

CSI - Ohio
The Common Sense Initiative

Business Impact Analysis

Agency Name: *Ohio Department of Insurance*
 Regulation/Package Title: *Health Rules Packet*
 Rule Number(s): *3901-8-03 and 3901-8-09*

 Date: **July 19, 2016**

Rule Type:

☐ New
 ☒ 5-Year Review
☒ Amended
 ☐ No Change
☐ Rescinded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.

3901-8-03 - The purpose of the standardized health claim form rule is to increase efficiency by standardizing forms used in the billing and reimbursement of health care. By doing so, a reduction in the number of carriers using different forms is achieved. The rule encourages the use of electronic data interchange of health care expenses and reimbursement.

Various technical amendments throughout the rule were made to address grammar, formatting, and citation references. Additionally, the rule is updated to reflect the transition from ICD-9 to ICD-10 (a medical classification list), this reflects current industry standards as mandated by the Center for Medicaid and Medicare Services (CMS), as well as reference

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in ORC. The existing rule already allows for the shift to ICD-10, proposed amendments simply replace ICD-9 references with ICD-10.

3901-8-09 - The rule safeguards medicare-eligible persons against misleading actions from companies or agents, by defining specific unfair or deceptive acts or practices in the solicitation or sale of any type of medicare supplemental sickness and accident health insurance policies. Medicare supplement policies, sold by a private company, can help pay some of the health care costs that medicare doesn't cover, like copayments, coinsurance, and deductibles. The targeted community for such policies is senior citizens. The rule works to increase consumer protection.

Proposed amendments will extend protection against unsolicited communication to electronic venues, i.e. email and social media. In addition, various technical changes are made and the term broker is removed to align with ORC.

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

3901-8-03 - Sections 3901.041, 3901.21, and 3902.22 of the Revised Code.

3901-8-09 - Sections 3901.041, 3901.21, and 3923.332 of the Revised Code.

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.

Not applicable.

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

Not applicable.

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)?

3901-8-03 - This rule promotes efficiency in medical billing and reimbursement of healthcare costs. The rule serves as a clear and consistent standard for the regulated community to follow, further achieving a balanced market.

3901-8-09 - The rule protects senior citizens against misleading actions from companies or agents during the solicitation or sale of any type of medicare supplemental sickness and accident health insurance policy. This rule is designed to protect against financial harm by increasing consumer protections.

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

Success is measured both through regular financial and market conduct reviews, as well as through review and investigation of consumer complaints submitted to the department.

Development of the Regulation

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.*

Interested stakeholders for these rules include Ohio Insurance Institute (OII), Association of Ohio Life Insurance Companies (AOLIC), Ohio Association of Health Underwriters, Ohio Association of Health Plans (OAHP), Professional Insurance Agents Association of Ohio (PIAA), and domestic insurers. The department posted the rules on its website for public review and made trade associations representing insurance companies aware the rules were due for five year review. In addition, on June 30, 2016, an email requesting comment on the rules was sent to various stakeholders, interested parties, and trade associations who signed up for updates on the department's rules and bulletins.

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

No comments were received throughout the vetting process.

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?

Rule 3901-8-03 incorporates industry trends and federal mandates to move to ICD-10. Updates were made after reviewing CMS guidance and the United States Code.

Rule 3901-8-09 was established after reviewing guidance from CMS to build safeguards for medicare-eligible senior citizens. Recently, CMS guidance has been updated to reflect the increase in electronic forms of communication. The department recognized the need to incorporate this change given the rise in email and social media correspondence.

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?

There were no alternative regulations considered because the rules purposes are to standardize form submission and to clarify the statutory prohibitions involved.

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.

No. Rule 3901-8-03 works to standardize the industry by providing clear and consistent requirements. The purpose and scope of rule 3901-8-09 is to clarify prohibited practices.

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

The Ohio department of insurance is the sole agency regulating insurance and there are no duplicative rules.

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.

Rule 3901-8-03 remains in place and the regulated community is aware of the requirements. The rule is applied consistently and the change to ICD-10 has been ongoing as a requirement of CMS since 2014.

Rule 3901-8-09 remains in place and the regulated community is aware of these specific prohibitions against unfair and deceptive practices. The proposed amendments were vetted to interested parties, and the final rule will be made available. The department maintains the product regulation, agent licensing and legal divisions should the regulated community have any questions regarding the proposed amendments. The regulations are applied consistently through oversight, market conduct reviews performed, and monitoring of consumer complaints.

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.

3901-8-03 - Health insurance companies are impacted by the requirements of this rule. The use of specific forms and systems is a common business practice among the regulated community with the rule serving as a reference for what may or may not be utilized. Therefore, any adverse impact would be described as employee time and costs associated with internal development, such as information technology updates and staff training. The use of the forms and systems are ongoing and would require employees to be trained in these requirements on a consistent basis. Individual companies would differ on the costs associated with updating IT systems.

3901-8-09 - This rule impacts companies and their agents soliciting and selling medicare supplemental sickness accident and health insurance policies. The rule clarifies certain prohibited acts. There are no reporting or related requirements involved, and therefore, no adverse impact for insurers that comply. If, however, an insurer violates the unfair and deceptive practices statute and requirements of the rule, the superintendent may issue a cease and desist order and impose other administrative penalties such as license revocation and/or order to pay back payments received as a result of the violation.

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

3901-8-03 - The impacts associated with this rule can be quantified as everyday business practices, the purpose is to achieve a more efficient billing transactions.

Rule 3901-8-09 clarifies certain prohibited acts to ensure that companies are not inappropriately soliciting senior citizens. The proposed amendments build on consumer protections for senior citizens already in place.

Regulatory Flexibility

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

Rule 3901-8-03 standardizes requirements across health insurance companies to ensure consistency and clarity in the billing and reimbursement of health care. It is crucial that all companies regardless of size comply with these requirements to further efficiency and predictability.

Rule 3901-8-09 defines prohibited unfair and deceptive practices for companies. Prohibitions against unfair and deceptive practices are applied consistently no matter the size or structure of the company. There are no alternative compliance requirements appropriate or necessary for small companies as the prohibitions do not relate to size of company.

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?

Paperwork violations and/or first time offender issues would be dealt with on a case-by-case basis to determine whether the violation could have a serious impact on the consumer or the general public. Minor errors would be handled by advising the company or agent and giving them an opportunity to cure the omission or irregularity.

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

Department staff is available to answer questions and provide assistance as needed.