

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Department of Insurance
Regulation/Package Title: Long term care partnership program
Rule Number(s): 3901-4-02

Date: January 8, 2013

Rule Type:

☐ New

☒ Amended

☒ 5-Year Review

☐ Rescinded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 rule describes the requirements for offering existing long term care insurance policyholders or certificateholders "partnership qualified" long term care insurance policies or certificates. This is similar to a federal law as tailored by Ohio. Partnership qualified forms allow the insured to take advantage of a dollar for dollar avoidance of "spend-down" of assets for Medicaid eligibility based on the amount of qualified long term care services paid for under the private policy. Only currently marketed policies can be used to offer a partnership policy. The rule is being amended to allow existing policies that

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are not being currently marketed to be used to offer "partnership qualified" policies if they meet all other requirements of the partnership rule.

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

R.C. 3901.041, 3923.44 and 3923.47.

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.

The Deficit Reduction Act of 2005 altered federal requirements for avoiding a certain amount of spend-down to Medicaid through use of a partnership-qualified long term care insurance policy form by allowing the insured's family to avoid the Medicaid program's asset recovery after the insured dies. This change brought several new states into the partnership program, including Ohio, as they wished to make this program available to their consumers and also to reduce costs to Medicaid through persons buying these long term care insurance policies. States choose to participate in the partnership program, and when they do, the federal requirements are the floor that must be met. The proposed amendment is not similar to any particular federal requirement.

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

Ohio drafted the original partnership regulation with the input of the National Association of Insurance Commissioners (NAIC) and the long term care insurance industry, as federal law only gave a certain amount of detail. An example: federal law does not mandate an offer of partnership qualified policies to existing long term care policyholders. Ohio has a 180 day period to make the offer to existing long term care insurance policyholders once an insurer starts to market partnership policies. There is also a look back period to August 12, 2002 for issuance of policies eligible for the offer, as that is when Ohio made its long term care insurance statute and rule conform more closely to the NAIC model long term care insurance regulation that forms the basis of the partnership program. Federal law requires inflation protection be in the partnership policies at certain issue ages or be offered at certain issue ages, but does not specify a value. Ohio selected three percent for its mandatory inflation protection, at a minimum. Insurers choose to participate in the partnership program; if they do so, they must follow federal and Ohio requirements.

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)?

This rule and related statutes allow Ohioans to take advantage of avoidance of a certain amount of Medicaid spend-down by purchasing and using "partnership qualified" long term care insurance policies. This in turn allows the state to save the Medicaid program money through residents purchasing and keeping and using these "partnership qualified" long term care insurance policies when they can instead of using government resources meant for the very poor.

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

Ultimately, the Medicaid program will save resources if this rule is successful, and Ohio residents who can afford to pay the long term care insurance premium will be able to avoid spending down (dumping assets) to apply for Medicaid and avoid using family resources that might be used for other things. Also, their families will avoid the same dollar for dollar asset recovery by Medicaid after they have died. Insurers must report statistics to the federal government that should help track this.

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.*

In December 2011, an email requesting comment on the rule was sent to various stakeholders, interested parties, and trade associations who signed up for updates on the Department's rules and bulletins, including the Association of Ohio Life Insurance Companies (AOLIC) and the American Council of Life Insurance (ACLI) as well as the Office of Health Transformation.

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

Certain insurers asserted that due to the requirement in the rule that only currently marketed policies can be used, a number of persons whose existing long term care insurance policies conformed in every other way with the partnership requirements, or could be made to conform by a minimal rider, could not afford or could not be underwritten under the newer partnership policies' increased benefits at their attained ages, and that this was not fair. The Department changed it by allowing carriers to seek and obtain approval of compliant or nearly compliant but not currently marketed policies as partnership qualified long term care insurance policies. Also, added to the rule is an exemption from replacement application questions and reporting requirements regarding

exchanges made by the same insurer that issued the existing policy or certificate being exchanged.

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?

N/A

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 proposed change is a revision to an existing rule that was requested by impacted parties.

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.

N/A

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

N/A, it was a new specific subject matter when first adopted and the proposed change is a revision to an existing rule requested by impacted parties.

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 current change is a revision to an existing rule that was requested by impacted parties. The Department will proceed with publication of the rule, providing training and oversight to the Department's staff responsible for reviewing forms and processing complaints, ensuring consistent application of the rule.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:
- Identify the scope of the impacted business community;
 - Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and
 - 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. Insurers marketing long term care insurance who choose to make the partnership qualified coverage available using currently non-marketed policies.

b. These insurers that choose to make the partnership qualified coverage available using currently non-marketed policies must file those policies they select to utilize for the partnership offer, and any related riders or endorsements, with the Department of Insurance for approval as “partnership qualified” policies before they can offer those as a “partnership qualified” policy.

c. Filing policies for approval is a cost of doing business for insurers.

If a long term care insurance insurer chooses to participate in the partnership program and they choose to use currently non-marketed policies as the proposed amended rule will allow, they must file the policy(s) they choose to utilize for making partnership qualified policy offers. The filing fee is fifty dollars per filing, which can include multiple policies per filing. If filed separately, the fee is fifty dollars for each policy.

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

This is a business choice of the insurer. They are not required to participate in the partnership program.

Regulatory Flexibility

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

N/A

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?

The Department will provide training and oversight to their staff responsible for reviewing policies filed and those investigating complaints ensuring consistent application while allowing waivers depending on the seriousness of the act and any potential harm to a consumer.

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

N/A