

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 294

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

(Public)

Sponsors: Representatives Hurley; Mosley, Edwards, and Gibson.

Referred to: Insurance.

March 4, 1999

A BILL TO BE ENTITLED

1 AN ACT TO PROVIDE MEDICARE SUPPLEMENT INSURANCE FOR PERSONS
2 WHO DELAY MEDICARE PART B ENROLLMENT; TO PRESCRIBE
3 STANDARDS FOR DISABILITY INCOME INSURANCE; TO CONFORM
4 NORTH CAROLINA'S 1997 POST-MASTECTOMY RECONSTRUCTIVE
5 SURGERY LAWS TO THE FEDERAL WOMEN'S HEALTH AND CANCER
6 RIGHTS ACT OF 1998; TO UPDATE THE LAW ON VIATICAL SETTLEMENTS;
7 AND TO AUTHORIZE THE WRITING OF FAMILY LEAVE CREDIT
8 INSURANCE.
9

10 The General Assembly of North Carolina enacts:

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12 **PART I. MEDICARE SUPPLEMENT OPEN ENROLLMENT.**

13 Section 1. Article 54 of Chapter 58 of the General Statutes is amended by
14 adding a new section to read:

15 "**§ 58-54-55. Open enrollment for persons who delay Medicare Part B enrollment.**

16 In addition to any other provision in this Article or any rule adopted under this Article
17 that is directly or indirectly related to guaranteed issue or open enrollment, an insurer
18 shall expand open enrollment to include those persons who have delayed Medicare Part B
19 enrollment beyond attaining the age of 65 years because they were working and were
20 covered by an individual or group health plan."

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

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

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

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

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

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

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

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

18 (1) Terms of renewability.

19 (2) Initial and subsequent conditions of eligibility.

20 (3) Nonduplication of coverage.

21 (4) Preexisting conditions.

22 (5) Probationary periods.

23 (6) Benefit limitations, exceptions, and reductions.

24 (7) Elimination periods.

25 (8) Requirements for replacement.

26 (9) Recurrent conditions.

27 (10) Definitions of terms.

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

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

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

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

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

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

- 1 (1) A description of the principal benefits and coverage provided in the
2 policy.
- 3 (2) A statement of the exceptions, reductions, and limitations contained in
4 the policy.
- 5 (3) A statement of the renewal provisions, including any reservation by the
6 insurer of a right to change premiums.
- 7 (g) Other Applicable Provisions. – G.S. 58-51-95(f) applies to individual policies
8 and G.S. 58-51-80(g) applies to group policies.
- 9 (h) Other Income Sources. – If a policy contains a provision that provides for
10 integration of benefits with other income sources, it shall include a definition of what is
11 considered other income sources and a complete description of how benefits will be
12 reduced by other income sources, if at all. No disability income policy shall provide that
13 the amount of any disability benefit paid to the insured shall be reduced by reason of any
14 cost-of-living increase, designated as such under the federal Social Security Act, if the
15 cost-of-living increase occurs during the period for which benefits are payable."

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

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

19 **"§ 58-51-62. Coverage for reconstructive breast surgery ~~resulting from~~ following**
20 **mastectomy.**

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

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

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

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

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

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

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

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

18 **"§ 58-65-96. Coverage for reconstructive breast surgery following mastectomy.**

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

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

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

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

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

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

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

18 "**§ 58-67-79. Coverage for reconstructive breast surgery following mastectomy.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 (4b) 'Viatical settlement representative' means a person who is an authorized
5 agent of a viatical settlement provider or viatical settlement broker, as
6 applicable, who acts in any manner in the solicitation of a viatical
7 settlement. A viatical settlement representative is deemed to represent
8 only the viatical settlement provider or viatical settlement broker.
9 Viatical settlement representative does not include:

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

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

15 (4c) 'Viaticated policy' means a policy that has been acquired by a viatical
16 settlement provider under a viatical settlement contract.

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

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

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

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

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

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

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

6 No registration is complete for any nonresident applicant unless a written designation of
7 an agent for service of process is filed and maintained with the Commissioner or the
8 applicant has filed with the Commissioner the applicant's written irrevocable consent that
9 any action against the applicant may be commenced against the applicant by service of
10 process on the Commissioner.

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

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

14 (2) The viatical settlement provider has been guilty of fraudulent or
15 dishonest practices, is subject to a final administrative action, or is
16 otherwise shown to be untrustworthy or incompetent to act as a viatical
17 settlement provider;

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

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

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

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

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

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

38 (1) Is necessary to effect a viatical settlement between the viator and a
39 viatical settlement provider and the viator has provided prior written
40 consent to the disclosure.

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (1) The affiliation, if any, between the viatical settlement provider and the
2 issuer of an insurance policy to be viaticated.
- 3 (2) If a policy to be viaticated has been issued as a joint policy or involves
4 family riders or any coverage of a life other than the insured, the viator
5 shall be informed of the possible loss of coverage on the other lives and
6 be advised to consult with his or her insurance producer or the company
7 issuing the policy for advice on the proposed viatication.
- 8 (3) The dollar amount of the current death benefit payable to the viatical
9 settlement provider under the policy. The viatical settlement provider
10 shall also disclose the availability of any additional guaranteed
11 insurance benefits, the dollar amount of any accidental death and
12 dismemberment benefits under the policy, and the viatical settlement
13 provider's interest in those benefits.

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

- 16 (1) A written statement from a licensed attending physician that the viator is
17 of sound mind and under no constraint or undue influence.
- 18 (2) A witnessed document in which the viator (i) consents to the contract,
19 (ii) acknowledges the catastrophic or life-threatening illness, (iii)
20 represents that the viator has a full and complete understanding of the
21 contract, (iv) represents that the viator has a full and complete
22 understanding of the benefits of the policy, and (v) releases the medical
23 records and acknowledges that the contract has been entered into freely
24 and voluntarily.

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

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

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

- 43 (1) Adopt rules to implement this section.

- 1 (2) Establish standards for evaluating reasonableness of payments under
2 contracts. This authority includes regulation of discount rates used to
3 determine the amount paid in exchange for assignment, transfer, sale,
4 devise, or bequest of a benefit under a policy.
- 5 (3) Establish appropriate registration and other regulatory requirements for
6 brokers.
- 7 (4) Repealed by Session Laws 1998-211, s. 32.
- 8 (k) Unfair Trade Practices. – A violation of this section is considered an unfair
9 trade practice under Article 63 of this Chapter."
10

11 PART 5. FAMILY LEAVE CREDIT INSURANCE.

12 Section 5. Article 57 of Chapter 58 of the General Statutes is amended by
13 adding a new section to read:

14 "§ 58-57-115. Family leave credit insurance standards; policy provisions.

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

- 16 (1) 'Foster child' means a minor (i) over whom a guardian has been
17 appointed by the clerk of superior court of any county in North
18 Carolina; or (ii) the primary or sole custody of whom has been assigned
19 by order of a court of competent jurisdiction.
- 20 (2) 'Immediate family member' means a spouse, child (natural, adopted, or
21 foster), or parent.
- 22 (3) 'Placement in the foster home' means physically residing with a person
23 appointed as guardian or custodian of a foster child as long as that
24 guardian or custodian has assumed the legal obligation for total or
25 partial support of the foster child with the intent that the foster child
26 reside with the guardian or custodian on more than a temporary or short-
27 term basis.

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

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

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

- 38 (1) An accident involving sickness of, or incapacitation of an immediate
39 family member that requires the insured to attend to the family
40 member's needs.
- 41 (2) Birth of a child or children.
- 42 (3) Adoption of a child or children.
- 43 (4) Placement in the foster home of a foster child or children.

- 1 (5) The insured's principal residence is in a federally declared disaster area.
2 (6) The insured is called to active military duty.
3 (7) The insured is called to jury duty.
4 (e) Exclusions. – Coverage shall not contain any exclusions except:
5 (1) Retirement of the insured from employment.
6 (2) Voluntary resignation of the insured from employment.
7 (3) Seasonal unemployment of the insured.
8 (4) Involuntary unemployment of the insured.
9 (5) Disability of the insured.
10 (6) Employment termination because of willful or criminal misconduct of
11 the insured.
12 (f) Notice. – The insurer shall send a notice to the insured at the insured's home
13 address to inform the insured that benefits have been paid, including the dates and the
14 amount of payment. The notice shall be sent to the insured within 60 days after the last
15 day of the benefit period.
16 (g) Minimum Amounts. – The minimum monthly benefit amount shall be level for
17 the entire benefit period. The minimum monthly benefit amount shall equal or exceed
18 the minimum monthly payment required by the creditor, plus the premium charge for the
19 coverage attributable to the benefit period.
20 (h) Miscellaneous Provisions. – Any waiting period for benefits shall not exceed
21 30 days. The insured shall provide satisfactory evidence of employer approval of
22 qualified leave. Lump-sum benefits are prohibited. Refunds of unearned single
23 premiums shall be equal to the pro rata unearned gross premium.
24 (i) Rates. – Premium rates shall be actuarially demonstrated to generate a sixty
25 percent (60%) loss ratio. Joint coverage rates shall be one and two-thirds (1 2/3) times
26 the approved single rate. Rates shall be filed for approval before they can be used.
27 (j) Reports. – By March 30 of each year every insurer writing family leave
28 coverage shall file a statistical report of the past calendar year's actuarial experience for
29 that coverage. The report shall demonstrate the actual experience loss ratio for the
30 calendar year and shall include the: number of insureds, total premium volume, total
31 number of claims, total claims volume, total number of claims for each eligible leave
32 event, average monthly benefit per claim for each event, and premium refunds."

33 34 **PART 6. EFFECT OF HEADINGS.**

35 Section 6. The headings to the parts of this act are a convenience to the reader
36 and are for reference only. The headings do not expand, limit, or define the text of this
37 act.
38

39 **PART 7. EFFECTIVE DATES.**

40 Section 7. Sections 2, 4, and 5 of this act become effective October 1, 1999.
41 The remainder of this act is effective when it becomes law.