



Ohio Revised Code

Section 3916.17 Advertising of viatical settlement contracts.

Effective: September 11, 2008

Legislation: House Bill 404 - 127th General Assembly

(A) The general assembly hereby declares that the purpose of this section is to provide prospective viators with clear and unambiguous statements in the advertisement of viatical settlements and to assure the clear, truthful, and adequate disclosure of the benefits, risks, limitations, and exclusions of any viatical settlement contract. This purpose is intended to be accomplished by the establishment of guidelines and standards of permissible and impermissible conduct in the advertising of viatical settlements to assure that product descriptions are presented in a manner that prevents unfair, deceptive, or misleading advertising and is conducive to accurate presentation and description of viatical settlements through the advertising media and material used by licensees.

Divisions (B) to (P) of this section apply to any advertising of viatical settlement contracts, or any related products or services intended for dissemination in this state, including, but not limited to, internet advertising viewed by persons located in this state. In cases in which disclosure requirements are established pursuant to federal regulation, this section shall be interpreted so as to minimize or eliminate conflict with federal regulation wherever possible.

(B) Every licensee shall establish and at all times shall maintain a system of control over the content, form, and method of dissemination of all advertisements of its contracts, products, and services. All advertisements, regardless of by whom they are written, created, designed, or presented, shall be the responsibility of the licensee and of the person that created or presented the advertisement. A system of control shall include regular routine notification, at least once a year, to agents and others authorized by the licensee who disseminate advertisements of the requirements for compliance under this section prior to the use of any advertisements not furnished by the licensee.

(C) All advertisements that are subject to this section shall be truthful and not misleading in fact or by implication. The form and content of an advertisement of a viatical settlement contract shall be sufficiently complete and clear so as to avoid deception and shall not have the capacity or tendency to mislead or deceive. The determination of whether an advertisement has the capacity or tendency



to mislead or deceive shall be made by the superintendent, from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence within the segment of the public to which it is directed.

(D) Viatical settlement advertisements containing any representation set forth in this division are deemed false and misleading on their face and are prohibited. False and misleading viatical settlement advertisements include, but are not limited to, those including any of the following representations:

(1) "Guaranteed," "fully secured," "100 percent secured," "fully insured," "secure," "safe," "backed by rated insurance companies," "backed by federal law," "backed by state law," or "state guaranty funds," or similar representations;

(2) "No risk," "minimal risk," "low risk," "no speculation," "no fluctuation," or similar representations;

(3) "Qualified or approved for individual retirement accounts (IRAs), Roth IRAs, 401(k) plans, simplified employee pensions (SEPs), 403(b), Keogh plans, TSA, or other retirement account rollovers," "tax deferred," or similar representations;

(4) Utilization of the word "guaranteed" to describe the fixed return, annual return, principal, earnings, profits, investment, or similar representations;

(5) "No sales charges or fees" or similar representations;

(6) "High yield," "superior return," "excellent return," "high return," "quick profit," or similar representations;

(7) Purported favorable representations or testimonials about the benefits of viatical settlement contracts or viatical settlement purchase agreements as an investment, taken out of context from any newspaper, trade paper, journal, radio or television program, or any other form of print and electronic media.



(E)(1) The information required to be disclosed under this section shall not be minimized, rendered obscure, or presented in an ambiguous fashion or intermingled with the text of the advertisement so as to be confusing or misleading.

An advertisement shall not omit material information or use any words, phrases, statements, references, or illustrations if the omission or use has the capacity, tendency, or effect of misleading or deceiving viators, as to the nature or extent of any benefit, loss covered, premium payable, or state or federal tax consequence. The fact that the viatical settlement contract offered is made available for inspection prior to consummation of the sale, that an offer is made to refund the payment if the viator is not satisfied, or that the viatical settlement contract includes a "free look" period that satisfies or exceeds legal requirements, does not remedy any misleading statements.

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

(3) An advertisement shall not represent that any premium payments will not be required to be paid on the policy that is the subject of a viatical settlement contract in order to maintain that policy, unless that is the fact.

(4) An advertisement shall not state or imply that interest charged on an accelerated death benefit or a policy loan is unfair, inequitable, or in any manner an incorrect or improper practice.

(5) The words "free," "no cost," "without cost," "no additional cost," "at no extra cost," or words of similar import shall not be used with respect to any policy or to any benefit or service unless true. An advertisement may specify the charge for a benefit or a service or may state that a charge is included in the payment or use other appropriate language.

(6)(a) Testimonials, appraisals, analyses, or endorsements used in advertisements must satisfy all of the following:

(i) They must be genuine.

(ii) They must represent the current opinion of the author.



- (iii) They must be applicable to the viatical settlement contract product or service advertised, if any.
- (iv) They must be accurately reproduced with sufficient completeness to avoid misleading or deceiving prospective viators as to the nature or scope of the testimonials, appraisals, analyses, or endorsements.
- (b) In using testimonials, appraisals, analyses, or endorsements, the licensee makes as its own all the statements contained in the testimonials, appraisals, analyses, or endorsements, and the statements are subject to all the provisions of this section.
- (c) If the individual making a testimonial, appraisal, analysis, or endorsement has a financial interest in the subject of that testimonial, appraisal, analysis, or endorsement directly or indirectly as a shareholder, director, officer, employee, or otherwise, or receives any benefit directly or indirectly other than required union scale wages, that fact shall be prominently disclosed in the advertisement.
- (d) An advertisement shall not state or imply that a viatical settlement contract benefit or service has been approved or endorsed by a group of individuals, society, association, or other organization unless that is the fact and unless any relationship between the group of individuals, society, association, or organization and the viatical settlement provider is disclosed. If the entity making the endorsement or testimonial is owned, controlled, or managed by the viatical settlement provider, or receives any payment or other consideration from the viatical settlement provider for making an endorsement or testimonial, that fact shall be disclosed in the advertisement.
- (e) When an endorsement refers to benefits received under a viatical settlement contract, all pertinent information shall be retained for a period of at least five years after its use.
- (F) An advertisement shall not contain statistical information unless the information accurately reflects recent and relevant facts. The source of all statistics used in an advertisement shall be identified.
- (G) An advertisement shall not disparage any insurer, viatical settlement provider, viatical settlement



broker, insurance producer, policy, service, or method of marketing.

(H) All advertisements about a viatical settlement provider or its viatical settlement contract, products, or services shall clearly identify the viatical settlement provider's name. If any specific viatical settlement contract is advertised, the viatical settlement contract shall be identified either by form number or some other appropriate description. If an application is part of the advertisement, the name of the viatical settlement provider shall be shown on the application.

(I) An advertisement shall not use a trade name, group designation, name of the parent company of a licensee, name of a particular division of the licensee, service mark, slogan, symbol, or other device or reference without disclosing the name of the licensee, if either of the following applies regarding the advertisement:

(1) It would have the capacity or tendency to mislead or deceive as to the true identity of the licensee.

(2) It would have the capacity or tendency to create the impression that a company other than the licensee would have any responsibility for the financial obligation under a contract.

(J) An advertisement shall not use any combination of words, symbols, or physical materials that, by their content, phraseology, shape, color, or other characteristics, are so similar to a combination of words, symbols, or physical materials used by a government program or agency or otherwise appear to be of such a nature that they tend to mislead prospective viators into believing that the solicitation is in some manner connected with a government program or agency.

(K) An advertisement may state that a licensee is licensed in the state in which the advertisement appears, provided it does not exaggerate that fact or suggest or imply that competitors may not be so licensed. The advertisement may ask the audience to consult the licensee's web site or contact the department of insurance to find out if the state in which the advertisement appears requires licensing and, if it does, whether the person is licensed.

(L) An advertisement shall not create the impression that the viatical settlement provider, its financial condition or status, the payment of its claims, or the merits, desirability, or advisability of



its viatical settlement contracts are recommended or endorsed by any government entity.

(M) All advertisements of an actual licensee shall state the name of the actual licensee. An advertisement shall not use a trade name, any group designation, name of any affiliate or controlling entity of the licensee, service mark, slogan, symbol, or other device in a manner that would have the capacity or tendency to mislead or deceive as to the true identity of the actual licensee or create the false impression that an affiliate or controlling entity would have any responsibility for the financial obligation of the licensee.

(N) An advertisement shall not directly or indirectly create the impression that any division or agency of this state, any other state, or the United States government endorses, approves, or favors any of the following:

- (1) Any licensee or its business practices or methods of operation;
- (2) The merits, desirability, or advisability of any viatical settlement contract;
- (3) Any viatical settlement contract;
- (4) Any policy or life insurance company.

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

(P) If the advertising emphasizes the dollar amounts available to viators, the advertising shall disclose the average purchase price as a per cent of face value obtained by viators contracting with the licensee during the past six months.