

## CHAPTER 60

( HB 414 )

AN ACT relating to life insurance.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔SECTION 1. A NEW SECTION OF SUBTITLE 15 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(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 section.*
- (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.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

- (1) (a) *To the extent allowable under state or federal law, the proceeds of a life settlement received pursuant to Section 1 of this Act shall not be considered as a resource or asset in determining a Medicaid applicant's or recipient's eligibility for Medicaid and shall only be used as allowed for long-term-care services in accordance with Section 1 of this Act.*
- (b) *No state or federal Medicaid funds may be used for the recipient's care until available proceeds from the life settlement are utilized for the recipient's care, excluding the amount retained for final expenses in accordance with Section 1 of this Act.*
- (c) *The recipient, as defined in Section 1 of this Act, shall provide notice, in a manner prescribed by the cabinet, that the life settlement proceeds in the irrevocable account established pursuant to Section 1 of this Act are exhausted or will become exhausted on a specified date.*
- (2) *The cabinet shall ensure that Medicaid and applied income payments shall begin on the day following exhaustion of the life settlement proceeds if notice is provided to the cabinet as required by subsection (1)(c) of this section.*
- (3) *The cabinet may promulgate administrative regulations defining a service or support deemed a long-term-care service for the purposes of Section 1 of this Act. The cabinet shall promulgate an administrative regulation prescribing the manner in which a recipient, as defined in Section 1 of this Act, shall provide notice to the cabinet in accordance with subsection (1)(c) of this section.*
- (4) *The cabinet shall provide to all applicants as part of the application for enrollment in the Medicaid program:*
  - (a) *Written notice of the options provided in Section 1 of this Act; and*
  - (b) *Information about options that do not allow a life insurance policy to be considered as an asset or resource in determining eligibility for medical assistance.*
- (5) *The cabinet shall provide information about the options in Section 1 of this Act to other state and local, public and private agencies and organizations in cooperation with one (1) or more nonprofit organizations, pursuant to an agreement between the state and each nonprofit organization. Costs for materials and distribution of information required by this subsection shall not be the responsibility of the state, unless required by law.*

➔Section 3. KRS 304.15-420 is amended to read as follows:

- (1) The General Assembly declares the purpose of this section shall be to require recognition of the escheat statute, as found in KRS 393.062, and to require complete and proper disclosure, transparency, and accountability relating to any method of payment for **annuity, retained asset, or** life insurance death benefits regulated by the Department of Insurance.
- (2) As used in this section:
- (a) "Contract" means an annuity contract. The term "contract" shall not include an annuity used to fund an employment-based retirement plan or program where the insurer is not committed by terms of the annuity contract to pay death benefits to the beneficiaries of specific plan participants;
  - (b) "Death Master File" means the United States Social Security Administration's Death Master File or any other database or service that is at least as comprehensive as the United States Social Security Administration's Death Master File for determining that a person has reportedly died;
  - (c) "Death Master File match" means a search of the Death Master File that results in a match of the Social Security number or the name and date of birth of an insured, **annuitant**~~{annuity owner}~~, or retained asset account holder; and
  - (d) "Policy" means any policy or certificate of life insurance that provides a death benefit. The term "policy" shall not include:
    - 1. Any policy or certificate of life insurance that provides a death benefit under:
      - a. An employee benefit plan, subject to the Employee Retirement Income Security Act of 1974, as defined by 29 U.S.C. sec. 1002(3);
      - b. A governmental plan as defined by 29 U.S.C. sec. 1002(32);
      - c. A church plan as defined by 29 U.S.C. sec. 1002(33); or
      - d. Any federal employee benefit program;
    - 2. Any policy or certificate of life insurance that is used to fund a preneed funeral contract or prearrangement as defined in KRS 304.12-240(1)(a); or
    - 3. Any policies or certificates of insurance on the life of a debtor pursuant to or in connection with a specific loan or other credit transaction, or any group policy issued to a creditor to insure the lives of the creditor's debtors and any certificates issued under such policies.

All other terms used in this section shall be interpreted in a manner consistent with the definitions used in KRS Chapter 304.

- (3) (a) An insurer shall perform a comparison of its insureds' in-force life insurance policies, **contracts**, and retained asset accounts against a Death Master File, on at least a **semiannual**~~{quarterly}~~ basis, to identify potential matches of its insureds. ***An insurer may comply with the requirements of this section by using the entire Death Master File once, and for all comparisons thereafter, an insurer may utilize the Death Master File updates.***
- (b) For those potential matches identified as a result of a Death Master File match, the insurer shall within ninety (90) days of a Death Master File match:
- 1. Complete a good-faith effort, which shall be documented by the insurer, to confirm the death of the insured, **annuitant**, or retained asset account holder against other available records and information; and
  - 2. Determine whether benefits are due in accordance with the applicable policy or contract and, if benefits are due in accordance with the applicable policy or contract:
    - a. Use good-faith efforts, which shall be documented by the insurer, to locate the beneficiary or beneficiaries; and
    - b. Provide the appropriate claims forms or instructions to each beneficiary to make a claim, including the need to provide an official death certificate if applicable under the policy, ~~for~~ contract, **or retained asset account.**
- (c) With respect to group life insurance, insurers are required only to confirm the possible death of an insured when the insurers provide full recordkeeping services to the group policy holder.

- (d) To the extent permitted by law, the insurer may disclose minimum necessary personal information about the insured or beneficiary to a person who the insurer reasonably believes may be able to assist the insurer locate the beneficiary or a person otherwise entitled to payment of the claims proceeds.
- (4) An insurer shall not charge insureds, account holders, or beneficiaries for any fees or costs associated with a search or verification conducted pursuant to this section.
- (5) The benefits from a life insurance policy, **contract**, or a retained asset account, plus any applicable accrued interest, shall first be payable to the designated beneficiaries or owners and, in the event those beneficiaries or owners cannot be found, shall escheat to the state as unclaimed property pursuant to KRS 393.062.
- (6) An insurer shall notify the State Treasurer upon the expiration of the statutory time period for escheat that:
- (a) A life insurance policy **or contract** beneficiary or retained asset account holder has not submitted a claim with the insurer; and
- (b) The insurer has complied with subsection (3) of this section and has been unable, after good-faith efforts documented by the insurer, to contact the retained asset account holder or any beneficiary.
- (7) Upon such notice, an insurer shall ~~immediately~~ submit, **on its next unclaimed property report due to the State Treasurer**, the unclaimed life insurance benefits or unclaimed retained asset accounts, plus any applicable accrued interest, to the State Treasurer.
- (8) Failure to meet any requirement of this section **with such frequency as to constitute a general business practice** shall constitute a violation of Subtitle 12 of KRS Chapter 304.
- (9) **Nothing in this section shall be construed to create or imply a private cause of action for a violation of this section. An insurer that is making a good-faith effort to comply with this section shall not be subject to any fees, fines, penalties, or interest for failure to perform a comparison of its in-force life insurance policies, contracts, and retained asset accounts prior to the effective date of this Act.**
- ~~(10)(9)~~ **The commissioner shall have exclusive authority and jurisdiction in his or her reasonable discretion based upon a demonstration of hardship to the insurer to issue an order allowing an insurer to phase in compliance with this section for a time period not to exceed one (1) year, according to a plan and timeline approved by the commissioner.**
- (11) This section shall be known as the Unclaimed Life Insurance Benefits Act.

Signed by Governor April 8, 2014.