

**SECTION 2. REGULATION (with Statement of Purpose)**

R-39 Rev. 03/2012  
(Title page)

**IMPORTANT:** Read instructions on back of last page (Certification Page) before completing this form. Failure to comply with instructions may cause disapproval of proposed Regulations

**State of Connecticut**  
**REGULATION**  
of

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NAME OF AGENCY

**INSURANCE DEPARTMENT**

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**Concerning**

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SUBJECT MATTER OF REGULATION

**Life Settlement Contracts**

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Sections 38a-465-1 to 38a-465-10, inclusive, of the Regulations of Connecticut State Agencies are amended to read as follows

**[Sec. 38a-465-1. Definitions**

As used in sections 38a-465-1 to 38a-465-10, inclusive,

- (1) "Commissioner" means the Insurance Commissioner of the State of Connecticut;
- (2) "Insured" means the person covered under a life insurance policy or the holder of a certificate being considered for viatication;
- (3) "Life expectancy" means the average of the number of months the individual insured under the life insurance policy to be viaticated can be expected to live as determined by the viatical settlement provider considering medical records and appropriate experiential data;
- (4) "Patient identifying information" means an insured's address, telephone number, facsimile number, electronic mail address, photograph or likeness, employer, employment status, social security number or any other information that is likely to lead to identification of the insured;
- (5) "Viatical settlement" means viatical settlement as defined in section 38a-465 of the Connecticut general statutes;
- (6) "Viatical settlement agent" means viatical settlement agent as defined in section 38a-465 of the Connecticut general statutes;
- (7) "Viatical settlement broker" means viatical settlement broker as defined in section 38a-465 of the Connecticut general statutes;
- (8) "Viatical settlement provider" means viatical settlement provider as defined in section 1 of Public Act 99-104;
- (9) "Viator" means viator as defined in section 38a-465 of the Connecticut general statutes;]

**Sec. 38a-465-2. Annual statement reporting requirements**

Each [viatical settlement] provider shall file with the Commissioner on or before March 1 each year, [commencing with March 1, 2001,] an annual statement containing the following information regarding business transacted in this state for the previous calendar year:

- (1) For each policy [viaticated] settled, the date that the [viatical] life settlement contract was entered into; the life expectancy of the [viator] insured at the time of the contract; the face amount of the policy; the amount paid by the [viatical settlement] provider to [viaticate] settle the policy and the percentage that amount represents of the face amount; and if the [viator] insured has died, the date, the total insurance premiums paid by the [viatical settlement] provider to maintain the policy in force and the primary ICD diagnosis code, in numeric format, as defined by the International Classification of Diseases, as published by the U.S. Department of Health and Human Services;

- (2) a breakdown of applications received, accepted, and rejected, by disease category;
- (3) a breakdown of purchased policies [viaticated] by issuer, year of policy issuance and policy type;
- (4) the number of secondary market versus primary market transactions;
- (5) the total number of policies [viaticated] settled, the total policy premiums paid, the total paid to all [viators] owners, and the total commissions paid to [viatical settlement] brokers;
- (6) the source and amount of outside borrowing or financing; and
- (7) the name and address of each [viatical settlement] broker through whom the reporting company purchased a policy from [a viator] an owner who resided in Connecticut at the time of contract.

**Sec. 38a-465-3. Verification of license status of [viatical settlement] providers**

Each licensed [viatical settlement] broker shall file on or before March 1 of each year, [commencing March 1, 2001,] a notarized statement, signed under oath or affirmation, verifying that each [viatical settlement] provider from which such [viatical settlement] broker receives a commission or other payment or benefit is licensed in the State of Connecticut.

**Sec. 38a-465-4. Confidentiality of identify of [viator] insured's information**

Except as otherwise permitted under Section 38a-465d of the Connecticut General Statutes:

(a) No person may submit the report required by Section 38a-465-2 in such a manner as would identify any [viator] insured except with the express written consent of such [viator] insured or the [viator's] insured's estate or representative;

(b) A [viatical settlement agent] life insurance producer, [viatical settlement] broker or [viatical settlement] provider shall not provide patient identifying information to any person, unless the [viator] owner and the insured provide written consent to the release of the information at or before the time of the [viatical] settlement transaction.

(NEW) (c) The disclosed information required in section 38a-465d of the Connecticut General Statutes and sections 38a-465-1 to 38a-465-10, inclusive, of the Regulations of Connecticut State Agencies shall not be disclosed in any form to any person, unless disclosure: (1) is necessary to effect the life settlement contract; (2) is for an insurer to determine its obligation or responsibility under a policy or certificate and the owner and the insured have provided written consent or is permitted by law to be disclosed.

**Sec. 38a-465-5. Evaluation standards for reasonable payments**

(a) A [viatical settlement broker, company] broker or provider shall not enter into a [viatical settlement] life settlement contract that provides payment to the [viator] owner that is unreasonable, unjust or inequitable. In determining whether a payment is unreasonable, unjust or inequitable, the [commissioner] Commissioner may consider, among other factors, the life expectancy of the [viator] 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 the prevailing discount rates in the [viatical] life settlement contract market in Connecticut, or if sufficient data is unavailable for Connecticut, the prevailing discount rates nationally or in other states that maintain this data; and

(b) A [viatical settlement] provider shall not use a longer life expectancy than is realistic in order to reduce the payout to which the [viator] owner is entitled.

**Sec. 38a-465-6. Amounts payable to [viator] owner**

(a) Payment of the proceeds of a [viatical settlement pursuant to subsection (c) of section 38a-465g of the Connecticut General Statutes] life settlement contract shall be made by means of wire transfer to the account of the [viator] owner or by certified check or cashier's check.

(b) Payment of the proceeds to the [viator] owner pursuant to a [viatical settlement] life settlement contract shall be made in a lump sum except where the [viatical settlement] provider has purchased an annuity or similar financial

instrument issued by a licensed insurance company or bank, or an affiliate of either. Retention of a portion of the proceeds by the [viatical settlement] provider or escrow agents is not permissible.

### **Sec. 38a-465-7. Prohibited practices**

(a) A [viatical settlement agent] life insurance producer, [viatical settlement] broker or [viatical settlement] provider shall not discriminate in the creation or solicitation of a [viatical] life settlement contract on the basis of race, color, age, sex, national origin, ancestry, creed, religion, occupation, marital or family status, sexual orientation, gender identity or expression, or based on whether the [viator] insured has children.

(b) A [viatical settlement agent] life insurance producer, [viatical settlement] broker or [viatical settlement] provider shall not pay or offer to pay any finder's fee commission or other compensation to any:

- (1) [viator's] insured's physician, attorney, accountant, or any other person providing financial planning services, legal services or medical services to the [viator] insured, or to any other person acting as an agent of the [viator] insured with respect to the [viatical settlement] life settlement contract transaction; and
- (2) owner's attorney, accountant or any other person providing financial planning services or legal services to the owner, or to any other person acting as an agent of the owner with respect to the life settlement contract transaction.

(c) A [viatical settlement] provider shall not knowingly solicit investors who have treated or have been asked to treat the illness of the insured whose coverage would be the subject of the investment.

(d) A [viatical settlement] provider shall not act also as a [viatical settlement] broker, whether entitled to collect a fee directly or indirectly, in the same [viatical settlement] life settlement contract transaction.

(e) A [viatical settlement] broker shall not, without the written agreement of the [viator] owner obtained prior to performing any services in connection with a [viatical settlement] life settlement contract, seek or obtain any compensation from the [viator] owner.

(NEW) (f) "Gender identity or expression" has the same meaning as provided in Connecticut General Statutes Section 1-1n.

### **Sec. 38a-465-8. Advertising practices**

(a) Advertising related to the [viatical settlement] life settlement contract shall be truthful and not misleading by fact or implication.

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

(c) If the advertising references the dollar amounts available to [viators] owners, the advertising shall disclose the average purchase price as a percentage of face value obtained by [viators] owners contracting with the advertiser during the past six (6) months.

### **Sec. 38a-465-9. Interest retained by [viator] owner**

(a) If a [viatical settlement] provider enters a [viatical settlement] life settlement contract that allows the [viator] owner to retain an interest in the policy, the [viatical] life settlement contract shall contain the following provisions:

(1) 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] settled. Benefits in excess of the amount [viaticated] settled shall be paid directly to the [viator's] owner or their beneficiary by the insurance company;

(2) a provision that the [viatical settlement] provider will, upon acknowledgment of the perfection of the transfer, either

(A) advise the insured, in writing that the insurance company has confirmed the [viator's] owner's interest in the policy or

(B) send a copy of the instrument sent from the insurance company to the [viatical settlement company] provider that acknowledges the [viator's] owner's interest in the policy; and

(3) a provision that apportions the premiums to be paid by the [viatical settlement company] provider and the [viator] owner. It is permissible for the [viatical] life settlement contract to specify that all premiums shall be paid by the [viatical settlement company] provider. The contract may also require that the [viator] owner reimburse the [viatical settlement] provider for the premiums attributable to the retained interest.

(NEW)(b) If a provider enters a life settlement contract that pertains to a contract with benefits that are in addition to the basic face amount of the life insurance, including but not limited to, benefits such as accidental death or double indemnity, the owner shall retain an interest in the policy to the extent of such rights. The owner may sell these additional rights to the provider if the life insurance policy does not prohibit the sale of such rights and the life settlement contract discloses or acknowledges the purchase of such rights.

#### **Sec. 38a-465-10. Disclosure requirements**

[(a)] A disclosure document containing the disclosures required in section 38a-465f of the Connecticut General Statutes and sections 38a-465-1 to 38a-465-10, inclusive, of the Regulations of Connecticut State Agencies shall be provided before or concurrent with taking an application for a [viatical] life settlement contract.

[(b)] The disclosure document shall contain the following language "all medical, financial or personal information solicited or obtained by a viatical settlement company or viatical settlement broker about a viator and an insured, including the viator and insured's identity of family members, a spouse or a significant other, is confidential.

[(c)] The disclosed information required in section 38a-465f of the Connecticut General Statutes and sections 38a-465-1 to 38a-465-10, inclusive, of the Regulations of Connecticut State Agencies shall not be disclosed in any form to any person, unless disclosure: (1) is necessary to effect the viatical settlement; (2) is for an insurer to determine its obligation or responsibility under a policy or certificate and the viator and the insured have provided written consent; or is permitted by law to be disclosed.]

## **Statement of Purpose**

*Pursuant to CGS Section 4-170(b)(3), "Each proposed regulation shall have a statement of its purpose following the final section of the regulation." Enter the statement here.*

**Statement of Purpose:** To amend the regulation consistent with state statutory changes which have changed the terminology from "viatical" to "life settlement" as well as other related terminology amendments. The definitions are largely redundant to statute and are therefore being repealed. A provision regarding disclosure is also redundant to statute and is being repealed. Another change to the disclosure section will move a subsection to the existing privacy protection section. Consistent with Connecticut's laws, protection from discrimination based on an individual's gender identity or expression is being added.

**A. The problems, issues or circumstances that the regulation proposes to address.** The Insurance Department ("Department") is addressing the changes in the life settlement law. As part of the substantive changes the law changed basic defined terms. For example, the prior statutes referred to viatical settlements made by viators. The existing regulations reflect this outdated terminology. The new regulations revise the language to match the language in the current statutes. Some statutory references changed and other parts of the regulation needed to be moved to fit with other sections. Language which was redundant to the statute was also removed.

**B. Summary of the main provisions of the proposed regulation.** The regulation makes a number of technical changes related to the change from the terminology of viatical settlements to life settlement contracts. The definitions section has been replaced to the extent that the definitions merely re-stated the statutory definitions. In addition, the regulation requires reporting of these transactions, verification of licensing and prohibits the release of information that would undermine the law's privacy protection. The disclosure section has been modified to remove language that merely tracked the statute. The disclosure section has also been modified to move privacy provisions into the privacy portion of the regulation rather than splitting privacy between two sections, one specifically relating to privacy and the other to disclosure requirements. Consistent with Connecticut's laws, protection from discrimination based on an individual's gender identity or expression is being added.

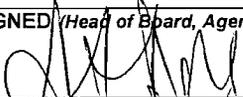
**C. The legal effects of the regulation, including all ways that the regulation would change existing regulations or other laws.** No other laws or regulations will be affected.

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(Certification page—see Instructions on back)

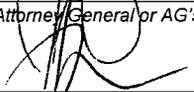
### CERTIFICATION

This certification statement must be completed in full, including items 3 and 4, if they are applicable.

- 1) I hereby certify that the above (check one)  Regulations  Emergency Regulations
- 2) are (check all that apply)  adopted  amended  repealed by this agency pursuant to the following authority(ies): (complete all that apply)
  - a. Connecticut General Statutes section(s) 38a-465m.
  - b. Public Act Number(s) N/A.  
(Provide public act number(s) if the act has not yet been codified in the Connecticut General Statutes.)
- 3) And I further certify that notice of intent to adopt, amend or repeal said regulations was published in the Connecticut Law Journal on December 4, 2012;  
(Insert date of notice publication if publication was required by CGS Section 4-168.)
- 4) And that a public hearing regarding the proposed regulations was held on N/A;  
(Insert date(s) of public hearing(s) held pursuant to CGS Section 4-168(a)(7), if any, or pursuant to other applicable statute.)
- 5) And that said regulations are EFFECTIVE (check one, and complete as applicable)
  - When filed with the Secretary of the State
  - OR  on (insert date) \_\_\_\_\_

DATE	SIGNED (Head of Board, Agency or Commission) 	OFFICIAL TITLE, DULY AUTHORIZED Deputy Insurance Commissioner
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**APPROVED by the Attorney General as to legal sufficiency in accordance with CGS Section 4-169, as amended**

DATE <u>4/15/13</u>	SIGNED (Attorney General or AG's designated representative)  Joseph Rubin	OFFICIAL TITLE, DULY AUTHORIZED ASSOC. ATTY. GENERAL
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Proposed regulations are **DEEMED APPROVED** by the Attorney General in accordance with CGS Section 4-169, as amended, if the attorney General fails to give notice to the agency of any legal insufficiency within thirty (30) days of the receipt of the proposed regulation.

(For Regulation Review Committee Use ONLY)

- Approved  Rejected without prejudice
- Approved with technical corrections  Disapproved in part, (Indicate Section Numbers disapproved only)
- Deemed approved pursuant to CGS Section 4-170(c)

By the Legislative Regulation Review Committee in accordance with CGS Section 4-170, as amended	DATE	SIGNED (Administrator, Legislative Regulation Review Committee)
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**Two certified copies received and filed and one such copy forwarded to the Commission on Official Legal Publications in accordance with CGS Section 4-172, as amended.**

DATE	SIGNED (Secretary of the State)	BY
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(For Secretary of the State Use ONLY)

## GENERAL INSTRUCTIONS

1. All regulations proposed for adoption, amendment or repeal, *except* emergency regulations, must be presented to the Attorney General for his/her determination of legal sufficiency. (See CGS Section 4-169.)
2. After approval by the Attorney General, the original and one electronic copy (in Word format) of all regulations proposed for adoption, amendment or repeal must be presented to the Legislative Regulation Review Committee for its action. (See CGS Sections 4-168 and 4-170 as amended by Public Act 11-150, Sections 18 and 19.)
3. Each proposed regulation section must include the appropriate regulation section number and a section heading. (See CGS Section 4-172.)
4. New language added to an existing regulation must be in underlining or CAPITAL LETTERS, as determined by the Regulation Review Committee. (See CGS 4-170(b).)
5. Existing language to be deleted must be enclosed in brackets [ ]. (See CGS 4-170(b).)
6. A completely new regulation or a new section of an existing regulation must be preceded by the word "(NEW)" in capital letters. (See CGS Section 4-170(b).)
7. The proposed regulation must have a statement of its purpose following the final section of the regulation. (See CGS Section 4-170(b).)
8. The Certification Statement portion of the form must be completed, including all applicable information regarding *Connecticut Law Journal* notice publication date(s) and public hearing(s). (See more specific instructions below.)
9. Additional information regarding rules and procedures of the Legislative Regulation Review Committee can be found on the Committee's web site: <http://www.cga.ct.gov/rr/>.
10. A copy of the Legislative Commissioners' Regulations Drafting Manual is located on the LCO website at [http://www.cga.ct.gov/lco/pdfs/Regulations\\_Drafting\\_Manual.pdf](http://www.cga.ct.gov/lco/pdfs/Regulations_Drafting_Manual.pdf).

## CERTIFICATION STATEMENT INSTRUCTIONS

(Numbers below correspond to the numbered sections of the statement)

1. Indicate whether the regulation is a regular or an emergency regulation adopted under the provisions of CGS Section 4-168(f).
2.
  - a) Indicate whether the regulations contains newly adopted sections, amendments to existing sections, and/or repeals existing sections. Check all cases that apply.
  - b) Indicate the specific legal authority that authorizes or requires adoption, amendment or repeal of the regulation. If the relevant public act has been codified in the most current biennial edition of the *Connecticut General Statutes*, indicate the relevant statute number(s) instead of the public act number. If the public act has not yet been codified, indicate the relevant public act number.
3. Except for emergency regulations adopted under CGS 4-168(f), and technical amendments to an existing regulation adopted under CGS 4-168(g), an agency must publish notice of its intent to adopt a regulation in the *Connecticut Law Journal*. Enter the date of notice publication.
4. CGS Section 4-168(a)(7) prescribes requirements for the holding of an agency public hearing regarding proposed regulations. Enter the date(s) of the hearing(s) held under that section, if any; also enter the date(s) of any hearing(s) the agency was required to hold under the provisions of any other law.
5. As applicable, enter the effective date of the regulation here, or indicate that it is effective upon filing with the Secretary of the State. Please note the information below.

Regulations are effective upon filing with the Secretary of the State or at a later specified date. See CGS Section 4-172(b) which provides that each regulation is effective upon filing, or, if a later date is required by statute or specified in the regulation, the later date is the effective date. An effective date may not precede the effective date of the public act requiring or permitting the regulation. Emergency regulations are effective immediately upon filing with the Secretary of the State, or at a stated date less than twenty days thereafter.