

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Insurance
Regulation/Package Title: HIV consent form. Advertisement of sickness/accident insurance. Unfair health claims practices.
Rule Number(s): 3901-8-06 (No Change)
3901-8-07 (No Change)
3901-8-11 (Amend)
Date: July 11, 2018

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☐ Rescinded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.

Rule 3901-8-06: This rule establishes the form and content of the written consent form an insurer must use in order to obtain an applicant's consent to an HIV test. No recommended changes.

Rule 3901-8-07: This rule sets the standards and requirements that insurers must follow when advertising sickness and accident insurance products. The rule requires that the advertising is not misleading or deceptive and advertises truthful and adequate information. No recommended changes.

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Rule 3901-8-11: Consumers and providers in Ohio can file claim disputes with their respective insurance companies if they believe that claim was wrongly denied. The rule sets uniform standards that health insurance companies must follow when denying a health insurance claims, including explaining the reason they are denying payment of the claim and the complaint procedure available to the insured and providers. The rule is being amended to avoid duplication by adding language that clarifies the claim denial dispute procedure for any plan that is not defined under division (P) of section 3922.01 of the Revised Code under the definition of “Health Plan Issuer”.

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

Sections 3901.041, 3901.44, 3901.46, 3901.20, 3901.21, and 3901.38 to 3901.3813 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)?

Rule 3901-8-06: The public purpose as defined in the rule is for life and sickness and accident insurers to provide a uniform consent form for HIV testing for applicants seeking life or sickness and accident insurance coverage to submit an HIV test.

Rule 3901-8-07: The public purpose of this rule is to protect consumers from deceptive and misleading advertisement of sickness and accident insurance products. The rule provides minimum standards for insurance companies to follow when marketing and advertising sickness and accident insurance products.

Rule 3901-8-11: This rule ensures consumers are provided appropriate information in the case of a claim denial. This rule sets forth the standards health insurance companies must comply with when a consumer's claim is denied.

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

Rules 3901-8-06, 3901-8-07, 3901-8-11: The department will see a decrease on unconsented or inappropriately consented HIV testing, a decrease in complaints concerning deceptive or misleading advertising of sickness and accident insurance products, a decrease in administrative actions against insurers for violating provisions of the rule, and a decrease in health claim errors from health insurance companies.

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.*

In April 2018, an email was sent to industry stakeholders including insurance companies and trade groups. This list included the Ohio Association of Health Plans (OAHP), Ohio Association of Health Underwriters (OAHU), Ohio Hospital Association (OHP) and the Association of Ohio Life Insurance Companies (AOLIC) among others.

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 regarding these rules.

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 3901-8-06: The HIV consent form developed a standard form for use. Specifics were derived from interested party discussion and evaluating trends in consumer complaints.

Rules 3901-8-07 and 3901-8-11: These rules were developed through industry input and evaluating similar regulations in other states, as well as guidance provided by the National Association of Insurance Commissioners (NAIC) Model Laws. The NAIC consults industry, regulators, and the public to create industry standards that states may adopt into their own laws and rules. Consumer protections and consistent regulation of the general claims process and advertising of sickness and accident insurance were the driving factors in establishing the specifics of these rules.

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 are no alternative regulations that have been drafted that address the issue as thoroughly as these rules. These rules provide consistent regulatory guidance for insurance carriers.

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.

The rules establish a set of requirements that protect consumers from deceptive or misleading information. Insurers are required to provide appropriate and adequate information that is not misleading in the case of HIV testing, advertisement of sickness and accident insurance and claim denials. The rule do not define a required outcome, therefore, performance based regulations are not appropriate for these rules.

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

Rules 3901-8-06, 3901-8-07, and 3901-8-11: These rules are exclusive to the department of insurance and does not duplicate any other rule or regulation.

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 3901-8-06: The rule is in-force as it is currently implemented, as every insurer must provide the form to the applicant before the HIV test can occur.

Rule 3901-8-07: The rule is applied consistently and predictably through our consumer services division and our market conduct division for review as necessary. Insurers are required to compile and maintain printed, published, advertisements of its policies for a period of four years or until the filing of the next report or examination of the insurer.

Rule 3901-8-11: The rule is applied consistently and predictably through the consumer services and market conduct review process, which has specific standards that insurance companies are required to meet in order to sell their products in the state of Ohio.

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.

Rule 3901-8-06: Insurers administering HIV consent forms are impacted by the requirements of this rule. Since this rule is already in existence and merely requires the provision of a form, the cost is minimal if not non-existent.

Rule 3901-8-07: Sickness and accident insurers and brokers and agents are the impacted community. Time and resources are necessary to make sure prohibited practices are avoided and that required language or disclosures are included in sickness and accident advertising directed to consumers. The cost is staff time associated with complying with the rule, developing advertisements that meet the requirements of the rule, and maintaining a file of printed, published or prepared advertisements.

Rule 3901-8-11: Health insurance issuers are impacted by this rule. Staff time and resources are required to comply with the general claims practices set forth by this rule. Since the rule is already in existence, insurers are already meeting the provisions of the rule, those staff and resources appear to already be in place.

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

Rule 3901-8-06: The rule establishes a uniform consent form that life and sickness and accident insurers must use in order to obtain an applicant's written consent to an HIV test. Without this rule in place, there would be no consumer protections for individuals seeking insurance coverage for HIV and no regulation of HIV testing administered by insurers.

Rule 3901-8-07: This rule sets the standards and requirements that insurers must follow when advertising sickness and accident insurance products. The rule is essential to consumer protection by ensuring that consumers are not being subjected to misleading or deceptive advertising of sickness and accident insurance through various media outlets including printed and published material and audio-visual material.

Rule 3901-8-11: This rule establishes the requirements insurers must follow when a claim is denied, including an explanation for the denial and the complaint procedure available to consumers and providers. The rule provides essential protections for consumers by ensuring

that the insurers are providing consumers all the necessary information regarding the claim denial process and reasoning for a claim denial.

Regulatory Flexibility

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

All businesses are required to meet the same standards and rules requirements regardless of size, in order to maintain a fair and competitive market.

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 will be handled on a case by case basis due to the fact that these types of violations could have a serious impact on the consumer.

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

Department staff is available to answer questions, regardless of the size of the business. The department also provides information to assist businesses on the agency's web site.