# 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: **July 20, 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- ☐ Rescinded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.*

   ***The purpose of this rule is to provide for the standardization of coverage of Medicare Supplement policies.***

   ***A Medicare Supplement (Med Supp) policy helps pay some of the health care costs that Original Medicare doesn't cover such as co-payments, coinsurance and deductibles.***

   ***Medicare Supplement policies are standardized according to federal law. Each state then implements the federal standards. Following passage of the applicable federal law, the National Association of Insurance Commissioners (NAIC) works with various states and***

***interested parties to update the "Medicare Supplement NAIC model law." States then adopt the NAIC model law to maintain compliance with the federal requirements and uniformity among the states. This rule, 3901-8-08, is based on the current NAIC model which was amended to address the passage of the most recent federal act, the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA).***

***Amendments to the rule largely address changes to standardized plans. Med Supp policies are sold by alphabetical names, with each plan offering slightly different benefits. MACRA mandates various changes to these plans by plan year 2020, these are addressed throughout the draft rule by the addition of paragraph (L) of this rule. Various amendments are also made to the rule appendices which market the plans accordingly for consumers.***

***Additionally, the following two amendments further clarify how the rule currently is applied: the amendment to paragraph (N) of this rule, open enrollment, states that tobacco and nicotine usage is not to be used as a discriminating factor in the pricing of these policies.***

***Amendments to paragraph (S)(2) of this rule, further clarify how commission or other compensation for agents following the fifth renewal year of the policy will be paid out.***

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

   ***Sections 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.*

   ***The Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) is a major piece of federal legislation affecting many aspects relating to healthcare payments, including a re-design of some Med Supp policies.***

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

   ***This rule is based on the NAIC model which provides the framework for states to implement the new federal requirements for Med Supp policies. The model overlays the state framework with the federal requirements, but allows for some state specific decisions to be made. The department is updating the current rule to implement these federal changes.***

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)?

***This rule works to facilitate consumer understanding and comparison of Med Supp policies and to provide for disclosures in the sale of such policies. This type of policy provides a valuable option to Medicare enrollees. Costs not covered by Medicare can add up quickly and can be especially difficult for people that are traditionally on a fixed income. The purpose of this rule is to ensure these plans are standardized for ease of consumer understanding and that the plans be in compliance with federal law.***

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

   ***The measure of success will be a better understanding among Medicare enrollees of what Med Supp plans offer, resulting in fewer questions regarding the terms and benefits of their supplement policy. The department will also measure the success by fewer complaints and administrative actions against Medicare supplement insurers.***

## 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 June 20th, 2018, an email requesting comment for this rule was sent to various stakeholders, interested parties, and trade associations, including but not limited to: America's Health Insurance Plans (AHIP), the Ohio Association of Health Plans (OAHP), and various health insurance companies. 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?

   ***The department received feedback from two interested parties: United Healthcare, and the Ohio Association of Health Plans (OAHP).***

   ***United Healthcare provided suggested amendments that were technical in nature, mostly citation fixes, which were all included in the proposed rule.***

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?

   ***In April 2015, MACRA was passed which included a significant change for Med Supp plans. In response to MACRA, the NAIC has amended the Med Supp model. The NAIC works with various state insurance departments & stakeholders to update the model law. The NAIC Med***

***Supp model remains a consistent and preferred method of regulating Med Supp plans at the state level.***

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?

    ***Med Supp plans are standardized nationally and then adopted into state regulations. The proposed amendments to this rule reflect the most recent version of the NAIC model. This method is preferred by the regulated community, the NAIC, and the department to promote uniformity and compliance with federal guidance across the states. Due to the requirements of standardization an alternative regulation is not appropriate.***

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.*

    ***This rule requires a specific set of regulations to maintain the standardization of specific insurance products. Therefore, a performance-based regulation is not appropriate for this rule.***

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

    ***The department maintains sole regulatory authority over health insurers, no other regulation duplicates this rule.***

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.

    ***Amendments to this rule will be effective prior to January 1, 2019 which will provide companies with over a year to come into compliance ahead of the new 2020 plan year requirements. During this time department staff will be available to review new product filings or any other administrative filings, using the rule's specific requirements. The use of the NAIC model within the rule assists with consistency to prior versions of this rule, as well as predictability throughout the regulated community.***

## 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.*

***a. This rule applies to all health plan issuers engaging in the sale of Med Supp policies in the state of Ohio.***

***b. This rule impacts internal company resources which may include IT systems, publication edits, time to prepare new filings and staff training time.***

***c. The proposed amendments will require a substantial review and revision to existing practices. Companies will need to submit new filings well in advance of the January 1, 2020 effective date of the new federally standardized Med Supp plans. In order to remain in compliance with this rule, health insurance companies should monitor staff communications and training, as well as their internal IT systems and procedures.***

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

***This rule applies only to health insurance companies selling Med Supp policies and is intended to establish standards that will promote consistency and accountability in the sale of such policies. The amendments to the rule are to be effective prior to January 1, 2019 which will provide companies over a year to come into compliance with the new 2020 plan year requirements. Additionally, this rule is based on the NAIC model which is being used in many, if not all other states. Although the amendments impose changes to current business practices, consistency among states provides a predictable and consistent enforcement of these regulations. After review it has been determined that a standardized market promotes conusmer protections and outweighs any adverse impact on insurance companies.***

## Regulatory Flexibility

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

***The requirements of this rule are intended to promote a standardized environment for the sale of Med Supp policies as required by federal law. Therefore, it is essential that all health***

***insurance companies engaging in the sale of these policies, regardless of size, comply consistently with the requirements of this rule.***

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?

    ***Non-compliant filings are identified in the review process and discussed with the company. Generally, companies agree to change a filing as requested by the department, propose an alternative solution, or will withdraw the filing.***

    ***Paperwork violations and/or first time offender issues would be dealt with on a case-by-case basis due to the fact that these types of violations could impact the consumer. There is no fine or penalty for paperwork violations under this rule.***

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

    ***Should an entity have any questions about achieving compliance with this rule, department staff will be available to answer any questions.***