MEMORANDUM

TO: Jarrett Dunbar, Ohio Department of Insurance

FROM: Paula Steele, Regulatory Policy Advocate

DATE: October 23, 2012

RE: **CSI Review –** (OAC 3901-4-02) Long-term care partnership program

---

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

The draft rule addresses the requirements with which an insurance company must comply in order for its product to be sold as part of the state's long-term care partnership program as established by the director of Job and Family Services (ORC 5111.18). As a result of the federal Deficit Reduction Act of 2005, Ohio's long–term care (LTC) partnership program was developed. The program allows for certain benefits paid by "qualified" LTC insurance plans to be disregarded for the purposes of Medicaid eligibility determinations. Specifically, the federal change makes it possible for a family to keep assets that would otherwise be spent down in order to apply and qualify for Medicaid-funded long-term care services. The assets Medicaid will disregard is equal to the benefits paid for by the qualified LTC partnership policy. Qualified LTC plans often have different requirements and triggers that are less flexible than non-qualified plans, so an insurer may choose to offer both types of product.

The substantive change to the proposed LTC partnership program (OAC 3901-4-02) expands the market by allowing insurance providers to offer "qualified" LTC insurance policies to more current LTC policy holders. Prior to the proposed change, only customers insured by LTC products that were being currently marketed and sold, could receive an offer to transfer to a state qualified LTC insurance program policy. The amendment allows for insurance companies to offer eligible customers the opportunity to exchange to a qualified LTC insurance policy under certain criteria even if the LTC product they own is no longer marketed or sold.

According to the Ohio Department of Insurance (ODI), the proposed changes are in response to industry comments that certain policyholders did not have fair access to a qualified LTC insurance partnership program policy. Stakeholder involvement included industry associations and the Ohio Office of Health Transformation. The amended rule and BIA were filed with the CSI Office on September 18, 2012, and were open for comment until September 28, 2012. No comments were received during that time.

ODI correctly identified the adverse impact to businesses offering qualifying LTC products as the time spent to file the product with ODI for approval, a $50 fee per filing, and the limitations on the types of plans that can be deemed "qualified." Multiple products can be included in one filing. Offering qualified LTC insurance products in Ohio is an optional business decision made by insurance companies. If a company chooses not to sell qualified products, it is still able to sell non-qualifying LTC insurance. Therefore, the adverse impact is justified because it is minimal, it relates to an optional business decision to sell qualified products. Moreover, by allowing more existing LTC plans to be eligible for exchange into a qualified plan, the proposed amendments to the rule reduce the adverse impact to businesses.

Review of the rule and the associated BIA motivated additional inquiry to clarify the effect of statute language in ORC 3923.50 primarily in regard to inflation protection. DOI provided additional information that clarified the impact of the Revised Code. After reviewing the proposed rule, the associated revised BIA, and the additional information regarding statute questions, the CSI Office has determined that the rule satisfactorily meets the standards espoused by the CSI Office, and the purpose of the rule justifies the adverse impact identified in the BIA.

Recommendations

For the reasons explained above this office does not have any recommendations regarding this rule change.

Conclusion

Based on the above comments, the CSI Office concludes that the Department should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.