Ohio | Common Sense Initiative

Mike DeWine, Governor | **Jon Husted**, Lt. Governor | **Joseph Baker**, Director

Business Impact Analysis

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Regulation/Package Title *(a general description of the rules' substantive content)*:
Medicare Supplement

Rule Number(s): ***3901-8-08 Medicare supplement***

Date of Submission for CSI Review: ***December 27, 2022***
Public Comment Period End Date: ***January 21, 2023 12:00am***

Rule Type/Number of Rules:

- ☐ New/ rules
- ☐ No Change/ rules (FYR?)
- ☒ Amended/ ***1*** 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- ☐ Rescinded/ rules (FYR?)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.

   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 Medicare Supplement, is based on the most current NAIC model.

   The proposed substantive amendment found in paragraph (O)(2)(a) will expand the definition of eligible persons to include individuals who have lost state Medicaid benefits as a result of plan termination and will establish a guarantee issue opportunity for individuals that lose Medicaid benefits when the federal public health emergency ends.

   Additional techinical amedments will reduce regulatory restrictions in accordance with the requirements of ORC 121.951 (SB 9).

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

Sections 3901.041, 3923.33, and 3923.331 to 3923.339 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.

   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 redesign of some Med Supp policies.

5. If the regulation implements a federal requirement, but 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 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.

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)?

   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 are compliant with federal law. The proposed amendment will further consumer protection by providing individuals who lose coverage under Medicaid the option to purchase a Med Supp plan, which otherwise is not available outside of open enrollment periods.

7. 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.

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.*

   On November 18, 2022, the department sent an email requesting comment to industry stakeholders, including companies offering Med Supp plans, consumer groups, and associations such as the Ohio Association of Health Plans, the Ohio Insurance Agents Association, the National Association of Insurance and Financial Advisors, and the Ohio Insurance Underwriters Association. A follow-up email was also sent on December 1, 2022.

   The Department submitted the rule to CSI for review on December 27, 2022. One comment of support was received during the two week comment period. Upon conclusion of the comment period, the Department proposed additional technical amendments to reduce regulatory restrictions in accordance with the requirements of ORC 121.951 (SB 9). The Department will resubmit the rule to CSI on January 13, 2023 and open a one week comment period.

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.

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?

    The NAIC works with various state insurance departments and industry stakeholders 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. The proposed amendment was drafted to provide an option for individuals whom will face a loss of coverage when the public health emergency ends, as well as any termination of Medicaid benefits.

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? *Alternative regulations may include performance based regulations, which define the required outcome, but do not dictate the process the regulated stakeholders must use to comply.*

    Med Supp plans are standardized nationally and then adopted into state regulations. 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.

13. 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.

14. 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.

    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

15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:
    a. Identify the scope of the impacted business community; and
    b. Quantify and identify the nature of the adverse impact (e.g., fees, fines, employer time for compliance).
       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. The proposed amendment will require a review and revision to existing practices. 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.

16. Are there any proposed changes to the rule(s) that will reduce a regulatory burden imposed on the business community? Please identify. *(Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors.)*

    There are no proposed changes to the rule that will reduce regulatory burden.

17. 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. Although the amendment will impose a change to current business practices, the option to purchase a med supp plan for individuals who have lost coverage due to plan termination with Medicaid, this establishes a consumer protection and outweighs the potential adverse impact on insurance companies.

Regulatory Flexibility

18. 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.

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?

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.

20. 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.