

**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 – Chapter 4 FYR – Long-Term Care Insurance (OAC 3901-4-01, 3901-4-02, and 3901-4-03)**

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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 three rules being proposed by the Ohio Department of Insurance related to long-term care insurance policies offered for sale in the State of Ohio. The three rules comprise Chapter 3901-4 of the Ohio Administrative Code (OAC), have been reviewed under the five-year review requirement of ORC 119.032, and are being proposed with no changes. The rules were initially submitted as three separate rule packages with separate BIAs. However, because the rules are closely related to each other, the CSI Office has reviewed them together.

Rule 3901-4-01 outlines in significant detail the requirements to offer long-term care insurance in Ohio. Rule 3901-4-02 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, under which certain benefits paid by "qualified" long-term care insurance plans may be disregarded for the purposes of Medicaid eligibility determinations. Rule 3901-4-03 establishes record-keeping requirements for insurers related to the education and training of their agents on long-term care insurance.

Both 3901-4-01 and 3901-4-02 are highly prescriptive in terms of how long-term care and qualified long-term care insurance policies may be provided. As a result, they create numerous adverse impacts such as notice and disclosure requirements to consumers, detailed reporting requirements to the Superintendent of Insurance, financial and actuarial requirements an insurer must comply with in order to sell the respective policies, and penalties for failure to comply with the rules. The BIAs submitted by the Department note that these impacts are justified in order to protect consumers and provide a level of consistency in regulation of long-term care insurance plans, which are particularly complex and require significant financial investment over long periods of time by consumers who choose to purchase these policies. Moreover, the sale of insurance generally is a heavily regulated industry due to the actuarial and other requirements necessary to ensure that consumers will ultimately receive the benefits paid for through their premiums. Rule 3901-4-03 creates its own adverse impact to businesses through the specific record-keeping requirements and auditing authority by the Department. For the same reasons described above about the complexity and unique factors related to long-term care insurance, the Department has determined that it is important for insurers to retain proof of their agents' training to avoid any potential disputes regarding the sale of these policies.

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 these rules are out of line with requirements in other states, or otherwise unduly burdensome. The CSI Office has determined that the rules justify the adverse impact 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.