

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Bureau of Workers' Compensation

Regulation/Package Title: BWC Claims Procedure rules

Rule Number(s): No Change Rules (12) 4123-3-02, 4123-3-11, 4123-3-14, 4123-3-15.1, 4123-3-17, 4123-3-23, 4123-3-24, 4123-3-25, 4123-3-29, 4123-3-32, 4123-3-35;

Amended Rules (15) 4123-3-01, 4123-3-03, 4123-3-07, 4123-3-08, 4123-3-09, 4123-3-10, 4123-3-15, 4123-3-16, 4123-3-18, 4123-3-20, 4123-3-22, 4123-3-31, 4123-3-34, 4123-3-36, 4123-3-37, 4123-3-38.

Date: December 21, 2018

Rule Type:

☐ New

☒ Amended

☒ 5-Year Review

☐ Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

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Please include the key provisions of the regulation as well as any proposed amendments.

Chapter 4123-3 of the Administrative Code contains BWC rules relating to claims procedures. Many of these rules are parallel to Industrial Commission rules in Chapter 4121-3 of the Administrative Code. BWC conducted a five year rule review of the rules.

The statutory authority for the rule provisions in Chapter 4123-3 are found in R.C. 4121.11, 4121.121, 4121.30, 4121.31, and 4123.05. Collectively, these statutes provide the general framework for the management of the BWC and the administration and processing of claims. Specifically, R.C. 4121.11 grants to BWC general rule making authority and provides that the “bureau of workers compensation may adopt its own rules of procedure and may change the same in its discretion.” However, where a Revised Code statute specifically addresses a claims issue, such as the time limit for a provider to file a medical fee bill, the BWC rule conforms to the statutory mandate.

There are 27 rules in Chapter 4123-3 subject to the five-year rule review. BWC recommends retaining 12 rules without change, amending 15 rules as summarized below and as indicated in more detail in the attached rules.

No Change Rules (12)

4123-3-02 Forms.
4123-3-11 Reports of payments by self-insuring employers.
4123-3-14 Procedure in the original adjudication of noncomplying employers' claims.
4123-3-15.1 Dismissal of an application for the determination of percentage of permanent partial disability.
4123-3-17 Briefs.
4123-3-23 Limitations on the filing of fee bills.
4123-3-24 Fee controversies.
4123-3-25 Application for change of occupation allowance.
4123-3-29 Informing the claimant of the right to representation and status of the claim.
4123-3-32 Temporary total examinations.
4123-3-35 Employer handicap reimbursement

Amended Rules (15)

4123-3-01 Office locations; scope of rules.
4123-3-03 Employers' reports of injuries and occupational diseases.
4123-3-07 Applications for death benefits.
4123-3-08 Preparation and filing of applications for compensation and/or benefits.
4123-3-09 Procedures in the processing of applications for benefits.
4123-3-10 Awards.
4123-3-15 Claim procedures subsequent to allowance.

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4123-3-16 Motions.
4123-3-18 Appellate procedure.
4123-3-20 Additional awards by reason of violations of specific safety requirements.
4123-3-22 Inspection of claim files.
4123-3-31 Disabled workers' relief fund: claimant's payments.
4123-3-34 Settlement of state fund claims.
4123-3-36 Immediate allowance and payment of medical bills in claims.
4123-3-37 Lump sum advancements.
4123-3-38 Surplus fund charge of qualified motor vehicle accident claims.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

R.C. 4121.11, 4121.12, 4121.121, 4121.30, 4121.31, 4123.05

**3. Does the regulation implement a federal requirement? 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?
*If yes, please briefly explain the source and substance of the federal requirement.***

No.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

Not applicable.

5. 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)?

These rules describe the BWC policies and procedures for processing and payment of injured worker claims under the workers' compensation statutes. While the statutes provide the basic law on claims procedures and what benefits are payable, these BWC rules inform workers and employers on the procedures for processing and payment of benefits.

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

These rules do not provide measurable standards or criteria. The "success" of the regulation is in the efficient and informed payment of proper benefits to injured workers.

Development of the Regulation

7. 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.

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On November 16, 2018, BWC presented the rules for first consideration to the BWC Board of Directors. The Board includes representatives of injured workers and employers, as well as professional members. Also, BWC distributed the proposed rules to its external rules distribution list, which includes all parties that have expressed an interest in BWC rules. Persons on the rules distribution list include persons who represent injured workers and employers, and persons who are members of the Ohio Association for Justice, the Ohio Chamber of Commerce, the Ohio Manufacturers Association, the Ohio Self-Insured Association, provider organizations, and Managed Care Organizations. BWC also has distributed the rules to the Industrial Commission for its input.

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

BWC will report on the stakeholder feedback, if any, to the BWC Board of Directors, and to the CSI office, in January.

9. 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?

Not applicable.

10. 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?

BWC did not consider alternative regulations. BWC is amending these rules to comply with the Revised Code as amended since the last five year rule review of these rules.

11. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.*

Not applicable.

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

The Industrial Commission has some rules similar to the BWC rules of Chapter 4123-3. The Industrial Commission rules are in Chapter 4121-3. Many of the rules cover different aspects of the same subjects from the different perspective and role of BWC and the Industrial Commission on workers' compensation claims procedures. For example, there are some areas that are exclusively within the jurisdiction of the Industrial Commission, like attorney fee disputes. Therefore, BWC rule 4123-3-24 simply states that if there is a fee dispute, the Industrial Commission will handle the dispute. The Industrial Commission rule then provides

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the detail of how the Industrial Commission processes and handles the fee dispute. BWC reviewed the rules during the five year rule review to coordinate and complement its rules to the Industrial Commission rules, but also BWC has shared these proposed rule changes with the Industrial Commission for its input.

13. 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.

BWC will develop and/or amend policy and will train the BWC field staff to apply these rules to workers' compensation claim decisions. BWC will inform the workers' compensation community about the changes.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

- a. Identify the scope of the impacted business community;
- b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and
- c. Quantify the expected adverse impact from the regulation.

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. The impacted community consists of injured workers, injured worker representatives (attorneys and law firms), employers, employer representatives, providers, and Managed Care Organizations.

b. The adverse impact of this rule is upon all of the parties mentioned in response to question 14a. The impact consists of compliance with processes and procedures for the BWC to adjudicate claim applications and make payments to injured workers for compensation and medical benefits.

The rules describe certain forms or procedures to follow, and provide some time limitations. However, any time limitations within the rules are based on Revised Code statutes.

c. There are no significant changes in the impact of these rules upon the impacted community from the existing versions of these rules. The changes proposed by BWC in the rules do not add or diminish any prior regulatory requirements or impact.

However, the current impact on employers and injured workers could be mainly the

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length of processing a claim and the expense each party may have when factoring in objections by either party to a Bureau and/or an Industrial Commission decision. However, the Bureau is unable to predict exact expense that may incur with each claim, given the uniqueness of issues and decisions involved.

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

The regulation is required to comply with the Chapters 4121 and 4123 of the Revised Code as established in statute by the Ohio General Assembly.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

Not applicable.

17. 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?

Not applicable.

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

BWC publicizes its rules and regulations on-line at bwc.ohio.gov. BWC also has customer service assistants to help employers and injured workers in the workers' compensation system.