Ohio | Common Sense Initiative

Mike DeWine, Governor
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Business Impact Analysis

Agency, Board, or Commission Name: Ohio Bureau of Workers Compensation

Rule Contact Name and Contact Information:
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Regulation/Package Title (a general description of the rules' substantive content):

Third batch of Chapter 4123-6 rules.

Rule Number(s): 4123-6-03.2, 4123-6-06.2, 4123-6-21.2, 4123-6-21.4, 4123-6-21.5, 4123-6-22, 4123-6-23, 4123-6-25, 4123-6-26, 4123-6-27, 4123-6-29, 4123-6-30, 4123-6-31, 4123-6-32, 4123-6-33, 4123-6-37, 4123-6-38, 4123-6-38.1, 4123-6-38.2, 4123-6-39, 4123-6-40, 4123-6-41, 4123-6-42, 4123-6-43, 4123-6-44, 4123-6-45, 4123-6-45.1, 4123-6-46

Date of Submission for CSI Review: July 9, 2021

Public Comment Period End Date: July 30, 2021

Rule Type/Number of Rules:

New/_2__ rules

No Change/_5___ rules (FYR? Yes)

Amended/_21_ rules (FYR? Yes)

Rescinded/_3___ rules (FYR? Yes)

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.

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Reason for Submission

1. **R.C. 106.03 and 106.031 require 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):

   ☐ **Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**

   ☐ **Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**

   ☒ **Requires specific expenditures or the report of information as a condition of compliance.**

   ☐ **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.

   Proposed Changes

   In addition to syntax and grammar changes for clarity and consistency, BWC proposes the following changes:

   4123-6-03.2 MCO participation in the HPP – MCO application for certification or recertification.
   - Revise references to "managed care organization" to "MCO".
   - Rearrange language for clarity.
   - Add language to permit subcontracting or outsourcing medical management services as part of the MCO's business continuity plan approved by the Bureau.

   4123-6-06.2 Employee access to the HPP – employee choice of provider.
   - Replace the term "employee" with "injured worker".
   - Replace the phrase "industrial injury" with "work related injury".

   4123-6-21.2 Pharmacy and therapeutics committee.
   - Update titles of BWC and Industrial Commission staff.

- Revise language to reflect the list of potential committee members are those that have expressed an interest in serving, rather than those that have agreed to serve.
- Remove language requiring approval and review of a list of non-covered, non-reimbursable medications.
- Revise language providing for review and approval of BWC policies and procedures to language providing for a review and approval of clinical criteria related to drug utilization review or specific medication issues.
- Rephrase language regarding peer reviews that may be conducted by the P&T committee.
- Revise language to provide that written records of the P&T committee will be maintained by the Bureau, as opposed to specifically the "chief medical officer".
- Remove language requiring all recommendations from the P&T committee be submitted to the chief medical officer.

4123-6-21.4 Coordinated services program.

- Rephrase to eliminate the use of "his or her" language.
- Correct a pinpoint citation to a cross-referenced rule.

4123-6-22 Stakeholders' health care quality assurance advisory committee.

- Revise language to reflect the list of potential committee members are those that have expressed an interest in serving, rather than those that have agreed to serve.
- Update titles of BWC and Industrial Commission staff.
- Revise language to provide that the list of interested potential members be maintained by the Bureau, rather than specifically the chief medical officer.
- Rephrase language regarding peer reviews that may be conducted by the HCQAAC.
- Revise language to provide that written records of the HCQAAC will be maintained by the Bureau, as opposed to specifically the "chief medical officer".
- Remove language requiring all recommendations of the HCQAAC be submitted to the chief medical officer.

4123-6-25 Payment for medical supplies and services.

- Rephrase language to more precisely reflect the legal standard for the reimbursement of medical supplies and services (the *Miller* criteria).
- Remove redundant language regarding how outpatient medication services must be billed.
- Replace "claimant" with "injured worker" and "industrial injury" with "work related injury".

4123-6-26 Claimant Reimbursement

- Remove language referencing reimbursement when a claim is subsequently allowed and add language requiring that the medical service or supplies to be reimbursed meet the criteria of Ohio Administrative Code rule 4123-6-16.2(B) (the *Miller* criteria).
- Add the word "medical" before the reference to a service or supply.

4123-6-30 Payment for physical medicine

- Replace "claimant" with "injured worker".
- Add "certified registered nurse anesthetist" as a provider that may prescribe physical medicine.

- Remove unnecessary language cross-referencing Ohio Administrative Code rule 4123-6-10.

4123-6-31 Payment for miscellaneous medical services and supplies

- Update language regarding the provision of acupuncture, consistent with Ohio Revised Code Chapter 4762.

Add language to permit a treating physician to prescribe orthotic devices.

- Remove language requiring the use of orthotic devices be "directly" related to an allowed condition.
- Remove repetitive language.
- Add language to state replacement requests may be denied in instances of malicious damage, neglect, culpable irresponsibility or wrongful disposition.
- Clarify language regarding dental care, eyeglasses, contact lenses and hearing aids, and when and to what extent they may be provided, repaired, replaced or adjusted.

4123-6-32 Payment for lumbar fusion surgery.

- Remove unnecessary reference to the original effective date.
- Correct language to require both lumbar X-rays and a lumbar MRI or lumbar CT.
- Add language to clarify the criteria when an injured worker does not have a history of lumbar surgery <u>at the level for which the fusion is requested</u>, and when the injured worker does have a history of surgery <u>at the level for which the fusion is requested</u>.

4123-6-33 Payment for health and behavior assessment and intervention services.

- Rephrase references to "health <u>and</u> behavior assessment and intervention services" to "health behavior assessment and intervention services".
- Remove language requiring the length of time of the assessment be included in the health behavior assessment report.
- Rephrase language to clarify health behavior assessment and intervention services are limited to up to six hours in a twelve month period, as opposed to "per year".

4123-6-37 Payment of hospital bills.

- Remove unnecessary language stating payment will be in accordance with Ohio Administrative Code rule 4123-6-10.

4123-6-38.1 Payment for nursing and caregiver services provided by persons other than home health agency employees.

- Remove language citing specific credentialing agencies or organizations and add language cross-referencing credentialing Ohio Administrative Code rule 4123-6-02.2.
- Replace "claimant" with "injured worker".
- Remove and replace "his/her" with plural pronouns.
- Remove language discussing part-time care and cross-reference Ohio Administrative Code rule 4123-6-38.
- Remove requirement that the services are necessary as a "direct" result of the allowed injury.

4123-6-38.2 Payment of nursing home and residential care/assisted living services.

- Replace "claimant" with "injured worker".

- Remove and replace language to clarify that prescription medication provided in a nursing home is included in the nursing home's per diem rate and is not separately payable.

4123-6-39 Payment for prosthetic device or other artificial appliances.

- Replace "claimant" with "injured worker".
- Relocate language regarding payment of artificial appliances out of the surplus fund.
- Correct a misspelling of "disabilities".
- Add language to provide that replacement requests may be denied in instances of malicious damage, neglect, culpable irresponsibility, or wrongful disposition.
- Add language to clarify that the Bureau will not pay for purchasing or repairing prosthetic devices designed solely for sports, hobbies or other recreational activities.

4123-6-40 Payment of claimant travel expenses.

- Replace "claimant" with "injured worker".
- Add language that travel reimbursement in specific circumstances will only be reimbursed if the travel exceed forty-five miles round trip.
- Add language to provide travel expenses as part of an approved vocational rehabilitation plan.
- Add language and address of a link for information on payment rates for meals, lodging and travel.
- Replace "industrial injuries" with "work related injuries".

4123-6-41 No legal relationship between the industrial commission or bureau and a health care provider.

- Replace "claimant" with "injured worker".

4123-6-43 Payment for transcutaneous electrical nerve stimulators and neuromuscular electrical stimulators.

- Replace "industrial injury" with "work related injury".
- Replace "claimant" with "injured worker".
- Add language clarifying payment during a portion of the trial period.
- Change reference from Ohio Respiratory Care Board to State of Ohio Board of Pharmacy.

4123-6-44 Bureau fees for provider services rendered by in-state and out-of-state providers.

- Revise language to provide that in-state and out-of-state provider fees will be established by the Bureau.

4123-6-45 Audit of providers' patient and billing related records.

- Correct statutory cites.

4123-6-45.1 Records to be retained by provider.

- Change the period of time a provider must retain records relating to goods and services provided to injured workers from three to five years.

Proposed Rules To Be Rescinded

4123-6-21.5 Standard dose tapering schedules

4123-6-23 Jurisdictional principles applicable to payment of bills for medical services rendered by health care providers.

4123-6-38 Payment for home health nursing services.

Proposed Replace Rules

4123-6-21.5 Standard dose tapering schedules

- Clarifies when and under what circumstances a weaning period will be applied, including requiring a written treatment plan from the prescriber reflecting an intention to discontinue the medication and a request for a weaning period.
- Requires weaning from opioids be at least a ten percent reduction of the total daily morphine equivalent dose per week.
- Includes an appendix detailing the weaning periods for benzodiazepines.

4123-6-38 Payment for home health nursing services and home health aide services.

- Clarifies when home health nursing services and home health aide services may be authorized.
- Requires a written treatment plan to support the need for the services.
- Clarifies that home health nursing services and home health aide services are to be no more than eight hours per day.
- Provides that when more than eight hours per day of services are required, alternative settings will be considered or in exceptional cases, more than eight hours per day may be authorized by the bureau.
- Lists services that home health aides may provide.
- States that incidental services may not extend the service hours provided.
- Requires the maintaining of records that fully document the extent of services provided, noting the Bureau may request a detailed hourly description of the care delivered to an injured worker.

Proposed No Change Rules

BWC proposes that the following rules be submitted with no changes:

4123-6-27 Treatment by more than one physician.

4123-6-29 Request for information by the treating provider.

4123-6-42 Interest on late payments for equipment, materials, goods, supplies or services in state insurance fund, public work relief employees' compensation fund, coal workers pneumoconiosis fund, and marine industry fund claims.

4123-6-46 Standardized or negotiated payment rates for services or supplies

3. **Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

   R.C. 4121.44, 4121.441, and 4123.66

4. **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.

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

   N/A

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)?**

   The public purpose is to provide appropriate and clear direction of program parameters and service actions which all parties engaging in the administration, use or provision of HPP related services to Ohio injured workers pursuant to addressing an allowed medical condition resulting from a workplace injury must adhere. These proposed rules will support the charge as set forth in R.C. 4121.44(B)(1), (2) and (4) which provide that, to implement the HPP, the Administrator shall "certify one or more external vendors, which shall be known as 'managed care organizations,' to provide medical management and cost containment services" in the HPP for a period of two years beginning on the date of certification; the Administrator may recertify the MCOs for additional two year periods; and the Administrator may "enter into a contract with any managed care organization that is certified by the bureau
   . . . to provide medical management and cost containment services" in the HPP.
   Further, the proposed rules support the charge pursuant to R.C. 4121.441(A) which provides that the Administrator, with the advice and consent of the BWC Board of Directors, shall adopt rules for implementation of the HPP "to provide medical, surgical, nursing, drug, hospital, and rehabilitation services and supplies to an employee for an injury or occupational disease . . . and to regulate contracts with managed care organizations pursuant to this chapter."

   Finally, the proposed rules also support the charge pursuant to R.C. 4123.66(A) which provides that the BWC Administrator "shall disburse and pay from the state insurance fund the amounts for medical, nurse, and hospital services and medicine as the administrator deems proper," and that the Administrator "may adopt rules, with the advice and consent of the [BWC] board of directors, with respect to furnishing medical, nurse, and hospital service and medicine to injured or disabled employees entitled thereto, and for the payment therefore."

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

   Success will be measure by the providers' and employers' compliance with the modifications to the rules. Further, MCO compliance will be measured in accordance with the terms of the MCO contract, and administrative payments made to the MCOs based on their HPP operational performance. Additionally, success will be measured by the timely provision of services to injured workers, and the maintenance of costs within the annual fee schedule projections for the relevant services impacted by the recommended changes.

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?**
   If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.
   No

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.

   The proposed rules were published for stakeholder comment on May 12, 2021, with a comment period open through May 27, 2021, and notice was e-mailed to the following lists of stakeholders:

   - BWC's Managed Care Organizations
   - BWC's Medical Services Division's medical provider stakeholder list
   - BWC's Healthcare Quality Assurance Advisory Committee
   - Ohio Association for Justice
   - Employer Organizations
     - Council of Smaller Enterprises (COSE)
     - National Federation of Independent Business (NFIB)
     - Ohio Chamber of Commerce
   - BWC's Self-Insured Division's employer distribution list
   - BWC's Employer Services Division's Third-Party Administrator (TPA) distribution list.

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

    Stakeholder comments received by BWC, and BWC's responses to each comment are summarized on the Stakeholder Feedback Summary Spreadsheet. No modifications resulted from received comments.

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?**

    None

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?**

None. No regulatory alternatives which could be considered have been identified.

13. **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.***

    No. The regulations pursuant to the requirements of the O.R.C. 44121.44(B)(1), (2) and (4), 4121.441(A) and 4123.66(A) are designed to provide appropriate and clear direction of program parameters and service actions which all parties engaging in the administration, use or provision of HPP related services to Ohio injured workers pursuant to addressing an allowed medical condition resulting from a workplace injury must adhere.

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

    BWC is the only state agency responsible for regulating HPP related medical services for Ohio's workers' compensation programs.

15. **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.**

    Once the rules are approved and through the JCARR process, the BWC staff impacted by the rules will be informed of the effective date. The various units of the Medical Services Division of BWC will coordinate communication and training to internal BWC staff and the MCOs. BWC's Medical Services Division will also ensure that relevant sections of the MCO Policy Guide and the Provider Billing and Reimbursement manuals are updated to reflect appropriate rule modifications.

Adverse Impact to Business

16. **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; and**

    All HPP services providers, self-insured employers, and MCOs.

    b. **Identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance,); and**

    Impact is in the nature of HPP services providers', self-insured employers', and MCOs' time for reviewing or receiving education on the changes, as well as applying any modifications to relevant systems.

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.

Estimated time which HPP services providers, employers, and MCOs may need to adjust to the changes is at less than 15 hours.

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

BWC is attempting to meet the legislative intent by setting forth appropriate and clear direction of program parameters and service actions which all parties engaging in the administration services to Ohio injured workers pursuant to addressing an allowed medical condition resulting from a workplace injury must adhere. The rules have been reviewed and appropriately modified to add additional clarity of program parameters and service actions to take to ensure service access, quality and cost efficiencies.

Regulatory Flexibility

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

BWC is attempting to meet the legislative intent by setting forth appropriate and clear direction of program parameters and service actions which all parties engaging in the administration, use or provision of HPP services to Ohio injured workers pursuant to addressing an allowed medical condition resulting from a workplace injury must adhere. The rules have been reviewed and appropriately modified to add additional clarity of program parameters and service actions which all parties engaging in the administration, use or provision of HPP services need to take to ensure service access, quality and cost efficiencies.

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?

20. N/A

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

The MCOs have a responsibility in the contract they sign with BWC to provide training and support to all providers they utilize in managing the medical care of their injured workers.

Additionally, by contract the MCOs are responsible for providing education and support to injured workers and employers on all workers' compensation services and programs including medical services. The various units of the Medical Services Division will also provide support and direction to impacted businesses regardless of size with respect to meeting Bureau regulations.

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Stakeholder Feedback Recommendations for 4123-6 Rules under 5 Year Rule Review

Line #	Rule #/ Subject Matter	Stakeholder	Draft Rule Suggestions	Stakeholder Rationale	BWC Response	Resolution
1	4123-6	Dr. Paul Scheatzle, DO		Changes appear appropriate		No change required.
2	4123-6-30	Ohio Chapter International Assoc of Rehabilitation Professionals (IARP)	We object to the wording of sentences in Section 4123-6-30 (A) "Physical medicine does not include…" and the first sentence of paragraph (B) of Section Rule 4123-6-30. The only change proposed by BWC to (B) was to add another provider type "certified registered nurse anesthetists" to provider types list in the first sentence: "Physical medicine must be prescribed by the physician of record or other approved treatment provider licensed to practice medicine, osteopathy, chiropractic, mechanotherapy, dentistry, podiatry, nursing clinical nurse specialist, certified nurse midwife, or certified nurse practitioner."	This language is confusing, conflicting, and negatively impacts physical therapists, occupational therapists, injured workers, and employers. It limits worker access to objective fitness-for-duty exams to validate work restrictions and creates barriers to cost-effective work-focused services that reduce the cost of unnecessary or harmful medications and disability. Better language with respect to Ohio law is already stipulated in paragraph (C) that stipulates that physical medicine services must be "within the scope of his or her license, certification, or registration."	The language sets forth which providers have been recognized under Ohio to medically assess and diagnosis a patient's disability and prescribe. Under Ohio's workers' compensation laws diagnosing an injured workers' disability is critical. A work injury resulting from an accident requires a full medical assessment to medically diagnose and assess all conditions allowed and related to a claim which helps establish the nexus with any medical services needed to address the issues within that claim. That action provides the injured worker with upfront clarity and notice regarding what medical services and/or treatment will potentially be covered and paid. This notice and clarity help an	No change required.

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					injured worker from incurring personal liability for medical costs mistakenly thinking that a rendered medical service will be paid for by the workers' compensation system. Failure to establish an appropriate diagnosed connection between a workplace incident, the injury incurred, and the medical services being received, will lead to those medical services not being reimbursable through the workers' compensation system. Every professional provider currently listed in the relevant rule section pertaining to this comment has either been granted the ability statutorily, or recognized by Ohio case law, as being able to medically assess and diagnose a patient's disability and prescribe services to address the issues identified.	
3	4123-6-33	Ohio Chapter International Assoc of Rehabilitation Professionals (IARP)	Permit any provider type eligible to submit a C-9 to request a Health Behavior Assessment and Intervention Services. Other physicians and healthcare practitioners such as physical and	High quality evidence validates that workers with health behavioral issues return to work sooner when the plan of care is supplemented with behavioral interventions such as cognitive	The current language in the HBAI rule reflects Ohio's workers' compensation current approach to expectations of a POR. Various BWC rules reflects the expectations that PORs are	No change required.

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			occupational therapists are well-positioned to identify patients at high risk for prolonged disability or poor therapy outcomes. Permit the health professional who does the assessment to be authorized by the MCO to provide the intervention, with adequate justification to the MCO to substantiate that recommended interventions are reasonable and necessary. The amount of time authorized for this service is very limited. Introducing a separate professional to provide the intervention disrupts trust, delays intervention, and wastes intervention time for the intervention provider to do a second evaluation.	behavioral therapy and motivational interviewing. This rule had a good intent to address complicating psychosocial issues and health comorbidities that delay worker recovery. Unfortunately, excessive restrictions applied to rule 4123-6-33 have discouraged any substantial use of these services for early intervention with workers who are not recovering as expected.	considered the quarterback on handling injured workers treatment needs, appropriately requesting specialist services as needed. Thus, the current HBAI rule approach was deemed appropriate to ensure effective and consistent adherence to the intent of the rule and HBAI services.	
4	4123-6-06.2	Ohio Physical Therapy Association (OPTA)	OPTA makes the following comment: *This rule establishes that injured workers have a choice in their provider. However, without adding physical therapists as a physician of record, patient choice is actually limited.*	Should an injured worker need physical therapy to treat their injury, they first would need to go to a physician of record as currently defined. This is inefficient for the patient. They should be able to see a BWC enrolled physical therapist if they choose that care model.	The comment is not recommending any change to this rule. The embedded recommendation within the comments is relevant to rule 4123-6-30, which will be addressed below. This particular rule establishes that an injured worker may seek medical care	No change required.

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				Ohioans have been able to access care by physical therapists directly (without a physician referral) for more than 10 years. Therapists have demonstrated their abilities to provide safe and effective care with third party payers willing to pay for therapists' services including establishment of a diagnosis and plan of care and provision of treatment.	from any certified provider or with appropriate caveats a non-bureau certified provider. Thus, where a claim allowance exists which requires services of a physical therapists, an injured worker may choose a physical therapist for that care.	
5	4123-6-22	Ohio Physical Therapy Association (OPTA)	OPTA recommend explicitly adding the Ohio Physical Therapy Association to the list of organization who make nominations to the stakeholders' health care quality assurance advisory committee (HCQAAC).	There is currently a physical therapist serving on the HCQAA Committee. We believe that representative has brought a critical voice to the work of the committee. We would like to ensure that representation continues. Physical therapists provide more care (in terms of reimbursement) than any other discipline except for medical and osteopathic physicians. They are integral to providing care for pain management, post-operative rehabilitation and assessment and improvement of functional limitations.	BWC acknowledges the physical therapist HCQAAC member and the contribution he has made to the committee discussions. The recommended change to the current rule's language is unnecessary given the rule indicates that a list of medical providers in good standing shall be developed and maintained by the bureau. The rule further states that "Providers may be nominated for inclusion on the list by provider associations and organizations including but not limited to" the list stated in the rule.	No change required.

Line #	Rule #/ Subject Matter	Stakeholder	Draft Rule Suggestions	Stakeholder Rationale	BWC Response	Resolution
6	4123-6-30	Ohio Physical Therapy Association (OPTA)	Physical therapists (PTs) should be added to the list of treating providers who can prescribe physical medicine.	As defined in the rule all of the care defined within "physical medicine" fall under the scope of practice of PTs. They are experts in this field. They are uniquely qualified to identify injured workers in need of these services. PTs are specifically listed in the rule as providers of physical medicine, as are chiropractic treatments. However, a chiropractor is eligible to be a physician of record and a physical therapist is not—this does not make sense to our organization. In practice though, physical therapists are the providers who actually prescribe physical therapy. Other providers typically only provide a referral for therapy, while the physical therapist decides on the specific modalities, exercises, functional training and conditioning activities to be provided to the injured worker.	BWC acknowledge the services and practice of PTs. However, PTs cannot be added to the list of treating providers who can prescribe physical medicine. Every professional provider currently listed in the relevant rule section pertaining to this comment has either been granted the ability statutorily, or recognized by Ohio case law, as being able to medically assess and diagnose a patient's disability and to prescribe services to address the issues identified. The ORC governing PTs specifically state that a PT's diagnosis is not a medical diagnosis and does not provide PTs the ability to prescribe services. The statue provides PTs the ability to evaluate and treat.	No change required.
7	4123-6-30	Ohio Physical Therapy Association (OPTA)	BWC should presumptively authorize an evaluation by any provider type that is eligible to submit C-9 requests at any time in the claim.	This is a best practice by Federal Workers' Comp and is reasonable and necessary to justify treatment requests.	The recommendation is set by policy and thus, not addressed within this rule. However, Under Ohio's workers' compensation	No change required.

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					laws, diagnosing an injured workers' disability is critical. A work injury resulting from an accident requires a full medical assessment to medically diagnose and assess all conditions allowed and related to a claim which helps establish the nexus with any medical services needed to address the issues within that claim. Once that nexus is established, BWC does have presumptive authorization of selected services as set forth within the Provider Billing and Reimbursement Manual.	
8	4123-6-32	Ohio Physical Therapy Association (OPTA)	Payment for a lumbar fusion surgery should additionally require physical performance-based measures.	To establish a baseline for evaluating outcomes and functional recovery.	Modifying the rule's language to incorporate the OPTA recommendation would not be in line with the objective of the rule. The objective of the lumbar fusion surgery rule is to set forth minimum guidelines which protects injured workers. The Rule is expected to ensure that quality decision making is completed before surgical treatment. It's designed to drive high quality, high value care	No change required.

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					while avoiding treatment-related harm to injured workers. It was developed on a foundation of evidence-based medicine, tailored to the needs of Ohio's injured workers, and vetted by those who perform the procedures. Establishing a baseline for evaluating outcomes and functional recovery is an after-the-fact tactic.	
9	4123-6-33	Ohio Physical Therapy Association (OPTA)	Any provider type that is eligible to submit a C-9 can request referral for a Health Behavior Assessment and Intervention Services, and the professional doing this assessment can also provide the intervention provided that professional is not affiliated with the physical of records for the claim.	The Occupational Health Special Interest Group of APTA will be publishing Clinical Practice Guidelines to manage work participation restrictions. These are consistent with earlier intervention to screen for an address psychosocial risk factors in a multidisciplinary manner.	The current language in the HBAI rule reflects Ohio's workers' compensation current approach to expectations of a POR. Various BWC rules reflects the expectations that PORs are considered the quarterback on handling injured workers' treatment needs, appropriately requesting specialist services as necessary. Thus, the current HBAI rule approach was deemed appropriate to ensure effective and consistent adherence to the intent of the rule and HBAI services.	No change required.

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10	4123-6-33	Dr. David Schwartz, Ph. D.	Opinion that the rule be revised to allow C-9 referral for HBAI services to be in the form of "evaluate and treat".	This is a common accepted medical practice for multiple other disciplines such as physical therapy. This approach would reduce delays, increase the pool of available providers, and improve outcomes (and hence reduce costs).A significant component of an HBAI evaluation is to assess the injured workers mindset regarding the role of behavior, emotions, and thoughts in their difficulties and to begin to build a working relationship to address these issues. When the injured worker must then be handed off to a totally different person, it disrupts this trust and requires the new HBAI therapist to start over, as well as dealing with the injured workers completely legitimate concerns as to why they are now being required to see a different person. Equally important is the clinical concern that under the current model, the new HBAI therapist is expected to step in and begin treating based on another	BWC interprets this recommendation as a request to modify the rule so that the provider who perform the evaluation is also allowed to render the treatment. When BWC originally proposed and adopted the HBAI services rule 4123-6-33, this issue was evaluated. The determined position at the time which is still maintained is that the approach being reflected in this rule is not out of line with current practice limitation on selected services. While the rule limits the ability of a single provider from doing the assessment and then intervention services, the rule does not prevent both assessment and intervention services from being provided by different providers of a singular practice group. We have not received complaints that injured workers are unable to receive services when requested, and will continue to monitor injured worker's effective access to these services.	No change required.

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				individual's evaluation. No health profession would accept this. From an ethical point of view a psychologist is not supposed to treat an individual without first performing an evaluation and developing a treatment plan. In addition to being bad clinical practice to begin treating immediately, it would be an ethical violation. Finally, it introduces delays and reduces the number of available providers by half. HBAI is clearly intended to be a tool to identify and address behavioral issues which are impeding progress in recovery from injury and return to work. There is consensus in the industrial injury literature that the initial 6 to 8 weeks post injury is a crucial period of time for the development of more chronic problems. To introduce barriers and delays in a system ostensibly designed to address these problems is self-defeating.	Additionally, this approach does not appear to conflict with the American Medical Association and Common Procedure Terminology guidance. The codes are set forth where two different providers are able to perform the distinctive services and be reimbursed for their portion of the services.	
11	4123-6-33	Dr. David Schwartz, Ph. D.	We would also urge that the referral for HBAI be broadened to other	The POR will often refer to physical therapy, then not see the IW for 4 or more weeks	The current language in the HBAI rule reflects Ohio's workers' compensation current approach	No change required.

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			healthcare professional besides the POR.	During the time, the PT has both observational and objective data as to progress or lack hereof, and to observe behaviors which are indicative of behavioral barriers in place. Unfortunately, but realistically, these documented concerns will simply not reach the POR and lead to an immediate and indicated referral for HBAI. By the time the POR sees the note at the next visit, the process of delayed recovery has already taken root. Anything that expedites HBAI initiation during this crucial period should be encouraged.	to expectations of a POR. Various BWC rules reflect the expectations that PORs are considered the quarterback on handling injured workers treatment needs, appropriately requesting specialist services as needed. There is no prohibition of any other provider treating the injured worker from reaching out to the POR to indicate a potential need for a health behavior assessment. Thus, the current HBAI rule approach was deemed appropriate to ensure effective and consistent adherence to the intent of the rule and HBAI services.	
12	4132-6-33	Dr. David Schwartz, Ph. D.	Reimbursement for HBAI services is significantly lower than reimbursement for psychotherapy services on a per-time basis.	In our direct experience working an HBAI model, the IW's needs are at least as great and often require timely and aggressive intervention and contact with employers, treating physicians, etc. The same hour of time, however, is compensated at a much lower rate. This is a	Setting reimbursement for HBAI services are not addressed within in this rule. Reimbursement for these services will be evaluated and considered in rule 4123-6-08 Bureau fee schedule.	No change required.

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				disincentive for psychologists to wish to take on this type of work and, perversely, an incentive to add a psychological condition so that the patient can obtain needed treatment without the provider taking a significant discount for their time. Effective HBAI services can and do reduce the number of psychological conditions added to claims as well as improving overall outcomes and costs. Shortchanging this early intervention is shortsighted both clinically and in terms of cost-effectiveness.		