

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

Agency Name: Ohio Department Of Insurance  
Regulation/Package Title: Solicitation and sale of medicare supplemental accident and health policies.  
Rule Number(s): 3901-8-09  
Date: February 7, 2012

Rule Type:

☐ New

☐ 5-Year Review

☒ Amended

☐ Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

### Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

*Please include the key provisions of the regulation as well as any proposed amendments.*

***The rule makes it an unfair and deceptive act or practice to give the impression that an agent or broker or the Medicare supplement program being offered is connected to or sanctioned by the federal government, that the agent is something other than an insurance agent, and failing to disclose verbally and in writing their status as an agent or broker and their relationship to an insurance company. Marketing material must include a specific disclaimer of connection to or endorsement by the federal government, or substantially similar one. The rule is being amended to clarify that prohibited unsolicited contact with a***

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***Medicare-eligible person does not include mail and other print media (e.g., advertisements, direct mail) or communication with an applicant or prospective applicant with whom the entity or insurance agent has a business relationship.***

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

***R.C. 3901.041, 3901.21, and 3923.332.***

3. Does the regulation implement a federal requirement? ☐ Yes ☒ No

Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?

☐ Yes ☒ No

*If yes, please briefly explain the source and substance of the federal requirement.*

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

***N/A***

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

***The rule prohibits misrepresentation to a vulnerable population of a non-existent relationship to any federal governmental agency in soliciting Medicare supplement insurance and making clear to that population they can contact the insurance company which the agent or broker represents. The rule contains language similar to Medicare Marketing Guidelines prohibiting unsolicited contact with Medicare beneficiaries in the sale of Medicare Advantage plans although it is not required by federal law. However, similar abuses involving unsolicited contact have been reported in the Medicare supplement marketing in Ohio, leading the Department of Insurance to propose the more specific prohibitions.***

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

***The measure of success is fewer complaints from the Medicare-eligible population about misrepresentations by insurance agents or brokers concerning Medicare supplement products, and fewer complaints about unsolicited contacts having the effect of overreaching, or harassing the senior population, while allowing mail and other print media and business relationships to continue for this market.***

### **Development of the Regulation**

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7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation. *If applicable, please include the date and medium by which the stakeholders were initially contacted.*

***In December 2011, an email requesting comment on the rule was sent to various stakeholders, interested parties, and trade associations who signed up for updates on the Department's rules and bulletins, including America's Health Insurance Plans (AHIP) and the Ohio Association of Health Plans (OAHP) as well as agents.***

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

***Comments after the rule was effective from brokers and agents argued the language concerning unsolicited contacts was very broad. Language regarding unsolicited contacts was clarified to allow mail and print materials and business relationships to continue.***

9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

N/A

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

***The current change is a revision to an existing rule that was requested by impacted parties.***

11. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.*

N/A

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

N/A

13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

***The current change is a revision to an existing rule that was requested by impacted parties. The Department will proceed with publication of the rule, processing complaints as received while providing training and oversight to the Department's staff responsible for investigating complaints ensuring consistent application of the rule.***

### **Adverse Impact to Business**

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

- a. Identify the scope of the impacted business community;
- b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and
- c. Quantify the expected adverse impact from the regulation.

*The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.*

***a. Agents and brokers soliciting Medicare Supplement insurance are affected in their behavior toward Medicare-eligible persons.***

***b. Agents and brokers must make a verbal and written disclosure of their insurance intent and agency, and their lack of connection with the federal government or Medicare program. A specific disclaimer must be in all marketing materials for medicare supplement products.***

***c. The cost of a written disclosure of seven points listed in the rule for each contact they make.***

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

***The department’s position is that the protection of a vulnerable population, seniors, from abusive practices in the marketplace outweighs any potential impact of providing written disclosures and avoiding certain unsolicited contacts with this population.***

### **Regulatory Flexibility**

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

N/A

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

*The Department will provide training and oversight to its staff responsible for investigating complaints ensuring consistent application while allowing waivers depending on the seriousness of the act and any potential harm to a consumer.*

18. What resources are available to assist small businesses with compliance of the regulation?

*With the exception of insurance agents and some insurance agencies, small businesses will not be affected by this regulation. All questions and inquiries can be directed to divisions that support insurance agents and agencies within the Department.*