

**MEMORANDUM**

**TO:** Michael Farley, Assistant Director for Legislative Affairs, Ohio Department of Insurance

**FROM:** Mark Hamlin, Director of Regulatory Policy

**DATE:** November 29, 2013

**RE:** **CSI Review – Health Insurance Advertising and Unfair Practices (OAC 3901-8-07 and 3901-8-11)**

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On behalf of Lt. Governor Mary Taylor, 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 Agency as provided for in ORC 107.54.

**Analysis**

This rule package consists of two rules being proposed by the Ohio Department of Insurance. Ohio Administrative Code (OAC) Chapter 3901-8 outlines the regulation of health insurance in Ohio, and the two rules in this package deal specifically with prohibited activities and practices by insurers. OAC 3901-8-07 establishes detailed regulations intended to prevent false and misleading advertising and solicitations. OAC 3901-8-11 addresses unfair trade practices by third-party payers. The Department has reviewed both rules pursuant to the five-year review requirement of ORC 119.032, and is proposing both rules with no changes. The rules were initially submitted as two separate rule packages with separate BIAs. However, because the rules are closely related to each other, the CSI Office has reviewed them together.

Both of the rules in this package outline a number of very specific disclosures that must be provided, and activities that are prohibited. Rule 3901-8-07 details assertions and information that may not be provided in advertising, marketing, or solicitations unless the information is true. It also provides standards for how certain information is presented to potential consumers in order to ensure that the claims are not misleading. Under the rule, insurers are required to develop

marketing procedures, to retain marketing-related records that are subject to inspection by the Department, and to submit an annual statement to the Department affirming compliance with the provisions of the rule. Rule 3901-8-11 expands on the prohibitions in ORC 3901.20 and 3901.21 related to unfair and deceptive practices. The rule details additional specific requirements and prohibitions related to claim payments, coverage for coordinated care, and reporting suspected fraud by a provider or beneficiary. In addition, the rule requires the insurer to maintain records and establish a complaint procedure, and establishes potential penalties for violations of the rule. The adverse impacts from the requirements and prohibitions in these two rules represent standard consumer protections.

Based on follow-up conversations with the CSI Office related to the adverse impact of the rules and the stakeholder outreach for developing the rules, the Department submitted revised BIAs on November 4, 2013. No comments were submitted during the CSI review period to suggest that the adverse impacts created by the rules are unduly burdensome. The CSI Office has determined that the rules justify the adverse impacts to businesses.

### **Recommendations**

For the reasons discussed above, the CSI Office does not have any recommendations for this rule package.

### **Conclusion**

Based on the above comments, the CSI Office concludes that the Department of Insurance should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.