

**MEMORANDUM**

TO: Tina Chubb, Ohio Department of Insurance
FROM: Mark Hamlin, Director of Regulatory Policy
DATE: June 11, 2013
RE: **CSI Review – Insurance Navigator Certification (OAC 3901-5-13)**

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 a single new rule being proposed by the Ohio Department of Insurance (ODI) as a result of recently-enacted House Bill 3. The rule was submitted to the CSI Office on May 22, 2013 and the comment period was held open through June 5, 2013. A revised BIA was requested by the CSI Office to provide additional detail about the nature of comments received during the early stakeholder process and about the potential adverse impacts to businesses.

The draft rule relates to requirements for insurance navigators, a new function established in ORC 3905.471 by House Bill 3. ORC 3905.471 establishes specific criteria for insurance navigators, including that they obtain certification from ODI. According to ODI, most of the provisions of draft OAC 3901-5-13 tie directly to specific statutory requirements.

In its revised BIA, the Department outlines a number of specific adverse impacts imposed on businesses by the rule, including educational requirements (24 hours of precertification education, four hours of annual continuing education, and eight hours of education for licensed insurance agents). Other impacts include an application and annual renewal fee of *up to* \$25 (ODI states in

the BIA that the actual fees will be \$10), a late renewal fee of \$50, an examination requirement to obtain certification, and administrative requirements related to the application and reporting operational changes to the Department. ODI justifies these impacts based on the statutory requirements of ORC 3905.471 and the need to provide consistent consumer protection for those utilizing insurance navigators. The CSI Office agrees that the adverse impacts in the draft rule are justified.

The Department's BIA describes outreach to a number of stakeholders prior to the actual development of rule language. As a result, much of the input received was conceptual in nature, and the Department states that most was incorporated into the rule, with the exception of suggestions that would have exceeded statutory authority.

Fifteen comments were received during the CSI review process. Of these, a number focused on language in the rule that exempts certain entities from the requirements of the rule and of the statutory provisions related to insurance navigators. As written, the rule proposes exemption of persons acting within the scope of their employment as licensed health care providers, federally qualified health centers, or nonprofit organizations whose purpose is to meet emergency needs through the distribution of food or other donated or purchased goods. The comments submitted ranged from encouraging the Department to eliminate the exemptions and require entities to work through certified navigators or licensed agents, to requests for exemptions of additional entity types. In follow-up discussions, the Department explained that its intention with the exemption provisions is to ensure that an organization which may currently assist clients in identifying options for health care coverage as part of a range of services being offered, is not forced to become certified and seek federal funding as a result of the new insurance navigator requirements. Within this context, the Department agreed that it would consider the suggestions for additional exemptions that are consistent with this goal, but it does not intend to eliminate the exemptions altogether.

None of the comments expressed opposition to the rule. Instead, additional comments included expressions of support and specific suggestions which attempt to clarify or modify certain provisions of the rule. Multiple commenters offered suggestions on language addressing requirements for licensed agents selling insurance within the exchange. These suggestions do not materially affect the adverse impact of the rules, but ODI indicated that it will closely review those suggestions that would clarify the intention of the rule, and will consider changes as appropriate.

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.