



Department of Insurance

Mike DeWine, Governor
Jon Husted, Lt. Governor

Judith L. French, Director

IN THE MATTER OF PUBLIC HEARING :
FOR THE AMENDMENT OF : NOTICE OF
OHIO ADMINISTRATIVE CODE : PUBLIC HEARING
SECTIONS 3901-4-01 AND 3901-4-02 :
:

Pursuant to section 119.03 of the Ohio Revised Code, the Superintendent of Insurance, State of Ohio, will hold a public hearing at 10:00 a.m., on Monday, July 29, 2024, at the Ohio Department of Insurance, Public Hearing Room, 50 West Town Street, 3rd Floor, Suite 300, Columbus, Ohio, to consider the amendment of Ohio Administrative Code sections 3901-4-01 Long-term care insurance, and 3901-4-02 Long-term care partnership program.

The public hearing will also be conducted remotely by video conferencing coordinated by the Ohio Department of Insurance (“Department”). Instructions and a web link and/or telephone number for accessing the hearing will be provided on the Department’s web site, www.insurance.ohio.gov. Alternatively, a request for the web link and/or telephone number may be submitted to ecomment@Insurance.ohio.gov.

The Department is committed to providing access and inclusion and reasonable accommodation in accordance with the Americans with Disabilities Act (ADA) and other applicable laws. To request a reasonable accommodation due to a disability please contact the Department’s ADA Coordinator, Andrew Skal, by emailing Andrew.Skal@insurance.ohio.gov or calling 1-614-644-3264 or for TTY 711 (then dial) 614-644-3264. Requests made 14 days prior to an event will generally allow us to provide seamless access, but we will make every effort to meet requests made after this date.

The purpose of rule 3901-4-01 is to implement sections 3923.41 to 3923.49 of the Revised Code to promote the public interest, to promote the availability of long-term

care insurance coverage, to protect applicants for long-term care insurance, as defined, from unfair or deceptive sales or enrollment practices, to facilitate public understanding and comparison of long-term care insurance coverages, and to facilitate flexibility and innovation in the development of long-term care insurance.

Rule 3901-4-01 is amended to reduce regulatory restrictions and make technical amendments, as well as modernize language surrounding dementia and related conditions.

The purpose of rule 3901-4-02 is to implement a state long-term care partnership program in Ohio in accordance with sections 3923.41 to 3923.49 and 5164.86 of the Revised Code. The rule sets the requirements on how to obtain a “partnership qualified” long-term care policy and the requirements on how to exchange such a policy.

Rule 3901-4-02 is amended to reduce regulatory restrictions.

Requests for copies of these rules should be addressed to Tina Chubb, Ohio Department of Insurance, 50 West Town Street, 3rd Floor, Suite 300, Columbus, Ohio 43215, or proposed rules can be viewed online at www.insurance.ohio.gov.

Matthew Walsh, Staff Attorney

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 3901-4-02

Rule Type: Amendment

Rule Title/Tagline: Long-term care partnership program.

Agency Name: Department of Insurance

Division:

Address: 50 W Town Street Suite 300 Columbus OH 43215

Contact: Tina Chubb **Phone:** (614) 728-1044

Email: Tina.Chubb@insurance.ohio.gov

I. Rule Summary

1. Is this a five year rule review? Yes

A. What is the rule's five year review date? 6/28/2024

2. Is this rule the result of recent legislation? No

3. What statute is this rule being promulgated under? 119.03

4. What statute(s) grant rule writing authority? 3901.041, 3923.44, 3923.47

5. What statute(s) does the rule implement or amplify? 3923.41 to 3923.49

6. Does the rule implement a federal law or rule in a manner that is more stringent or burdensome than the federal law or regulation requires? No

A. If so, what is the citation to the federal law or rule? Not Applicable

7. What are the reasons for proposing the rule?

This rule is being reviewed as a part of the agency five-year rule review.

8. Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.

The purpose of rule 3901-4-02 is to implement a state long-term care partnership program in Ohio. The rule sets the requirements on how to obtain a "partnership qualified" long-term care policy, and the requirements on how to exchange such a policy.

Recommended amendments will reduce regulatory restrictions.

9. Does the rule incorporate material by reference? No
10. If the rule incorporates material by reference and the agency claims the material is exempt pursuant to R.C. 121.75, please explain the basis for the exemption and how an individual can find the referenced material.

Not Applicable

11. If revising or re-filing the rule, please indicate the changes made in the revised or re-filed version of the rule.

Not Applicable

II. Fiscal Analysis

12. Please estimate the increase / decrease in the agency's revenues or expenditures in the current biennium due to this rule.

This will have no impact on revenues or expenditures.

0.00

Not applicable.

13. What are the estimated costs of compliance for all persons and/or organizations directly affected by the rule?

Not applicable.

14. Does the rule increase local government costs? (If yes, you must complete an RSFA Part B). No
15. Does the rule regulate environmental protection? (If yes, you must complete an RSFA Part C). No

16. If the rule imposes a regulation fee, explain how the fee directly relates to your agency's cost in regulating the individual or business.

Not applicable.

III. Common Sense Initiative (CSI) Questions

17. Was this rule filed with the Common Sense Initiative Office? Yes

18. Does this rule have an adverse impact on business? Yes

A. Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? Yes

In order to offer long-term care insurance policies that are "partnership qualified" an insurer must file those forms for approval with the department before they can be offered as such.

B. Does this rule impose a criminal penalty, a civil penalty, or another sanction, or create a cause of action, for failure to comply with its terms? No

C. Does this rule require specific expenditures or the report of information as a condition of compliance? Yes

Paragraph (l) of the rule states that each insurer offering partnership program policies in this state shall make regular reports to the Health and Human Services Secretary.

D. Is it likely that the rule will directly reduce the revenue or increase the expenses of the lines of business of which it will apply or applies? No

IV. Regulatory Restriction Requirements under S.B. 9. Note: This section only applies to agencies described in R.C. 121.95(A).

19. Are you adding a new or removing an existing regulatory restriction as defined in R.C. 121.95? Yes

A. How many new regulatory restrictions do you propose adding to this rule? 0

B. How many existing regulatory restrictions do you propose removing from this rule? 13

(D) - Shall

(D) - Shall

(E)(2)(a) Shall

(E)(2)(b) Shall

(E)(2)(c) Shall

(E)(2)(d) Shall

(E)(4)(b) Shall

(E)(5)(a) Shall

(E)(5)(b) Shall

(E)(6)(a) Shall

(E)(11) Shall

(J) Shall not

(J) shall

C. If you are not removing existing regulatory restrictions from this rule, please list the rule number(s) from which you are removing restrictions.
Not applicable.

D. Please justify the adoption of the new regulatory restriction(s).

Not Applicable

3901-4-02

Long-term care partnership program.**(A) Purpose**

The purpose of this rule is to implement a state long-term care partnership program in Ohio in accordance with sections 3923.41 to 3923.49 and 5164.86 of the Revised Code.

(B) Authority

This rule is promulgated pursuant to the authority vested in the superintendent under sections 3901.041, 3923.44, and 3923.47 of the Revised Code.

(C) Applicability

This rule applies to long-term care insurance that is intended to qualify under the state's long-term care partnership program.

(D) Definitions

For purposes of this rule, the definitions set forth in section 3923.41 of the Revised Code and in rule 3901-4-01 of the Administrative Code ~~shall~~ have the same meaning as if such definitions were fully set forth herein. The term "policy" ~~shall also include~~ includes a certificate issued as evidence of coverage under a group insurance policy.

(E) Offers of exchange

- (1) Within one hundred eighty days of the date that an insurer begins to advertise, market, offer, sell or issue policies that qualify under the state long-term care partnership program, the insurer shall offer, on a one time basis, in writing, to all existing policyholders and certificate holders that were issued long-term care coverage by the insurer on or after August 12, 2002, the option to exchange their existing long-term care coverage for coverage that is intended to qualify under the state's long-term care partnership program (partnership plan). The written offer of exchange may be in electronic or paper copy form and shall include a long-term care partnership program exchange notification, appendix A to this rule, or a form that is substantially similar in content.
- (2) An exchange occurs when an insurer offers a policyholder or certificate holder (hereinafter "insured") the option to replace an existing long-term care insurance policy with a policy that qualifies as a partnership plan, and the insured accepts the offer to terminate the existing policy and accepts the new policy. In making an offer to exchange, an insurer shall comply with all of the following requirements:

- (a) The offer ~~shall be is~~ made on a nondiscriminatory basis without regard to the age or health status of the insured;
- (b) The offer ~~shall remain remains~~ open for a minimum of ninety days from the date of electronic transmission or paper copy mailing by the insurer;
- (c) At the time the offer is made, the insurer ~~shall provide provides~~ the insured a copy of appendix A to this rule or a form that is substantially similar in content; and
- (d) The offer and the materials required in paragraph (E)(2)(c) of this rule ~~shall be are~~ accessible to insureds in paper copy form upon request.

(3) Notwithstanding paragraphs (E)(1) and (E)(2) of this rule,

- (a) An offer to exchange may be deferred for any insured who is currently eligible for benefits under an existing policy or who is subject to an elimination period on a claim, but such deferral shall continue only as long as such eligibility or elimination period exists; and
- (b) An offer to exchange does not have to be made if the insured would be required to purchase additional benefits to qualify for the state long-term care partnership program and the insured is not eligible to purchase the additional benefits under the insurer's new business, long-term care, underwriting guidelines.

(4) If the new policy has an actuarial value of benefits equal to or lesser than the actuarial value of benefits of the existing policy, then all of the following apply:

- (a) The new policy shall not be underwritten; and
- (b) The rate charged for the new policy ~~shall be is~~ determined using the original issue age and risk class of the insured that was used to determine the rate of the existing policy.

(5) If the new policy has an actuarial value of benefits exceeding the actuarial value of the benefits of the existing policy, then all of the following apply:

- (a) The insurer ~~shall apply applies~~ its new business, long-term care, underwriting guidelines to the increased benefits only; and
- (b) The rate charged for the new policy ~~shall be is~~ determined using the method set forth in paragraph (E)(4)(b) of this rule for the existing benefits,

increased by the rate for the increased benefits using the then current attained age and risk class of the insured for the increased benefits only.

- (6)
 - (a) The new policy offered in an exchange shall be on a form that is currently offered for sale by the insurer in the general market and the effective date of the partnership plan policy ~~shall be~~ is the same as the new policy.
 - (b) For purposes of implementing the exchange requirement set forth in paragraph (E)(1) of this rule, an insurer may also implement exchanges via any policy form that the superintendent has approved as being partnership-qualified, even if that long-term care insurance policy form is no longer offered or marketed. The superintendent may, at the superintendent's sole discretion, extend the one hundred eighty day time period referenced in paragraph (E)(1) of this rule to allow for implementation of exchanges on a long-term care insurance policy form no longer offered or marketed.
- (7) In the event of an exchange, the insured shall not lose any rights, benefits or built-up value that has accrued under the original policy with respect to the benefits provided under the original policy, including, but not limited to, rights established because of the lapse of time related to pre-existing condition exclusions, elimination periods, or incontestability clauses.
- (8) Insurers may complete an exchange by: issuing a new policy; amending an existing policy with an endorsement or rider; or revising the schedule of benefits.
- (9) The requirements of rule 3901-4-01 of the Administrative Code shall apply to exchanges including, but not limited to, the requirements relating to suitability. However, policies issued pursuant to this rule shall not be considered replacements if issued by the same insurer that issued the existing policy and shall therefore not be subject to paragraphs (N) and (O) in rule 3901-4-01 of the Administrative Code replacement standards.
- (10) The offer of exchange required by paragraph (E) of this rule only applies to products issued by an insurer that are comparable to the types of policy forms (e.g. group policies or individual policies) offered by the insurer which are qualified as partnership plans. For example, if an insurer offers a comprehensive individual long-term care insurance policy qualified as a partnership plan, it is only required to offer exchanges to comprehensive individual long-term care insurance policyholders who were issued coverage on or after August 12, 2002.

In this example, since only an individual policy is qualified as a partnership plan, exchange offers would not be required to be made to group certificate holders under a group policy.

(11) For those insureds with long-term care insurance policies issued before August 12, 2002, any insurer may offer any insured an option to exchange an existing policy for a policy that qualifies as a state long-term care insurance partnership plan. The requirements set forth in paragraphs (E)(2) to (E)(9) of this rule shall apply to any such exchange.

(F) Filing requirements for long-term care insurance partnership program policies.

- (1) Any policy that is intended to qualify as a partnership plan must be filed with the superintendent in accordance with section 3923.02 of the Revised Code prior to use, and such filing shall include the partnership program certification form attached as appendix B to this rule, signed by an officer of the company.
- (2) Insurers intending to make use of a previously filed qualifying partnership policy shall submit to the superintendent a partnership program certification form (appendix B to this rule) signed by an officer of the company with respect to each such policy form filed. For each policy form, the partnership program certification form (appendix B to this rule) shall identify the policy by the original form number and filing date.
- (3) If an insurer intends to amend a previously filed policy with an endorsement or rider in order to bring the policy into compliance with the partnership program, the insurer shall file the endorsement or rider with the superintendent prior to use, and the filing shall include a partnership program certification form (appendix B to this rule) signed by an officer of the company for each policy to be amended by the endorsement or rider, which shall include the original form number and filing date of the previously filed policy.
- (4) Insurers using appendix A or appendix C to this rule do not have to file the forms with the superintendent before use. However, if the insurer modifies the content of appendix A or appendix C to this rule or intends to use another form, even though substantially similar in content, the form must be filed with the superintendent before use.

(G) Modifications to inflation protection

Modification or elimination of inflation protection after the date of purchase as specified in divisions (O)(1) to (O)(3) of section 3923.44 of the Revised Code is not

a change that affects the partnership qualified status of a policy that was qualified under the partnership program as of the date of issue.

(H) The partnership program disclosure form

For policies intended to qualify under the partnership program,

- (1) The agent or insurer shall give the consumer a partnership disclosure notice, either using appendix C to this rule or a notice substantially similar in content, along with the outline of coverage required by division (I) of section 3923.44 of the Revised Code at the time of solicitation;
- (2) In the case of a policy issued to a group where an outline of coverage is not delivered, the agent or insurer shall deliver copies of a partnership disclosure notice, either using appendix C to this rule or a notice substantially similar in content, along with the enrollment forms; or
- (3) In the case of a life insurance policy that offers long-term care insurance as a term of the policy or in a rider, the agent or insurer shall give the consumer a partnership disclosure notice, either using appendix C to this rule or a notice substantially similar in content, along with the policy summary at the time of solicitation.
- (4) In addition to assuring that either a copy of appendix C to this rule or a notice substantially similar in content is provided to the consumer at the time of the initial solicitation, or to the group at the time the enrollment forms are delivered, the insurer shall also assure that a copy of appendix C to this rule or a notice substantially similar in content, is provided no later than partnership policy delivery.

(I) Data reporting

Each insurer offering partnership program policies in this state shall make regular reports to the United States secretary of health and human services that include such information as required by law or as the secretary determines is appropriate for the administration of the partnership program.

(J) Severability

~~If any paragraph, term, or provision of this rule is adjudged invalid for any reason, the judgment shall not affect, impair or invalidate any other paragraph, term, or provision of this rule, but the remaining paragraphs, terms, and provisions shall be and continue in full force and effect. If any portion of this rule or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions~~

or applications of the rule or related rules which can be given effect without the invalid portion or application, and to this end the provisions of this rule are severable.

Effective:

Five Year Review (FYR) Dates: 6/28/2024

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 3901.041, 3923.44, 3923.47
Rule Amplifies: 3923.41 to 3923.49
Prior Effective Dates: 09/10/2007, 01/01/2009, 04/05/2013, 11/15/2018,
11/14/2021

3901-4-02

1

APPENDIX A**Date****Company Name****Address****Contact information****Other company identifiers****Insured's name****Address****Insured's policy/certificate number****Effective date/policy issue date****“The Long-Term Care Partnership Exchange Notification Form”**

Our company participates in Ohio's long-term care partnership program by offering long-term care insurance policies that meet certain state and federal requirements. Under the partnership program, policies that meet these requirements may allow you to protect a portion of your assets from medicaid's "spend down" requirements if you should ever need to apply for medicaid benefits to pay for long-term care expenses in the future. Partnership program policies may allow you to keep a dollar of your own assets for every dollar of benefits paid by the policy for long-term care services should you need to apply for Medicaid.

Although we sell long-term care insurance policies that qualify as partnership plan policies, **the policy you currently have with us does not qualify for the partnership program**. Therefore, we are notifying you that you may be able to exchange your current long-term care policy for a new policy that qualifies under the partnership program.

However, before you consider exchanging your current long-term care policy for a policy that qualifies under the partnership program, there are several things you should know:

1. You may be required to answer health questions that will determine whether we will issue you a new policy (medical underwriting).
2. Since your current policy may be out of date and, therefore, does not qualify as a partnership plan policy, you may be required to update your plan by adding benefits. Carefully consider any change in benefits that may increase your costs.

3. The premium for the new policy may be higher than the premium you pay for your existing policy.
4. If you move to a state that does not maintain a partnership program or does not recognize your plan as a partnership plan, you would not receive the asset protection under the medicaid laws of that state.
5. Since the partnership program is based on current federal and state laws, it is subject to change. If the laws are changed, the partnership plan policies may not offer the same protections in the future as they do now.

If you would like more information about this offer to exchange your existing long-term care insurance policy for a policy that qualifies under the state's partnership program, please call us at _____ or write to us at: _____.

If, after you learn more about the partnership plan and any additional costs or benefit updates that may be required, and you decide to accept the offer to exchange your existing policy for a new, partnership plan policy, we may ask you to complete certain requirements before determining whether we can issue you a policy, such as completing an application and providing medical records.

Once you know all the additional costs, if any, and we have determined that you qualify for any additional benefits that may be required, in order to effect the completion of the exchange of your old long-term care policy for a new, partnership policy, we may send you a new policy or new certificate or we may send you an endorsement or rider that will amend your existing policy so that it qualifies under the state's long-term care partnership program.

If you have general questions about Ohio's long-term care partnership program and medicaid, please call the Ohio medicaid office at _____.

If you have questions about long-term care insurance in general, please call the Ohio department of insurance at _____.

3901-4-02

1

APPENDIX B**“Partnership Program Policy Certification Form”**

DIRECTIONS: This certification must be completed and submitted with each long-term care policy or certificate that is intended to qualify under the state long-term care partnership program. The certification must be signed by an officer of the company with authority to bind the company. A separate certification must be completed for each policy form. A long-term care policy or certificate may not be issued in Ohio as a partnership program policy or certificate unless and until this certification has been submitted to the department of insurance and the policy or certificate has been filed for use with the department of insurance.

For newly-filed policy forms intended to qualify for the partnership program, this certification must be filed as part of the policy form filing. With respect to a previously filed form that qualifies for the partnership program, this certification shall be filed with the department identifying by form number and filing date the previously filed form. If an insurer is filing an endorsement or rider to amend a previously filed form in order to make the form compliant with the partnership program, this Certification must be filed with the endorsement or rider filing, and must identify the previously filed form by form number and filing date.

CERTIFICATION

Under section 1917(b)(5)(B)(iii) of the Social Security Act (42 U.S.C. 1396p(b)(5)(B)(iii)) and in accordance with sections 3901-4-01 and 3901-4-02 of the Ohio Administrative Code, the following insurer _____

(name) hereby submits information related to policy or certificate form _____ (form number) filed on _____ (date) to substantiate that the form includes all consumer protection requirements set forth in section 1917(b)(5)(A) of the Social Security Act (42 U.S.C. 1396p(b)(5)(A)) and that it includes certain specified provisions of the Long-Term Care Insurance Model Regulation and Long-Term Care Insurance Model Act promulgated by the National Association of Insurance Commissioners (NAIC), as adopted as of October 2000, hereinafter referred to herein as the “Model Regulation” and “Model Act,” respectively, which have been incorporated into Ohio law as provided for in sections 3923.41 to 3923.49 of the Revised Code and sections 3901-4-01 and 3901-4-02 of the Ohio Administrative Code.

Part I. General Information.

A. Name, address, and telephone number of issuer: _____

B. Policy form(s) covered by this certification, including the form number and filing date: _____

Specimen copies of each of the above policy forms, including any riders and endorsements, shall be provided with this certification if they have not been previously filed with the Department of Insurance for use in Ohio. Policy forms that have been previously filed with the Department for use in Ohio shall be provided upon request.

Part II. Questions regarding compliance with the Model Regulation, Model Act and Ohio law.

Please answer each of the following questions with respect to the policy forms identified in Part I(B), above.

For purposes of answering the questions below, any provision of the Model Regulation and Model Act listed below shall be treated as including any other provisions of the Model Regulation and Model Act necessary to implement the provision.

In order for a policy to qualify as a Long-Term Care Insurance Partnership Program Policy, the answers to all questions below should be “Yes” (or “N/A” where all requirements with respect to a provision cited herein are not applicable). If answers differ between policy forms (e.g., a requirement would be answered “Yes” for one form and “N/A” for another), you should use separate Certification for such policies.

(1) Do each of the policies identified in Part I(B) above (including certificates issued under a group insurance contract) comply with the following requirements of the Model Regulation, as contained in section 3901-4-01 of the Ohio Administrative Code?

Yes No N/A

A. Section 6A (relating to guaranteed renewal or noncancellability), other than paragraph (5) thereof, and the requirements of section 6B of the Model Act. (Section 3901-4-01(F)(1) of the Ohio Administrative Code; and section 3923.44(B) of the Revised Code.)

Yes No N/A

- B. Section 6B (relating to prohibitions on limitations and exclusions) other than paragraph (7) thereof. (Section 3901-4-01(F)(2) of the Ohio Administrative Code.)

Yes No N/A

- C. Section 6C (relating to extension of benefits). (Section 3901-4-01(F)(3) of the Ohio Administrative Code.)

Yes No N/A

- D. Section 6D (relating to continuation or conversion of coverage). (Section 3901-4-01(F)(4) of the Ohio Administrative Code.)

Yes No N/A

- E. Section 6E (relating to discontinuance and replacement of policies). (Section 3901-4-01(F)(5) of the Ohio Administrative Code.)

Yes No N/A

- F. Section 7 (relating to unintentional lapse). (Section 3901-4-01(G) of the Ohio Administrative Code.)

Yes No N/A

- G. Section 8 (relating to disclosure), other than sections 8F, 8G, 8H, and 8I thereof. (Section 3901-4-01(H) of the Ohio Administrative Code.)

Yes No N/A

- H. Section 9 (relating to required disclosure of rating practices to consumer). (Section 3901-4-01(I) of the Ohio Administrative Code.)

Yes No N/A

- I. Section 11 (relating to prohibitions against post-claims underwriting). (Section 3901-4-01(K) of the Ohio Administrative Code.)

Yes No N/A

- J. Section 12 (relating to minimum standards). (Section 3901-4-01(L) of the Ohio Administrative Code.)

Yes No N/A

- K. Section 14 (relating to application forms and replacement coverage). (Section 3901-4-01(N) of the Ohio Administrative Code.)

Yes No N/A

- L. Section 15 (relating to reporting

requirements). (Section 3901-4-01(O) of the Ohio Administrative Code.)

Yes ____ No ____ N/A ____

- M. Section 22 (relating to filing requirements for marketing). (Section 3901-4-01(U) of the Ohio Administrative Code.)

Yes ____ No ____ N/A ____

- N. Section 23 (relating to standards for marketing), including inaccurate completion of medical histories, other than paragraphs (1), (6), and (9) of section 23C. (Section 3901-4-01(V) of the Ohio Administrative Code.)

Yes ____ No ____ N/A ____

- O. Section 24 (relating to suitability). (Section 3901-4-01(W) of the Ohio Administrative Code.)

Yes ____ No ____ N/A ____

- P. Section 25 (relating to prohibition against preexisting conditions and probationary periods in replacement policies or certificates). (Section 3901-4-01(X) of the Ohio Administrative Code.)

Yes ____ No ____ N/A ____

- Q. The provisions of section 26 relating to contingent nonforfeiture benefits. (Section 3901-4-01(AA) of the Ohio Administrative Code.)

Yes ____ No ____ N/A ____

- R. Section 29 (relating to standard format outline of coverage). (Section 3901-4-01(DD) of the Ohio Administrative Code.)

Yes ____ No ____ N/A ____

- S. Section 30 (relating to requirement to deliver shopper's guide). (Section 3901-4-01(EE) of the Ohio Administrative Code.)

(2) Do each of the policies identified in Part I(B) above (including certificates issued under a group insurance contract) comply with the following requirements of the Model Act?

Yes ____ No ____ N/A ____

- A. Section 6C (relating to preexisting conditions). (Sections 3923.44(B), (C) and

(D) of the Revised Code.)

Yes No N/A

- B. Section 6D (relating to prior hospitalization). (Sections 3923.44(E) and (F) of the Revised Code.)

Yes No N/A

- C. The provisions of section 8 relating to contingent nonforfeiture benefits. (Section 3923.442 of the Revised Code.)

Yes No N/A

- D. Section 6F (relating to right to return). (Section 3923.44(H) of the Revised Code.)

Yes No N/A

- E. Section 6G (relating to outline of coverage). (Section 3923.44(I) and (M) of the Revised Code.)

Yes No N/A

- F. Section 6H (relating to requirements for certificates under group plans.) (Section 3923.44(J) of the Revised Code.)

Yes No N/A

- G. Section 6J (relating to policy summary). (Section 3923.44(K) of the Revised Code.)

Yes No N/A

- H. Section 6K (relating to monthly reports on accelerated death benefits). (Section 3923.44(L) of the Revised Code.)

Yes No N/A

- I. Section 7 (relating to incontestability period). (Section 3923.441 of the Revised Code.)

Part III. Inflation Protection.

Yes No

Do each of the policies identified in Part I(B) above (including certificates issued under a group insurance contract) comply with the partnership program inflation protection requirements of sections 3923.44(O), (P) and (Q) of the Revised Code.)

Part IV. Certification.

As an officer of the insurer, I hereby certify that the answers, accompanying documents, and other information set forth herein for certification of the listed policy form or forms are to the best of my knowledge and belief, true, correct, and complete and that the policies identified in this form meet all of the consumer protection requirements pertaining to long-term care insurance partnership policies for the State of Ohio. I understand that false, inaccurate or incomplete information on this form or accompanying documents may result in disapproval of listed policies for use in Ohio and other administrative sanctions.

Signature Date:

Insurer contact:

Name of Certifying Officer: _____
Title of Certifying Officer: _____

Name of Company Contact _____
(If other than certifying officer)

Phone Number: _____

Fax Number: _____

E-mail Address: _____

Mailing Address: _____

3901-4-02

1

APPENDIX C**Date****Company Name****Address****Contact information****Other company identifiers****Insured's name****Address****Insured's policy/certificate number****Effective date/policy issue date****“Ohio’s Long-Term Care Insurance Partnership Disclosure Notice”****Note: Please keep a copy of this notice****Partnership policy status.**

Insurance companies can voluntarily agree to participate in the Ohio long-term care insurance partnership program by offering long-term care insurance policies that meet certain state and federal requirements (partnership plan). Our company has chosen to participate in this program. Therefore, the long-term care insurance policy you are considering purchasing or have purchased qualifies as a partnership plan.

What does this mean to you?

Under the partnership program, if you own a long-term care insurance policy that qualifies as a partnership plan, you may be able to protect some of your assets from medicaid's "spend down" requirements if you should ever have to apply for medicaid benefits. For example, if you have a policy that qualifies as a partnership plan, you may be able to shield one dollar of your assets under medicaid for every dollar of benefits the policy pays for your long-term care. **Please note that the purchase of a partnership plan does not automatically qualify you to receive benefits under medicaid.** Medicaid has certain requirements that must be met in order to receive benefits under a state medicaid program.

What could disqualify a plan as a partnership plan?

If any changes are made to the plan once it has been purchased, these changes could affect whether the plan will continue to be qualified as a partnership plan.

Therefore, if you purchase a partnership plan or have purchased one, ***before you make any change to the plan (e.g., decrease the level of benefits), you should consult with us to determine the effect of the proposed change.*** In addition, if you should move to a state that does not maintain a partnership program or does not recognize the policy as a qualified partnership plan under the laws of that state, any payment of long-term care benefits under the policy would not protect your assets under the medicaid program.

State and federal law governing partnership plan policies

The information contained in this notice is based on current Ohio and federal laws. However, please be aware that these laws are subject to change at any time in the future, which changes could result in the modification, reduction or even the elimination of the medicaid-asset protection feature.

Questions?

Should you have questions regarding the long-term care insurance partnership program policy you are considering purchasing or have purchased, please contact at _____.

If you have general questions about Ohio's partnership program and how it works with Ohio's medicaid laws, please call the Ohio medicaid office at _____.

If you have questions about long-term care insurance in general, please call the Ohio department of insurance at _____.



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Joseph Baker, Director

Business Impact Analysis

Agency Name: Ohio Department of Insurance

Rule Contact Name: Loretta Medved

Rule Contact Information: 614-644-0239

loretta.medved@insurance.ohio.gov

Regulation/Package Title (*a general description of the rules' substantive content*):

Long-term care.

Rule Number(s): 3901-4-01

3901-4-02

Date of Submission for CSI Review: January 5, 2024

Public Comment Period End Date: January 14, 2024, 11:59 PM

Rule Type/Number of Rules:

New/ rules No Change/ rules (FYR?)
 Amended/ **2** rules (FYR? **2023**) 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 require 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.

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 rule is being amended to reduce regulatory restrictions and make technical amendments.

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 reduce regulatory restrictions.

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

Sections 3901.041, 3923.44, 3924.47, and 3901.41 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)?

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.

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

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

These regulations provide transparent guidance for businesses and individuals engaging in the sale of insurance products. The department will see a decrease in confusion surrounding such requirements as well as a decrease in complaints and or damages to consumers, given that the agent or business has completed their own licensing requirements established in these regulations.

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.*

In early November 2023 the department sent an email to stakeholders informing them that the rules have been posted to the department webpage for a two week comment period. Drafts of the rules have remained online for review since then. Stakeholders included; 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, as well as insurance companies.

10. 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.

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?

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.

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.*

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.

13. 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 and the partnership program is exclusive to the department and the rules do not duplicate any other rules 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 staff reviews filings for long-term care products and assists Ohio consumers with complaints or questions regarding their long-term care plan.

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.

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.

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.)

Proposed amendments will reduce regulatory restrictions.

17. 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.

Regulatory Flexibility

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

The regulations set forth in this rule package are in place to create uniformity among insurance agents doing business in the state of Ohio. Standards of practice for providers, associated fees and violations must remain consistent for all individuals and businesses accordingly in order to sustain a uniform and competitive marketplace for agents and consumers alike. Regardless of size, it is essential that these regulations are applied consistently to maintain consumer protections.

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?

Minor errors would be handled by advising the agent or insurer and giving them an opportunity to remedy the omission.

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 provides filing information and instructions on its web site.



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Joseph Baker, Director

MEMORANDUM

TO: Loretta Medved, Ohio Department of Insurance

FROM: Caleb White, Business Advocate

DATE: May 10, 2024

RE: **CSI Review – Long-Term Care (OAC 3901-4-01 and 3901-4-02)**

On behalf of Lt. Governor Jon Husted, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Department as provided for in ORC 107.54.

Analysis

This rule package consists of two amended rules proposed by the Ohio Department of Insurance (ODI) as a part of the statutory five-year review process. This rule package was submitted to the CSI Office on January 5, 2024, and the public comment period was held open through January 14, 2024. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on January 5, 2024.

The rules in this package set forth regulations surrounding long-term care insurance which is a product that helps to cover the costs of home care, assisted living, adult daycare, hospice care, and nursing homes for individuals with a chronic illness or disability that cannot care for themselves over the course of a long period. Ohio Administrative Code (OAC) 3901-4-01 sets forth the definitions, requirements, and standards surrounding the long-term care insurance product, in addition to marketing and disclosure requirements insurers are to follow when they are selling long-term care insurance. Additionally, this rule also includes nine appendices containing worksheets, information, forms, letters, templates, and notices for insurers and policy holders to use in relation to the sale or purchase of long-term care insurance. This rule is amended to update and streamline language, update

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

language related to reporting annual values and lifetime projections following a premium rate schedule increase, and update terminology related to dementia. OAC 3901-4-02 establishes the long-term care partnership program. This rule establishes the definitions relating to this program and the requirements insurers and plans must meet to qualify for and remain in the program. This rule also contains two appendices which contain forms related to the program. This rule is amended to update and streamline language.

During early stakeholder outreach, ODI posted the draft rules on its website and emailed stakeholders in early November 2023 informing them of a two-week comment period. The stakeholders included 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, in addition to insurance companies. No comments were received during this period. During the CSI public comment period, ODI received two comments. The first comment came from the American Council of Life Insurers (ACLI). The ACLI expressed concerns over a proposed change to OAC 3901-4-01 which updated requirements for reporting projections following a premium rate schedule increase. The ACLI expressed concerns that this change would make the rule inconsistent with the corresponding NAIC Long-Term Care Model Regulation which has been widely adopted by states and would make Ohio inconsistent with other states regarding long-term care insurance. In response to this comment ODI decided to remove this amendment to the rule and revert the language back to the current requirement. The second comment came from the Ohio Department of Aging which had several suggestions for language related to adult daycare, home health care, and dementia. In response to this comment ODI adopted the Department of Aging's suggestions related to dementia but elected not to adopt the other changes as they did not align with the NAIC model regulation.

The business community impacted by the rules includes insurance companies and agents that choose to sell long-term insurance care products, as well as insurance companies that choose to offer partnership qualified plans. The adverse impacts created by the rules include the time and resources required to meet the rule requirements which includes developing policy forms and rates and filing them with ODI as well as the \$50 filing fee which can be charged for each form if they are filed separately. ODI states that the adverse impacts to business are justified to provide the standards for insurers to follow for the development and solicitation of long-term care insurance policies and for the selling of long-term care partnership qualified plans; this in turn protects the state insurers and consumers, as well as provides uniformity.

Recommendations

Based on the information above, the CSI Office has no recommendations on this rule package.

Conclusion

The CSI Office concludes that ODI should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.



Mike DeWine, Governor
Jon Husted, Lt. Governor

Judith L. French, Director

DATE: 06/28/2024 2:06 PM

50 West Town Street

Third Floor – Suite 300

Columbus, OH 43215-4186

(614) 644-2658

MEMORANDUM

To: Caleb White, Business Advocate, Common Sense Initiative Office

CC: Joseph Baker, Director of the Common Sense Initiative Office

From: Loretta Medved, Policy Analyst

Date: April 30, 2024

Re: Summary of conversation with Department of Aging

On January 30, 2024, the Ohio Department of Insurance (the Department) conducted a meeting with the Ohio Department of Aging via teams. During this conversation we reviewed the comments previously submitted by Aging. It was determined we would accept the suggestions that updated terminology surrounding dementia. and benefited senior citizens, while balancing the Departments adherence to the National Association of Insurance Commissioners (NAIC) model act.

The Department is grateful for the time and expertise Aging provided.

If you have any questions, please contact Loretta Medved at 614-644-0239 or Loretta.Medved@insurance.ohio.gov.

Accredited by the National Association of Insurance Commissioners (NAIC)

Consumer Hotline: 1-800-686-1526 Fraud Hotline: 1-800-686-1527 OSHIIP Hotline: 1-800-686-1578

TDD Line: (614) 644-3745

(Printed in house)



Mike DeWine, Governor

Judith L. French, Director

Jon Husted, Lt. Governor

50 West Town Street

Third Floor – Suite 300

Columbus, OH 43215-4186

(614) 644-2658

MEMORANDUM

To: Caleb White, Business Advocate, Common Sense Initiative Office

CC: Joseph Baker, Director of the Common Sense Initiative Office

From: Loretta Medved, Policy Analyst

Date: May 17, 2024

Re: Response to CSI Review – Long-Term Care (OAC 3901-4-01 and 3901-4-02)

On May 10, 2024, the Ohio Department of Insurance (the Department) received the Recommendation Memorandum (CSI Recommendation) from the Common Sense Initiative Office for rule the packages containing the following rules; 3901-4-01, and 3901-4-02.

The CSI Recommendation stated that the office does not have any recommendations regarding this rule package, and therefore should proceed with a formal filing of the rule package.

At this time, the Department plans to move forward with the filing of this rule package with the Joint Committee on Agency Rule Review.

If you have any questions please contact Loretta Medved at 614-644-0239 or Loretta.Medved@insurance.ohio.gov.