

# CSI - Ohio

## The Common Sense Initiative

### Business Impact Analysis

Agency Name: Ohio Department of Insurance  
Regulation/Package Title: Medicare Supplement  
Rule Number(s): 3901-8-08  
  
  
Date: May 16, 2013

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☐ Rescinded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.*

***The purpose of this rule is to provide for the reasonable standardization of coverage and simplification of term and benefits of medicare supplement policies; to facilitate public understanding and comparison of such policies; to eliminate provisions contained in such policies which may be misleading or confusing in connection with the purchase of such policies or with the settlement of claims; and to provide for full disclosures in the sale of sickness and accident insurance coverage to persons eligible for medicare.***

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

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**3901.041, 3923.33 and 3923.331 to 3923.339 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.*

***89 P.L. 97 amended the Social Security Act in 1965 to add Title XVIII to the United States Code creating the Medicare program which provided hospitalization (section 181.) and medical insurance (section 1831) for the aged. This law starts at 42 U.S.C. section 1395. Section 1882(g)(1) of the Social Security Act also defines what constitutes a certifiable (acceptable) Medicare supplemental health insurance policy. This definition is found at 42 U.S.C. section 1395ss. The NAIC's Model Regulation 651 incorporates these standards and the states adopt the NAIC Model to provide an acceptable product under federal law.***

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

***Ohio added certain provisions to protect its Medicare-eligible citizens including from perceived abuses in marketing to seniors: a definition of direct response issuers (D)(9); protective consumer marketing language at open enrollment (M)(4); guaranteed issue at open enrollment for individuals who voluntarily leave their employee welfare benefit plan which is primary to Medicare (N)(2)(a); the filing and approval process is described in detail (Q)(3).***

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 is being amended to add a handful of technical changes adopted in 2010 by the National Association of Insurance Commissioners ("NAIC") to their Model Regulation 651 for Medicare Supplement Insurance, which this rule tracks; also some typographical errors have been corrected. The rule contains language to protect consumers from deceptive or ambiguous medicare supplement policies and to ensure there is full disclosure in the sale of Medicare supplement policies. This rule also creates a standardization of Medicare Supplement coverage, terms, and benefits used in all Medicare supplement policies for ease of comparison and public understanding. The rule demonstrates compliance with 42 U.S.C. 1395ss standards allowing accreditation of Ohio's Medicare supplement program.***

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

*The measure of success will be fewer complaints from the Medicare-eligible population and fewer questions regarding the terms and benefits of their supplement policies. The department will also measure the success by fewer administrative actions against Medicare supplement insurers. Ohio also maintains its accreditation for its Medicare supplement program under 42 U.S.C. 1395ss.*

### **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 January 2013, an email requesting comment on the rule was sent to the general public, various stakeholders, interested parties, and trade associations who signed up for updates on the Department's rules and bulletins. The Department also reached out to the Ohio Association of Health Plans (OAHP), America's Health Insurance Plans (AHIP), the Ohio Association of Health Underwriters (OAHU), and the Professional Independent Agents Association (PIAA). The rule was also posted on the Department's web site for review.*

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

*This rule was reviewed as part of the five year rule review. Department staff decided that the rule should be updated with technical changes adopted in 2010 by the NAIC; also some typographical errors were corrected. The Department received one comment on this rule which pointed out a typographical error, which the Department corrected.*

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?

*Not applicable.*

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?

*NAIC model regulation 651 sets out minimum standards for Medicare supplement insurance policies and contains the standard required by federal law regulating Medicare and Medicare supplement policies in the United States. This is why using the model was the only option for Ohio to receive accreditation of its Medicare Supplement program.*

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.*

***Not applicable.***

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

***This is the only regulation of Medicare supplement insurance in Ohio.***

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 Department will consistently review Medicare supplement policies, rates and advertising filed by Medicare supplement issuers, using the rule's specific requirements.***

### **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.*

***Medicare supplement issuers must comply with the rule's very exacting standards. They must file their policy forms, rates and advertising for approval with the Department of Insurance, paying a \$50 fee per form or per group of related forms as required under Ohio Administrative Code section 3901-1-57(C)(11). This is not a new fee, therefore issuers will not need to be notified.***

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

***Adoption of this rule, which tracks the NAIC Model Regulation for Medicare supplement minimum standards, and requiring issuers and marketers to follow its strict requirements is the only way Ohio can have an accredited Medicare supplement program for its citizens.***

### **Regulatory Flexibility**

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

*There is no exemption for small businesses. Any issuer that seeks to offer Medicare supplement insurance in Ohio must comply with this rule for the protection of Ohio senior citizens purchasing this important product.*

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 their 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. It should be noted that this rule is based on federal law creating the Medicare program and was thought important enough to regulate quite closely the supplemental insurance product marketed to a vulnerable and protected class of citizens. There is not much leeway in design or marketing parameters.*

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 business.*