

Common Sense
Initiative

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Business Impact Analysis

Agency Name: Ohio Department of InsuranceRule Contact Name: Loretta MedvedRule Contact Information: Loretta.Medved@insurance.ohio.gov
614-644-0239Regulation/Package Title (a general description of the rules' substantive content):
2020 FYR Viaticals RulesRule Number(s): 3901-9-01, 3901-9-02, 3901-03 and 3901-9-04Date of Submission for CSI Review: December 23, 2020Public Comment Period End Date: January 8, 2021 12:00AM

Rule Type/Number of Rules:

- | | |
|--|--|
| <input type="checkbox"/> New/ rules | <input checked="" type="checkbox"/> No Change/ 2 rules (FYR? 2020) |
| <input checked="" type="checkbox"/> Amended/ 2 rules (FYR? 2020) | <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 Rescinded/ rules (FYR?)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 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.

The rules included in this package set forth guidance regarding viatical settlements.

Rule 3901-9-01 provides standards to applicants applying for initial licensure or renewal as a viatical settlement provider. The rule provides form and fee requirements. No changes are recommended.

Rule 3901-9-02 provides standards to applicants applying for initial licensure or renewal as a viatical settlement broker. The rule provides form and fee requirements. It is recommended to amend this rule to correct a citation.

Rule 3901-9-03 establishes viatical settlement education (VSE) requirements, criteria, standards and procedures and fees for VSE providers, VSE courses and licensed viatical settlement brokers. It is recommended to amend this rule to correct a citation.

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). No changes are recommended.

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 3916.05 and 3916.20 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)?

The purpose for these regulations is to establish uniformity through common business practices and requirements regarding viatical settlements. These regulations are intended 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 policyholder 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.

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 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.

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 for a two week comment period. 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?

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 adopted by the NAIC. When developing a model, the NAIC works with a subgroup consisting of representatives from multiple states and industry stakeholders 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. In addition, the models and the subsequent rules, were created in response to abuses of the products in the 1980's and 1990's and are in place as an important protection to consumers. 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.

These rules establish a set of requirements for insurers to follow to assure that consumers are adequately protected during viatical settlement transactions.

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

The department, which serves as the sole regulator of the insurance industry in Ohio, reviewed Ohio statutes and rules and determined that this rule does not duplicate other regulations.

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 agency's implementation of these regulations have been in place for many years and those impacted by the rules are familiar with the requirements. These rules are applied consistently, as they are required for viatical settlement transactions.

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. 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.

17. 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

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 website.

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.