

Common Sense
Initiative

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Business Impact AnalysisAgency Name: Ohio Department of InsuranceRule Contact Name: Loretta MedvedRule Contact Information: loretta.medved@insurance.ohio.gov
(614)644-0239Regulation/Package Title (a general description of the rules' substantive content):
Standardized health claim form rule and Solicitation and sale of medicare
supplemental accident and health policies.Rule Number(s): 3901-8-03, 3901-8-09Date of Submission for CSI Review: July 9, 2021Public Comment Period End Date: July 23, 2021 12:00 amRule Type/Number of Rules:

- ☐ New/ rules ☒ No Change/ 2 rules (FYR? 2021)
☐ Amended/ rules (FYR?) ☐ Rescinded/ rules (FYR?)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Reason for Submission

1. R.C. 106.03 and 106.031 requires agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.

Which adverse impact(s) to businesses has the Agency determined the rule(s) create?

The rule(s):

- ☐ a. Requires a license, permit, or any other prior authorization to engage in or operate a line of business.
- ☒ b. Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.
- ☐ c. Requires specific expenditures or the report of information as a condition of compliance.
- ☒ d. Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.

Regulatory Intent

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

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

Rule 3901-8-03: 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. There are no suggested amendments to this rule.

Rule 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 does not cover, like copayments, coinsurance, and deductibles. The targeted community for such policies is senior citizens. The rule works to increase consumer protection. There are no suggested amendments to this rule.

3. Please list the Ohio statute(s) that authorize the Agency to adopt the rule(s) and the statute(s) that amplify that authority.

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.

4. 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.

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

Not applicable.

6. 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 3901-8-03: 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.

Rule 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.

7. 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.

8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931? ☐ Yes ☒ No

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

Not applicable.

Development of the Regulation

9. 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 May 2021, an email requesting comment on the rule was sent to various stakeholders, interested parties, trade associations and companies. Specifically, the department reached out to the Ohio Insurance Institute (OII), the Association of Ohio Life Insurance Companies (AOLIC), the American Council of Life Insurance (ACLI), the National Association of

Insurance and Financial Advisors (NAIFA), Ohio Association of Health Plans (OAHP) and the Professional Independent Agents Association (PIAA), among others. Additionally, these rules were also posted on the department's web site for review.

10. 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.

11. 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 guidance from federal mandates, according to the Center for Medicare & Medicaid Services (CMS) and the United States Code.

Rule 3901-8-09 was established after reviewing federal guidance from CMS to build safeguards for medicare-eligible senior citizens. The rule reflects modern communication and sales practices standards.

12. 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?

Rule 3901-8-03 works to standardize forms in the healthcare industry, therefore, alternatives were not considered.

Rule 3901-8-09 defines and clarifies further prohibitions that are established in statute.

13. 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.

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, therefore, performance - based regulations are not appropriate.

14. 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.

15. 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.

Both rules remain in place, familiar to the industry, and with no proposed amendments. Department staff is available to assist should any questions arise.

Adverse Impact to Business

16. 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.

Rule 3901-8-03: Health insurance companies are impacted by the requirements of this rule.

Rule 3901-8-09: This rule impacts companies and their agents soliciting and selling medicare supplemental sickness accident and health insurance policies.

b.

Rule 3901-8-03: 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.

Rule 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.

c.

Rule 3901-8-03: 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.

Rule 3901-8-09: Should an insurer violate 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.

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

Rule 3901-8-03: The impacts associated with this rule can be quantified as everyday business practices, the purpose is to achieve a more efficient standard of 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

18. 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.

19. 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.

20. 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.