

HOUSE BILL 846

J1, C4

4lr0329

By: **Delegates Hixson, Barve, Carr, and Cullison**

Introduced and read first time: February 5, 2014

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Medical Assistance Program – Viatical Settlement Contracts –**
3 **Long-Term Care Services**

4 FOR the purpose of authorizing an owner of a life insurance policy with a face value of
5 a certain amount to enter into a viatical settlement contract in exchange for
6 payments to a health care provider for long-term care services for an individual;
7 requiring the proceeds of certain viatical settlement contracts to be used for a
8 certain purpose; prohibiting the proceeds of certain viatical settlement contracts
9 from being considered a resource or asset in determining an individual's
10 eligibility for the Maryland Medical Assistance Program; prohibiting certain
11 funds from being used to pay for certain long-term care services under the
12 Maryland Medical Assistance Program until certain proceeds are expended;
13 establishing requirements for certain viatical settlement contracts and the
14 proceeds of the contracts; providing that only a certain recipient of long-term
15 care services may choose the provider and type of services provided to the
16 recipient; establishing that any attempt to require the recipient of long-term
17 care services to choose a specific provider or specific type of services is an unfair
18 method of competition or an unfair or deceptive act or practice under a certain
19 provision of State insurance law; requiring a viatical settlement provider who
20 enters into a certain viatical settlement contract to hold certain proceeds in a
21 certain account for a certain purpose and to maintain a certain surety bond,
22 certain insurance, or a certain deposit; prohibiting certain claims relating to
23 certain viatical settlement contracts from exceeding a certain amount; requiring
24 a viatical settlement provider to pay certain claims from funds held in a certain
25 account; requiring the Department of Health and Mental Hygiene to include a
26 certain notice in a certain application, adopt certain regulations, and seek a
27 certain waiver or authorization under certain circumstances; providing that
28 certain provisions of law governing viatical settlement contracts apply to
29 viatical settlement contracts entered into under certain provisions of this Act
30 under certain circumstances; requiring a viatical settlement provider to file
31 with the Maryland Insurance Commissioner certain forms for review and

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 approval and certain advertisements; requiring the Commissioner to conduct
2 certain examinations of certain viatical settlement providers; defining certain
3 terms; and generally relating to viatical settlement contracts for long-term care
4 services and the Maryland Medical Assistance Program.

5 BY adding to
6 Article – Health – General
7 Section 15–109.3
8 Annotated Code of Maryland
9 (2009 Replacement Volume and 2013 Supplement)

10 BY adding to
11 Article – Insurance
12 Section 8–612 and 27–224
13 Annotated Code of Maryland
14 (2011 Replacement Volume and 2013 Supplement)

15 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
16 MARYLAND, That the Laws of Maryland read as follows:

17 **Article – Health – General**

18 **15–109.3.**

19 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE
20 MEANINGS INDICATED.

21 (2) “LONG-TERM CARE SERVICES” INCLUDES HOME HEALTH
22 CARE, ASSISTED LIVING, AND NURSING HOME SERVICES.

23 (3) “VIATICAL SETTLEMENT CONTRACT” HAS THE MEANING
24 STATED IN § 8–601 OF THE INSURANCE ARTICLE.

25 (4) “VIATICAL SETTLEMENT PROVIDER” HAS THE MEANING
26 STATED IN § 8–601 OF THE INSURANCE ARTICLE.

27 (5) “VIATOR” HAS THE MEANING STATED IN § 8–601 OF THE
28 INSURANCE ARTICLE.

29 (B) THE PROVISIONS OF TITLE 8, SUBTITLE 6 OF THE INSURANCE
30 ARTICLE SHALL APPLY TO A VIATICAL SETTLEMENT CONTRACT ENTERED INTO
31 UNDER THIS SECTION EXCEPT TO THE EXTENT THAT THE PROVISIONS OF TITLE
32 8, SUBTITLE 6 OF THE INSURANCE ARTICLE CONFLICT WITH THE PROVISIONS
33 OF THIS SECTION.

1 **(C) A VIATOR WHO OWNS A LIFE INSURANCE POLICY WITH A FACE**
2 **AMOUNT OF MORE THAN \$10,000 MAY ENTER INTO A VIATICAL SETTLEMENT**
3 **CONTRACT IN EXCHANGE FOR PAYMENTS TO A HEALTH CARE PROVIDER FOR**
4 **LONG-TERM CARE SERVICES FOR AN INDIVIDUAL.**

5 **(D) (1) THE PROCEEDS OF A VIATICAL SETTLEMENT CONTRACT**
6 **ENTERED INTO UNDER THIS SECTION:**

7 **(I) EXCEPT AS PROVIDED UNDER SUBSECTION (E) OF THIS**
8 **SECTION, SHALL BE USED TO PAY FOR LONG-TERM CARE SERVICES FOR AN**
9 **INDIVIDUAL; AND**

10 **(II) MAY NOT BE CONSIDERED A RESOURCE OR ASSET IN**
11 **DETERMINING AN INDIVIDUAL'S ELIGIBILITY FOR THE PROGRAM.**

12 **(2) NO STATE OR FEDERAL FUNDS MAY BE USED TO PAY FOR**
13 **LONG-TERM CARE SERVICES FOR AN INDIVIDUAL UNDER THE PROGRAM UNTIL**
14 **ALL PROCEEDS THAT MUST BE USED TO PAY FOR LONG-TERM CARE SERVICES**
15 **FOR THE INDIVIDUAL UNDER PARAGRAPH (1)(I) OF THIS SUBSECTION ARE**
16 **EXPENDED.**

17 **(E) A VIATICAL SETTLEMENT CONTRACT ENTERED INTO UNDER THIS**
18 **SECTION SHALL PROVIDE THAT:**

19 **(1) THE LESSER OF 5% OF THE FACE AMOUNT OF THE LIFE**
20 **INSURANCE POLICY THAT IS THE SUBJECT OF THE VIATICAL SETTLEMENT**
21 **CONTRACT OR \$5,000 IS RESERVED AND IS PAYABLE, FOR FINAL EXPENSES, TO**
22 **THE VIATOR'S ESTATE OR A NAMED BENEFICIARY ON THE DEATH OF THE**
23 **INSURED UNDER THE POLICY; AND**

24 **(2) THE BALANCE OF THE PROCEEDS OF THE VIATICAL**
25 **SETTLEMENT CONTRACT REMAINING AT THE DEATH OF THE INSURED MUST BE**
26 **PAID TO THE VIATOR'S ESTATE OR A NAMED BENEFICIARY.**

27 **(F) A VIATICAL SETTLEMENT PROVIDER SHALL HOLD ALL PROCEEDS**
28 **OF A VIATICAL SETTLEMENT CONTRACT ENTERED INTO UNDER THIS SECTION IN**
29 **AN IRREVOCABLE STATE OR FEDERALLY INSURED ACCOUNT FOR THE BENEFIT**
30 **OF THE RECIPIENT OF LONG-TERM CARE SERVICES OR FOR PAYMENT AS**
31 **OTHERWISE REQUIRED UNDER THIS SECTION.**

32 **(G) (1) ONLY A RECIPIENT OF LONG-TERM CARE SERVICES FOR**
33 **WHOSE BENEFIT A VIATOR ENTERS INTO A VIATICAL SETTLEMENT CONTRACT**
34 **UNDER THIS SECTION MAY CHOOSE THE PROVIDER AND TYPE OF SERVICES**

1 PROVIDED TO THE RECIPIENT AND PAID FOR OUT OF AN ACCOUNT DESCRIBED
2 IN SUBSECTION (F) OF THIS SECTION.

3 (2) ANY ATTEMPT BY A PERSON TO REQUIRE THE RECIPIENT OF
4 LONG-TERM CARE SERVICES TO CHOOSE A SPECIFIC PROVIDER OR SPECIFIC
5 TYPE OF SERVICES IS AN UNFAIR METHOD OF COMPETITION OR AN UNFAIR OR
6 DECEPTIVE ACT OR PRACTICE UNDER § 27-224 OF THE INSURANCE ARTICLE.

7 (H) A VIATICAL SETTLEMENT PROVIDER THAT ENTERS INTO A VIATICAL
8 SETTLEMENT CONTRACT WITH A VIATOR UNDER THIS SECTION SHALL
9 MAINTAIN:

10 (1) A SURETY BOND EXECUTED AND ISSUED BY AN INSURER
11 AUTHORIZED TO ISSUE SURETY BONDS IN THE STATE;

12 (2) A POLICY OF ERRORS AND OMISSIONS INSURANCE; OR

13 (3) A DEPOSIT IN THE AMOUNT OF \$500,000 IN ANY
14 COMBINATION OF CASH, CERTIFICATES OF DEPOSIT, OR SECURITIES.

15 (I) (1) A CLAIM BY A VIATOR, A VIATOR'S ESTATE, A NAMED
16 BENEFICIARY, OR ANY OTHER PERSON WITH RESPECT TO A VIATICAL
17 SETTLEMENT CONTRACT MAY NOT EXCEED THE FACE AMOUNT OF THE POLICY,
18 LESS THE PROCEEDS PAID UNDER THE VIATICAL SETTLEMENT CONTRACT AND
19 THE TOTAL AMOUNT OF PREMIUMS PAID AFTER ENTERING INTO THE VIATICAL
20 SETTLEMENT CONTRACT.

21 (2) A VIATICAL SETTLEMENT PROVIDER SHALL PAY A CLAIM
22 UNDER THIS SUBSECTION FROM THE FUNDS HELD IN AN ACCOUNT DESCRIBED
23 IN SUBSECTION (F) OF THIS SECTION.

24 (J) THE DEPARTMENT SHALL INCLUDE IN ANY ENROLLMENT
25 APPLICATION FOR LONG-TERM CARE SERVICES IN THE PROGRAM WRITTEN
26 NOTICE OF THE OPTION TO ENTER INTO A VIATICAL SETTLEMENT CONTRACT
27 UNDER THIS SECTION.

28 (K) THE DEPARTMENT SHALL ADOPT REGULATIONS TO CARRY OUT THE
29 PROVISIONS OF THIS SECTION, INCLUDING REGULATIONS TO ENSURE THAT:

30 (1) PROCEEDS FROM A VIATICAL SETTLEMENT CONTRACT ARE
31 USED TO REIMBURSE A PROVIDER OF LONG-TERM CARE SERVICES;

1 **(2) ELIGIBILITY AND NEED FOR PROGRAM BENEFITS ARE**
2 **DETERMINED WITHOUT CONSIDERING THE BALANCE OF PROCEEDS FROM A**
3 **VIATICAL SETTLEMENT CONTRACT ENTERED INTO UNDER THIS SECTION; AND**

4 **(3) PAYMENTS TO A PROVIDER OF LONG-TERM CARE SERVICES**
5 **ARE MADE IN ACCORDANCE WITH THIS SECTION.**

6 **Article – Insurance**

7 **8-612.**

8 **(A) A VIATICAL SETTLEMENT PROVIDER SHALL FILE WITH THE**
9 **COMMISSIONER:**

10 **(1) FOR REVIEW AND APPROVAL BY THE COMMISSIONER, ANY**
11 **VIATICAL SETTLEMENT CONTRACT FORMS USED FOR LONG-TERM CARE**
12 **SERVICES UNDER § 15-109.3 OF THE HEALTH – GENERAL ARTICLE; AND**

13 **(2) ANY ADVERTISEMENTS USED BY THE VIATICAL SETTLEMENT**
14 **PROVIDER THAT RELATE TO VIATICAL SETTLEMENT CONTRACTS FOR**
15 **LONG-TERM CARE SERVICES UNDER § 15-109.3 OF THE HEALTH – GENERAL**
16 **ARTICLE.**

17 **(B) THE COMMISSIONER SHALL CONDUCT PERIODIC EXAMINATIONS OF**
18 **EACH VIATICAL SETTLEMENT PROVIDER WITH RESPECT TO ANY VIATICAL**
19 **SETTLEMENT CONTRACTS ENTERED INTO UNDER § 15-109.3 OF THE HEALTH –**
20 **GENERAL ARTICLE.**

21 **27-224.**

22 **A PERSON MAY NOT VIOLATE § 15-109.3(G) OF THE HEALTH – GENERAL**
23 **ARTICLE.**

24 SECTION 2. AND BE IT FURTHER ENACTED, That the Department of
25 Health and Mental Hygiene shall seek a waiver or authorization from the Centers for
26 Medicare and Medicaid Services if necessary to implement this Act.

27 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
28 October 1, 2014.