

Common Sense
Initiative

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Business Impact AnalysisAgency Name: Ohio Department of InsuranceRule Contact Name: Loretta MedvedRule Contact Information: loretta.medved@insurance.ohio.gov
1-614-644-0239Regulation/Package Title (a general description of the rules' substantive content):
Insurance navigator certification and agent exchange requirements.Rule Number(s): 3901-5-13Date of Submission for CSI Review: March 13, 2023Public Comment Period End Date: March 25, 2023 12:00 AMRule Type/Number of Rules:

- | | | | |
|--|--------------------|-------------------------------------|---------------|
| ☐ New/ | rules | ☐ No Change/ | rules (FYR?) |
| ☒ Amended/ | 1 rules (FYR? Yes) | ☐ Rescinded/ | rules (FYR?)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.

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 (CMS) 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.

Proposed amendments will remove the bifurcated fee structure, delay the expiration date of the license to accomdate the timeline of CMS, and to reduce regulatory restrictions.

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

Sections 3901.041, 3905.12, 3905.47, and 3905.471 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)?

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.

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

The success of this rule 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.

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.*

On February 23, 2023 the department sent an email to various stakeholders including: the Mid-Ohio Foodbank, 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.

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

ODI received the following written comment from Leondria Taty on behalf of CMS / U.S. Department of Health & Human Services:

"request that the department revise the date of individual and business entity insurance navigator certification expiration from July 31st to at least October 31st. The annual open enrollment period for the federal health insurance Marketplace begins on November 1st and CMS does not typically release Navigator training, which is required for Navigator license renewal, until August or September. In past years, ODI has extended the licenses of Navigators to accommodate this training release schedule but has not issued updated licenses to Navigators. This creates a situation where Navigators are displaying a license which appears to be expired, which erodes consumer confidence. By changing the date of Navigator license expiration to October 31st, ODI could avoid the need to extend licenses annually and Ohio consumer confidence would be improved."

The department has amended the rule to extend the certificate expiration date from July 31st to October 31st.

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?

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.

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.*

The regulations established in this rule 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.

13. 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.

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.

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.

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.

The Navigator entity 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).

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.*)

The proposed amendment to correct the discrepancy with the certificate expiration date and remove the bifurcated fee structure will reduce burden on certified navigator entities and individuals.

17. 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 goal of the enabling law and this

rule is to provide consistent consumer protection as navigators handle consumers personal information and provide assistance.

Regulatory Flexibility

18. 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.

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?

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. The department 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.

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 has developed FAQ's regarding the navigator process, located on the department webpage.