

**MEMORANDUM**

TO: Vicki Rich, Ohio Department of Insurance

FROM: Cory Bailey, Regulatory Policy Advocate, Lt. Governor's Office

DATE: July 7, 2015

RE: CSI Review – Viaticals (OAC § 3901-9-01 through 3901-9-04)

On behalf of Lt. Governor Mary Taylor, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (R.C.) § 107.54, CSI has reviewed the abovementioned administrative rules and associated Business Impact Analysis (BIA). This memo represents CSI's comments to the Agency as provided for in R.C. § 107.54.

Analysis

On June 10, 2015, the Ohio Department of Insurance (ODI) submitted a rule package consisting of four rules to the CSI Office as part of the five-year rule review requirement contained in Ohio statute. The official public comment period closed on June 25, 2015 with no comments submitted.

The draft rule package establishes requirements for viatical providers and brokers in the state of Ohio. A viatical settlement takes place when a third party purchases a life insurance policy from a policyholder for a percentage of the face value. Upon the passing of the original policyholder, the third party collects the death benefit. According to the BIA, the purpose of the draft rules is to establish uniformity through common business practices and requirements in order to create a safe and transparent marketplace for the sale and purchase of viatical settlements.

The draft rules define the licensing and education requirements for viatical providers and brokers. The requirements have been drafted in accordance with the National Association of Insurance Commissioners (NAIC) Viatical Settlement Model Act and cover issues such as licensing fees, application forms, license renewal, and continuing education. Additionally, OAC § 3901-9-04 provides questions for insurance companies to include on life insurance applications in order to prevent stranger originated life insurance (STOLI), or life insurance policies created solely for the purpose of resale.

In the BIA, ODI defines the impacted business community as individuals and insurance agents pursuing registration as viatical settlement brokers and providers, as well as life insurance companies. Adverse impacts to business include the time and cost of complying with the licensing and education requirements. The CSI Office would add the standards for evaluation of reasonable payments found in OAC § 3901-9-01 as an additional adverse impact. The standards set the minimum amount a viatical provider must pay in a settlement, which depends on the policyholder's life expectancy.

Consumer protections are necessary given the nature of viatical settlements and the possibility for fraud. The draft rules align with national standards and drew no complaints from industry stakeholders during early stakeholder outreach or the CSI comment period. Following review of the draft rules, BIA, and stakeholder outreach, it has been determined that the standards espoused by the CSI Office have been met, and the adverse impacts of the draft rules are justified.

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 Ohio Department of Insurance should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.

cc: Mark Hamlin, Lt. Governor's Office