

# CSI - Ohio

## The Common Sense Initiative

### Business Impact Analysis

Agency Name: Ohio Department of Insurance  
Regulation/Package Title: Coordination of benefits. Provider discounts.  
Regulation of third party administrators.  
Rule Number(s): 3901-8-01 (Amend)  
3901-8-02 (No Change)  
3901-8-05 (Amend)  
Date: July 11, 2018

Rule Type:

☐ New

☒ Amended

☐ Rescinded

☒ 5-Year Review

☒ No Change

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 3901-8-01: Coordination of benefits is when multiple insurance plans work together to pay claims for the same person. If an individual is covered by two plans, this rule governs how the insurance plans work together to determine which plan is the primary plan and the secondary plan and pay claims accordingly. The rule permits the transfer of information to pay claims and eliminate the duplication of benefits, while at the same time reduce claim payment delays. This rule is being amended to fix a technical error by correcting a citation and removing parts of paragraph (J) of the rule, as the original effective date has passed.***

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117  
[CSIOhio@governor.ohio.gov](mailto:CSIOhio@governor.ohio.gov)

***Rule 3901-8-02: This rule sets forth the requirements that third party payers must follow when receiving a discount on billed charges from a health care provider. The negotiated discounts must be disclosed to the insured. No recommended changes to this rule.***

***Rule 3901-8-05: Third party administrators are organizations that typically handle certain administrative responsibilities for other organizations such as processing and settling claims in connection with life, dental, vision, health or disability insurance plans. This rule defines the licensing requirements, standards and regulations of third party administrators must follow and abide by. The department is proposing to amend the rule to include pharmacy benefit managers and prescription drugs in the definition of what a third party administrator is consistent with statutory requirements.***

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

***Sections 3901.041, 3901.14, 3901.21, and 3959.04 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.

***These rules do not implement or exceed a federal requirement.***

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 3901-8-01: There are times when an individual may be covered by two health plans. The purpose of this rule is to prevent the duplication of benefits and reduce in claim payment delays by allowing plans to coordinate benefits.***

***Rule 3901-8-02: This rule provides transparency to the consumer, making the consumer aware of any discount, with their health care provider, allowing the consumer to ensure that the proper amounts are being billed, paid and credited to their benefit maximums.***

***Rule 3901-8-05: The purpose of this rule is to establish a framework of guidelines and requirements that third party administrators must follow and adhere to in order to conduct business in the state of Ohio. This provides consumer protection by regulating and setting licensing requirements of third party administrators. Without this rule there would be no***

*oversight on third parties who are adjusting and settling claims in connection with various insurance products.*

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

*The success of the rules can be monitored by an understanding of the requirements throughout the regulated community and the department receiving a low number of consumer complaints regarding provider discounts being inappropriately managed by third party payers, and in general fewer complaints regarding the actions of third party administrators or claim payment delays.*

### **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.*

*On April 4<sup>th</sup>, May 11<sup>th</sup>, and May 25<sup>th</sup>, 2018, the department sent an email to industry stakeholders including insurance companies and trade groups. That list included the Ohio Association of Health Plans, Ohio Association of Health Underwriters, and the Ohio Hospital Association 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?

*Rules 3901-8-01 and 3901-8-05: 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). These rules are based off a NAIC model. The NAIC consults industry, regulators, and the public to create industry standards that states may adopt into their own laws and rules. Consumer protections are the driving factor in establishing the specifics of the rule.*

*Rule 3901-8-02: The provider discount rule was developed to increase transparency in discounts third party payers receive from health care providers as well as for consumer protections. Specifics of the rule were derived from interested party discussions and evaluating trends in consumer complaints.*

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?

***These rules provide specific and consistent regulatory guidance for insurance carriers. These rules do not require any alternative regulations.***

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.*

***These regulations establish specific minimum requirements and disclosures for all insurers. As a result, using performance-based regulations would not establish the needed regulatory structure.***

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

***The regulation of third party administrators, coordination of benefits and provider discounts is exclusive to the Ohio department of insurance and the rules do not duplicate any other rules or statute.***

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 3901-8-01: This rule will be applied through the form review process which has specific standards that insurers are required to meet. Coordination of benefit provisions are a part of the policy forms that are filed and reviewed by the department. In addition, the department reviews consumer complaints to identify if additional action is necessary.***

***Rule 3901-8-02: Third party payers must disclose information regarding negotiated discounts with health care providers in a consumer's policy or certificate of insurance. The third party payer must keep records of its compliance with the rule, which the superintendent may ask them to produce as needed to ensure compliance.***

***Rule 3901-8-05: This rule lays out consistent standards applied at the time of licensing and renewal. All third party administrators must meet the same set of licensing requirements in order to conduct business 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:

---

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117  
[CSIOhio@governor.ohio.gov](mailto:CSIOhio@governor.ohio.gov)

- 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 3901-8-01: Insurance companies that sell health insurance will be impacted by this rule. This rule provides the requirements insurers must follow when a coordination of benefits provision is included in a health plan. These requirements help determine which health plan is the primary and secondary plan and how these companies pay claims. Staff time and resources are required to comply with this rule, however, there is no additional cost compared to current regulation.***

***Rule 3901-8-02: Third party payers are the impacted business. They must disclose the existence (not the details) of any negotiated discounts with health care providers in the insured's policy and calculate the benefit maximums based on amounts actually paid to the providers. There will be staff time associated with keeping adequate records of compliance with the rule. Insurers have already taken into account cost of compliance.***

***Rule 3901-8-05: Third party administrators and their staff will be impacted by this rule. The rule establishes the definition of standards and requirements for licensing for a third party administrator. Staff time and resources will be required to comply with this rule by following the requirements and also preparing annual reports to be filed with the plan sponsor within ninety days following the fiscal end of the plan. There is a cost of staff time to apply for license renewal and the fee associated, plus the staff time to maintain the records.***

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

***Rule 3901-8-01: This rule sets forth the requirements that insurers must follow when a coordination of benefits provision is included in their plans. This provision helps insurers determine which plan is a primary or secondary plan when a consumer is covered by two plans. The rule also ensures that claims are paid promptly without delay. Without this rule in place, consumers would not have the ability to uniformly coordinate benefits and may possibly see a delay in claim payments. This rule is a NAIC model used across the industry and states.***

***Rule 3901-8-02: The rule sets forth the requirements for fair business practices towards consumers with regard to discounted health care services from providers. The requirements***

*of the rule are essential for consumer protection because without this rule, consumers would not be aware that their third party administrators are negotiating a discount with their health care provider and this rule provides additional transparency to the consumer.*

*Rule 3901-8-05: The rule creates the regulatory standards third party administrators must follow in order to conduct business in Ohio. These regulatory standards ensure consistency across all regulated third party administrators.*

### **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 the 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 addressed 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 on its web site to assist businesses.*