



## Common Sense Initiative

**Mike DeWine**, Governor  
**Jon Husted**, Lt. Governor

**Sean McCullough**, Director

### 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):

Applications for death benefits & limitations on the filing of fee bills.

Rule Number(s): 4123-3-07 & 4123-3-23

Date of Submission for CSI Review: November 09, 2021

Public Comment Period End Date: November 30, 2021

**Rule Type/Number of Rules:**

New/\_\_\_ rules

No Change/\_\_\_ rules (FYR? \_\_\_)

Amended/ 2 rules (FYR? No)

Rescinded/\_\_\_ rules (FYR?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.

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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):**

- 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.***

BWC proposes the following changes:

#### **4123-3-07 Applications for death benefits.**

Update “industrial injury” to “work related injury.”

Revise language to align with R.C. 4123.59, clarifying that, to be considered a dependent, a person must be a member of the family of the deceased employee, or bear to the employee the relation of surviving spouse, lineal descendant, ancestor, or brother or sister.

#### **4123-3-23 Limitations on the filing of fee bills.**

In accordance with federal law, adds language to provide that the limitation that fee bills for medical or vocational rehabilitation services rendered in a claim must be submitted to BWC or the IC for payment within one year of the date on which the service was rendered

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or one year after the date the services became payable under R.C. 4123.511(I), whichever is later, does not apply to requests made by the Department of Veterans Affairs (VA) pursuant to 38 U.S.C. 1729 for reimbursement of medical treatment provided to an injured worker in or through any VA provider or facility.

- 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. 4121.11, 4121.121, 4121.30, 4121.31, and 4123.05.

- 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.**

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)?**

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.

- 7. 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.

- 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**

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**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 13, 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
  - o Council of Smaller Enterprises (COSE)
  - o National Federation of Independent Business (NFIB)
  - o 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?**

No stakeholder responses were received on these two 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?**

Not applicable.

**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.***

Not applicable.

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

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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. BWC reviewed the rules to coordinate and complement its rules to the Industrial Commission rules.

**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.**

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**

**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**

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

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

b. The adverse impact of this rule is upon all of the parties mentioned in response to question 16a. 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 statutes.

**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.*

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- d. 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 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 the exact expense that may incur with each claim, given the uniqueness of issues and decisions involved.

**17. 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 Chapters 4121 and 4123 of the Revised Code as established in statute by the Ohio General Assembly.

**Regulatory Flexibility**

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

Not applicable.

**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?**

Not applicable.

**20. 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](http://bwc.ohio.gov). BWC also has customer service assistants to help employers and injured workers in the workers' compensation system.