

**Common Sense
Initiative****Mike DeWine**, Governor**Jon Husted**, Lt. Governor**Joseph Baker**, Director

Business Impact Analysis

Agency Name: **Ohio Department of Insurance**Rule Contact Name: **Loretta Medved**Rule Contact Information: **loretta.medved@insurane.ohio.gov**
614-644-0239Regulation/Package Title (a general description of the rules' substantive content):
Chapter 3901-8 part 1Rule Number(s): **3901-8-01**
3901-8-02
3901-8-05Date of Submission for CSI Review: **June 2, 2023**Public Comment Period End Date: **June 15, 2023 12:00 a.m.**Rule Type/Number of Rules:

- | | | | |
|--|---------------------|-------------------------------------|---------------|
| ☐ New/ | rules | ☐ No Change/ | rules (FYR?) |
| ☒ Amended/ | 3 rules (FYR? 2023) | ☐ Rescinded/ | rules (FYR?)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 3901-8-01: 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, 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. Proposed amendments will reduce regulatory restrictions.

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. Proposed amendments are technical and will reduce regulatory restrictions.

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. 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.

Sections 3901.041, 3901.14, 3901.21, and 3959.04 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 3901-8-01: 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 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.

7. 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.

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 mid-April 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?

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.

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.*

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

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

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.

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 3901-8-01: 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

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 3901-8-01: 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.

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 3901-8-01: 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

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

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 addressed on a case by case basis due to the fact that these types of violations could have a serious impact on the consumer.

20. 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.