



MEMORANDUM

TO: Carrie Haughwout, Assistant Director of Policy and Product Coordination, Ohio Department of Insurance

FROM: Tess Eckstein, Regulatory Policy Advocate

DATE: August 16, 2016

RE: **CSI Review – Five-Year Review Part Three (OAC 3901-8-03 and 3901-8-09)**

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 amended rules being proposed by the Ohio Department of Insurance for review under the statutory five-year rule review requirement. The rule package was submitted to the CSI Office on July 19, 2016, and the comment period was held open until August 3, 2016. Two comments, both in opposition to amendments made to 3901-8-09, were received during this time.

Rule 3901-8-03 standardizes the forms used in the billing and reimbursement of healthcare, and encourages the use of electronic data interchange of healthcare expenses and reimbursements. Amendments are being proposed to address grammar, formatting, and citation references. The rule has also been updated to reflect a transition from ICD-9 to ICD-10 (a medical classification list), as mandated by the Centers for Medicare and Medicaid Services (CMS) since 2014, as well as referenced in the ORC. Rule 3901-8-09 defines unfair or deceptive acts or practices in the solicitation or sale of Medicare supplemental sickness and accident health insurance policies. Amendments are being proposed to extend protection against unsolicited communications to electronic venues. In addition, various technical changes have been made, including removal of the term "broker," to align with the ORC.

All health insurance companies are impacted by 3901-8-03, while 3901-8-09 impacts companies and their agents who solicit and sell Medicare supplemental and accident health insurance policies. Adverse impacts associated with 3901-8-03 are employee time and costs associated with internal development, such as staff training and information technology updates. Adverse impacts associated with 3901-8-09 pertain to sanctions for failure to comply with the rule. If an insurer violates the unfair and deceptive practices statute and requirements of the rule, the Superintendent may issue an order to cease and desist and impose other administrative penalties, such as license revocation and/or order to pay back payments received as a result of the violation.

The BIA explains that adverse impacts arising from these rules are justified. Rule 3901-8-03 increases efficiency in medical billing and reimbursement of healthcare costs by standardizing the reimbursement process and reducing the number of carriers using different forms. Therefore, the rule serves as a consistent standard for the regulated community and helps achieve a balanced market. Rule 3901-8-09 protects Medicare-eligible persons against misleading actions from companies or agents who solicit or sell Medicare supplemental sickness and accident health insurance policies. The rule safeguards against financial harm by increasing consumer protections.

The Department posted both rules on its website, in addition to making trade associations representing insurance companies aware that the rules were due for a five-year review. In addition, an email requesting comment on the rules was sent to various stakeholders, interested parties, and trade associations who signed up for updates on the Department's rules and bulletins. From these distributions, the Department received no feedback. However, during the CSI public comment period, two comments were submitted. Both argued that the proposed amendments could have harmful consequences on the market because by not clearly stating which forms of communication would be forbidden, they would expressly forbid all telephonic and electronic advertisements.

In response to these comments, the Department amended the rule to clarify types of electronic outreach that are permissible: "These prohibitions on marketing through unsolicited contacts do not extend to advertisements through mass communications including direct mail..." This modification allows for advertising through mass emailing, social media messaging, or websites, while still prohibiting direct forms of these advertising methods. With these changes in place, the CSI Office determines the purpose of the rules to be 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