

Insurance Regulatory Sandbox; Innovation Waiver Regulation

December 9, 2019

Reg. I-2019-03

Section 1. Purpose

The purpose of this regulation is to set forth the requirements and standards for the submission, granting, denying, monitoring, and revocation of innovation waivers, and the monitoring, examination, and supervision of, and reporting by, persons applying for or granted innovation waivers (collectively, “participants”), in each case pursuant to 8 V.S.A. § 15a.

Section 2. Authority.

This regulation is promulgated under the authority granted to the Commissioner by 8 V.S.A. § 15a.

Section 3. Applications for innovation waivers.

- A. An application for an innovation waiver shall be submitted in writing to the Commissioner at least 60 days prior to the proposed effective date of the waiver. An application shall be in a form acceptable to the Commissioner and include the following:
 1. The specific waiver requested, including the precise scope and duration requested.
 2. The relevant facts the participant believes would justify a waiver under each of the criteria described in 8 V.S.A. § 15a(a).
 3. All information required by 8 V.S.A. § 15a(b).
 4. If the product or service proposed to be offered pursuant to the waiver involves the use of software, hardware, or other technology developed for the purpose of implementing or operating it, a detailed description of the operation and general content of technology to be utilized, including (a) the problem addressed by that technology and (b) the interaction between the technology and its users.
 5. A description of the participant’s personnel and technical expertise and whether any person substantially involved in the development, operation, management, or implementation of the product or service proposed to be offered pursuant to the waiver has been convicted of any state or federal criminal offense, or, if known to the participant, is currently under investigation for fraud, state or federal securities violations, any property-based offense, or any conduct for which a producer’s license could be denied, revoked, or non-renewed under the provisions of 8 V.S.A. § 4804.
 6. A sufficient plan to test, monitor, and assess the product or service proposed to be offered pursuant to the waiver and to winddown the offering of the product or service at the end of the waiver period or if the waiver is withdrawn, canceled, modified, or revoked by the Commissioner.

7. The proposed metrics by which the Commissioner may reasonably test the utility of the product or service proposed to be offered pursuant to the waiver.
 8. A copy of the disclosures required under 8 V.S.A. § 15a(e).
- B. Materials included in the application are public records pursuant to 1 V.S.A. § 317 and are subject to public inspection unless specifically exempted. In the event a participant or other person submitting materials into the record believes them to be exempt from public inspection:
1. Such person shall request a preliminary determination from the Department as to whether the materials are exempt from public inspection;
 2. The request shall include a detailed description of the material at issue and a detailed legal justification for the requested exemption;
 3. The participant shall bear the burden of establishing the exemption; and
 4. If the Department preliminarily determines that the materials are exempt, it will so inform the participant.
- C. The Commissioner may request additional information from the participant relative to the application and surrounding circumstances and may schedule a telephonic or in-person meeting between the participant and the Commissioner and/or his or her representatives.
- D. The burden of persuasion rests with the participant to demonstrate that the Commissioner should exercise his or her discretion to grant an innovation waiver.
- E. At least 30 days prior to granting an innovation waiver, the Commissioner shall provide public notice of the draft waiver on the Department's website. In making a determination as to whether to grant or deny a waiver, the Commissioner shall give due consideration to any public comment received about such application via mail, telephone, or electronic communication within 21 days of public notice being posted on the Department's website.
- F. An expedited application process shall be available to a participant who demonstrates, to the Commissioner's satisfaction, that the product or service proposed to be subject to a waiver is substantially similar to one for which a waiver has previously been granted by the Commissioner. The burden of persuasion rests with the participant to demonstrate substantial similarity. Upon receipt of an expedited application request, the Commissioner shall determine, within five business days, whether the product or service qualifies for an expedited application process. If the Commissioner so determines, then the Commissioner shall provide, within five business days, public notice of the application pursuant to 8 V.S.A. § 15a.

- G. Unless extended as provided in subsection H of this section, the Commissioner shall issue an order granting or denying a waiver within 60 days of receipt of a completed application. Failure of the Commissioner to grant or deny a waiver within the required time period shall be deemed a denial
- H. The Commissioner may extend by not more than 30 days the period provided in subsection G of this section if he or she notifies the application before expiration of the initial 60-day period.
- I. An order granting a waiver shall be in writing and shall contain a reference to the particular person, product or service, and statute, regulation, or bulletin to which the order pertains, a statement of the relevant facts and reasons upon which the order is based, and a description of the precise scope and duration of the waiver.
- J. The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the Commissioner. Each application for a waiver shall be evaluated by the Commissioner based on the unique, individual circumstances set out in the application or otherwise communicated to the Commissioner.
- K. A waiver, if granted, shall provide the narrowest exception possible to the provisions of a statute, regulation, or bulletin.
- L. The Commissioner may place any condition on a waiver that he or she finds desirable to protect the public safety, health, and welfare.

Section 4. Statutory deposit required.

- A. If a waiver is granted, the participant shall make a deposit of cash or marketable securities with the State Treasurer in an amount, subject to such conditions, and for such purposes as the Commissioner determines necessary for the protection of Vermont consumers. The Commissioner shall determine a deposit amount that is commensurate with the risk profile of the product or service being offered pursuant to the waiver.
- B. To enable the Commissioner to determine the appropriate amount of statutory deposit required, a participant shall provide to the Commissioner, at least 60 days prior to the proposed effective date of the waiver, an actuarially determined estimate of total premium to be written and total claims to be paid during the waiver period.
- C. In no event shall the amount of a required statutory deposit be less than \$10,000. The amount may be increased or decreased by the Commissioner at any time during the waiver period based on risk profile.
- D. Except to the extent it would contravene applicable provisions of 9A V.S.A. Article 9, the State of Vermont shall be deemed to control the funds on deposit and to have a lien on the funds for the benefit of Vermont policyholders. The lien so created shall be superior to any lien filed by a general creditor of the participant.
- E. A statutory deposit may be used by the Commissioner at any time during the waiver period for the protection of Vermont consumers.

- F. Interest on the deposit shall inure to the benefit of the participant until such time as the Commissioner determines the deposit shall be used for the benefit of Vermont consumers.

Section 5. Monitoring, examination, and supervision of, and reporting by, participants.

- A. Quarterly, a participant shall submit a report to the Commissioner containing the following information:
1. The total number of policies written for the product or service for which the waiver has been granted for (a) the period since the waiver was granted and (b) the period since the date of the previous report submitted pursuant to this section.
 2. The total amount of premium collected with respect to the product or service for which the waiver has been granted for (a) the period since the waiver was granted and (b) the period since the date of the previous report submitted pursuant to this section.
 3. The total number and dollar amount of claims made with respect to the product or service for which the waiver has been granted for (a) the period since the waiver was granted and (b) the period since the date of the previous report submitted pursuant to this section.
 4. The total number and dollar amount of claims paid with respect to the product or service for which the waiver has been granted for (a) the period since the waiver was granted and (b) the period since the date of the previous report submitted pursuant to this section.
 5. Material changes in the business plan, underwriting or claims practices for the product or service for which the waiver was granted.
 6. Any other information the Commissioner reasonably requires.
- B. In order to evaluate compliance with the conditions of the waiver, the Commissioner may examine the affairs, transactions, accounts, records, and any other matters deemed necessary of the participant or its independent account, including workpapers and assets of the participant, as often as the Commissioner deems necessary. In accordance with 8 V.S.A. § 18, the reasonable cost of any such examination shall be borne by the participant.
- C. Upon reasonable notice, except in such case as the Commissioner determines warrant immediate action, the Commissioner may withdraw, cancel, modify, or revoke an innovation waiver if he or she finds any of the following:
1. The participant withheld or misrepresented material facts relevant to the of the waiver.
 2. Alternate means for ensuring the public policy goals of any waived law, regulation, or bulletin have been demonstrated to be insufficient.
 3. The participant or any agent or employee of the participant has failed to comply with any of the conditions contained in the waiver order.

4. The waiver is contrary to the public health, safety, or welfare in light of newly discovered evidence or changed circumstances.
5. Any other information that would have warranted denial of the waiver application.

Section 6. Effective Date.

This regulation shall become effective January 1, 2020.