

Common Sense
Initiative

Mike DeWine, Governor

Jon Husted, Lt. Governor

Joseph Baker, Director

Business Impact AnalysisAgency Name: Ohio Department of InsuranceRule Contact Name: Loretta MedvedRule Contact Information: 614-644-0239loretta.medved@insurance.ohio.gov

Regulation/Package Title (a general description of the rules' substantive content):

Chapter 3901-6 Disclosures - and Chapter 3901-4 Record RetentionRule Number(s): 3901-6-02, 3901-6-05, 3901-6-13, 3901-4-03Date of Submission for CSI Review: June 26, 2023Public Comment Period End Date: July 12, 2023, 12:00AMRule Type/Number of Rules:

- | | | | |
|--|----------------------|-------------------------------------|---------------|
| <input type="checkbox"/> New/ | rules | <input type="checkbox"/> No Change/ | rules (FYR?) |
| <input checked="" type="checkbox"/> Amended/ | 4 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 Rescinded/ | rules (FYR?)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 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.

Rule 3901-6-02: The purpose of this rule is to establish minimum requirements for the forms provided to consumers when an agent or insurance company solicits, services, or collect premiums for life insurance which is sold in correlation with a mutual fund or other security. These statutorily required forms are meant to provide the consumer with a clear understanding of the transaction. Proposed amendments will reduce regulatory restrictions and make necessary technical corrections.

Rule 3901-6-05: The purpose of this rule is to regulate the activities of insurers and agents with respect to the replacement of existing life insurance and annuities. This rule protects the interests of life insurance and annuity purchases by establishing minimum standards for conduct in replacing life insurance or annuity policies. It will assure that purchasers receive information with which a decision can be made in his or her own best interest; reduce the opportunity for misrepresentation and incomplete disclosure; and establish penalties for failure to comply with requirements of this rule. Proposed amendments will reduce regulatory restrictions.

Rule 3901-6-13: The purpose of this rule is to require insurers, including fraternal benefit societies, to establish standards and procedures for recommending annuity products to consumers so that their individual insurance needs and financial objectives, at the time of the transaction, are appropriately addressed. There are no proposed amendments.

3901-4-03: Insurance agents often have to take continuing education and training credits regarding various insurance products. This rule sets forth the requirements insurers must follow to maintain records of their insurance agent's education and training credits on long-term care insurance. Proposed amendments will reduce regulatory restrictions and make necessary technical corrections.

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

Section 3901.041 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)?

Chapter 6: The rules listed provide important consumer protections by issuing guidance to insurance companies and agents in regard to the solicitation, sale, replacement and determination of suitability in annuity and life insurance transactions.

Rule 3901-4-03: The public purpose of this rule is to ensure that insurers are keeping adequate and up to date records of agents education and training courses concerning long-term care insurance.

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

Chapter 6: The department will receive fewer complaints from consumers about agents and/or companies regarding the solicitation, sale, replacement, and determination of suitability for life insurance policies and annuities.

Rule 3901-4-03: The department will not see an increase in insurers improperly retaining records concerning continuing education credits.

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 late April and early May, 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?

The Department received a comment from The Association of Ohio Life Insurance Companies (AOLIC) requesting additional amendments to rule 3901-6-05. AOLIC believes that the adoption of newer, more robust regulations such as best interest standards and annuity suitability, address the same issue that the Replacement Rule addresses for annuities and creates duplicative requirements.

The department reviewed the comment internally and requested a red line draft from AOLIC indicating the areas of concern and desired amendments. The department reviewed the red line and determined that the conceptual idea of the "replacement" product would eliminate certain consumer protections on disclosures to the consumer that the other rules do not specify. The department then met with AOLIC and member John Gruber to discuss moving forward. AOLIC reiterated that specific forms required by 3901-6-05 are burdensome, the department agreed to continue the conversation with AOLIC during the CSI process with the goal of removing duplicative and unnecessary regulations while maintaining protections to the consumer.

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?

The Chapter 6 rules listed follow models that have been adopted by the National Association of Insurance Commissioners. 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.

Rule 3901-4-03: This rule was developed to create consumer protections by establishing requirements that insurers must maintain education and training records of their agents who are selling long-term care insurance products. Specifics were derived from interested party discussion and evaluating trends in consumer complaints.

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 are based upon current NAIC models which represent nationwide industry standards and provide important consumer protections. These rules assure consistent regulatory requirements for insurance carriers among all states.

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

The department reviewed Ohio statutes and rules and determined that these rules do not duplicate other regulations. The regulation of long-term care insurance products, the partnership program and the regulation of agent education and training records retention 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.

These rules will be applied consistently and predictably through the product filing process, which has specific standards that companies are required to meet in regard to the solicitation, sale, replacement and determination of suitability for life insurance and annuity products.

Rule 3901-4-03: Continuing education retention requirements are discussed during agent continuing education classes that all licensed agents are required to take.

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 that sell life and annuity products would be impacted by implementation of these rules. Staff time would be required to explain the policy to consumers each time a life insurance or annuity transaction takes place. Resources such as printed copies of the policies and disclosures are also required to comply with the rule. These required resources are relative to the type and the frequency of the transactions. However, these rules are already in effect and the companies are meeting the provisions of the rules, so those staff and resources appear to be in place and the transactions are critical for the protection of consumers.

Rule 3901-4-03: Insurance companies and agents that sell long-term care insurance products will be impacted by this rule. Since this rule is already in existence, staff time and resources required to meet the requirements have already been accounted for.

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.)*

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

These rules provide guidelines to which companies must adhere to solicit, sell, replace, or determine suitability for life insurance or annuity products. Consumers could face significant financial harm if companies do not adhere to these standards promulgated by the department.

Rule 3901-4-03: The rule places requirements on insurers to ensure that agents who sell long-term care insurance products are properly trained and educated.

Regulatory Flexibility

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

No, the rules provide important consumer protections and are adopted from the respective NAIC models. All insurance agents, agencies, and companies must adhere to this rule regardless of size.

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.