



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Sean McCullough, Director

MEMORANDUM

TO: Loretta Medved, Ohio Department of Insurance

FROM: Joseph Baker, Business Advocate

DATE: December 10, 2021

RE: **CSI Review – Standardized health claim form rule and solicitation and sale of Medicare supplemental accident and health policies. (OAC 3901-8-03 and 3901-8-09)**

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 no-change rules proposed by the Ohio Department of Insurance (Department) as a part of the statutory five-year review process. This rule package was submitted to the CSI Office on July 9, 2021, and the public comment period was held open through July 22, 2021. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI office on July 9, 2021. The Department concluded its evaluation of the comment and filed its response with the CSI Office on October 28, 2021.

The rules in this package establish standardized health claim forms for health insurance purposes and prohibit certain methods of soliciting individuals for participation in Medicare supplement insurance plans.

Ohio Administrative Code (OAC) 3901-8-03 standardizes health claim forms used in the billing and reimbursement of healthcare. The rule establishes definitions related to such forms and requires all issuers of policies or contracts of insurance, as well as administrators of self-funded

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employee benefit plans and other coverage providers to use specific claims forms depending on the type of claim. The rule further states that failure to use the appropriate claim form is considered an unfair and deceptive business practice.

OAC 3801-8-09 states that any implication that conveys the impression that any Medicare supplement insurance program being offered by a company or agent is affiliated with the federal government is considered an unfair or deceptive act or practice. The rule also classifies door-to-door solicitation, approaching individual applicants in common areas, and telephone and electronic solicitation of Medicare-eligible individuals as an unfair or deceptive act or practice. Additional activities deemed deceptive acts or practices under the rule include insurance agents representing themselves as a counselor or advisor in a manner that obscures the actual role of the agent, any attempt to induce an applicant to sign any blank form, application or document, failure to state affirmatively that the person is an insurance agent making the solicitation on behalf of an insurance company and that the payments will be made directly to the insurance company rather than a government entity both verbally and in writing, and any inaccurate or misleading description of the benefits provided by the program, among others.

During early stakeholder outreach, the Department shared the proposed rules with various interested parties including the Ohio Insurance Institute, the Association of Ohio Life Insurance Companies, the American Council of Life Insurance, the National Association of Insurance and Financial Advisors (NAIFA), the Ohio Association of Health Plans, and the Professional Independent Agents Association, among others. No comments were provided in response to the request for early stakeholder outreach.

During the CSI public comment period, one comment was received from NAIFA regarding the prohibition on certain forms of soliciting for Medicare supplement products. NAIFA suggested that entities selling Medicare supplement insurance products in neighboring states frequently contact Ohioans via telephone in violation of the rule's prohibition on such soliciting methods. NAIFA suggested that because Ohio companies abide by the rule, out-of-state businesses gain an unfair competitive advantage over Ohio businesses who are unable to sell their insurance products in this manner, and that the rule should therefore be revised to enable Ohio-based agents to also sell their insurance products in this manner, particularly since Ohio is one of only a few states in the nation with similar restrictions. The Department responded to the comment stating that Medicare is a complex program that the rule ensures that Medicare-eligible Ohioans are not inundated with unsolicited marketing materials and promotes consumer protection. The Department further noted that the soliciting regulations mirrored Centers for Medicare and Medicaid (CMS) guidelines, that consumer complaints have been reduced since the implementation of the rule, and that the rule ensured marketing parity between agents that sell

Medicare advantage plans and those that sell Medicare supplement plans (as CMS prohibits these types of marketing for Medicare advantage plans). Finally, the Department stated that it will increase industry awareness of the requirements in the rule to reduce and address violations by out-of-state entities.

The business community impacted by the rules includes health insurance companies in Ohio, as well as agents and companies soliciting and selling Medicare supplement sickness accident and health insurance policies. The adverse impact created by OAC 3901-8-03 includes the administrative effort necessary to identify, complete, and utilize the appropriate standardized form for health claims, as well as any training necessary to appropriately instruct employees in such processes. The adverse impact created by OAC 3901-8-09 includes the loss of potential business that may result from being unable to solicit business in the manners prohibited by the rule, as well as any administrative penalties that may result from acting in violation of the rule. The Department states that the adverse impact created by OAC 3901-8-03 is necessary to standardize processes and achieve a more efficient method of billing transactions, while the adverse impact created by OAC 3901-8-09 is necessary to ensure that companies are not inappropriately soliciting senior citizens.

Recommendations

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

Conclusion

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