



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: October 20, 2021

RE: **CSI Review – Unfair and Deceptive Practices Rules (OAC 3901-1-07, 3901-1-08, and 3901-1-54)**

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 one no-change and two amended 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 August 2, 2021, and the public comment period was held open through August 16, 2021. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on August 2, 2021.

The rules in this package establish business practice requirements for insurers in Ohio. OAC 3901-1-07 outlines insurance business practices that are defined as unfair or deceptive. These practices include knowingly misrepresenting pertinent facts or policy provisions to claimants, failing to acknowledge or reply to communications or claim inquiries in a certain timeframe, and not offering fair and reasonable amounts to claimants in accordance with policy limits and provisions when liability is clear, among others. The Department states in the BIA that the rule is amended for uniformity and to correct a spelling error.

OAC 3901-1-08 establishes additional unfair and deceptive practices specifically relating to the

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sale of life insurance products to military members and their families. The rule states that soliciting the purchase of a life insurance product using door-to-door marketing, soliciting members as a part of a mass or captive audience, making appointments with service members during normal duty hours, posting unauthorized advertisements, and certain similar activities are defined as unfair business practices if taking place at a military installation. The rule also sets forth activities that are classified as unfair and deceptive practices regardless of location, such as offering anything of value to military personnel to procure their assistance in facilitating the sale of life insurance to another service member, advising service members in certain pay grades to modify income tax withholding to increase income for purposes of purchasing life insurance, and engaging in direct deposit agreements to divert payroll funds for the payment of life insurance premiums in certain circumstances, among others.

Lastly, OAC 3901-1-54 describes minimum standards for investigating property and casualty insurance claims and defines procedures and practices that constitute unfair claims practices. The rule requires insurers to determine within 21 days of receiving proof of a loss whether to approve or deny a claim, or to notify the claimant regarding the reason for needing additional time, to specify the grounds for denying a claim based on the policy documents and prohibits insurers from using settlement practices that result in litigation by offering substantially less than the amounts claimed, among others. The rule also establishes special requirements for resolving automobile claims and fire and extended coverage claims promptly and fairly and authorizes the Superintendent of the Department to recover the cost of investigations and potentially to fine insurers for violations. The rule is amended to correct an errant citation.

During early stakeholder outreach, the Department shared the proposed rules with various interested parties including the Ohio Insurance Institute, the Ohio Land Title Association, the Association of Ohio Life Insurance Companies, the American Council of Life Insurance, the National Association of Insurance and Financial Advisors, 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 or during the CSI public comment period.

According to the BIA, the business community impacted by the rules includes insurers authorized in all lines of insurance, insurers authorized to sell life insurance as well as those authorized to sell life insurance or annuities to military members, and insurers authorized to sell property and casualty insurance. The adverse impact created by the rules includes potential disciplinary action for entities that engage unfair or deceptive practices or unfair claims practices as defined by the rules. Additionally, the Department notes in the BIA that insurers may be required to report information to the Superintendent in the case of investigation regarding an allegation of unfair and deceptive practices and that the Superintendent may take action including issuing a cease-and-

desist order, revoking a license, and ordering back payments. The Department states that the adverse impact to business is necessary to preserve consumer protection in the industry and to serve as a clear guide for insurers regarding market misconduct and deceptive sales practices.

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.