
MEMORANDUM

To: Ethan Wittkorn

CC: Carrie Kuruc, Director of the Common Sense Initiative Office

From: Loretta Medved, Policy Analyst

Date: February 18, 2021

Re: Amended filing – OAC 3901-6-11

On February 3, 2021, the Ohio Department of Insurance (the Department) received notice of an incorrect citation in rule 3901-6-11. This rule had been previously reviewed and approved by the Common Sense Initiative Office (CSI) as a no change rule. Following internal review by the Department, it was confirmed this flagged reference in paragraph (E)(4) to rescinded rule 3901-3-11 should be replaced by citing ORC 3903.726. The Department will withdraw the no change filing from JCARR and refile 3901-6-11 as amend. In addition, the Department will notify the list of stakeholders who have signed up to receive Department rule updates through the e-Notification system. Attached is a red line version of the rule with proposed technical amendment for CSI review.

Please consider this memorandum to be an addendum to the BIA #770952 filed and approved with CSI.

If you have any questions please contact Loretta Medved at 614-644-0239 or Loretta.Medved@insurance.ohio.gov.



Common Sense
Initiative

Mike DeWine, Governor

Jon Husted, Lt. Governor

Carrie Kuruc, Director

Business Impact Analysis

Agency Name: Ohio Department of Insurance

Rule Contact Name: Loretta Medved

Rule Contact Information: Loretta.Medved@insurance.ohio.gov
614-644-0239

Regulation/Package Title (a general description of the rules' substantive content):
2020 FYR Life & Health Rules

Rule Number(s): 3901-3-10, 3901-3-17, 3901-6-11, and 3901-6-12

Date of Submission for CSI Review: December 23, 2020

Public Comment Period End Date: January 8, 2021 12:00AM

Rule Type/Number of Rules:

- ☐ New/ rules ☒ No Change/ **4** rules (FYR? **2020**)
☐ Amended/ rules (FYR?) ☐ Rescinded/ rules (FYR?)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 requires 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.

This rule package contains four rules addressing various life & health insurance regulations, specifically including: minimum required reserves for health insurance companies, the permitted use and recognition of certain mortality tables for life insurance companies, and the licensing of managing general agents.

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

Sections 3901.041, 3905.79, 3903.72 and 3915.071 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 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 3901-3-10 establishes the application requirements for a managing general agent (MGA). An MGA is a specialized type of insurance agent that, unlike traditional agents, is vested with underwriting authority from an insurer. The application standards established in this rule work to maintain accountability and therefore provide consumer protections. No changes are recommended.

Rule 3901-3-17 recognizes and permits the use of new annuity mortality tables for use in determining minimum standards of valuation for annuity and pure endowment contracts. The use of this table is in accordance with National Association of Insurance Commissioners (NAIC) model regulation. No changes are recommended.

Rule 3901-6-11 recognizes and permits the use of the 2001 commissioners standard ordinary (CSO) mortality table in accordance with the Revised Code. The recognition of this table makes Ohio life insurance policies consistent with the applicable NAIC model regulation. No changes are recommended.

Rule 3901-6-12 recognizes and permits the use of an alternative mortality table to what is established in 3901-6-11. Use of the table within 3901-6-12 is an optional alternative, and provides for greater flexibility in the delivery of a compliant product to consumers. This table is also provided for in the NAIC model regulation. No changes are recommended.

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

These regulations provide transparent guidance for MGAs and insurance companies. The department will see a decrease in confusion surrounding such requirements as well as a decrease in complaints and/or damages to consumers, as the rules are maintained.

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 June 2020, an email requesting comment on the rule was sent to various stakeholders, interested parties, trade associations and companies. Specifically, the department reached out to the Ohio Insurance Institute (OII), the Association of Ohio Life Insurance Companies (AOLIC), the American Council of Life Insurance (ACLI), the National Association of

Insurance and Financial Advisors (NAIFA), Ohio Association of Health Plans (OAHP) and the Professional Independent Agents Association (PIAA), among others. Additionally, these rules were also posted on the department's web site for review.

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

These rules were reviewed as part of the five year rule review. The department received no comments on the rules from industry or the general public during the comment period.

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?

These rules follow national models that have been developed by the National Association of Insurance Commissioners and have been adopted by other state insurance regulators. When developing a model, the NAIC works with a subgroup consisting of representatives from multiple states. Stakeholders also provide comment as to find the right balance between consumer protection and ease of compliance.

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?

These rules are based upon current NAIC models and publications which represent nationwide industry standards. These rules provide consistent regulatory requirements for insurance carriers. Therefore, no other alternatives were considered.

13. 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.

Rule 3901-3-10 establishes application requirements which define the steps necessary to apply for MGA licensure. Therefore, this regulation may not be performance-based.

Rules 3901-6-11 and 3901-6-12 recognize the use of mortality table. These rules do not render a performance-based regulation necessary.

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

These rules establish a set of requirements for insurers to follow to ensure that they properly rate insurance products to maintain a sufficient reserve balance and remain solvent. Performance-based regulations are not appropriate for these rules.

15. 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's implementation of these regulations have been in place for many years and those impacted by the rules are familiar with the requirements. The department maintains the licensing business unit which has been structured to support individuals and businesses that must comply with application requirements, such as those established in rule 3901-3-10. Product regulation staff oversees the compliance matters related to a very specific standard and through the establishment in rule provide predictability in the market. The product regulation division reviews all product submissions for compliance.

Adverse Impact to Business

16. 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. Rule 3901-3-10, the scope of this rule impacts individuals seeking licensure as a MGA.

b. Rule 3901-3-10, requires an application fee of twenty dollars, as well as the gathering of applicable information required to complete the application.

c. Rule 3901-3-10, requires an applicant to complete the application for licensure. This includes a twenty dollar fee and should take no longer than a couple of hours at most to complete.

Rules 3901-3-17, 3901-6-11 and 3901-6-12, provide guidance for the use of mortality tables and minimum reserve guidelines. These regulations do not impose any specific costs or labor related requirements.

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

The requirements set forth in this package are necessary to maintain accountability and consumer protections.

Regulatory Flexibility

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

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.

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?

The department will apply section 119.14 of the Revised Code into the implementation of this regulation by working with businesses on first-time violations of this rule.

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. The department intends to continue dialogue with stakeholders through the implementation process to ensure compliance and facilitate questions.