



Common Sense Initiative

Mike DeWine, Governor
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Business Impact Analysis

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Regulation/Package Title (a general description of the rules' substantive content):	<u>Long-term care.</u>
Rule Number(s):	<u>3901-4-01</u>
	<u>3901-4-02</u>
Date of Submission for CSI Review:	<u>January 5, 2024</u>
Public Comment Period End Date:	<u>January 14, 2024, 11:59 PM</u>

Rule Type/Number of Rules:

- | | | | |
|--|----------------------|-------------------------------------|---------------|
| <input type="checkbox"/> New/ | rules | <input type="checkbox"/> No Change/ | rules (FYR?) |
| <input checked="" type="checkbox"/> Amended/ | 2 rules (FYR? 2023) | <input type="checkbox"/> Rescinded/ | rules (FYR?) |

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Reason for Submission

1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.

Which adverse impact(s) to businesses has the Agency determined the rule(s) create?

The rule(s):

- ☒ a. Requires a license, permit, or any other prior authorization to engage in or operate a line of business.
- ☒ b. Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.
- ☒ c. Requires specific expenditures or the report of information as a condition of compliance.
- ☒ d. Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.

Regulatory Intent

2. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

Rule 3901-4-01: Long-term care is a type of insurance product that can help cover costs of home care, assisted living, adult daycare, hospice care, and/or nursing homes for individuals with chronic illness or disability for those who cannot care for themselves over a long period. This rule sets out product, disclosure and marketing requirements for insurers to follow for the sale of long-term care insurance in Ohio. The rule is being amended to reduce regulatory restrictions and make technical amendments.

Rule 3901-4-02: The rule implements the state long-term care partnership program and sets requirements that insurers and plans must meet in order for a long-term policy to qualify for the partnership program. The purpose of the partnership program is for the state to partner with long-term care insurers to encourage the sale of long-term care insurance. Qualified partnership plans offer a way for people to buy long-term care insurance, receive policy benefits and protect a matching amount of assets if they ever need to apply for Medicaid. In other words, a person with a qualified partnership plan can be eligible for Medicaid benefits through the state without depleting all of their attachable assets. The rule is being amended to reduce regulatory restrictions.

3. Please list the Ohio statute(s) that authorizes the Agency to adopt the rule(s) and the statute(s) that amplify that authority.

Sections 3901.041, 3923.44, 3924.47, and 3901.41 of the Revised Code.

4. Does the regulation implement a federal requirement? ☐ Yes ☒ No

Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?

☐ Yes ☒ No

If yes, please briefly explain the source and substance of the federal requirement.

Not applicable.

5. If the regulation implements a federal requirement, but includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

Not applicable.

6. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

Rule 3901-4-01: Long-term care insurance pays for services such as nursing homes, in-home services, daily living assistance and other home health care services for eligible enrollees who can no longer perform the activities of daily living. Long-term care insurance can become expensive and can affect an individual's long-term financial planning.

Rule 3901-4-02: The public purpose of this rule is to help states manage long-term care costs, while at the same time this rule provides consumer protections by allowing an individual with a partnership qualified plan to keep more of their assets if they ever need to apply for medicaid.

7. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

These regulations provide transparent guidance for businesses and individuals engaging in the sale of insurance products. The department will see a decrease in confusion surrounding such requirements as well as a decrease in complaints and or damages to consumers, given that the agent or business has completed their own licensing requirements established in these regulations.

8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931? ☐ Yes ☒ No

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

Not applicable.

Development of the Regulation

9. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation. *If applicable, please include the date and medium by which the stakeholders were initially contacted.*

In early November 2023 the department sent an email to stakeholders informing them that the rules have been posted to the department webpage for a two week comment period. Drafts of the rules have remained online for review since then. Stakeholders included; consumer groups and associations such as the Ohio Association of Health Plans, the Ohio Insurance Agents Association, the National Association of Insurance and Financial Advisors, and the Ohio Insurance Underwriters Association, as well as insurance companies.

10. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

No comments were received regarding this rule packet.

11. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

Rule 3901-4-01: The long-term care rule was developed through industry input and evaluating similar regulations in other states, as well as guidance provided by the National Association of Insurance Commissioners (NAIC) Model Law IV-641. The NAIC consults industry, regulators, and the public to create industry standards that states may adopt into their own laws and rules. Ohio adopted a large portion of this model into this rule because it represents the industry standard. Consumer protections for the development, education and sale of long-term care insurance policies were the driving factor in establishing the specifics of the rules.

Rule 3901-4-02: Ohio implemented a long-term care partnership program. This rule sets up the parameters that insurers must follow if they are participating in Ohio's long-term care partnership program and offering partnership qualified plans. The rule was developed by interested party discussions with insurance companies, trades and others, and evaluating trends in consumer.

12. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives? *Alternative regulations may include performance-based regulations, which define the required outcome, but do not dictate the process the regulated stakeholders must use to comply.*

These rules provide specific and consistent regulatory guidance for insurance carriers to abide by, are well understood by the regulated community and are in use nationwide. As a result, alternative regulations aren't appropriate.

13. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

The regulation of long-term care insurance products and the partnership program is exclusive to the department and the rules do not duplicate any other rules or statute.

14. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

The department staff reviews filings for long-term care products and assists Ohio consumers with complaints or questions regarding their long-term care plan.

Adverse Impact to Business

15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:

- a. Identify the scope of the impacted business community; and
- b. Quantify and identify the nature of the adverse impact (e.g., fees, fines, employer time for compliance).

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a representative business. Please include the source for your information/estimated impact.

Insurance companies and agents who sell long-term care insurance products and or insurance companies that choose to offer partnership qualified plans are the impacted business community. Insurers staff, time and resources are required to meet the requirements of the rules. Policy forms and rates must be developed, filed with the department of insurance and approved before use in the Ohio market. Forms filed cost \$50 per form if filed separately.

16. Are there any proposed changes to the rule(s) that will reduce a regulatory burden imposed on the business community? Please identify. (*Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors.*)

Proposed amendments will reduce regulatory restrictions.

17. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

Rule 3901-4-01: The rule establishes the requirements insurers must follow for the development and solicitation of long-term care policies. This rule is essential for consumer protection, without this rule in place there would be no guidance on the development of long term care policies and consumers may be exposed to unfair and deceptive sales or enrollment practices of long-term care insurance.

Rule 3901-4-02: If insurers choose to participate in the selling of long-term care partnership qualified plans, the insurer must follow the requirements of the rule. This rule provides the minimum requirements for long-term care partnership qualified plans which protects the state, insurers and consumers. The minimum requirements provide uniformity that allows the consumer and insurer to understand the product and the state to be aware of the impact on Medicaid.

Regulatory Flexibility

18. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

The regulations set forth in this rule package are in place to create uniformity among insurance agents doing business in the state of Ohio. Standards of practice for providers, associated fees and violations must remain consistent for all individuals and businesses accordingly in order to sustain a uniform and competitive marketplace for agents and consumers alike. Regardless of size, it is essential that these regulations are applied consistently to maintain consumer protections.

19. How will the Agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

Minor errors would be handled by advising the agent or insurer and giving them an opportunity to remedy the omission.

20. What resources are available to assist small businesses with compliance of the regulation?

Department staff is available to answer questions, regardless of the size of business. Furthermore, the department provides filing information and instructions on its web site.