



GENERAL ASSEMBLY COMMONWEALTH OF KENTUCKY

2014 REGULAR SESSION

HOUSE BILL NO. 414

FRIDAY, MARCH 14, 2014

The following bill was reported to the Senate from the House and ordered to be printed.

RECEIVED AND FILED
DATE April 8, 2014
3:27pm
ALISON LUNDERGAN GRIMES
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY R. Adler

1 AN ACT relating to life insurance.

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

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

5 (1) For purposes of this section:

6 (a) "Long-term care services" means:

7 1. Home health care;

8 2. Assisted living;

9 3. Nursing home care; and

10 4. Any other service or support deemed a long-term care service
11 pursuant to administrative regulations promulgated by the
12 Department for Medicaid Services; and

13 (b) "Recipient" means the recipient of the long-term care services that are
14 being paid for from the proceeds of the life settlement contract entered into
15 pursuant to this section.

16 (2) The owner of a life insurance policy with a face value in excess of ten thousand
17 dollars (\$10,000) may enter into a life settlement contract pursuant to KRS
18 304.15-700 to 304.15-720, in exchange for payments directly to a long-term care
19 services provider as of the effective date of the life settlement contract in
20 accordance with this section.

21 (3) (a) All proceeds of the life settlement contract entered into pursuant to this
22 section shall:

23 1. Not be subject to any statute or administrative regulation relating to
24 minimum payments for a life settlement which conflict with the
25 provisions of this section; and

26 2. Be held in an irrevocable state or federally insured account for the
27 benefit of the recipient of the long-term care services and administered

1 in accordance with this section.

2 (b) The type of long-term care services payable from the irrevocable account
3 shall be chosen only by the recipient of the services. Any attempt by any
4 person to require the use of a long-term care services provider to obtain
5 long-term care services pursuant to this section is prohibited and shall
6 constitute an unfair or deceptive act or practice in violation of KRS 304.12-
7 010.

8 (c) In addition to the requirements in KRS 304.15-700 to 304.15-720, any life
9 settlement contract entered into pursuant to this section shall include the
10 following:

11 1. A provision in the contract that five percent (5%) of the face amount
12 of the life insurance policy, not to exceed seven thousand five hundred
13 dollars (\$7,500), or five thousand dollars (\$5,000), whichever is
14 greater, may be reserved and if reserved shall be payable to the
15 owner's estate or a named beneficiary of the irrevocable account upon
16 the death of the insured under the policy that is the subject of the life
17 settlement contract for final expenses; and

18 2. The balance of proceeds of the life settlement contract that are unpaid
19 at the death of the owner shall be paid to the owner's estate or a
20 named beneficiary of the irrevocable account.

21 (d) Any life settlement provider entering into a life settlement contract pursuant
22 to this section shall maintain one (1) of the following:

23 1. A surety bond executed and issued by an insurer authorized to issue
24 bonds in this state in the amount of five hundred thousand dollars
25 (\$500,000). Any surety bond issued shall be in favor of this state and
26 shall specifically authorize recovery by the commissioner on behalf of
27 any person in this state who sustained damages as the result of

1 erroneous acts, failure to act, conviction of fraud, or conviction of
2 unfair practices by the life settlement provider; or

3 2. A policy of errors and omissions insurance covering legal liability
4 resulting from erroneous acts or failure to act in their capacity as a
5 life settlement provider in the sum of no less than five hundred
6 thousand dollars (\$500,000) per occurrence and in the aggregate.

7 (e) For purposes of this section, in addition to any requirements of KRS
8 304.15-700 to 304.15-720:

9 1. Life settlement contract forms entered into pursuant to this section
10 shall be filed and approved by the department; and

11 2. Advertising and marketing materials used by a life settlement provider
12 pursuant to this section shall be filed with the department.

13 (f) Any claim against a life settlement provider from an owner of a policy, the
14 owner's estate, any beneficiary, or any other person with respect to the life
15 settlement contract shall not exceed the face amount of the policy, less the
16 proceeds paid under the life settlement contract, the total amount of
17 premiums paid subsequent to entering into the life settlement contract, and
18 any other reasonable costs or expenses associated with the acquisition or
19 maintenance of the policy that is the subject of a life settlement contract.
20 Any payment of a claim by a life settlement provider shall be made from the
21 funds established pursuant to paragraph (a)2. of this section.

22 (g) The department shall conduct periodic market examinations of each life
23 settlement provider regarding the life settlement contracts entered into
24 pursuant to this section in accordance with KRS 304.15-705.

25 (4) Nothing in this section shall be the exclusive method for a life insurance policy to
26 be excluded as a resource or asset in determining the applicant's or recipient's
27 eligibility for Medicaid.

1 (5) The commissioner may promulgate administrative regulations to implement this
 2 section.

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

5 (1) (a) To the extent allowable under state or federal law, the proceeds of a life
 6 settlement received pursuant to Section 1 of this Act shall not be considered
 7 as a resource or asset in determining a Medicaid applicant's or recipient's
 8 eligibility for Medicaid and shall only be used as allowed for long-term-care
 9 services in accordance with Section 1 of this Act.

10 (b) No state or federal Medicaid funds may be used for the recipient's care until
 11 available proceeds from the life settlement are utilized for the recipient's
 12 care, excluding the amount retained for final expenses in accordance with
 13 Section 1 of this Act.

14 (c) The recipient, as defined in Section 1 of this Act, shall provide notice, in a
 15 manner prescribed by the cabinet, that the life settlement proceeds in the
 16 irrevocable account established pursuant to Section 1 of this Act are
 17 exhausted or will become exhausted on a specified date.

18 (2) The cabinet shall ensure that Medicaid and applied income payments shall begin
 19 on the day following exhaustion of the life settlement proceeds if notice is
 20 provided to the cabinet as required by subsection (1)(c) of this section.

21 (3) The cabinet may promulgate administrative regulations defining a service or
 22 support deemed a long-term-care service for the purposes of Section 1 of this Act.
 23 The cabinet shall promulgate an administrative regulation prescribing the
 24 manner in which a recipient, as defined in Section 1 of this Act, shall provide
 25 notice to the cabinet in accordance with subsection (1)(c) of this section.

26 (4) The cabinet shall provide to all applicants as part of the application for
 27 enrollment in the Medicaid program:

- 1 (a) Written notice of the options provided in Section 1 of this Act; and
 2 (b) Information about options that do not allow a life insurance policy to be
 3 considered as an asset or resource in determining eligibility for medical
 4 assistance.
- 5 (5) The cabinet shall provide information about the options in Section 1 of this Act to
 6 other state and local, public and private agencies and organizations in
 7 cooperation with one (1) or more nonprofit organizations, pursuant to an
 8 agreement between the state and each nonprofit organization. Costs for materials
 9 and distribution of information required by this subsection shall not be the
 10 responsibility of the state, unless required by law.

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

- 12 (1) The General Assembly declares the purpose of this section shall be to require
 13 recognition of the escheat statute, as found in KRS 393.062, and to require complete
 14 and proper disclosure, transparency, and accountability relating to any method of
 15 payment for annuity, retained asset, or life insurance death benefits regulated by
 16 the Department of Insurance.
- 17 (2) As used in this section:
- 18 (a) "Contract" means an annuity contract. The term "contract" shall not include an
 19 annuity used to fund an employment-based retirement plan or program where
 20 the insurer is not committed by terms of the annuity contract to pay death
 21 benefits to the beneficiaries of specific plan participants;
- 22 (b) "Death Master File" means the United States Social Security Administration's
 23 Death Master File or any other database or service that is at least as
 24 comprehensive as the United States Social Security Administration's Death
 25 Master File for determining that a person has reportedly died;
- 26 (c) "Death Master File match" means a search of the Death Master File that
 27 results in a match of the Social Security number or the name and date of birth

1 of an insured, annuitant~~[annuity owner]~~, or retained asset account holder; and

2 (d) "Policy" means any policy or certificate of life insurance that provides a death
3 benefit. The term "policy" shall not include:

4 1. Any policy or certificate of life insurance that provides a death benefit
5 under:

6 a. An employee benefit plan, subject to the Employee Retirement
7 Income Security Act of 1974, as defined by 29 U.S.C. sec.
8 1002(3);

9 b. A governmental plan as defined by 29 U.S.C. sec. 1002(32);

10 c. A church plan as defined by 29 U.S.C. sec. 1002(33); or

11 d. Any federal employee benefit program;

12 2. Any policy or certificate of life insurance that is used to fund a preneed
13 funeral contract or prearrangement as defined in KRS 304.12-240(1)(a);
14 or

15 3. Any policies or certificates of insurance on the life of a debtor pursuant
16 to or in connection with a specific loan or other credit transaction, or any
17 group policy issued to a creditor to insure the lives of the creditor's
18 debtors and any certificates issued under such policies.

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

21 (3) (a) An insurer shall perform a comparison of its insureds' in-force life insurance
22 policies, contracts, and retained asset accounts against a Death Master File, on
23 at least a semiannual~~[quarterly]~~ basis, to identify potential matches of its
24 insureds. An insurer may comply with the requirements of this section by
25 using the entire Death Master File once, and for all comparisons thereafter,
26 an insurer may utilize the Death Master File updates.

27 (b) For those potential matches identified as a result of a Death Master File

- 1 match, the insurer shall within ninety (90) days of a Death Master File match:
- 2 1. Complete a good-faith effort, which shall be documented by the insurer,
3 to confirm the death of the insured, annuitant, or retained asset account
4 holder against other available records and information; and
- 5 2. Determine whether benefits are due in accordance with the applicable
6 policy or contract and, if benefits are due in accordance with the
7 applicable policy or contract:
- 8 a. Use good-faith efforts, which shall be documented by the insurer,
9 to locate the beneficiary or beneficiaries; and
- 10 b. Provide the appropriate claims forms or instructions to each
11 beneficiary to make a claim, including the need to provide an
12 official death certificate if applicable under the policy, ~~or~~
13 contract, or retained asset account.
- 14 (c) With respect to group life insurance, insurers are required only to confirm the
15 possible death of an insured when the insurers provide full recordkeeping
16 services to the group policy holder.
- 17 (d) To the extent permitted by law, the insurer may disclose minimum necessary
18 personal information about the insured or beneficiary to a person who the
19 insurer reasonably believes may be able to assist the insurer locate the
20 beneficiary or a person otherwise entitled to payment of the claims proceeds.
- 21 (4) An insurer shall not charge insureds, account holders, or beneficiaries for any fees
22 or costs associated with a search or verification conducted pursuant to this section.
- 23 (5) The benefits from a life insurance policy, contract, or a retained asset account, plus
24 any applicable accrued interest, shall first be payable to the designated beneficiaries
25 or owners and, in the event those beneficiaries or owners cannot be found, shall
26 escheat to the state as unclaimed property pursuant to KRS 393.062.
- 27 (6) An insurer shall notify the State Treasurer upon the expiration of the statutory time

1 period for escheat that:

2 (a) A life insurance policy or contract beneficiary or retained asset account
3 holder has not submitted a claim with the insurer; and

4 (b) The insurer has complied with subsection (3) of this section and has been
5 unable, after good-faith efforts documented by the insurer, to contact the
6 retained asset account holder or any beneficiary.

7 (7) Upon such notice, an insurer shall ~~immediately~~ submit, on its next unclaimed
8 property report due to the State Treasurer, the unclaimed life insurance benefits or
9 unclaimed retained asset accounts, plus any applicable accrued interest, to the State
10 Treasurer.

11 (8) Failure to meet any requirement of this section with such frequency as to constitute
12 a general business practice shall constitute a violation of Subtitle 12 of KRS
13 Chapter 304.

14 (9) Nothing in this section shall be construed to create or imply a private cause of
15 action for a violation of this section. An insurer that is making a good-faith effort
16 to comply with this section shall not be subject to any fees, fines, penalties, or
17 interest for failure to perform a comparison of its in-force life insurance policies,
18 contracts, and retained asset accounts prior to the effective date of this Act.

19 ~~(10)(9)~~ The commissioner shall have exclusive authority and jurisdiction in his or
20 her reasonable discretion based upon a demonstration of hardship to the insurer
21 to issue an order allowing an insurer to phase in compliance with this section for
22 a time period not to exceed one (1) year, according to a plan and timeline
23 approved by the commissioner.

24 (11) This section shall be known as the Unclaimed Life Insurance Benefits Act.

Byron D. Stiles
Speaker-House of Representatives

Kathie Kraft Stone
President of Senate

Attest: *Dean C. Burgin*
Chief Clerk of House of Representatives

Approved *Alan S. Bock*
Governor

Date 4/8/14