



Common Sense Initiative

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Business Impact Analysis

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

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Regulation/Package Title (a general description of the rules' substantive content):

Chapter 4123-3 Five Year Rule Review

Rule Number(s): Amended Rules: 4123-3-01, 4123-3-02, 4123-3-03, 4123-3-08, 4123-3-09, 4123-3-10, 4123-3-11, 4123-3-14, 4123-3-15, 4123-3-15.1, 4123-3-16, 4123-3-18, 4123-3-20, 4123-3-23, 4123-3-24, 4123-3-25, 4123-3-29, 4123-3-31, 4123-3-32, 4123-3-36, 4123-3-38;
No Change Rules: 4123-3-07, 4123-3-17, 4123-3-22, 4123-3-34, 4123-3-35, 4123-3-37

Date of Submission for CSI Review: July 24, 2024

Public Comment Period End Date: August 7, 2024

Rule Type/Number of Rules:

New/___ rules

No Change/ 6 rules (FYR? Y)

Amended/ 21 rules (FYR? Y)

Rescinded/___ rules (FYR?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.

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.

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 6 rules without change and amending 21 rules.

The proposed changes eliminate, where appropriate, regulatory restrictions "shall," "must," "require," "shall not," "may not," and "prohibit" from the rule, in accordance with the regulatory restriction reduction mandate found in R.C. 121.95 and R.C. 121.951.

There are also minor changes throughout the rules regarding syntax and grammar. The proposed syntax and grammatical changes improve the consistency and clarity of the proposed

rules, and these proposed changes are not intended to provide substantive change to any proposed rule.

In addition, the following substantive changes are proposed:

4123-3-08 Preparation and filing of applications for compensation and/or benefits.

- Remove language regarding the time limitations within which injury claims occurring prior to September 29, 2017 must be filed, as the relevant time period has expired.

4123-3-10 Awards.

- Remove language in paragraph (D) regarding electronic payment of compensation and benefits as duplicative of Section 4123.311 of the Revised Code.

4123-3-16 Motions.

- Remove reference to "licensed psychiatric specialist" in paragraph (I)(2) and add language clarifying that motions requesting psychiatric conditions must be accompanied by a report from a doctor of medicine (MD), doctor of osteopathic medicine (DO), a clinical psychologist, a licensed professional clinical counselor (LPCC), or a licensed independent social worker (LISW).

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

- Add language to paragraph (D) to clarify that in cases involving MCO or BWC error, requests for additional payment on fee bills must be submitted within one year and seven days from the date the provider knew or should have known of an MCO or BWC error impacting payment or shall be forever barred.

4123-3-36 Immediate allowance and payment of medical bills in claims.

- Remove language in paragraph (B) that the Administrator shall consider all of the necessary evidence and relevant laws and rules for the determination of the allowance of a claim as redundant.
- Edit language in paragraph (C) to align with Section 4123.111 of the Revised Code regarding the employer's right to contest the immediate allowance of a medical condition in a claim under the rule.

4123-3-38 Surplus fund charge of qualified motor vehicle accident claims.

- Remove language in paragraph (F)(2) that BWC "shall limit any adjustments in an employer's account which result in changes to the amount of premium due from an

employer for a policy year to the annual or adjustment periods ending within twenty-four months immediately prior to the date the employer filed its application under this rule” to align with Section 4123.932 of the Revised Code.

- 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.**

Authorize: R.C. 4121.11, 4121.12, 4121.121, 4121.13, 4121.30, 4121.31, 4121.43, 4123.05, 4123.52, 4123.57, 4123.65

Amplify: R.C. 3121.0311, 4121.11, 4121.12, 4121.121, 4121.13, 4121.30, 4121.31, 4121.43, 4123.032, 4123.05, 4123.06, 4123.27, 4123.28, 4123.311, 4123.343, 4123.35, 4123.412, 4123.413, 4123.414, 4123.511, 4123.512, 4123.53, 4123.56, 4123.57, 4123.59, 4123.64, 4123.65, 4123.651, 4123.66, 4123.68, 4123.84, 4123.85, 4123.88, 4123.89, 4123.93, 4123.931, 4123.932

- 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 implements a federal requirement, but 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

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 distributed for stakeholder comment with a comment period open from July 3, 2024 through July 17, 2024, 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)
 - Ohio Manufacturers' Association (OMA)
 - 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 responses received by BWC are summarized on the Stakeholder Feedback Summary Spreadsheet.

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?

Alternative regulations may include performance-based regulations, which define the required outcome, but do not dictate the process the regulated stakeholders must use to comply.

BWC did not consider alternative regulations. These rules generally follow statutory mandates. The statutes provide the basic parameters of the regulation; these rules simply inform stakeholders of the procedures and policies the Bureau will use to implement these regulations.

13. 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 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.

14. 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

15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:

- a. Identify the scope of the impacted business community, and**
- b. Quantify and identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance, etc.).**
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 in the workers' compensation system.

b. 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. on Revised Code statutes.

The impact on employers and injured workers would 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 exact expense that may incur with each claim, given the uniqueness of issues and decisions involved.

- 16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify. (*Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors*).**

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.

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

The rules are required to comply with the 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 online at www.bwc.ohio.gov. BWC also has customer service assistants to help employers and injured workers in the workers' compensation system.