- b. That the viatical settlement provider has obtained and furnished to the commissioner either:
 - (1) A copy of the current year's audited financial statement; or
 - (2) At the commissioner's discretion, a copy of the current year's consolidated annual audited financial statement with a financial guarantee from the provider's ultimate controlling person; and
- c. That the viatical settlement provider has maintained fidelity bonds on each officer and director in the amount of \$100,000.

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191—48.8(508E) Examination or investigations.

48.8(1) *Authority, scope and scheduling of examinations.* In addition to the authority, scope and scheduling of examinations set forth in Iowa Code section 508E.7, the following provisions shall apply:

- a. The commissioner may investigate suspected fraudulent viatical settlement acts and persons engaged in the business of viatical settlements.
- b. The provisions of Iowa Code chapter 507 shall apply to viatical settlement providers and viatical settlement brokers. The expense of examinations shall be assessed against the viatical settlement provider in the same manner as insurers are assessed for examinations.
- c. Neither the commissioner nor any person that received the documents, material or other information while acting under the authority of the commissioner, including the NAIC and its affiliates and subsidiaries, shall be permitted to testify in any private civil action concerning any confidential documents, materials or information subject to this subrule.

48.8(2) *Immunity from liability.* No cause of action shall arise nor shall any liability be imposed against the commissioner, the commissioner's authorized representatives or any examiner appointed by the commissioner for any statements made or conduct performed in good faith while carrying out the provisions of this rule or of Iowa Code chapter 508E.

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191—48.9(508E) Requirements and prohibitions.

48.9(1) With respect to policies containing a provision for double or additional indemnity for accidental death, the additional payment shall remain payable to the beneficiary last named by the viator prior to entering into the viatical settlement contract, or to such other beneficiary, other than the viatical settlement provider, as the viator may thereafter designate, or in the absence of a beneficiary, to the estate of the viator.

48.9(2) Payment of the proceeds to the viator pursuant to a viatical settlement contract shall be made in a lump sum except where the viatical settlement provider has purchased a single-premium paid-up annuity issued by a licensed insurance company to the viator. Retention of a portion of the proceeds by the viatical settlement provider or escrow agent is not permissible. For purposes of this subrule, “escrow agent” means an individual or institution that has established an escrow or trust account with a state-chartered or federally chartered financial institution whose deposits and accounts are insured by the Federal Deposit Insurance Corporation (FDIC) and with which an escrow account has been established for use by a viatical settlement provider or viatical settlement purchaser.

48.9(3) If a viatical settlement provider or viatical settlement broker is served with a subpoena and thereby compelled to produce records containing patient-identifying information, the viatical settlement provider or viatical settlement broker shall notify the viator and the insured in writing at the viator’s and the insured’s last-known addresses within five business days after receiving notice of the subpoena.

48.9(4) A viatical settlement provider shall not act also as a viatical settlement broker, whether entitled to collect a fee directly or indirectly, related to the same viatical settlement contract.

48.9(5) A viatical settlement broker shall not, without the written agreement of the viator obtained prior to performing any services in connection with a viatical settlement, seek or obtain any compensation from the viator.

48.9(6) A viatical settlement provider shall not use a longer life expectancy than is reasonable based on all medical and actuarial information available at the time of a viatical settlement transaction in order to reduce the payout to which the viator is entitled.

48.9(7) A viatical settlement provider or viatical settlement broker shall not discriminate in the making or solicitation of viatical settlement contracts on the basis of race, age, sex, national origin, creed, religion, occupation, marital or family status or sexual orientation, or discriminate between viators with or without dependents.

48.9(8) A viatical settlement provider or viatical settlement broker shall not pay or offer to pay any finder’s fee, commission or other compensation to any insured’s physician, or to an attorney, accountant or other person providing medical, legal or financial planning services to an insured or viator, or to any other person acting as an agent of an insured or viator with respect to a viatical settlement contract.

48.9(9) A viatical settlement provider shall not knowingly solicit individuals who have treated or have been asked to treat the illness of an insured whose coverage would be the subject of a viatical settlement contract.

48.9(10) A life insurance company may not charge a fee for responding to a request for information from a viatical settlement provider or viatical settlement broker in compliance with this rule in excess of any usual and customary charges to contract holders, certificate holders or insureds for similar services.

48.9(11) In recommending a viatical settlement contract, viatical settlement brokers and viatical settlement providers shall make suitable recommendations.

191—48.10(508E) Penalties; injunctions; civil remedies; cease and desist.

48.10(1) Unfair trade practices. Pursuant to Iowa Code section 508E.17, a violation of rule 48.4(508E), 48.5(508E), 48.6(508E), 48.7(508E) or 48.9(508E) shall be considered an unfair trade practice under Iowa Code chapter 507B, and a violator shall be subject to the penalties contained in that chapter.

48.10(2) Unauthorized insurer. A person doing the activities of a viatical settlement provider or a viatical settlement broker without a license under this chapter shall be deemed an unauthorized insurer and shall be subject to the penalties of Iowa Code chapter 507A.

48.10(3) License revocation and denial. The commissioner may suspend, revoke, refuse to issue, or refuse to renew the license of a viatical settlement provider or viatical settlement broker for violation of rule 48.3(508E).

48.10(4) A viatical settlement provider licensed in this state that in the time required fails to file either the annual statement referred to in Iowa Code section 508E.6 or the annual audited financial statement referred to in subparagraph 48.3(1)“a”(1) shall pay an administrative penalty pursuant to Iowa Code

section 508E.16. The viatical settlement provider's right to transact further new business in this state shall immediately cease until the provider has fully complied with this rule.

48.10(5) Pursuant to Iowa Code section 508E.16, if the commissioner finds that an activity in violation of this rule presents an immediate danger to the public that requires an immediate final order, the commissioner may issue an emergency cease and desist order reciting with particularity the facts underlying the findings. The emergency cease and desist order is effective immediately upon service of a copy of the order on the respondent and remains in effect for 90 days. If the commissioner begins nonemergency cease and desist proceedings, the emergency cease and desist order remains effective, absent an order by a court of competent jurisdiction pursuant to 191—Chapters 2 and 3.

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191—48.11(252J) Suspension for failure to pay child support.

48.11(1) Upon receipt of a certificate of noncompliance from the child support recovery unit (CSRU), the commissioner shall issue a notice to the viatical settlement broker that the viatical settlement broker's pending application for licensure, pending request for renewal, or current license will be suspended 30 days after the date of the notice. Notice shall be sent to the viatical settlement broker's last-known address by regular mail.

48.11(2) The notice shall contain the following items:

- a.* A statement that the commissioner intends to suspend the viatical settlement broker's application, request for renewal or current license in 30 days;
- b.* A statement that the viatical settlement broker must contact the CSRU to request a withdrawal of the certificate of noncompliance;
- c.* A statement that the viatical settlement broker's application, request for renewal or current license will be suspended if the certificate of noncompliance is not withdrawn;
- d.* A statement that the viatical settlement broker does not have a right to a hearing before the commissioner, but that the viatical settlement broker may file an application for a hearing in district court pursuant to Iowa Code section 252J.9;
- e.* A statement that the filing of an application with the district court will stay the proceedings of the commissioner;
- f.* A copy of the certificate of noncompliance.

48.11(3) The filing of an application for hearing with the district court will stay all suspension proceedings until the commissioner is notified by the district court of the resolution of the application.

48.11(4) If the commissioner does not receive a withdrawal of the certificate of noncompliance from the CSRU or a notice from a clerk of court that an application for hearing has been filed, the commissioner shall suspend the viatical settlement broker's application, request for renewal or current license 30 days after the notice is issued.

48.11(5) Upon receipt of a withdrawal of the certificate of noncompliance from the CSRU, suspension proceedings shall halt, and the named viatical settlement broker shall be notified that the proceedings have been halted. If the viatical settlement broker's license has already been suspended, the license shall be reinstated if the viatical settlement broker is otherwise in compliance with this chapter. All fees required for license renewal or license reinstatement must be paid by the viatical settlement broker, and all continuing education requirements must be met before the viatical settlement broker's license will be renewed or reinstated after a license suspension or revocation pursuant to this rule.

191—48.12(261) Suspension for failure to pay student loan.

48.12(1) The commissioner shall deny the issuance or renewal of a viatical settlement broker license upon receipt of a certificate of noncompliance from the college student aid commission (CSAC) according to the procedures set forth in Iowa Code sections 261.126 and 261.127. In addition to the procedures contained in those sections, this rule shall apply.

48.12(2) Upon receipt of a certificate of noncompliance from the CSAC according to the procedures set forth in Iowa Code sections 261.126 and 261.127, the commissioner shall issue a notice to the viatical settlement broker that the viatical settlement broker's pending application for licensure, pending request

for renewal, or current license will be suspended 30 days after the date of the notice. Notice shall be sent to the viatical settlement broker's last-known address by restricted certified mail, return receipt requested, or by personal service in accordance with the Iowa Rules of Civil Procedure. Alternatively, the applicant or licensed viatical settlement broker may accept service personally or through authorized counsel.

48.12(3) The notice shall contain the following items:

- a.* A statement that the commissioner intends to suspend the viatical settlement broker's application, request for renewal or current license in 60 days;
- b.* A statement that the viatical settlement broker must contact the CSAC to request a withdrawal of the certificate of noncompliance;
- c.* A statement that the viatical settlement broker's application, request for renewal or current license will be suspended if the certificate of noncompliance is not withdrawn or, if the current license is on suspension, a statement that the current license will be revoked;
- d.* A statement that the viatical settlement broker does not have a right to a hearing before the commissioner, but that the viatical settlement broker may file an application for a hearing in district court pursuant to Iowa Code section 261.127;
- e.* A statement that the filing of an application with the district court will stay the proceedings of the commissioner;
- f.* A copy of the certificate of noncompliance.

48.12(4) The effective date of revocation or suspension of a viatical settlement broker license, as specified in the notice required by Iowa Code section 261.126, shall be 60 days following service of the notice upon the applicant or licensed viatical settlement broker.

48.12(5) In the event an applicant or licensed viatical settlement broker timely files a district court action following service of notice by the commissioner pursuant to Iowa Code section 261.127, the commissioner's suspension proceedings will be stayed until the commissioner is notified by the district court of the resolution of the application. Upon receipt of a court order lifting the stay, or otherwise directing the commissioner to proceed, the commissioner shall continue with the intended action described in the notice. For purposes of determining the effective date of the denial of the issuance or renewal of a viatical settlement broker license, the commissioner shall count the number of days before the action was filed and the number of days after the court disposed of the action.

48.12(6) If the commissioner does not receive a withdrawal of the certificate of noncompliance from the CSAC or a notice from a clerk of court that an application for hearing has been filed, the commissioner shall suspend the viatical settlement broker's application, request for renewal or current license 60 days after the notice is issued.

48.12(7) Upon receipt of a withdrawal of the certificate of noncompliance from the CSAC, suspension proceedings shall halt, and the named viatical settlement broker shall be notified that the proceedings have been halted. If the viatical settlement broker's license has already been suspended, the license shall be reinstated if the viatical settlement broker is otherwise in compliance with this chapter. All fees required for license renewal or license reinstatement must be paid by the viatical settlement broker, and all continuing education requirements must be met before the viatical settlement broker's license will be renewed or reinstated after a license suspension or revocation pursuant to Iowa Code section 261.126.

48.12(8) The commissioner shall notify the viatical settlement broker in writing through regular first-class mail, or such other means as the commissioner deems appropriate in the circumstances, within ten days of the effective date of the suspension or revocation of the viatical settlement broker license, and shall similarly notify the viatical settlement broker when the viatical settlement broker license is reinstated following the commissioner's receipt of a withdrawal of the certificate of noncompliance.

48.12(9) Notwithstanding any statutory confidentiality provision, the commissioner may share information with the CSAC for the sole purpose of identifying viatical settlement brokers subject to enforcement under Iowa Code chapter 261.

191—48.13(272D) Suspension for failure to pay state debt.

48.13(1) The commissioner shall deny the issuance or renewal of a viatical settlement broker license upon receipt of a certificate of noncompliance from the centralized collection unit of the department of revenue according to the procedures in Iowa Code chapter 272D. In addition to the procedures set forth in Iowa Code chapter 272D, this rule shall apply.

48.13(2) Upon receipt of a certificate of noncompliance from the centralized collection unit of the department of revenue according to the procedures set forth in Iowa Code chapter 272D, the commissioner shall issue a notice to the viatical settlement broker that the viatical settlement broker's pending application for licensure, pending request for renewal, or current license will be suspended 30 days after the date of the notice. Notice shall be sent to the viatical settlement broker's last-known address by restricted certified mail, return receipt requested, or by personal service in accordance with the Iowa Rules of Civil Procedure. Alternatively, the applicant or licensed viatical settlement broker may accept service personally or through authorized counsel.

48.13(3) Pursuant to Iowa Code section 272D.8, the notice shall contain the following items:

a. A statement that the commissioner intends to suspend the viatical settlement broker's application, request for renewal or current license in 60 days;

b. A statement that the viatical settlement broker must contact the centralized collection unit of the department of revenue to schedule a conference or to otherwise obtain a withdrawal of the certificate of noncompliance;

c. A statement that the viatical settlement broker's application, request for renewal or current license will be suspended or denied if the commissioner does not receive a withdrawal of the certificate of noncompliance from the centralized collection unit of the department of revenue within 30 days of the issuance of notice under this rule; or, if the current license is on suspension, a statement that the viatical settlement broker's current license will be revoked;

d. A statement that the viatical settlement broker does not have a right to a hearing before the commissioner, but that the viatical settlement broker may file an application for a hearing in district court pursuant to Iowa Code section 272D.9;

e. A statement that the filing of an application with the district court will stay the proceedings of the commissioner;

f. A copy of the certificate of noncompliance.

48.13(4) Viatical settlement brokers shall keep the commissioner informed of all court actions and all actions taken by the centralized collection unit of the department of revenue under or in connection with Iowa Code chapter 272D; and viatical settlement brokers shall provide to the commissioner, within seven days of filing or issuance, copies of all applications filed with the district court pursuant to Iowa Code section 272D.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the centralized collection unit of the department of revenue.

48.13(5) The effective date of revocation or suspension of a viatical settlement broker license, as specified in the notice required by Iowa Code section 272D.8 and subrule 48.13(2), shall be 60 days following service of the notice upon the applicant or licensed viatical settlement broker.

48.13(6) In the event an applicant or licensed viatical settlement broker timely files a district court action following service of notice by the commissioner pursuant to Iowa Code section 272D.9, the commissioner's suspension proceedings will be stayed until the commissioner is notified by the district court of the resolution of the application. Upon receipt of a court order lifting the stay, or otherwise directing the commissioner to proceed, the commissioner shall continue with the intended action described in the notice. For purposes of determining the effective date of the denial of the issuance or renewal of a viatical settlement broker license, the commissioner shall count the number of days before the action was filed and the number of days after the court disposed of the action.

48.13(7) If the commissioner does not receive a withdrawal of the certificate of noncompliance from the centralized collection unit of the department of revenue or a notice from a clerk of court that an application for hearing has been filed, the commissioner shall suspend the viatical settlement broker's application, request for renewal or current license 60 days after the notice is issued.

48.13(8) Upon receipt of a withdrawal of the certificate of noncompliance from the centralized collection unit of the department of revenue, suspension proceedings shall halt, and the named viatical settlement broker shall be notified that the proceedings have been halted. If the viatical settlement broker's license has already been suspended, the license shall be reinstated if the viatical settlement broker is otherwise in compliance with this chapter. All fees required for license renewal or license reinstatement must be paid by the viatical settlement broker, and all continuing education requirements must be met before the viatical settlement broker's license will be renewed or reinstated after a license suspension or revocation pursuant to Iowa Code chapter 272D.

48.13(9) The commissioner shall notify the viatical settlement broker in writing through regular first-class mail, or such other means as the commissioner deems appropriate in the circumstances, within ten days of the effective date of the suspension or revocation of the viatical settlement broker license, and shall similarly notify the viatical settlement broker when the viatical settlement broker license is reinstated following the commissioner's receipt of a withdrawal of the certificate of noncompliance.

48.13(10) Notwithstanding any statutory confidentiality provision, the commissioner may share information with the centralized collection unit of the department of revenue for the sole purpose of identifying viatical settlement brokers subject to enforcement under Iowa Code chapter 272D.

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191—48.14(508E) Severability. If any rule or portion of a rule or its applicability to any person or circumstance is held invalid by a court, the remainder of these rules or the rules' applicability to other persons or circumstances shall not be affected.

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