

**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 Coordination of Benefits and Third Party Administrators (OAC 3901-8-01 and 3901-8-05)**

---

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. OAC 3901-8-01 addresses the issue of coordination of benefits, and OAC 3901-8-05 establishes requirements for the licensing and regulation of third party administrators. 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.

Coordination of benefits is the method by which multiple insurance carriers coordinate the benefits of their plans to avoid duplicate payment of claims and ensure that the appropriate insurer is paying a claim. As defined in ORC 3902.12, primary health coverage means that a plan's benefits are paid without regard to the benefits of another plan, while secondary coverage means that benefits are determined by taking into consideration payment made by another plan. OAC 3901-8-01 amplifies the statutory requirements for coordination of benefits. Specifically, the rule outlines various administrative requirements for coordination of benefits including consumer disclosures, prohibited practices, determinations about order of benefits, and penalties for failure to comply

with the rule. The prescriptive nature of the rule and the potential penalties for noncompliance mean that virtually every requirement included in the rule constitutes an adverse impact to business. The BIA submitted by the Department justifies these impacts as necessary to ensure the orderly transfer of information and elimination of duplication. Without the rule, the Department indicates that the coordination of benefits (and ultimately payment for services) would be slower and more difficult.

Similarly, OAC 3901-8-05 establishes the framework for regulation of third party administrators, amplifying a detailed set of requirements outlined in ORC Chapter 3959. The Department's BIA defines a third party administrator as "any person that adjusts or settles claims in connection with life, dental, vision and health or disability insurance plans, self-insurance programs or other benefits plans." The rule establishes very specific requirements such as standards and requirements for licensing, prohibited activities, requirements related to solicitations, record-keeping and auditing requirements, annual reporting, and penalties for failure to comply. Again, the nature of the rule determines that virtually every requirement creates an adverse impact. The BIA cites consumer protection as the justification for the impacts in the rule.

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.