

304.15-726 Life settlement contracts for payments directly to long-term care services providers -- Administrative regulations.

- (1) For purposes of this section:
 - (a) "Long-term care services" means:
 1. Home health care;
 2. Assisted living;
 3. Nursing home care; and
 4. Any other service or support deemed a long-term care service pursuant to administrative regulations promulgated by the Department for Medicaid Services; and
 - (b) "Recipient" means the recipient of the long-term care services that are being paid for from the proceeds of the life settlement contract entered into pursuant to this section.
- (2) The owner of a life insurance policy with a face value in excess of ten thousand dollars (\$10,000) may enter into a life settlement contract pursuant to KRS 304.15-700 to 304.15-720, in exchange for payments directly to a long-term care services provider as of the effective date of the life settlement contract in accordance with this section.
- (3)
 - (a) All proceeds of the life settlement contract entered into pursuant to this section shall:
 1. Not be subject to any statute or administrative regulation relating to minimum payments for a life settlement which conflict with the provisions of this section; and
 2. Be held in an irrevocable state or federally insured account for the benefit of the recipient of the long-term care services and administered in accordance with this section.
 - (b) The type of long-term care services payable from the irrevocable account shall be chosen only by the recipient of the services. Any attempt by any person to require the use of a long-term care services provider to obtain long-term care services pursuant to this section is prohibited and shall constitute an unfair or deceptive act or practice in violation of KRS 304.12-010.
 - (c) In addition to the requirements in KRS 304.15-700 to 304.15-720, any life settlement contract entered into pursuant to this section shall include the following:
 1. A provision in the contract that five percent (5%) of the face amount of the life insurance policy, not to exceed seven thousand five hundred dollars (\$7,500), or five thousand dollars (\$5,000), whichever is greater, may be reserved and if reserved shall be payable to the owner's estate or a named beneficiary of the irrevocable account upon the death of the insured under the policy that is the subject of the life settlement contract for final expenses; and
 2. The balance of proceeds of the life settlement contract that are unpaid at the death of the owner shall be paid to the owner's estate

or a named beneficiary of the irrevocable account.

- (d) Any life settlement provider entering into a life settlement contract pursuant to this section shall maintain one (1) of the following:
 - 1. A surety bond executed and issued by an insurer authorized to issue bonds in this state in the amount of five hundred thousand dollars (\$500,000). Any surety bond issued shall be in favor of this state and shall specifically authorize recovery by the commissioner on behalf of any person in this state who sustained damages as the result of erroneous acts, failure to act, conviction of fraud, or conviction of unfair practices by the life settlement provider; or
 - 2. A policy of errors and omissions insurance covering legal liability resulting from erroneous acts or failure to act in their capacity as a life settlement provider in the sum of no less than five hundred thousand dollars (\$500,000) per occurrence and in the aggregate.
- (e) For purposes of this section, in addition to any requirements of KRS 304.15-700 to 304.15-720:
 - 1. Life settlement contract forms entered into pursuant to this section shall be filed and approved by the department; and
 - 2. Advertising and marketing materials used by a life settlement provider pursuant to this section shall be filed with the department.
- (f) Any claim against a life settlement provider from an owner of a policy, the owner's estate, any beneficiary, or any other person with respect to the life settlement contract shall not exceed the face amount of the policy, less the proceeds paid under the life settlement contract, the total amount of premiums paid subsequent to entering into the life settlement contract, and any other reasonable costs or expenses associated with the acquisition or maintenance of the policy that is the subject of a life settlement contract. Any payment of a claim by a life settlement provider shall be made from the funds established pursuant to paragraph (a)2. of this subsection.
- (g) The department shall conduct periodic market examinations of each life settlement provider regarding the life settlement contracts entered into pursuant to this section in accordance with KRS 304.15-705.
- (4) Nothing in this section shall be the exclusive method for a life insurance policy to be excluded as a resource or asset in determining the applicant's or recipient's eligibility for Medicaid.
- (5) The commissioner may promulgate administrative regulations to implement this section.

Effective: July 15, 2014

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