



INFORMATIONAL MEMORANDUM

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ISSUED

10/13/2000

Florida Department of Insurance

Bill Nelson

Treasurer, Insurance Commissioner and Fire Marshal

ALL LICENSED VIATICAL SETTLEMENT PROVIDERS AND ALL LICENSED VIATICAL SETTLEMENT BROKERS AUTHORIZED TO DO BUSINESS IN FLORIDA FRAUD LEGISLATION

The purpose of this memorandum is to inform licensed viatical settlement providers and licensed viatical settlement brokers doing business in Florida, of the applicability of newly created section 626.99278 Florida Statutes; and the amendment of section 626.99275 Florida Statutes pertaining to prohibited acts and penalties; and section 817.234 Florida Statutes pertaining to false and fraudulent insurance claims.

I. NEW PROVISIONS REGARDING VIATICAL SETTLEMENT PROVIDERS, VIATICAL SETTLEMENT BROKERS, AND VIATICAL SETTLEMENT SALES AGENTS AND THE REPORTING OF INSURANCE FRAUD

All viatical settlement providers, viatical settlement brokers, viatical settlement sales agents, and their employees are required to submit to the Department of Insurance, Division of Insurance Fraud, a report or information of their knowledge or belief that a fraudulent insurance act or any act or practice which, upon conviction, constitutes a felony or a misdemeanor under the Insurance Code, or under section 817.234, F.S. (Insurance Fraud), or also under section 626.99275, F.S. (Prohibited practices; penalties.) is being or has been committed.

II. ANTI-FRAUD PLANS NOW APPLY TO VIATICAL SETTLEMENT PROVIDERS AND VIATICAL SETTLEMENT BROKERS (MANDATORY COMPLIANCE BY DECEMBER 1, 2000)

Anti-Fraud Plan Requirements

By December 1, 2000, every licensed viatical settlement provider and viatical settlement broker must adopt an anti-fraud plan and file it with the Department of Insurance, Division of Insurance Fraud.

The Anti-Fraud Plan shall include the following, at a minimum:

- (1) A description of the procedures for detecting and investigating possible fraudulent insurance acts and procedures for resolving material inconsistencies between medical records and insurance applications;

- (2) A description of the procedures for the mandatory reporting of possible fraudulent insurance acts to the Division of Insurance Fraud of the department;
- (3) A description of the plan for anti-fraud education and training of underwriters or other personnel; and
- (4) A written description or chart outlining the organizational arrangement of the anti-fraud personnel who are responsible for the investigation and reporting of possible fraudulent insurance acts, and investigating unresolved material inconsistencies between medical records and insurance applications.

The Division of Insurance Fraud will review all Anti-Fraud plans for sufficiency. The Division will notify the viatical settlement provider or viatical settlement broker of any deficiencies.

III. IMMUNITY PROVISIONS

Immunity from civil liability for insurers provided for in section 626.989(4)(d), Florida Statutes now apply to viatical settlement providers, viatical settlement brokers, and viatical settlement sales agents.

Section 626.989(4)(d), F.S., reads:

“(d) In addition to the immunity granted in paragraph (c) persons identified as designated employees whose responsibilities include the investigation and disposition of claims relating to persons suspected of committing fraudulent insurance acts with other designated employees employed by the same or other insurers whose responsibilities include the investigation and disposition of claims relating to fraudulent insurance acts, provided the department has been given written notice of the names and job titles of such designated employees prior to such designated employees sharing information. Unless the designated employees of the insurer act in bad faith or in reckless disregard for the rights of any insured, neither the insurer nor its designated employees are civilly liable for libel, slander, or any other relevant tort, and a civil action does not arise against the insurer or its designated employees:

1. For any information related to suspected fraudulent insurance acts provided to an insurer; or
2. For any information relating to suspected fraudulent insurance acts provided to the National Insurance Crime Bureau or the National Association of Insurance Commissioners.

Provided, however, that the qualified immunity against civil liability conferred on any insurer or its designated employees shall be forfeited with respect to the exchange or publication of any defamatory information with third persons not expressly authorized by this paragraph to share in such information.”

If a viatical settlement provider or a viatical settlement broker does not provide the Division of Insurance Fraud with a list of designated employees, it simply will not enjoy the immunity provided under this provision.

Viatical settlement providers and viatical settlement brokers must update with the Division their list of designated employees, when new employees are so designated or when employees leave or change job titles. Because the master list of “designated employees” maintained by the Division is subject to constant change, it will be nearly impossible to publish an accurate list

at any given time. Thus, in order to protect an insurer's designated employees pursuant to this provision, it is suggested that written communications between insurers read substantially as follows:

I am a designated employee pursuant to s. 626.989(4)(d), F.S., for the _____ Insurance Company and request the following information Please ensure that the person who responds to this request is also a designated employee pursuant to s. 626.989(4)(d), F. S.

IV. FILING INFORMATION

Required Anti-fraud plans must be submitted to the Division by December 1, 2000 at the following address:

Florida Department of Insurance
Special Investigation Unit Section
Division of Insurance Fraud
200 E. Gaines Street, Larson Building
Tallahassee, Florida 32399-0324

Questions or requests for copies of the law may be directed to Assistant Director Mike Ross at the above address or telephone (850) 922-3115.