

Common Sense
Initiative

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Business Impact AnalysisAgency Name: Ohio Department of InsuranceRule Contact Name: Loretta MedvedRule Contact Information: 614-644-0239loretta.medved@insurance.ohio.gov

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

Chapter 8 rulesRule Number(s): 3901-8-06, 3901-8-07, 3901-8-11, 3901-8-16Date of Submission for CSI Review: June 23, 2023Public Comment Period End Date: July 11, 2023, 12:00AMRule Type/Number of Rules:

- | | | | |
|--|----------------------|-------------------------------------|---------------|
| <input type="checkbox"/> New/ | rules | <input type="checkbox"/> No Change/ | rules (FYR?) |
| <input checked="" type="checkbox"/> Amended/ | 4 rules (FYR? 2023) | <input type="checkbox"/> Rescinded/ | rules (FYR?)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.

Rule 3901-8-06: This rule establishes the form and content of the written consent form an insurer must use in order to obtain an applicant's consent to an HIV test. Proposed amendments will reduce regulatory restrictions and make necessary technical corrections.

Rule 3901-8-07: This rule sets the standards and requirements that insurers must follow when advertising sickness and accident insurance products. The rule requires that the advertising is not misleading or deceptive and advertises truthful and adequate information. Proposed amendments will reduce regulatory restrictions.

Rule 3901-8-11: Consumers and providers in Ohio can file claim disputes with their respective insurance companies if they believe that claim was wrongly denied. The rule sets uniform standards that health insurance companies must follow when denying a health insurance claims, including explaining the reason they are denying payment of the claim and the complaint procedure available to the insured and providers. Proposed amendments will reduce regulatory restrictions.

Rule 3901-8-16: This rule sets forth standards for health insurers to provide access to clear and accurate information about their provider network directories and related network information for both enrollees and those shopping for coverage. Proposed amendments will reduce regulatory restrictions.

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

Rule 3901-8-06: Sections 3901.041 and 3901.46 of the Revised Code.

Rule 3901-8-07: Sections 3901.041 and 3923.16 of the Revised Code.

Rule 3901-8-11: Sections 3901.041, 3901.20, 3901.21, and 3901.38 to 3901.3813 of the Revised Code.

Rule 3901-8-16: Sections 3901.21 and 3901.041 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.

Not applicable.

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.

Not applicable.

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)?

Rule 3901-8-06: The public purpose as defined in the rule is for life and sickness and accident insurers to provide a uniform consent form for HIV testing for applicants seeking life or sickness and accident insurance coverage to submit an HIV test.

Rule 3901-8-07: The public purpose of this rule is to protect consumers from deceptive and misleading advertisement of sickness and accident insurance products. The rule provides minimum standards for insurance companies to follow when marketing and advertising sickness and accident insurance products.

Rule 3901-8-11: This rule ensures consumers are provided appropriate information in the case of a claim denial. This rule sets forth the standards health insurance companies must comply with when a consumer's claim is denied.

Rule 3901-8-16: This rule was promulgated to address consumer complaints regarding lack of accurate provider network information when shopping for health insurance plans both prior to and after enrollment. The objectives of this rule are to provide consumers the tools to better understand what they are purchasing and provide insurer clarity regarding compliance standards.

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

The success of these rules can be measured by a decreased amount of complaints received by the department's consumer services division, a decrease in complaints concerning deceptive or misleading advertising of sickness and accident insurance products, and a decrease in compliance reviews of companies regarding this issue.

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.*

In late April and early May, the department sent an email to stakeholders informing them that the rules have been posted to the department webpage for a two week comment period. Drafts of the rules have remained online for review since then. Stakeholders included; 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, as well as insurance companies.

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 regarding these rules.

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?

Rule 3901-8-06: The HIV consent form developed a standard form for use. Specifics were derived from interested party discussion and evaluating trends in consumer complaints.

Rules 3901-8-07 and 3901-8-11: 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) Model Laws. The NAIC consults 2industry, regulators, and the public to create industry standards that states may adopt into their own laws and rules. Consumer protections and consistent regulation of the general claims process and advertising of sickness and accident insurance were the driving factors in establishing the specifics of these rules.

Rule 3901-8-16: This rule was promulgated in response to complaints received by consumers that have been financially harmed as a result of inaccurate information provided to them by their health insurance carrier. During the drafting of the rule, department staff gathered information from complaints and from national discussion, as well as activity in other states in order to draft this rule.

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.*

There are no alternative regulations that have been drafted that address the issue as thoroughly as these rules. These rules provide consistent and predictable regulatory guidance for insurance carriers. The department has conducted extensive stakeholder outreach, as well as gathering data from other states and was not able to find an alternative regulation that would adequately address consumer concerns.

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

The department has the sole regulatory authority over health insurance companies. This rule applies strictly to information provided on behalf of these companies and therefore, is not duplicating an existing regulation. These rules are exclusive to the department of insurance, and the rules not duplicate any other rule or regulation.

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.

Rule 3901-8-06: The rule is in-force as it is currently implemented, as every insurer must provide the form to the applicant before the HIV test can occur. Department staff will assist carriers in locating the updated form.

Rule 3901-8-07: The rule is applied consistently and predictably through our consumer services division and our market conduct division for review as necessary. Insurers are required to compile and maintain printed, published, advertisements of its policies for a period of four years or until the filing of the next report or examination of the insurer.

Rule 3901-8-11: The rule is applied consistently and predictably through the consumer services and market conduct review process, which has specific standards that insurance companies are required to meet in order to sell their products in the state of Ohio.

Rule 3901-8-16: This rule does not require annual reporting or impose a penalty. Therefore, it is the responsibility of the insurance company to comply with these regulations. Paragraph (G) of this rule states that the superintendent may require an issuer to submit reports upon

request in order to demonstrate compliance. Such reports may include the timing and frequency of provider directory updates, the number of consumer complaints received related to the accuracy of the provider directory, difficulty in obtaining access to the directory, or difficulty in obtaining information related to out-of-network cost-sharing; and any other information that the superintendent considers to be relevant in evaluating an issuer's compliance. These reports are likely to be requested only after the department has reason to believe that the company is not complying with the rule.

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.

Rule 3901-8-06: Insurers administering HIV consent forms are impacted by the requirements of this rule. Since this rule is already in existence and merely requires the provision of a form, the cost is minimal if not non-existent.

Rule 3901-8-07: Sickness and accident insurers and brokers and agents are impacted by the requirements of this rule. Time and resources are necessary to make sure prohibited practices are avoided and that required language or disclosures are included in sickness and accident advertising directed to consumers. The cost is staff time associated with complying with the rule, developing advertisements that meet the requirements of the rule, and maintaining a file of printed, published or prepared advertisements.

Rule 3901-8-11: Health insurance issuers are impacted by this rule. Staff time and resources are required to comply with the general claims practices set forth by this rule. Since the rule is already in existence, insurers are already meeting the provisions of the rule, those staff and resources appear to already be in place.

Rule 3901-8-16: This rule applies to all health plan issuers in the state of Ohio and impacts internal company resources which may include IT systems, publication edits, and staff time. This rule has been in effect and applied in the regulated community. In order to remain in compliance with this rule, health insurance companies should monitor staff communications & training, as well as internal IT systems and procedures. The rule requires that specific standards in regards to information and timely updates are completed and publicly available.

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.*)

Proposed amendments will reduce regulatory restrictions.

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

Rule 3901-8-06: The rule establishes a uniform consent form that life and sickness and accident insurers must use in order to obtain an applicant's written consent to an HIV test. Without this rule in place, there would be no consumer protections for individuals seeking insurance coverage for HIV and no regulation of HIV testing administered by insurers.

Rule 3901-8-07: This rule sets the standards and requirements that insurers must follow when advertising sickness and accident insurance products. The rule is essential to consumer protection by ensuring that consumers are not being subjected to misleading or deceptive advertising of sickness and accident insurance through various media outlets including printed and published material and audio-visual material.

Rule 3901-8-11: This rule establishes the requirements insurers must follow when a claim is denied, including an explanation for the denial and the complaint procedure available to consumers and providers. The rule provides essential protections for consumers by ensuring that the insurers are providing consumers all the necessary information regarding the claim denial process and reasoning for a claim denial.

Rule 3901-8-16: This rule strengthens a consumer's right-to-know when shopping for and utilizing a health insurance plan. Transparency is expected in any transaction or contract, and it is the objective of the department to ensure that Ohioans have access to the details of the healthplans for which they are shopping or enrolled. If a consumer relies on inaccurate information, increased financial liability can occur. Additionally, the regulations will provide predictability and a constant standard for health insurance companies.

Regulatory Flexibility

18. 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 rules requirements regardless of size, in order to maintain a fair and competitive market.

The requirements of these rules are intended to promote a consistent environment for consumers when shopping, selecting, and utilizing health insurance coverage. It is important that consumers can make accurate comparisons and decisions. Therefore, it is

essential that all health insurance companies comply consistently with the requirements of the rules and achieve the desired outcome.

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?

Paperwork violations and/or first time offender issues will be handled on a case by case basis due to the fact that these types of violations could have a serious impact on the consumer. In the case of a violation of unfair trade practices, the department may conduct a market conduct investigation if a pattern of noncompliance arises.

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

The department maintains the product regulation and market conduct divisions which are available to answer general industry questions.