

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Insurance
Regulation/Package Title: Chapter 3901-5 Five year rule review
Rule Number(s): 3901-5-10 (No Change)
3901-5-11 (No Change)
3901-5-13 (Amend)
Date: June 1, 2018

Rule Type:

- | | |
|---|---|
| <input type="checkbox"/> New | <input checked="" type="checkbox"/> 5-Year Review |
| <input checked="" type="checkbox"/> Amended | <input checked="" type="checkbox"/> No Change |
| <input type="checkbox"/> Rescinded | |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.

Rule 3901-5-10: This rule establishes the procedures and requirements for the issuance of a limited lines rental car agent license. A limited lines license is a license authorizing the sale, solicitation or negotiation of a line of insurance other than a major line of insurance (e.g. Life, Health, Property, Casualty). The license is limited in scope, and in this rule only authorizes the agent in the sale of insurance in connection with the rental of a car. There are no proposed amendments to this rule.

Rule 3901-5-11: This rule provides guidance that senior-specific terminologies and naming designations may not be used by an insurance agent who has not actually earned such

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designation from an accredited organization. This prohibition is established to protect senior citizens from unfair and deceptive sales practices. There are no proposed amendments to this rule.

Rule 3901-5-13: This rule establishes procedures and requirements for the certification of insurance navigators as recognized by the department as both an individual and business entity. The Affordable Care Act established navigators as an entity to assist individuals in enrolling in health plans through the federal exchange. Entities in Ohio are selected by the Center for Medicaid Services and awarded federal grants to carry out navigator activities. Ohio Revised Code establishes the authority for the department to certify navigators, this rule lays out the process and requirements for certification. This rule also establishes the requirements for agents who sell health coverage on the exchange. One technical amendment is proposed.

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

Rule 3901-5-10: Section 3901.041 of the Revised Code.

Rule 3901-5-11: Sections 3901.041, 3901.19 to 3901.26, and 3905.14 of the Revised Code.

Rule 3901-5-13: Sections 3901.041, 3905.12, 3905.47, and 3905.471 of the Revised Code.

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.

Not applicable.

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)?

Rule 3901-5-10: The purpose of this rule is to protect consumers who engage in rental car insurance contracts from being misled or improperly solicited during the sale of rental car insurance and to establish regulatory guidelines for agents and endorsees. For the purposes of this rule, an endorsee means an employee of a rental car agent or any authorized representative who acts on behalf of the agent and complies with the requirements in this rule as to allow the endorsee to sell or solicit rental car insurance. These established requirements provide for consumer protection.

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Rule 3901-5-11: The purpose of this rule is to protect senior citizens from being deceived by false professional designations such as: "medicare specialist" or "Senior Medicare Consultant" during the marketing, solicitation, or sale of a life, annuity or health insurance product. By using such designations, a consumer may be misled to believe that an individual is an expert in matters related to insurance products for senior citizens and as a result, might purchase an unsuitable product.

Rule 3901-5-13: The navigator rule establishes the certification requirements for Ohio's navigators, providing guidance to navigator funding awardees and agents selling health plans on the federal exchange. This rule fosters consumer protection through accountability, as navigators and agents have access to personal consumer information.

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

The success of this rule packet can be monitored by an understanding of the requirements throughout the regulated community and the department receiving a low number of consumer complaints and investigations or enforcement actions.

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.*

On March 14th and April 4th, 2018, respectively, an email requesting comment for these rules was sent to various stakeholders, interested parties, and trade associations. Including but not limited to; the Ohio Insurance Agents Association, the Ohio Association of Health Plans, various health insurance companies and Ohio's Navigator entity, HRS Erase. The rule was also posted on the department's web site for review.

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

No comments were received by the department during the vetting of these rules.

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?

Rule 3901-5-10: The regulation of limited lines licenses is addressed nationally in a similar format to this rule. Accordingly, the rule was amended in 2013 to allow for an authorized representative to act as an endorsee, providing more flexibility for the industry by not

requiring a license from every employee of the entity, however, still maintaining accountability.

Rule 3901-5-11: This rule follows a national model that was adopted by the National Association of Insurance Commissioners in 2008. Nationally, state departments were tracking an increase of complaints related to the use of non-legitimate professional designations and naming conventions in relation to senior citizen specific "titles." 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 compliance.

Rule 3901-5-13: This rule was promulgated to regulate the certification of insurance navigators in Ohio. Navigators were established by the federal Affordable Care Act and require certification by the department as established in Ohio Revised Code. Certification requirements were modeled off of similar requirements to insurance agents. Navigators, like agents, have access to personal information of exchange enrollees and therefore, require similar accountability and education standards to ensure consumer protection.

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 regulations established in this rule packet are modeled from processes developed at the national level as well as processes working effectively in Ohio. These standards have been in effect and are known throughout the regulated community. With no request for substantive amendment, there is no need for alternatives at this time.

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.

Rules 3901-5-10 and 3901-5-13 provide a procedure for licensure and certification. The steps required in these processes work to maintain a fair market for the regulated community and Ohio consumers. Performance-based regulations are not appropriate in these rules in order to ensure consistency throughout the licensing and certification processes.

Rule 3901-5-11 does not dictate a specific process, however, does lay out specific conduct limitations which are essential to consumer protections this rule is a performance-based regulation.

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

The regulation of insurance agents and certification of Ohio Navigators is exclusive to the department of insurance. The rules in this packet do not duplicate any other rule or statute.

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.

All rules included in this packet have been in effect and do not have any proposed substantive amendments. The department maintains the licensing and enforcement divisions which oversee the licensing and certification processes and monitor compliance. The department web site contains checklists, applications, and instructions for licensing and certification procedures. Additionally, various agent continuing education courses offer training materials regarding the conduct standards laid out in rule 3901-5-11.

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.

Rule 3901-5-10: This rule impacts rental car limited lines license holders and applicants. A ten dollar initial and renewal application fee is required. Completion of the application will depend on the entity or individuals record keeping, as most of the information required should already be available to the applicant. Additionally, rental car agents will need to establish a training program for designated endorsees, the requirements of which are outlined in the rule. The time to complete training will depend on the method chosen by the entity, much of these requirements are disclosure notices that must be given to the consumer and therefore, would likely not exceed the length of a couple of days.

Rule 3901-5-11: This rule impacts insurance agents, in regards to the solicitation of insurance products. The rule provides guidance that terminologies and naming designations that are not of an accredited organization may not be used as a professional title or designation for the agent. There is no cost associated with complying with the rule. This rule remains in effect without amendment and therefore, would not impose any increase in cost

to the agent community. A violation of this rule may be found to be an unfair and deceptive act and therefore, subject to penalties under the Ohio Revised Code. This rule provides a critical consumer protection for senior citizens.

Rule 3901-5-13: The Navigator application requires a two hundred and fifty dollar initial application fee and a one hundred dollar renewal fee. Individuals also need to successfully complete a criminal background check at both the federal and state level. The department has furnished a list, on the department web site, of locations that do not charge additional processing fees and therefore, at these locations the total price for a background check would be seventy-one dollars per individual. Completion of the application will depend on the entity or individuals record keeping, as most of the information required should already be available to the applicant, this should take no longer than a few hours. 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 been approved for funding from the federal government for the navigator program (i.e., nonprofits, local government groups).

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

Rule 3901-5-10: The requirements imposed by this rule promote uniform standards in compliance, ultimately working towards a fair market.

Rule 3901-5-11: This rule does not impose any quantifiable adverse action on the agent, it simply provides a conduct standard that is an important consumer protection for senior citizens.

Rule 3901-5-13: 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 goal of the enabling law and this rule is to provide consistent consumer protection as navigators handle consumers personal information.

Regulatory Flexibility

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

All businesses and their employees are required to meet the same conduct standards, regardless of size, in order to promote consumer protections and a fair market.

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?

Paperwork violations and/or first time offender issues would be dealt with on a case-by-case basis due to the fact that these types of violations could have a serious impact on the consumer.

For rules 3901-5-10 and 3901-5-13 specifically, the superintendent has the authority to waive any fees required by this rule or reinstate any certification cancelled pursuant to this rule, due to military service, a long-term medical disability, or some other special or extenuating circumstance, in accordance with Chapter 119. of the Revised Code.

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 FAQ's regarding the navigator process.