

**MEMORANDUM**

TO: Vicki Rich, Ohio Department of Insurance

FROM: Sean T. McCullough, Regulatory Policy Advocate

DATE: August 22, 2014

RE: **CSI Review – Insurance Agent and Education Provider Regulation (OAC §§ 3901-5-01; 3901-5-02; 3901-5-03; 3901-5-04; 3901-5-05; 3901-5-06; 3901-5-07; 3901-5-08; 3901-5-09.)**

On behalf of Lt. Governor Mary Taylor, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (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.

I. INTRODUCTION AND BACKGROUND

On July 1, 2014, the Ohio Department of Insurance (ODI) submitted a rule package containing a total of nine (9) rules; specifically, six (6) amended rules and three (3) no-change rules. ODI submitted these rules as a result of the five-year review requirement contained in R.C. § 119.032. The rules regulate various requirements for insurance agent licensure and continuing education (CE), along with CE and pre-license education provider requirements. ODI cites R.C. §§ 3901.041, 3901.043, 3901.20, 3905.16, 3905.486, 3905.95, 3905.481, 3905.484, 3905.12, 3905.04, and 3905.20 as authority to establish these rules. The official comment period ended July 15, 2014. One stakeholder comment was submitted during the CSI review period.

II. ANALYSIS

A. ADVERSE IMPACT ON BUSINESS

The scope of the impacted business community is comprised of all of Ohio's insurance agents, businesses selling insurance products, along with CE and pre-license education providers.

The rules contain various CE requirements for licensed insurance agents. The rules require agents wishing to use their published written work towards their CE requirements to submit written proof of authorship to ODI. A similar required showing exists for agents wishing to use their membership in a professional insurance association for credit towards CE requirements.

The rules also contain various requirements for businesses wishing to provide CE courses for agents. More specifically, a provider must submit an application to the Department, along with an application fee. The annual fee can range from \$25 to \$1,000 depending on the status for which the provider applied. Every provider must reapply annually to ODI for continued designation as a CE provider. Providers must also submit for each course to be offered certain information about the course (e.g., topic of the course, length of the course, method of instruction, course outline, etc.), along with a course application, prior to course approval by ODI. Each provider must also ensure that any instructor it employs to administer the course meets minimum qualification levels, such as certain professional designations or degrees, or minimum professional experience in the insurance field. The provider must also submit proof of the instructor's qualifications to ODI upon request. The rules require courses to be offered as approved, and any change in the course content must have prior written approval of ODI. Providers must issue certificates of completion to each agent who successfully completes the course. The rules also enumerate fines for various improper practices by a provider, such as misreporting information or making false representations to agents concerning CE courses and credits.

The rules require applications for providers wishing to offer agent pre-licensing education. As with CE, providers must submit an application for each course to be offered. These application fees can range from twenty-five to hundreds of dollars depending on the courses to be offered. Further, providers must submit information to ODI that instructors of these courses have met certain minimum criteria (e.g., have obtained a bachelor's degree or have a minimum amount of experience in a particular insurance field). The rules also require that a provider keep certain information for each course as part of a records retention schedule (e.g. providers must keep all certificates of completion for four years, providers must keep copies of course rosters for four years, etc.).

The rules require resident agents to complete applications for licensure and to submit certain information to ODI, such as information that shows they have completed certain educational

credit, passed an examination, passed a criminal background check and paid certain fees. The rules also require a nonresident agent wishing to be licensed in Ohio to submit an application and various types of information, such as proof of good character and a valid license from the other state, along with payment of certain fees. The rules contain similar requirements for resident and nonresident business entity licenses. Agents wishing to renew their licenses must complete and submit applications to ODI, complete CE requirements and pay pertinent fees with costs ranging up to thousands of dollars depending on the circumstances of the agent or business. Some of these fees are required by statute while others are enumerated in the rules.

The rules also require insurers to submit to ODI certain identification and employment information concerning agents representing the insurers. Additionally, an agent wishing to be designated as “inactive” by ODI must submit an application to ODI and meet certain criteria enumerated in the rules. The “inactive” agents are prohibited from engaging in any activities for which active licenses are required. Engaging in such behavior can result in penalties, such as revocation of that agent’s license or a fine of up to \$25,000. An agent wishing to be designated as “active” must provide notification to ODI, complete certain CE requirements and pay fees ranging from \$50 to \$150 depending on the agent’s license.

The above provisions impose on licensed Ohio insurance agents, businesses offering insurance products and providers of insurance CE and pre-licensing education requirements to report various types of information to ODI through applications and notices. The rules also impose expenditures of specific fees to ensure compliance with these rules. The rules require various instances of prior authorization by ODI through approval or disapproval of applications. Finally, the rules impose numerous punitive measures as a result of non-compliance. Such requirements are enumerated in R.C. § 107.52, and therefore, are considered adverse impacts to business.

B. JUSTIFICATION FOR ADVERSE IMPACT

According to ODI, the Department reached out to interested stakeholders for feedback on the proposed rules in early 2014, including the Professional Independent Agents Association and the Ohio Association of Health Underwriters. Further, according to ODI in the BIA, the stakeholders are supportive of the proposed rules. ODI argues that some of the impacts resulting from the rules are contained in statute, and that the rules are based on the National Association of Insurance Commissioners (NAIC) model act. ODI explained that the model act is a national set of best practices with regard to insurance industry standards, and is continually created and shaped by insurance companies, consumers and regulators. Adoption of the standards of this model act provides uniformity in Ohio and other states in the insurance industry, which can be an administratively burdensome and complex process for businesses being regulated in multiple states. Such uniformity provides multi-state predictability and a sense of administrative conformity for the regulated community. Further, ODI argues that the above-listed impacts are

necessary “to maintain educated and compliant professionals to ensure consumer protection and avoid potential harm to consumers.” Finally, the only comment received by CSI concerns a typographical error in the CE section of the rules. ODI has agreed to remedy this typo prior to submission of the proposed rules to JCARR.

CSI is satisfied with ODI’s justification because (1) ODI reached out to stakeholders from an early stage of rule review and included those stakeholders in the drafting process, (2) the stakeholders are supportive of the proposed rules, (3) the only comment submitted concerned a typo and will be corrected prior to JCARR filing, and (4) ODI has provided sufficient substantive reasoning as to why these proposed rules are necessary; specifically, that many of the impacts have been created in statute, and the rules are based on a national model of best practices for the insurance industry. Accordingly, the adverse impacts of these rules have been sufficiently justified by ODI.

III. RECOMMENDATIONS

After reviewing the BIA, and pursuant to the more detailed reasons outlined above, CSI has no specific recommendations regarding the rule package.

IV. CONCLUSION

Based on the above analysis and recommendations, CSI concludes that ODI should proceed with the formal filing of the rule package with the Joint Committee on Agency Rule Review.

cc: Mark Hamlin, Lt. Governor’s Office