



## Ohio Revised Code

### Section 3961.08 Noncompliance with chapter - sanctions - enforcement.

Effective: March 23, 2007

Legislation: Senate Bill 5 - 126th General Assembly

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(A) No person shall fail to comply with sections 3961.01 to 3961.09 of the Revised Code. If the superintendent of insurance determines that any person has violated sections 3961.01 to 3961.07 of the Revised Code, the superintendent may take one or more of the following actions:

- (1) Assess a civil penalty in an amount not to exceed twenty-five thousand dollars per violation if the person knew or should have known of the violation;
- (2) Assess administrative costs to cover the expenses incurred in the administrative action, including, but not limited to, expenses incurred in the investigation and hearing process. Costs collected under this division shall be paid into the state treasury to the credit of the department of insurance operating fund created in section 3901.021 of the Revised Code.
- (3) Order corrective actions in lieu of or in addition to the other penalties described in this section, including, but not limited to, suspending civil penalties if a discount medical plan organization complies with the terms of the corrective action order;
- (4) Order restitution to members.

(B) Before imposing a penalty under division (A) of this section, the superintendent shall give a discount medical plan organization notice and opportunity for hearing as described in Chapter 119. of the Revised Code to the extent that Chapter 119. of the Revised Code does not conflict with any of the following service requirements:

(1)(a) A notice of opportunity for hearing, a hearing officer's findings and recommendations, or any order issued by the superintendent under division (A) of this section shall be served by certified mail, return receipt requested, to the last known address of a discount medical plan organization. For purposes of division (B) of this section, an organization's last known address is the address listed on the organization's disclosures required under section 3961.04 of the Revised Code.



(b) If the certified mail envelope described in division (B)(1)(a) of this section is returned to the superintendent with an endorsement showing that service was refused or that the envelope was unclaimed, the notices, findings and recommendations, and orders described in division (B)(1)(a) of this section and all subsequent notices required under Chapter 119. of the Revised Code may be served by ordinary mail to the discount medical plan organization's last known address. The time period to request an administrative hearing described in Chapter 119. of the Revised Code shall begin to run from the date the ordinary mailing was sent. A certificate of mailing shall evidence any mailings sent by ordinary mail pursuant to this division and shall complete service to the organization unless the ordinary mail envelope is returned to the superintendent with an endorsement showing failure of delivery.

(c) If service by ordinary mail as described in division (B)(1)(b) of this section fails, the superintendent may publish a summary of the substantive provisions of the notice, findings and recommendations, or orders described in division (B)(1)(a) of this section once a week for three consecutive weeks in a newspaper of general circulation in the county of the discount medical plan organization's last known address. The notice shall be considered served on the date of the third publication.

(d) Any notice required to be served under Chapter 119. of the Revised Code also shall be served upon the party's attorney by ordinary mail if the party's attorney has entered an appearance in the matter.

(e) In lieu of certified or ordinary mail or publication notice as described in divisions (B)(1)(a), (b), and (c) of this section, the superintendent may perfect service on a party by personal delivery of the notice by the superintendent's designee.

(f) Notices regarding the scheduling of hearings and all other notices not described in division (B)(1)(a) of this section shall be sent by ordinary mail to the party and the party's attorney.

(2) A subpoena or subpoena duces tecum from the superintendent or the superintendent's designee or attorney to a witness for appearance at a hearing, for the production of documents or other evidence, or for taking testimony for use at a hearing shall be served by certified mail, return receipt requested.



The subpoenas described in this division shall be enforced in the manner described in section 119.09 of the Revised Code. Nothing in this division shall be construed to limit the superintendent's other statutory powers to issue subpoenas.

(C)(1) If a violation of sections 3961.01 to 3961.07 of the Revised Code has caused, is causing, or is about to cause substantial and material harm, the superintendent may issue a cease-and-desist order requiring a person to cease and desist from engaging in a violation.

(2) The superintendent shall, immediately after issuing an order pursuant to division (C)(1) of this section, serve notice of the order by certified mail, return receipt requested, or by any other manner described in division (B) of this section to the person subject to the order and all other persons involved in the violation. The notice shall specify the particular act, omission, practice, or transaction that is the subject of the order and set a date, not more than fifteen days after the date the order was issued, for a hearing on the continuation or revocation of the order. The person subject to the order shall comply with the order immediately upon receiving the order. After an order is issued pursuant to division (C)(1) of this section, the superintendent may publicize and notify all interested parties that a cease-and-desist order was issued.

(3) Upon application by the person subject to the order and for good cause, the superintendent may continue the hearing date described in division (C)(2) of this section. Chapter 119. of the Revised Code applies to the hearing on the order to the extent that the chapter does not conflict with the procedures described in this section. The superintendent shall, within fifteen days after objections are submitted concerning the hearing officer's report and recommendations, issue a final order either confirming or revoking the cease-and-desist order described in division (C)(1) of this section. The final order may be appealed as described in section 119.12 of the Revised Code.

(4) The remedy described in division (C) of this section is cumulative and concurrent with other remedies available under this section.

(D) If the superintendent has reasonable cause to believe that an order issued pursuant to this section has been violated in whole or in part, the superintendent may request the attorney general to commence any appropriate action against the violator. In an action described in this division, a court may impose any of the following penalties:



(1) A civil penalty of not more than twenty-five thousand dollars per violation;

(2) Injunctive relief;

(3) Restitution;

(4) Any other appropriate relief.

(E) The superintendent shall deposit any penalties assessed under division (A)(1) or (D) of this section into the state treasury to the credit of the department of insurance operating fund created in section 3901.021 of the Revised Code.