

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Insurance
Regulation/Package Title: Long-term care packet.
Rule Number(s): 3901-4-01 Long-term care insurance. (Amend)
3901-4-02 Long-term care partnership program. (Amend)
3901-4-03 Retention of long term care insurance education
records. (No Change)
Date: July 11, 2018

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☐ Rescinded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.

Rule 3901-4-01: Long-term care is a type of insurance product that can help cover costs of home care, assisted living, adult daycare, hospice care, and/or nursing homes for individuals with chronic illness or disability for those who cannot care for themselves over a long period. This rule sets out product, disclosure and marketing requirements for insurers to follow for the sale of long-term care insurance in Ohio. The department is proposing technical amendments.

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Rule 3901-4-02: The rule implements the state long-term care partnership program and sets requirements that insurers and plans must meet in order for a long-term policy to qualify for the partnership program. The purpose of the partnership program is for the state to partner with long-term care insurers to encourage the sale of long-term care insurance. Qualified partnership plans offer a way for people to buy long-term care insurance, receive policy benefits and protect a matching amount of assets if they ever need to apply for Medicaid. In other words, a person with a qualified partnership plan can be eligible for Medicaid benefits through the state without depleting all of their attachable assets. The rule is being amended to add more flexibility in the modification of inflation protection for partnership qualified long-term care policies.

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. No proposed amendments.

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

Sections 3901.041, 3923.44, 3924.47, and 3901.41 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 3901-4-01: Long-term care insurance pays for services such as nursing homes, in-home services, daily living assistance and other home health care services for eligible enrollees who can no longer perform the activities of daily living. Long-term care insurance can become expensive and can affect an individual's long-term financial planning. These rules provided guidance for the creation and solicitation of long-term care insurance policies and products.

Rule 3901-4-02: The public purpose of this rule is to help states manage long-term care costs, while at the same time this rule provides consumer protections by allowing an

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individual with a partnership qualified plan to keep more of their assets if they ever need to apply for medicaid.

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.

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

Rule 3901-4-01: The success of the rules can be monitored by an understanding of the requirements throughout the regulated community and the department receiving a low number of consumer complaints. The department will see a decrease in insurers improperly writing long-term care insurance policies or marketing them inappropriately.

Rule 3901-4-02: More consumers will buy partnership qualified plans for asset protection.

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

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 March and May of 2018, the department sent an email to industry stakeholders including insurance companies and trade groups. That list included the Ohio Association of Health Plans (OAHP), Ohio Health Care Association(OAHC), and the Ohio Association of Health Underwriters (OAHU). The department also asked the Ohio Department of Medicaid to review rule 3901-4-02 in June.

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 regarding this rule packet.

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 3901-4-01: The long-term care rule was developed through industry input and evaluating similar regulations in other states, as well as guidance provided by the National

Association of Insurance Commissioners (NAIC) Model Law IV-641. The NAIC consults industry, regulators, and the public to create industry standards that states may adopt into their own laws and rules. Ohio adopted a large portion of this model into this rule because it represents the industry standard. Consumer protections for the development, education and sale of long-term care insurance policies were the driving factor in establishing the specifics of the rules.

Rule 3901-4-02: Ohio implemented a long-term care partnership program. This rule sets up the parameters that insurers must follow if they are participating in Ohio's long-term care partnership program and offering partnership qualified plans. The rule was developed by interested party discussions with insurance companies, trades and others, and evaluating trends in consumer.

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.

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?

These rules provide specific and consistent regulatory guidance for insurance carriers to abide by, are well understood by the regulated community and are in use nationwide. As a result, alternative regulations aren't appropriate.

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.

These regulations establish specific minimum requirements and disclosures for all insurers in regards to long-term care insurance. As a result, using performance-based regulations would not establish the needed regulatory structure.

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

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.

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.

Rules 3901-4-01 and 3901-4-02: The department staff reviews filings for long-term care products and assists Ohio consumers with complaints or questions regarding their long-term care plan. We are amending rule 3901-4-02 which will provide more flexibility to both insurers and consumers.

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

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.

Insurance companies and agents who sell long-term care insurance products and or insurance companies that choose to offer partnership qualified plans are the impacted business community. Insurers staff, time and resources are required to meet the requirements of the rules. Policy forms and rates must be developed, filed with the department of insurance and approved before use in the Ohio market. Forms filed cost \$50 per form if filed separately.

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

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

Rule 3901-4-01: The rule establishes the requirements insurers must follow for the development and solicitation of long-term care policies. This rule is essential for consumer protection, without this rule in place there would be no guidance on the development of long-term care policies and consumers may be exposed to unfair and deceptive sales or enrollment practices of long-term care insurance.

Rule 3901-4-02: If insurers choose to participate in the selling of long-term care partnership qualified plans, the insurer must follow the requirements of the rule. This rule provides the minimum requirements for long-term care partnership qualified plans which protects the state, insurers and consumers. The minimum requirements provide uniformity that allows the consumer and insurer to understand the product and the state to be aware of the impact on medicaid.

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

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.

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 handled on a case by case basis due to the fact that these types of violations could have a serious impact on the consumer.

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 the business.