

**Michigan Office of Administrative Hearings and Rules**

**Administrative Rules Division (ARD)**

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**REGULATORY IMPACT STATEMENT  
and COST-BENEFIT ANALYSIS (RIS)**

**Agency Information:**

**Department name:**

Insurance and Financial Services

**Bureau name:**

Insurance

**Name of person filling out RIS:**

Julie Agueros

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**Rule Set Information:**

**ARD assigned rule set number:**

2020-113 IF

**Title of proposed rule set:**

Surprise Medical Billing

**Comparison of Rule(s) to Federal/State/Association Standard**

**1. Compare the proposed rules to parallel federal rules or standards set by a state or national licensing agency or accreditation association, if any exist.**

There are no parallel federal rules or standards set by a state or national licensing agency or accreditation association.

**A. Are these rules required by state law or federal mandate?**

No. These rules are permissive under MCL 333.24517.

**B. If these rules exceed a federal standard, please identify the federal standard or citation, describe why it is necessary that the proposed rules exceed the federal standard or law, and specify the costs and benefits arising out of the deviation.**

The rules do not exceed any federal standard.

**2. Compare the proposed rules to standards in similarly situated states, based on geographic location, topography, natural resources, commonalities, or economic similarities.**

At least 32 states have enacted laws protecting patients from balance billing; most include dispute resolution and reimbursement benchmark provisions similar to Michigan's. These proposed rules implement specific provisions of Michigan's surprise billing law and establish procedures and standards for dispute resolution. Of these states, Maine, New York, Georgia, Arizona, Delaware, and Connecticut have promulgated administrative rules similar to the proposed rules, that establish procedures for dispute resolution. These other states' administrative rules are substantially similar to the proposed rules.

**A. If the rules exceed standards in those states, please explain why and specify the costs and benefits arising out of the deviation.**

DIFS is not aware of any provision in the proposed rules that exceeds standards in other states.

**3. Identify any laws, rules, and other legal requirements that may duplicate, overlap, or conflict with the proposed rules.**

In December 2020, the federal No Surprises Act was enacted. This federal law will govern self-funded health plans, whereas the Michigan Surprise Medical Billing law governs state-regulated health benefit plans. Accordingly, there are no laws, rules, or other legal requirements that may duplicate, overlap, or conflict with these rules.

**A. Explain how the rules have been coordinated, to the extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter. This section should include a discussion of the efforts undertaken by the agency to avoid or minimize duplication.**

Because the state law and the federal No Surprises Act govern different health benefit plans, there was no need to coordinate or undertake efforts to avoid or minimize duplication.

**4. If MCL 24.232(8) applies and the proposed rules are more stringent than the applicable federally mandated standard, provide a statement of specific facts that establish the clear and convincing need to adopt the more stringent rules.**

MCL 24.232(8) does not apply.

**5. If MCL 24.232(9) applies and the proposed rules are more stringent than the applicable federal standard, provide either the Michigan statute that specifically authorizes the more stringent rules OR a statement of the specific facts that establish the clear and convincing need to adopt the more stringent rules.**

MCL 24.232(9) does not apply.

## **Purpose and Objectives of the Rule(s)**

**6. Identify the behavior and frequency of behavior that the proposed rules are designed to alter.**

As described above, the purpose of these rules is to implement the provisions of MCL 333.24510 and MCL 333.24511 by doing the following: 1) establishing procedures for the department to review and resolve requests for calculation determinations submitted pursuant to MCL 333.24510; 2) establishing procedures for the department to request documents, materials, or other information necessary to perform calculation reviews and issue determinations under MCL 333.24510; 3) establishing procedures for processing requests for binding arbitration submitted pursuant to MCL 333.24511; and 4) establishing standards for approving arbitrators to provide binding arbitration pursuant to MCL 333.24511. Accordingly, the proposed rules are intended to alter the dispute-resolution process between health care providers and insurers.

**A. Estimate the change in the frequency of the targeted behavior expected from the proposed rules.**

This legislation established a new program; accordingly, DIFS does not have an estimate of the number of requests for calculation review or arbitration that it will handle.

**B. Describe the difference between current behavior/practice and desired behavior/practice.**

At present, health care providers who do not have a negotiated agreement or who do not participate with an insurer's network are permitted to "balance-bill" patients. This legislation prohibits this practice in some circumstances and requires the provider to accept a certain payment from the insurer under certain circumstances. The provisions of the legislation that apply to DIFS, and which form the basis for these proposed rules, allow providers who believe they have not been adequately reimbursed by insurers to request a "calculation review" by DIFS. Where a health care service involves a "complicating factor," an insurer and the health care provider can submit to binding arbitration, which is facilitated by DIFS but handled by the arbitrator. These procedures are new under the statute and will change current practices by providing avenues for dispute resolution.

**C. What is the desired outcome?**

The desired outcome of the rules, independent of statutory effect, is to clarify procedures for calculation review and requests for arbitration.

**7. Identify the harm resulting from the behavior that the proposed rules are designed to alter and the likelihood that the harm will occur in the absence of the rule.**

The legislation that provides the authority for these rules was designed to minimize the impacts of balance-billing on patients. These rules provide clarity on the procedures to be followed for calculation review and requests for arbitration as required under the law.

**A. What is the rationale for changing the rules instead of leaving them as currently written?**

These rules do not amend an existing rule set.

**8. Describe how the proposed rules protect the health, safety, and welfare of Michigan citizens while promoting a regulatory environment in Michigan that is the least burdensome alternative for those required to comply.**

These proposed rules help implement the surprise medical billing law, which was intended to protect patients from being balance-billed by out-of-network providers. The processes established in the proposed rules are intended to provide clarity without adding burden to providers and insurers who utilize the dispute resolution processes established in the law.

**9. Describe any rules in the affected rule set that are obsolete or unnecessary and can be rescinded.**

These rules do not amend an existing rule set.

**Fiscal Impact on the Agency**

Fiscal impact is an increase or decrease in expenditures from the current level of expenditures, i.e. hiring additional staff, higher contract costs, programming costs, changes in reimbursements rates, etc. over and above what is currently expended for that function. It does not include more intangible costs for benefits, such as opportunity costs, the value of time saved or lost, etc., unless those issues result in a measurable impact on expenditures.

**10. Please provide the fiscal impact on the agency (an estimate of the cost of rule imposition or potential savings for the agency promulgating the rule).**

The proposed rules are projected to have a minimal fiscal impact on DIFS; the only projected fiscal impact will be the hiring of one (1) additional staff member to process calculation review and arbitration requests.

**11. Describe whether or not an agency appropriation has been made or a funding source provided for any expenditures associated with the proposed rules.**

DIFS has not made an agency appropriation for this position. However, DIFS has identified a restricted funding source for any expenditures associated with the proposed rules.

**12. Describe how the proposed rules are necessary and suitable to accomplish their purpose, in relationship to the burden(s) the rules place on individuals. Burdens may include fiscal or administrative burdens, or duplicative acts.**

The proposed rules are necessary and suitable to accomplish the purposes set forth under Question 6 because they set forth procedures and standards for processing calculation review and arbitration requests. These proposed rules are not intended to place additional burdens on individuals but rather to minimize burdens by providing a clear process.

**A. Despite the identified burden(s), identify how the requirements in the rules are still needed and reasonable compared to the burdens.**

As described above, these rules are necessary and reasonable to implement the provisions of MCL 333.24510 and MCL 333.24511 because they establish processes for calculation review and arbitration requests, both of which are required under the law.

**Impact on Other State or Local Governmental Units**

**13. Estimate any increase or decrease in revenues to other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Estimate the cost increases or reductions for other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Include the cost of equipment, supplies, labor, and increased administrative costs in both the initial imposition of the rule and any ongoing monitoring.**

DIFS estimates that the proposed rules would not increase or decrease revenues or costs to other state or local governmental units.

**14. Discuss any program, service, duty, or responsibility imposed upon any city, county, town, village, or school district by the rules.**

The proposed rules do not impose any program, service, duty, or responsibility upon any city, county, town, village, or school district.

**A. Describe any actions that governmental units must take to be in compliance with the rules. This section should include items such as record keeping and reporting requirements or changing operational practices.**

No governmental units other than DIFS are required to take action to be in compliance with the proposed rules.

**15. Describe whether or not an appropriation to state or local governmental units has been made or a funding source provided for any additional expenditures associated with the proposed rules.**

There are no additional expenditures associated with the proposed rules.

## **Rural Impact**

### **16. In general, what impact will the rules have on rural areas?**

The proposed rules will not have an impact on an area due to it being rural.

### **A. Describe the types of public or private interests in rural areas that will be affected by the rules.**

Public or private interests in rural areas will be affected by the rules to the same extent as public or private interests in non-rural areas. Health care providers and insurers located in rural areas will be able to access the dispute resolution procedures equally as those located in non-rural areas.

## **Environmental Impact**

### **17. Do the proposed rules have any impact on the environment? If yes, please explain.**

The proposed rules do not have any impact on the environment.

## **Small Business Impact Statement**

### **18. Describe whether and how the agency considered exempting small businesses from the proposed rules.**

DIFS did not consider exempting small businesses.

### **19. If small businesses are not exempt, describe (a) the manner in which the agency reduced the economic impact of the proposed rules on small businesses, including a detailed recitation of the efforts of the agency to comply with the mandate to reduce the disproportionate impact of the rules upon small businesses as described below (in accordance with MCL 24.240(1)(a-d)), or (b) the reasons such a reduction was not lawful or feasible.**

A reduction in the economic impact of the proposed rules on small businesses is not lawful or feasible. As set forth above, the proposed rules establish procedures through which health care providers may pursue dispute resolution. Exempting small businesses would have the effect of eliminating their access to this dispute resolution process, which would be inconsistent with the law.

### **A. Identify and estimate the number of small businesses affected by the proposed rules and the probable effect on small businesses.**

DIFS does not collect data on which health care providers or insurers are “small businesses.”

### **B. Describe how the agency established differing compliance or reporting requirements or timetables for small businesses under the rules after projecting the required reporting, record-keeping, and other administrative costs.**

DIFS did not establish differing compliance or reporting requirements or timetables for small businesses.

### **C. Describe how the agency consolidated or simplified the compliance and reporting requirements for small businesses and identify the skills necessary to comply with the reporting requirements.**

DIFS did not consolidate or simplify the compliance and reporting requirements for small businesses.

### **D. Describe how the agency established performance standards to replace design or operation standards required by the proposed rules.**

The proposed rules do not include any design or operation standards.

### **20. Identify any disproportionate impact the proposed rules may have on small businesses because of their size or geographic location.**

The proposed rules would not have a disproportionate impact on small businesses due to their size or geographic location.

### **21. Identify the nature of any report and the estimated cost of its preparation by small businesses required to comply with the proposed rules.**

There are no reporting requirements in the proposed rules.

### **22. Analyze the costs of compliance for all small businesses affected by the proposed rules, including costs of equipment, supplies, labor, and increased administrative costs.**

There may be minimal costs associated with the pursuit of calculation review requests or requests for arbitration under the law; however, these costs will apply to all providers and insurers, regardless of their size. Health insurers may incur some costs in providing DIFS with access to a data regarding their negotiated rates; however, because insurers already maintain this data, such costs are expected to be minimal.

**23. Identify the nature and estimated cost of any legal, consulting, or accounting services that small businesses would incur in complying with the proposed rules.**

The proposed rules are not intended to cause small businesses to incur any legal, consulting, or accounting services.

**24. Estimate the ability of small businesses to absorb the costs without suffering economic harm and without adversely affecting competition in the marketplace.**

DIFS does not estimate that the proposed rules will cause economic harm or adversely affect competition in the marketplace.

**25. Estimate the cost, if any, to the agency of administering or enforcing a rule that exempts or sets lesser standards for compliance by small businesses.**

Because the proposed rules are generally applicable to all health care providers, DIFS' costs in exempting or setting lesser standards for providers that constitute "small businesses" would involve voluminous data collection from providers (which DIFS does not regulate) to determine which are "small businesses." More importantly, establishing alternate standards would contravene the legislative purposes of the surprise medical billing statute.

**26. Identify the impact on the public interest of exempting or setting lesser standards of compliance for small businesses.**

As described above, the legislative intent of the surprise medical billing act was to protect patients from balance-billing. The proposed rules implement the dispute resolution processes under the legislation, and the public interest would not benefit from exempting or setting lesser standards of compliance for small businesses because doing so would contravene the intent of the legislation.

**27. Describe whether and how the agency has involved small businesses in the development of the proposed rules.**

DIFS has not specifically involved small businesses in the development of the rules.

**A. If small businesses were involved in the development of the rules, please identify the business(es).**

DIFS has not specifically involved small businesses in the development of the rules.

## **Cost-Benefit Analysis of Rules (independent of statutory impact)**

**28. Estimate the actual statewide compliance costs of the rule amendments on businesses or groups.**

DIFS does not collect data on compliance costs associated with health care providers, as those providers are not regulated by DIFS. Health insurers may incur some costs in providing DIFS with access to a data regarding their negotiated rates; however, because insurers already maintain this data, such costs are expected to be minimal.

**A. Identify the businesses or groups who will be directly affected by, bear the cost of, or directly benefit from the proposed rules.**

Health care providers and health insurers will be directly affected by, bear the cost of, and in some cases directly benefit from the proposed rules.

**B. What additional costs will be imposed on businesses and other groups as a result of these proposed rules (i.e. new equipment, supplies, labor, accounting, or recordkeeping)? Please identify the types and number of businesses and groups. Be sure to quantify how each entity will be affected.**

Health insurers may incur some costs in providing DIFS with access to a data regarding their negotiated rates; however, because insurers already maintain this data, such costs are expected to be minimal.

**29. Estimate the actual statewide compliance costs of the proposed rules on individuals (regulated individuals or the public). Include the costs of education, training, application fees, examination fees, license fees, new equipment, supplies, labor, accounting, or recordkeeping.**

The proposed rules, independent of statutory effect, will not impose costs on the public, as the dispute resolution process is between a health care provider and health insurer only. There are no individuals regulated by DIFS who will incur costs (individual health care providers are not regulated by DIFS).

**A. How many and what category of individuals will be affected by the rules?**

DIFS does not collect data on how many individual health care providers practice in Michigan.

**B. What qualitative and quantitative impact do the proposed changes in rules have on these individuals?**

Individual health care providers will be required to submit requests for calculation review. This process will be relatively simple and will allow providers with a mechanism for disputing reimbursement.

**30. Quantify any cost reductions to businesses, individuals, groups of individuals, or governmental units as a result of the proposed rules.**

The proposed rules, independent of statutory effect, are not expected to result in cost reductions to businesses, individuals, groups of individuals, or governmental units.

**31. Estimate the primary and direct benefits and any secondary or indirect benefits of the proposed rules. Please provide both quantitative and qualitative information, as well as your assumptions.**

The primary and direct benefits of the proposed rules are that providers and health insurers will understand the process by which calculation review and binding arbitration requests will be handled; and that arbitrators will understand how to apply to be included on DIFS' list of qualified arbitrators. Secondary or indirect benefits of the proposed rules are that the processes will help carry out the intent of the legislation, which is to decrease balance-billing of patients.

**32. Explain how the proposed rules will impact business growth and job creation (or elimination) in Michigan.**

The proposed rules are not expected to impact business growth and job creation or elimination in Michigan.

**33. Identify any individuals or businesses who will be disproportionately affected by the rules as a result of their industrial sector, segment of the public, business size, or geographic location.**

As described above, the proposed rules implement the surprise medical billing statute, which affects health care providers, health insurers, and patients. However, only those health care providers who wish to submit a calculation review or binding arbitration request will be subject to the proposed rules.

**34. Identify the sources the agency relied upon in compiling the regulatory impact statement, including the methodology utilized in determining the existence and extent of the impact of the proposed rules and a cost-benefit analysis of the proposed rules.**

DIFS relied on the following sources in compiling this regulatory impact statement:

- Legislative history of HB 4459 and HB 4460 of 2020: [http://www.legislature.mi.gov/\(S\(toreyalewj3n5xgu0ayqnlvz\)\)/mileg.aspx?page=getObject&objectName=2019-HB-4459](http://www.legislature.mi.gov/(S(toreyalewj3n5xgu0ayqnlvz))/mileg.aspx?page=getObject&objectName=2019-HB-4459)
- Other states' laws and regulations governing surprise medical billing / balance billing

**A. How were estimates made, and what were your assumptions? Include internal and external sources, published reports, information provided by associations or organizations, etc., that demonstrate a need for the proposed rules.**

Estimates relating to costs were based on the assumption that the proposed rules do not significantly reform the core rights, obligations, and requirements under the surprise medical billing statute.

## **Alternative to Regulation**

**35. Identify any reasonable alternatives to the proposed rules that would achieve the same or similar goals.**

The only alternative to the proposed rules would be to refrain from rulemaking and, instead, operationalize the program through forms and informal guidance. DIFS does not believe that this alternative is reasonable or that it would provide affected parties with consistent and clear regulatory guidance.

**A. Please include any statutory amendments that may be necessary to achieve such alternatives.**

There are no statutory amendments that would be necessary to achieve such alternatives because DIFS is authorized to issue forms and informal guidance.

**36. Discuss the feasibility of establishing a regulatory program similar to that proposed in the rules that would operate through private market-based mechanisms. Please include a discussion of private market-based systems utilized by other states.**

There are no private market-based mechanisms that are appropriate for establishing this regulatory program. The surprise billing legislation requires that the program be operated by DIFS. DIFS is not aware of any private market-based systems utilized by other states.

**37. Discuss all significant alternatives the agency considered during rule development and why they were not incorporated into the rules. This section should include ideas considered both during internal discussions and discussions with stakeholders, affected parties, or advisory groups.**

DIFS did not consider significant alternatives during the development of the proposed rules.

### **Additional Information**

**38. As required by MCL 24.245b(1)(c), please describe any instructions regarding the method of complying with the rules, if applicable.**

There are no instructions regarding the method of complying with the rules.