

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 3901-8-17

Rule Type: New

Rule Title/Tagline: Reimbursement for unanticipated out-of-network care.

Agency Name: Department of Insurance

Division:

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I. Rule Summary

1. **Is this a five year rule review?** No
 - A. **What is the rule's five year review date?**
2. **Is this rule the result of recent legislation?** Yes
 - A. **If so, what is the bill number, General Assembly and Sponsor?** HB 388 - 133
- Rep. Adam Holmes
3. **What statute is this rule being promulgated under?** 119.03
4. **What statute(s) grant rule writing authority?** 3902.54
5. **What statute(s) does the rule implement or amplify?** 3902.50, 3902.51, 3902.52, 3902.53, 3902.54
6. **What are the reasons for proposing the rule?**

Rule 3901-8-17 establishes requirements needed to implement sections 3902.50 through 3902.54 of the Revised Code as enacted in House Bill 388 of the 133rd General Assembly. The purpose of the law and subsequent rule is to provide the protections for consumers against surprise billing. Multiple studies have cited as many as one in five emergency inpatient services have led to surprise medical bills. Traditionally, consumers would be responsible for paying these unanticipated out of networks

costs directly to the health care provider. The rule enables the process in health care providers can seek reimbursement from health insurers for unanticipated out of network care. The rule sets a timeline for negotiations, and the arbitration process.

- 7. Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.**

The rule addresses definitions, parameters for reimbursement regarding unanticipated out of network care, limits on consumer cost sharing, negotiations for reimbursement, and parameters for arbitration.

- 8. Does the rule incorporate material by reference? No**
- 9. If the rule incorporates material by reference and the agency claims the material is exempt pursuant to R.C. 121.75, please explain the basis for the exemption and how an individual can find the referenced material.**

Not Applicable

- 10. If revising or re-filing the rule, please indicate the changes made in the revised or re-filed version of the rule.**

The Department of Insurance is revising rule 3901-8-17 filed on October 15, 2021. The revised rule changes from "calendar days" to "business days" when contemplating timelines in the rule, except for payment purposes. The revision will allow providers more time to determine whether to proceed to arbitration for reimbursement claims. The change to "business days" will also mirror the federal rule on the No Surprises Act which was updated on September 30, 2021. The initial federal rule released on July 1, 2021 specified a mix of calendar and business days.

II. Fiscal Analysis

- 11. Please estimate the increase / decrease in the agency's revenues or expenditures in the current biennium due to this rule.**

This will have no impact on revenues or expenditures.

\$0.00

This rule will have no impact on revenue or expenditures.

- 12. What are the estimated costs of compliance for all persons and/or organizations directly affected by the rule?**

As the law prohibits balance billing to the consumer for unanticipated out of network care, the new regulations represent a shift from the consumer to the health insurers and healthcare systems providing medical care. Compliance with this new shift will require additional time and resources to properly identify, document, and negotiate these unanticipated out of network claims. Healthcare providers and insurers will likely have to deploy strategies that obtain compliance with the new law with approaches that fit their particular business model. The amount of time and approaches to responding to these unanticipated out of network claims will vary depending on the organizations business strategy, size and complexity to resolving billing claims.

13. **Does the rule increase local government costs? (If yes, you must complete an RSFA Part B). No**
14. **Does the rule regulate environmental protection? (If yes, you must complete an RSFA Part C). No**
15. **If the rule imposes a regulation fee, explain how the fee directly relates to your agency's cost in regulating the individual or business.**

Not applicable.

III. Common Sense Initiative (CSI) Questions

16. **Was this rule filed with the Common Sense Initiative Office? Yes**
17. **Does this rule have an adverse impact on business? Yes**
 - A. **Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? No**
 - B. **Does this rule impose a criminal penalty, a civil penalty, or another sanction, or create a cause of action, for failure to comply with its terms? No**
 - C. **Does this rule require specific expenditures or the report of information as a condition of compliance? No**
 - D. **Is it likely that the rule will directly reduce the revenue or increase the expenses of the lines of business of which it will apply or applies? Yes**

Quantifying exact costs is difficult given the nature of complexity of medical billing across healthcare providers and insurers. Organizations will have to deploy strategies on how to approach the new law. This could include examining current practices, identifying areas of impact, and anticipating the organization responses. Ultimately, some organizations may consider changes to their pricing models and evaluation of insurer network status.

IV. Regulatory Restrictions (This section only applies to agencies indicated in R.C. 121.95 (A))

18. Are you adding a new or removing an existing regulatory restriction as defined in R.C. 121.95? No

A. How many new regulatory restrictions do you propose adding?

Not Applicable

B. How many existing regulatory restrictions do you propose removing?

Not Applicable