



# Common Sense Initiative

Mike DeWine, Governor  
Jon Husted, Lt. Governor

Joseph Baker, Director

## MEMORANDUM

**TO:** Eva Dixon, Ohio Bureau of Workers' Compensation

**FROM:** Caleb White, Business Advocate

**DATE:** June 12, 2024

**RE:** **CSI Review – Rehabilitation of Injured and Disabled Workers (OAC 4123-18-01, 4123-18-02, 4123-18-03, 4123-18-04, 4123-18-05, 4123-18-08, 4123-18-11, 4123-18-14, 4123-18-16, and 4123-18-21)**

On behalf of Lt. Governor Jon Husted, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Bureau as provided for in ORC 107.54.

### Analysis

This rule package consists of nine amended rules and one no-change rule proposed by the Ohio Bureau of Workers' Compensation (BWC) as a part of the statutory five-year review process. This rule package was submitted to the CSI Office on May 17, 2024, and the public comment period was held open through May 31, 2024. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on May 17, 2024.

The rules in this package establish the requirements for the provision of vocational rehabilitation services for injured workers in the Ohio workers' compensation system. Ohio Administrative Code (OAC) 4123-18-01 establishes the applicability of the rules in this chapter to the BWC, managed care organizations (MCOs) and self-ensuring employers and establishes the duties of the BWC related to vocational rehabilitation services. This rule is amended to update language. OAC 4123-18-02 establishes the goals of vocational rehabilitation and the steps the BWC will take to further these objectives. OAC 4123-18-03 establishes the guidelines and process for referring injured workers for vocational rehabilitation services as well as the process and requirements for determining a worker's

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eligibility for the program. This rule is amended to remove an eligibility criterion related to catastrophic injury, remove a requirement for a state agency or university to certify a claim if the worker is one of their employees, as well as to update and streamline language. OAC 4123-18-04 establishes the framework for living maintenance payments for workers approved for vocational rehabilitation services including when the payments begin, when the BWC will suspend the payments, when the BWC will not make living maintenance payments, when the BWC will terminate the living maintenance payments, when and for what amount the BWC can order a deduction of living maintenance payments, and provides for an appeals process for suspensions and deductions made by the BWC. This rule is amended to update the title, clarify language surrounding how salary continuations and living maintenance payments affect one another, clarify language surrounding medical holds, decrease the maximum duration for medical holds from two-years to six-months, clarify language the process for deductions when an injured worker receives wages while participating in vocational rehabilitation, as well as to update and streamline language.

OAC 4123-18-05 requires an MCO that manages vocational rehabilitation services to oversee the development and implementation of a written vocational rehabilitation assessment plan, comprehensive vocational rehabilitation plan, or job retention plan for the injured worker. This rule also outlines the requirements for the contents of each plan, when the MCO can close an injured worker's vocational rehabilitation assessment plan, comprehensive vocational rehabilitation plan, or job retention plan, and the process for appealing vocational rehabilitation plan closures. This rule is amended to clarify that the rule applies to the claims that are managed by an MCO and to update language. OAC 4123-18-08 governs payments made for rehabilitation services from the surplus fund established in ORC 4123.34. This rule is amended to increase the maximum reimbursement amount for non-allowed conditions from \$2,000 to \$3,000, to increase the maximum reimbursement amount for necessary relocation expenses from \$3,000 to \$4,000, and to remove language which limits the number of reimbursable days for temporary lodging to sixty days.

OAC 4123-18-11 governs the payments made to employers that retain or hire workers that have completed a rehabilitation program. This rule is amended to update the title, remove language which outlines the criteria which payment negotiations are to revolve around, remove language related to payments for out-of-state employers and payments for employers that provide transitional work activities, as well as to clarify and streamline language. OAC 4123-18-14 governs claims for workers that incur a compensable injury, occupational disease, or fatality during their participation in a vocational rehabilitation plan. This rule is amended to update the title, clarify that only claims for conditions that arise during the vocational rehabilitation plan are eligible for compensation, and to clarify what entity is responsible for paying these claims. OAC 4123-18-16 establishes the obligation of a self-insured employer to provide vocational rehabilitation services. This rule is amended to streamline language. OAC 4123-18-21 establishes the conditions when the BWC will provide wage loss payments to injured workers that complete vocational rehabilitation plans. This rule is amended

to clarify the definition of “present earnings,” clarify that the injured worker must provide proof of present earnings to receive wage loss payments, as well as to update and streamline language.

During early stakeholder outreach, the BWC sent the proposed rules via email to stakeholders for comment on March 29, 2024, and held the comment period open through April 12, 2024. The group of stakeholders was comprised of the BWC’s managed care organizations, the BWC’s internal medical provider stakeholder list, the BWC’s Healthcare Quality Assurance Advisory Committee, the BWC’s self-insured employer and Third-Party Administrator distribution lists, the Ohio International Association of Rehabilitation Providers, the Council of Smaller Enterprises, the Ohio Chamber of Commerce, the National Federation of Independent Business, the Ohio Manufacturers’ Association, and the Ohio Association of Justice. No comments were received during this period or during the CSI public comment period but after the comment period had ended, the BWC did make a technical change to OAC 4123-18-14.

The business community impacted by the rules includes MCOs, vocational rehabilitation service providers which administer services to injured workers, all employers with injured workers that utilize vocational rehabilitation services, and self-insuring employers. The adverse impacts created by the rules includes time spent acclimating to the program updates, the requirement for certain self-insuring employers to provide vocational rehabilitation services, and requirements surrounding the development of a written vocational rehabilitation plan. The BWC states that the adverse impact to business is justified for the BWC to ensure the access, quality and cost efficiencies of Ohio’s vocational rehabilitation services.

### **Recommendations**

Based on the information above, the CSI Office has no recommendations on this rule package.

### **Conclusion**

The CSI Office concludes that the BWC should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.