

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Insurance
Regulation/Package Title: Viaticals
Rule Number(s): 3901-9-01, 3901-9-02, 3901-9-03 and 3901-9-04

Date: June 3, 2015

Rule Type:

- | | |
|------------------------------------|---|
| <input type="checkbox"/> New | <input checked="" type="checkbox"/> 5-Year Review |
| <input type="checkbox"/> Amended | <input checked="" type="checkbox"/> No Change |
| <input type="checkbox"/> Rescinded | |

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

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

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

The rules included in this package set forth requirements for viatical settlements. Specifically these rules address: viatical settlement providers, viatical settlement broker license continuing education and registration requirements, as well as requirements for insurance agents operating as a viatical settlement broker.

Rule 3901-9-04 speaks specifically to the content of required questions on life insurance applications in order to identify and prevent stranger originated life insurance (STOLI).

There are no proposed amendments to these rules.

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2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

Sections 3916.05 and 3916.20 of the Revised Code.

3. 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.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

Not applicable.

5. 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)?

The purpose for these regulations is to establish uniformity through common business practices and requirements in order to create a safe and transparent marketplace for the sale and purchase of viatical settlements, through implementation of the National Association of Insurance Commissioners (NAIC) viatical settlements model act.

A viatical settlement is an arrangement in which a policy holder; sells his or her life insurance policy to a third party for a lump sum. The buyer continues to maintain the policy and receives the death benefit upon the passing of the insured. Due to the nature of these arrangements, consumer protections are necessary to ensure disclosure and appropriate transparency with viatical settlements.

6. 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 viatical settlement products. The department will see a decrease in confusion surrounding such requirements as well as a decrease in complaints and or damages to consumers as a result of this regulation.

Development of the Regulation

7. 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.*

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On April 7th an email was sent to a stakeholder list explaining the department's intention of filing this rule package as no-change during the 2015 rule review. This list of stakeholders included various companies such as: Westfield Group, Medical Mutual, Cincinnati Financial, Ohio National, and State Auto. Various trade groups were also contacted including: the National Association of Mutual Insurance Companies, the Ohio Hospital Association, the Ohio Association of Health Plans, Universal Health Care Action Network, and the American Council of Life Insurers. Individuals from Bricker & Eckler and various other firms were also included in the stakeholder list.

Following the email, the department held a public hearing on April 20th providing for an opportunity to comment. The comment period was left open until the following week.

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

Stakeholders were given the opportunity to comment both through email and at the public hearing. There were no stakeholder comments submitted regarding this rule package.

9. 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?

The general framework for this regulation comes from guidance established by the NAIC Viatical Settlement Model Act which has been enacted in Ohio since 2010. Furthermore, the model has been applied nationally through the NAIC, and is monitored and discussed at the national level by various NAIC subgroups.

10. 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?

The structure of the requirements set forth in these rules was established by evaluating NAIC model regulations and discussions with stakeholders.

Analysis showed that the current licensing process strikes a good balance across varying industry needs, providing a clear path to monitor appropriately licensed viatical settlement brokers.

11. Did the Agency specifically consider a performance-based regulation? Please explain.

Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.

The rules included in this packet define a specific set of requirements used to establish licensing standards for insurance agents operating as a viatical settlement broker. In order to maintain compliance, it is essential to agents and agencies that the process be thoroughly defined.

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

The department maintains regulatory authority over insurance agents, brokers, life insurance companies and the sale of insurance products. This regulation is confined to one chapter and applied consistently.

13. 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 rules within this rule package are currently being reviewed under the five-year rule review. Therefore the requirements within these rules are already in place. The department maintains the licensing business unit which has been structured to support individuals and businesses that must comply with these regulations.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

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

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.

a. The impacted business community consists of individuals and insurance agents pursuing registration as viatical settlement brokers, viatical settlement providers and life insurance companies.

b. The nature of this impact is contained in the time and cost associated with complying with pre-licensing and continuing education requirements, and for maintaining the required type of questions in regards to identifying STOLI on life insurance application.

c. Both the cost and time requirements vary in regards to the provider that the agent or broker chooses for initial and continuing education courses. The fees associated with provider and agent filings, as well as application fees are outlined specifically in rule 3901-9-03 of the Administrative Code and the exact cost will vary according to the fee schedule found in this rule.

In regards to rule 3901-9-04 of the Administrative Code, life insurance companies have been including the required STOLI identification questions on the application since the promulgation of this rule and will endure no additional costs as a result of this five-year rule review.

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

These rules are essential to the business of the sale of viatical settlements in Ohio, which if not regulated can pose a substantial risk to consumers. The guidelines set forth consist of the national standards established by the NAIC, which has become the national standard for insurance regulation.

Regulatory Flexibility

16. 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, brokers and life insurance companies doing business in the state of Ohio in regards to viaticals. The specific education and application requirements, standards of practice for providers, associated fees and appointment standards must remain consistent for all individuals and businesses accordingly in order to sustain a uniform and safe market. Regardless of size, it is essential that these regulations are applied consistently to maintain consumer protection.

17. 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?

Paperwork violations and/or first time offender issues would be dealt with on a case-by-case basis to determine whether the violation could have a serious impact on the consumer or the general public.

Minor errors would be handled by advising the agent or company and giving them an opportunity to cure the omission or irregularity.

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

Department staff is available to answer questions. Furthermore, the department website includes a complete section on agent and agency information which contains a specific page for information regarding viatical settlement brokers.