HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 837 Viatical Settlement Provider Licensees
SPONSOR(S): Jobs & Entrepreneurship Council and Grant
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Insurance	10 Y, 0 N	Davis	Overton
2) Jobs & Entrepreneurship Council	15 Y, 0 N, As CS	Davis	Thorn
3)			
4)			
5)			

SUMMARY ANALYSIS

This bill addresses the issue of insurer financial statements. It allows viatical settlement providers and certain insurance administrators to submit their annual audited financial statements on a fiscal year rather than a calendar year basis.

Insurance administrators provide a variety of administrative services for authorized commercial self-insurance funds, health maintenance organizations, and insured or self-insured programs which provide life or health insurance. Administrators are subject to a number of statutory requirements; these requirements include submitting to the Office of Insurance Regulation (OIR) both an annual financial statement and an annual audited financial statement on a calendar year basis.

The bill allows certain administrators who have an established fiscal year operation to submit their annual audited financial statements on a fiscal year basis, rather than on a calendar year basis.

Viatical settlement providers enter into agreements with life insurance policy owners or certificateholders to purchase their policies or become policy beneficiaries. The consideration given in exchange for the policy is an amount less than the death benefit on the policy. Viatical settlement providers must be licensed by OIR in order to engage in business in Florida. Each year, the licensee must submit to OIR a statement that conforms to requirements of the Financial Services Commission (the Commission). After December 31, 2007, the annual statement must include an audited financial statement. The audit must be conducted by an independent certified public accountant, and it must be conducted in a manner consistent with generally accepted accounting principles.

The statute currently provides that the annual audited financial statement, due on or before March 1, must be prepared as of the last day of the preceding calendar year.

The bill amends the requirement that the annual audited financial statement be based on the calendar year and requires instead that the statement cover a 12-month period and end on a day falling during the last 6 months of the preceding calendar year.

This bill does not appear to have a fiscal impact on state or local governments.

This bill will become effective on July 1, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty: The bill provides viatical settlement providers and certain insurance administrators with the option of filing their required annual audited financial statement at the end of the fiscal year.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Insurance Administrator Financial Statements

Part VII of chapter 626 governs insurance administrators, who provide a variety of administrative services such as billing and collections services for insurers with whom they have contracted. More specifically, section 626.88, Florida Statutes, defines an administrator as: "any person who directly or indirectly solicits or effects coverage of, collects charges or premiums from, or adjusts or settles claims on residents of this state in connection with authorized commercial self-insurance funds or with insured or self-insured programs which provide life or health insurance coverage or coverage of any other expenses described in s. 624.33(1) or any person who, through a health care risk contract as defined in s. 641.234 with an insurer or health maintenance organization, provides billing and collection services to health insurers and health maintenance organizations on behalf of health care providers."[1]

Each administrator is required to hold a valid certificate of authority and must have in force a bond equal to 10% of the amount it handles or manages annually.[2] An insurer must review, at least semi-annually, its administrator's operations; one of the reviews must be an on-site audit.[3]

Section 626.89, Florida Statutes, currently requires each authorized administrator to file a full and true statement of its financial condition, transactions, and affairs on or before March 1 of each year.[4] Additionally, each authorized administrator must file an annual audited financial statement; the audit must be performed by an independent certified public accountant. The audited financial statement must be filed on or before June 1 for the preceding calendar year ending December 31.[5]

Viatical Settlements

Also subject to annual financial reporting requirements are viatical settlement providers. Viatical settlement providers effectuate viatical settlement contracts, which are agreements to transfer ownership of or change the beneficiary designation of a life insurance policy at a later date in exchange for compensation to the policy owner or certificateholder.[6] The policy owner or certificateholder, known as a viator, receives compensation in an amount less than the expected death benefit.[7]

Viatical settlement contracts are well-known in the context of a viator who is terminally ill and has been given a life expectancy of two years or less. This is not always the case, however, as some contracts involve a longer life expectancy, possibly up to five years. Additionally, viatical settlement contracts are

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[1] Section 626.88(1), F.S.
[2] Section 626.8809, F.S.
[3] Section 626.8817(3).
[4] Section 626.89(1), F.S.
[5] Section 626.89(2), F.S.
[6] Section 626.9911(10), F.S.
[7] Id.

also entered into with elderly individuals, even those who are not terminally ill. Life expectancy providers assist viatical settlement providers by determining life expectancies or mortality ratings that are used to determine life expectancies.[8]

Viatical settlement providers are required to obtain a license from OIR before soliciting or entering into a viatical settlement contract.[9] A successful license application is submitted under oath on an authorized form and is accompanied by the payment of a $500 fee.[10] Once a license is obtained, a license stays in effect until it is suspended or revoked.[11]

Viatical Settlement Provider Annual Licensing Requirements

In order for a viatical settlement provider's license to remain in good standing, each year, the licensee must file an annual statement and a $500 license fee on or before March 1.[12] The annual statement must include all information that the Commission requires. In 2005, section 626.9913, Florida Statutes, was amended to require more detailed reporting in the statement, including: audited financial statements and a report of all life expectancy providers who have provided life expectancies directly or indirectly.[13] The audited financial statements must be prepared by an independent certified public accountant in accordance with generally accepted accounting principles.[14] In 2006, language was added to the statute to require that the audited financial statement provisions take effect after December 31, 2007.

Currently, the statute provides that after December 31, 2007, audited financial statements must be prepared as of the last day of the preceding calendar year.[15] If the audited financial statement is not complete, the licensee must submit in its annual statement an unaudited financial statement for the preceding calendar year and an officer of the licensee must submit an affidavit stating that the audit has not been completed. In this case, the licensee has until June 1 to submit the audited financial statement.

PROPOSED CHANGES

Administrators: The bill amends section 626.89(2), Florida Statutes, relating to the administrator's audited financial statement. It allows an administrator to base its audit on a fiscal year and submit its audited financial statement on or before December 31 if it meets certain conditions. First, the administrator must have an established fiscal year of July 1 to June 30, and its sole stockholder must be an association representing health care providers, and not be an affiliate of an insurer. This amendment would allow the administrator to have one rather than two separate annual audits. The annual statement required in section 626.89(1), Florida Statutes, must still be submitted by March 1 of each year.

Viatical Settlement Providers: The bill also amends section 626.9913(2), Florida Statutes, and it addresses the ending day of the year on which a viatical settlement provider's audited financial statement is to be based. Instead of requiring that all audited financial statements be prepared as of the last day of the calendar year (December 31), the bill requires that the annual statement contain an annual audited financial statement that covers a 12-month period and ends on a day that falls during the last six months of the preceding calendar year. The bill allows licensees who operate on a fiscal year to conduct their financial statement audit on the same basis, rather than on a calendar year basis.

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[8] Section 626.9911(4), F.S.
[9] Section 626.9912(1), F.S.
[10] Specific information that the applicant must disclose on the license application is detailed in section 626.9912(3), Florida Statutes.
[11] Section 626.9913(1), F.S.
[12] Section 626.9913(2), F.S.
[13] Id.
[14] Id.
[15] Id.

Licensees who operate on a calendar year basis would conduct calendar year audits, unaffected by the proposed change.

C. SECTION DIRECTORY:

Section 1: Amends section 626.89, Florida Statutes; allows certain administrators to submit their audited financial statements based on a fiscal year rather than a calendar year.

Section 2: Amends section 626.9913(2), Florida Statutes; revises the ending day on which a viatical settlement provider's annual audited financial statement must be based.

Section 3: Provides an effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Administrators covered by the bill's language and viatical settlement providers who currently operate on a fiscal year rather than a calendar year will be able to submit their audited financial statement on a fiscal year basis and will not have to conduct a second audit to comply with statutory requirements.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill does not require counties or municipalities to spend funds or to take any action requiring the expenditure of funds; reduce the authority that municipalities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR:

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 15, 2007, the Committee on Insurance adopted two amendments:

Amendment 1 provides that an administrator may submit its preceding fiscal year's audited financial statement on or before December 31 if the administrator has an established fiscal year of July 1 – June 30 and its sole stockholder is an association representing health care providers and is not an affiliate of an insurer; the amendment revises a portion of the title from "an act relating to viatical settlement provider licensees" to "an act relating to insurer financial statements."

Amendment 2 specifies that the ending day on which a viatical settlement provider's audited financial statement is based must occur during the last six months of the preceding calendar year.

On March 29, 2007, the Jobs and Entrepreneurship Council reported the bill favorably as amended by the Committee on Insurance as a council substitute.