

Viatical Settlements:

A Guide for People with Terminal Illnesses



vi-at-i-cal (vi-at-i-k l) *adj.* [Lat. *viaticus* < *via*, road.]
Of or relating to traveling, a road, or a way.



If you have a terminal illness—or if you are caring for someone who is terminally ill—chances are you’re giving a great deal of thought to time and money. You may be thinking about life insurance, too. It’s in that context that you may hear the phrases “accelerated benefits” and “viatical settlements.”

Accelerated benefits sometimes are called “living benefits.” They are the proceeds of life insurance policies that are paid by the insurer to policy holders before they die. Occasionally, these benefits are included in policies when they are sold, but usually, they are offered as riders or attachments to new or existing policies.

Viatical settlements involve the sale of a life insurance policy. If you have a terminal illness, you may consider selling your insurance policy to a viatical settlement company for a lump sum cash payment. In a viatical settlement transaction, people with terminal illnesses assign their life insurance policies to viatical settlement companies in exchange for a percentage of the policy’s face value. The viatical settlement company, in turn, may sell the policy to a third-party investor. The viatical settlement company or the investor becomes the beneficiary to the policy, pays the premiums, and collects the face value of the policy after the original policyholder dies.

Decisions affecting life insurance benefits can have a profound financial and emotional impact on dependents, friends and care-givers. Before you make any major changes regarding your policy, talk to your friends and family as well as to someone whose advice and expertise you can count on—a lawyer, an accountant or a financial planner.

Investigating Your Options

Many options exist for people with terminal illnesses when financial needs are critical. For example, you may consider a loan from someone such as the original beneficiary of your life insurance policy. Or, if you've already ruled out less expensive alternatives to raise cash, you might sell your life insurance policy through a viatical settlement.

Many life insurance policies in force nationwide now include an accelerated benefits provision. Companies offer anywhere from 25 to 100 percent of the death benefit as early payment, but policyholders can collect these payments only under very specific circumstances. The amount and the method of payment vary with the policy.

If you own a life insurance policy, call your state Insurance Commissioner or your company's Claims Department to find out about alternatives. Ask whether your life insurance policy allows for accelerated benefits or loans, and how much it will cost. Some insurers add accelerated benefits to life insurance policies for an additional premium, usually computed as a percentage of the base premium. Others offer the benefits at no extra premium, but charge the policyholder for the option if and when it is used. In most cases, the insurance company will reduce the benefits advanced to the policyholder before death to compensate for the interest it will lose on its early payout. There also may be a service charge.

In addition, you may consider selling your life insurance policy to a viatical settlement company, a private enterprise that offers a terminally ill person a percentage of the policy's face value. It is not considered an insurance company.

The viatical settlement company becomes the sole beneficiary of the policy in consideration

for delivering a cash payment to the policyholder and paying the premiums. When the policyholder dies, the viatical settlement company collects the face value of the policy.

Viatical settlements are complex legal and financial transactions. They require time and attention from physicians, life insurance companies, lawyers, and accountants or financial planners. The entire transfer process can take up to four months to complete.

Eligibility for Viatical Settlements

Each viatical settlement company sets its own rules for determining which life insurance policies it will buy. For example, most viatical companies will require that:

- you've owned your policy for at least two years;
- your current beneficiary sign a release or a waiver;
- you are terminally ill. Some companies require a life expectancy of two years or less, while others may buy your policy even if your life expectancy is four years.
- you sign a release allowing the viatical settlement provider access to your medical records.

Most companies will require that the company issuing your life insurance policy be financially sound. If your life insurance policy is provided by your employer, purchasers will want to know if it can be converted into an individual policy or otherwise be guaranteed to remain in force before it can be assigned.

Financial Implications

Because the decision to sell your life insurance policy is a very complex matter, you should consult a tax advisor before doing so. Generally, if you sell your policy to a viatical settlement company, the proceeds are tax-free if you have a life expectancy of less than two years.

However, you still may owe state tax, although a number of states, including New York and California have made these settlements tax-free.

Collecting accelerated benefits or making a viatical settlement also may affect your eligibility for public assistance programs based on financial need, such as Medicaid. The federal government does not require policyholders either to choose accelerated benefits or cash in their policies before qualifying for Medicaid benefits. But once the policyholder cashes in the policy and receives a payment, the money may be counted as income for Medicaid purposes and may affect eligibility.

In 1997, Congress changed the tax code so that proceeds from accelerated benefits and viatical settlements are tax-exempt. Under the law, proceeds from accelerated benefits and viatical settlements are tax-exempt as long as your life expectancy is less than two years and the viatical settlement company is licensed—if you live in a state that requires licensing. If your state does not require viatical settlement companies to be licensed, state law will still require that these companies meet other standards and make certain other disclosures.

Most states have declared that payments of accelerated benefits or viatical settlements are exempt from state taxes. However, some states do not give these payments tax-free status. Because of the complexity of the situation, seek professional tax advice from a lawyer, an accountant or a financial planner.

Guidelines for Consumers

The daily physical and emotional demands of a terminal illness can be overwhelming, and financial burdens can seem insurmountable. If you are considering making a viatical settlement on your life insurance policy—or if you are helping someone with this decision—these consumer guidelines should help you avoid

costly mistakes and make the choice that's right.

- Contact two or three viatical settlement companies to make sure offers are competitive, and be aware of prevailing discount rates. A viatical settlement company may pay 80 percent of the face value of a policy to a person whose life expectancy is six months or less.
- Check with your state insurance department to see if viatical settlement companies or brokers must be licensed. If so, check the status of the companies with whom you are considering doing business.
- Don't fall for high pressure tactics. You don't have to accept an offer, and you can change your mind. Some states require a 15-day cooling off period before any viatical settlement transaction is complete.
- Verify that the investor or the company has the money for your payout readily available. Large companies may have cash on hand; smaller ones may have uneven cash flows or may be "shopping" the policy to third parties.
- Insist that the company set up an escrow account with a reputable, independent financial institution before the company sends the offer papers for your signature. An escrow account will let you be sure that the funds are available to cover the offer.
- Insist on a timely payment. Once the insurance company has made the necessary changes, you should get your money within two to three business days from the escrow agent. No more than a few months should go by from the initial contact with the company to the closing. Check with your state Attorney General's office or department of insurance to see if there are complaints against the company before you do business.
- Ask the company about possible tax consequences and implications for public assis-

Facts for Consumers

tance benefits. Some states require viatical settlement companies to make these disclosures and tell you about other options that may be available from your life insurance company.

- Ask about privacy. Some companies may not protect a policyholder's privacy when they act as brokers for payouts from potential investors.
- Contact a lawyer to check on the possible probate and estate considerations. If you make a viatical settlement, there will be no life insurance benefits for the person you originally designated as beneficiary.

For More Information

Any decision that affects your life insurance benefits can affect the people who care for and about you. Before you make a decision, talk to your friends and family as well as to someone whose advice and expertise you can count on—a lawyer, an accountant or a financial planner. You also may want to contact the following organizations for more information.

American Council on Life Insurance
1001 Pennsylvania Avenue, NW
Washington, DC 20004-2599

National Association of Insurance
Commissioners
444 North Capitol Street, NW
Washington, DC 20001
www.naic.org

National Association of People with AIDS
1413 K Street, NW
Washington, DC 20005

National Viatical Association
1200 G Street, NW, Suite 760
Washington, DC 20005
www.nationalviatical.org

North American Securities Administrators
Association
555 New Jersey Avenue, NW
Washington, DC 20001
www.nasaa.org

Viatical Association of America
1200 19th Street, NW, Suite 300
Washington, DC 20036
www.cais.com/viatical

Your State Attorney General
Office of Consumer Protection
Your State Capital

Your State Insurance Commissioner
Department of Insurance
Your State Capital

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Federal Trade Commission
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