

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Insurance
Regulation/Package Title: Insurance navigator certification and agent exchange requirements.
Rule Number(s): 3901-5-13

Date: June 17, 2013

Rule Type:

☒ New

☐ 5-Year Review

☐ Amended

☐ No Change

☐ Rescinded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.

This rule provides guidance on education standards and requirements for insurance navigator certification of both individual and business entity as authorized by section 3905.471 of the Revised Code. This rule also states the amount of initial and continuing education requirements for agents selling plans within the exchange.

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

3901.041 and 3905.471 of the Ohio Revised Code.

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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.

The rule is consistent with department procedures regarding agent licensing standards.

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 of this rule is to ensure consumer protection and accountability under the new insurance navigator requirements in Ohio law.

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

The Department expects to limit consumer complaints and confusion about insurance navigators in the market.

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.*

May 1st, 2013 – Interested party meeting with Representative Sears, which included the Ohio Association of Food banks, the Ohio Hospital Association, Asian American Community Services, UHCAN, and a representative from Federally Qualified Health Centers.

May 10th, 2013 - Call with Ohio Hospitals Association.

May 14th, 2013 – Meeting with Food Bank Association of Ohio.

May 14th, 2013 – Call with Association of Community Health Centers.

On May 23rd, 2013, 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. The rule was also posted on the Department's web site for review.

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

Comments were received regarding concern over the specifics and enforcement of language within the authorizing statute. Language was drafted to clarify and address these concerns. Comments will be reviewed during an on going process and addressed accordingly. Initial comments were received prior to circulation and drafting of written rules. Generally, comments were incorporated into the drafted rules except where suggestions would have exceeded statutory authority.

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 Department reviewed the internal process for agent licensing and evaluated the similarities in insurance navigator regulations. It was determined that the process would ultimately be very similar and would ultimately produce similar outcomes.

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 purpose of the Department promulgating this rule is to establish a process that works to ensure these consumer protections are in place. In order to maintain this standard, it is important that proven methods are utilized. Therefore, it was determined that the proposed framework worked best to maintain these consumer protections.

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.

This rule cannot be a performance based program, the purpose is to establish a regulatory framework that is consistent for each applicant. While an application may be either denied or accepted, based on the facts, the process must remain consistent.

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

The navigator is a new entity created under Ohio law and was not regulated in Ohio statute prior to House Bill 3. The rule clarifies the requirements set forth within House Bill 3.

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 rule establishes the guidelines for navigator certification. Internal department procedures will include a standard application to ensure a fair and thorough process of certification.

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.

An application for certification will require a ten dollar application fee, both initially and at renewal. Individuals will also need to successfully complete a criminal background check at both the federal and state level; the total for both is forty-six dollars. Furthermore, site locations may charge a fee to the individual for additional processing. The department has furnished a list, on the department web site, of locations that are to charge no more than twenty-five dollars per individual. Therefore, under these locations the total price for a background check would be seventy-one dollars per individual. The time for completing the application will also have an impact; the application is expected to be between two and five pages but in the process of being formed. Additional potential impacts include the costs and time associated with continuing education, and potential late renewals, and time to prepare for examination. The rule impacts those who have proactively sought funding from the federal government for the navigator program (i.e., nonprofits, local government groups). At this time, the Department is unaware of who the federal government will select to receive federal navigator funds.

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

The rule sets forth the process that the Department will use to certify navigators and is consistent with the Department's regulation of agents. The operative statutory provisions have set forth the direction. The goal of the enabling legislation and the proposed rule is to provide consistent consumer protection.

Regulatory Flexibility

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

While, the process to become a certified navigator is uniform, there is an exception for entities and persons who might perform some navigator duties but are not holding themselves out as navigators.

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?

Under the proposed rule, the superintendent has the authority to waive any fees required by this rule or reinstate any certificate cancelled pursuant to this rule, due to military service, a long term medical disability, or some other special or extenuating circumstance, including compliance with Revised Code Chapter 119.

18. 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 has developed a communications plan to access basic information and FAQ's regarding the navigator process.