

Regular Session, 2013

HOUSE BILL NO. 545

BY REPRESENTATIVE CROMER

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

INSURANCE/LIFE: Provides for an alternative long-term care benefit option for Medicaid applicants with life insurance policies who enter into certain viatical settlement contracts

1 AN ACT

2 To amend and reenact R.S. 47:293(10) and to enact R.S. 22:1806, R.S. 36:254((D)(2)(e),

3 and R.S. 47:293(9)(a)(xviii), relative to an alternative long-term care benefit option

4 for Medicaid applicants with life insurance policies who enter into certain viatical

5 settlement contracts; to provide with respect to such viatical settlement contracts,

6 including specific requirements for such contracts; to provide with respect to the

7 duties and powers of the commissioner of insurance and the secretary of the

8 Department of Health and Hospitals relative to such contracts; to provide for a state

9 personal income tax exemption for the settlement proceeds from any such viatical

10 settlement contract; and to provide for related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. R.S. 22:1806 is hereby enacted to read as follows:

13 §1806. Alternative long-term care benefit option for Medicaid applicants with life

14 insurance policies who enter into certain viatical settlement contracts

15 A.(1) The owner of a life insurance policy with any face amount in excess of

16 ten thousand dollars may enter into a viatical settlement contract, in exchange for

17 payments directly to a health care provider for Medicaid covered long-term care

18 services for the recipient of such services in accordance with this Section.

1 (2) The proceeds of a viatical settlement contract entered into pursuant to this
2 Section shall not be considered as a resource or asset in determining a Medicaid
3 applicant's or recipient's eligibility for Medicaid and shall only be used as allowed
4 for Medicaid covered long term-care services in accordance with this Section. No
5 state or federal Medicaid funds shall be used for such Medicaid recipient's care until
6 such available proceeds are spent down, except for the amount provided for in
7 Paragraph (B)(1) of this Section.

8 B. In addition to any requirements contained in this Part, any viatical
9 settlement contract entered into pursuant to this Section shall include the following:

10 (1) A requirement that the lesser of five percent of the face amount of the
11 policy or five thousand dollars shall be reserved and be payable to the viator's estate
12 or a named beneficiary upon the death of the insured under the policy that is the
13 subject of the viatical settlement contract for burial expenses.

14 (2) A requirement that the balance of proceeds of the viatical settlement
15 contract that are unpaid at the death of the insured shall be paid to the viator's estate
16 or a named beneficiary.

17 (3) A schedule evidencing the total amount payable to the viator under the
18 viatical settlement contract.

19 C. All proceeds of the viatical settlement contract shall be held in an
20 irrevocable state or federally insured account for the benefit of the recipient of the
21 services and administered in accordance with this Section.

22 D. The type of long-term care services payable from the irrevocable state or
23 federally insured account shall be chosen only by the recipient of the services. Any
24 attempt by any person to require the use of a specific long-term care provider to
25 obtain long-term care services pursuant to this Section shall be strictly prohibited and
26 shall constitute an unfair trade practice under R.S.22:1803.

27 E. Any viatical settlement provider entering into a viatical settlement contract
28 pursuant to this Section shall maintain a surety bond, executed and issued by an
29 insurer authorized to issue surety bonds in this state, a policy of errors and omissions

1 insurance, or a deposit of cash, certificates of deposit or securities, or any
2 combination thereof in the amount of five hundred thousand dollars.

3 F. For purposes of this Section, in addition to any requirements of this Part:

4 (1) Viatical settlement forms for contracts entered into pursuant to this
5 Section shall be filed and approved by the commissioner of insurance.

6 (2) Advertising and marketing materials used by a viatical settlement
7 provider pursuant to this Section shall be filed with the commissioner.

8 G. For purposes of this Section, for any policy that is the subject of a viatical
9 settlement contract that has been in force for five years or more, the provisions of
10 R.S. 22:1801(G) shall not apply.

11 H. Notwithstanding the provisions of R.S. 22:1804(2), the proceeds of a
12 viatical settlement contract entered into pursuant to this Section shall be greater than
13 the cash surrender value or accelerated death benefit in the policy available at the
14 time the contract is executed by all parties.

15 I. Any claim against a viatical settlement provider from a viator, the viator's
16 estate, any beneficiary, or any other person with respect to the viatical settlement
17 contract may not exceed the face amount of the policy, less the proceeds paid under
18 the viatical settlement contract and the total amount of premiums paid subsequent
19 to entering into the viatical settlement contract. Any payment of a claim by a viatical
20 settlement provider shall be made from the funds provided for pursuant to Subsection
21 E of this Section.

22 J. The commissioner shall conduct periodic market examinations, in
23 accordance with R.S. 22:1796, of each viatical settlement provider regarding viatical
24 settlement contracts entered into pursuant to this Section.

25 K. The secretary of the Department of Health and Hospitals shall provide,
26 written notice of the life insurance policy option provided for in this Section as part
27 of the application for Medicaid, or in a separate document, signed by the applicant.

28 L. The commissioner of insurance and the secretary of the Department of
29 Health and Hospitals are authorized to promulgate and adopt rules to ensure that:

1 (9)(a) "Tax table income", for resident individuals, means adjusted gross
2 income plus interest on obligations of a state or political subdivision thereof, other
3 than Louisiana and its municipalities, title to which obligations vested with the
4 resident individual on or subsequent to January 1, 1980, and less:

5 * * *

6 (xviii) The settlement proceeds from a viatical settlement contract entered
7 into pursuant to R.S. 22:1806.

8 * * *

9 (10) "Tax table income", for nonresident individuals, means the amount of
10 Louisiana income, as provided in this Part, allocated and apportioned under the
11 provisions of R.S. 47:241 through 247, plus the total amount of the personal
12 exemptions and deductions already included in the tax tables promulgated by the
13 secretary under authority of R.S. 47:295, less the proportionate amount of the federal
14 income tax liability, excess federal itemized personal deductions, the temporary
15 teacher deduction, the recreation volunteer and volunteer firefighter deduction, the
16 construction code retrofitting deduction, any gratuitous grant, loan, or other benefit
17 directly or indirectly provided to a taxpayer by a hurricane recovery entity if such
18 benefit was included in federal adjusted gross income, the exclusion provided for in
19 R.S. 47:297.3 for S Bank shareholders, the deduction for expenses disallowed by
20 I.R.C. Section 280C, the deduction for net capital gains, the deduction for the
21 settlement proceeds from a viatical settlement entered into pursuant to R.S. 22:1806,
22 and personal exemptions and deductions provided for in R.S. 47:294. The
23 proportionate amount is to be determined by the ratio of Louisiana income to federal
24 adjusted gross income. When federal adjusted gross income is less than Louisiana
25 income, the ratio shall be one hundred percent.

26 * * *

27 Section 4. The provisions of Section 3 of this Act shall be applicable for all taxable
28 periods beginning on or after January 1, 2013.

1 Section 5. This Act shall become effective upon signature by the governor or, if not
 2 signed by the governor, upon expiration of the time for bills to become law without signature
 3 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
 4 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 5 effective on the day following such approval.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Cromer

HB No. 545

Abstract: Provides for an alternative long-term care benefit option for Medicaid applicants with life insurance policies who enter into certain viatical settlement contracts.

Present law provides for viatical settlement contracts by which the owner of a life insurance policy may enter into a written agreement under which compensation will be paid to that owner during his lifetime in return for his assignment, transfer, sale, or bequest of the death benefit or ownership of the policy at the time of his death.

Present law, relative to Medicaid estate recovery, requires that Medicaid applicants surrender life insurance policies with a cash value of at least \$2,000 in order to qualify for Medicaid. Also, pursuant to regulations adopted pursuant to proposed law, Medicaid recipients are limited to a small amount of money per month on discretionary spending (thus resulting in the lapse or surrender of life insurance policies owned by some Medicaid recipients).

Proposed law provides for an alternative long-term care benefit option for Medicaid applicants with life insurance policies who enter into certain viatical settlement contracts, as follows:

- (1) Requires that Medicaid applicants be notified that they may sell (rather than abandon) their life insurance policies pursuant to a viatical settlement contract, as further specifically provided in proposed law. Requires that the proceeds of such a contract be placed in a state or federally insured irrevocable trust that must spend the proceeds on Medicaid eligible expenses, paid directly to a health care provider (thus dedicating this money to pay for the applicant's health care needs with the applicant's own resources, so that the applicant will be delayed or completely diverted from entering the Medicaid system).
- (2) Further provides that the lesser of 5% of the face amount of the policy or \$5,000 shall be reserved in the trust to be for burial needs at the time of the recipient's death and that any other proceeds of the trust that are unused at the time of the recipient's death shall be paid to a named beneficiary or the deceased's estate.
- (3) Requires that all such viatical settlement transactions meet the requirements of present law relative to viatical settlements generally.
- (4) Places additional requirements on such viatical settlement contracts, including the following:

- (a) That all such viatical settlement providers maintain a surety bond, executed and issued by an insurer authorized to issue surety bonds in this state, a policy of errors and omissions insurance, or a deposit of cash, certificates of deposit or securities, or any combination thereof in the amount of \$500,000 and that all claims against a viatical settlement provider be limited and paid from these funds.
 - (b) That all such viatical settlement contract forms be filed with and approved by the commissioner of insurance.
 - (c) That all advertising and marketing materials used by such a viatical settlement provider be filed with the commissioner of insurance.
- (5) Specifically requires the secretary of the Department of Health and Hospitals (DHH) to provide written notice of this alternative long-term care benefit option as part of the application for Medicaid, or in a separate document, signed by the applicant.
- (6) Authorizes the commissioner of insurance and the secretary of DHH to promulgate and adopt rules to ensure that: (a) the proceeds from the viatical settlement contract shall be distributed directly to a health care provider; (b) eligibility for Medicaid shall be determined without considering the balance of the viatical settlement proceeds; and (c) Medicaid and applied income payments shall begin the day following the exhaustion of the life settlement proceeds.
- (7) Exempts the settlement proceeds of a viatical settlement contract entered into pursuant to proposed law from state personal income taxation, applicable for all taxable periods beginning on or after Jan. 1, 2013.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 47:293(10); Adds R.S. 22:1806, R.S. 36:254((D)(2)(e), and R.S. 47:293(9)(a)(xviii))