



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Joseph Baker, Director

MEMORANDUM

TO: Eva Dixon, Ohio Bureau of Workers' Compensation

FROM: Jacob Ritzenthaler, Business Advocate

DATE: August 27, 2024

RE: CSI Review – Claims Procedure (OAC 4123-3-01, 4123-3-02, 4123-3-03, 4123-3-07, 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, 4123-3-17, 4123-3-18, 4123-3-20, 4123-3-22, 4123-3-23, 4123-3-24, 4123-3-25, 4123-3-29, 4123-3-31, 4123-3-32, 4123-3-34, 4123-3-35, 4123-3-36, 4123-3-37, and 4123-3-38)

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 twenty-one amended rules and six no-change rules proposed by the Ohio Bureau of Workers' Compensation (BWC) as part of the statutory five-year review requirement. This rule package was submitted to the CSI Office on July 24, 2024, and the public comment period was held open through August 7, 2024. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on July 24, 2024.

Ohio Administrative Code (OAC) Chapter 4123-3 establishes requirements for workers' compensation claims. OAC 4123-3-01 sets forth requirements for office locations and the scope of the rules within the chapter and is amended to update rule language. OAC 4123-3-02 concerns BWC forms and is amended to remove unnecessary references. OAC 4123-3-03 requires employers to maintain a record of all injuries and occupational diseases resulting in seven or more days of disability

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or death and to submit these records as a report to BWC within one week. The rule is amended to remove unnecessary regulatory restrictions. OAC 4123-3-07 establishes the process for applying for death benefits and is proposed without changes. OAC 4123-3-08 sets forth the application process for compensation or benefits, including form preparation and execution, employer certification, and filing time limitations. The rule includes amendments that remove requirements concerning claims that occurred before September 29, 2017, as the requirements are outdated. OAC 4123-3-09 establishes the processing procedures of benefits applications and is amended to remove unnecessary regulatory restrictions. OAC 4123-3-10 concerns compensation awards, including requirements for issuance time limits, payment delivery or personal pick-up, medical awards, self-insuring employers, and electronic payments. The rule is amended to remove language related to electronic payments that is duplicative of ORC language. OAC 4123-3-11 sets forth requirements for reports of payments by self-insuring employers and is amended to remove unnecessary regulatory restrictions. OAC 4123-3-14 provides the procedure for the original adjudication of a non-complying employer's claims and is amended to remove a regulatory restriction. OAC 4123-3-15 and 4123-3-15.1 set forth requirements concerning claims procedures for subsequent actions and the dismissal of an application for a determination of the percentage of permanent partial disability. These rules are proposed without changes.

OAC 4123-3-16 establishes requirements for motions and amends requirements for motions requesting the recognition of an additional psychiatric condition to require a report by a doctor of medicine or osteopathic medicine instead of a licensed psychiatric specialist. OAC 4123-3-17 concerns the submission of briefs to BWC and is proposed without changes. OAC 4123-3-18 provides the procedure for appeals and is amended to remove duplicative language. OAC 4123-3-20 concerns the determination of awards for violation of specific safety requirements within the jurisdiction of the Industrial Commission and is amended to remove unnecessary regulatory requirements. OAC 4123-3-22 establishes requirements for the inspection of claim files and is proposed without changes. OAC 4123-3-23 sets forth the limitations on the filing of fee bills, including time limits for filing with BWC, provider negotiation, and exempted requests. The rule is amended to state that, in cases involving an error by a managed care organization or BWC, requests for additional fee bill payments must be submitted within one year and seven days from the date a provider was aware of the error. OAC 4123-3-24 establishes requirements for controversies that exist between a party and representatives concerning fees for services rendered in industrial claims and is amended to update rule language. OAC 4123-3-25 provides the application process for a change in occupation allowance and is amended to remove unnecessary regulatory restrictions. OAC 4123-3-29 states that the claimant of an industrial claim will be notified of the right to representation and the status of the claim. The rule is proposed to remove unnecessary regulatory restrictions. OAC 4123-3-31 and 4123-3-32 establish requirements related to claimant payments from the Disabled Workers' Relief Fund and temporary total disability entitlement examinations. The rules include amendments that update language and remove regulatory restrictions. OAC 4123-3-34 and 4123-3-35 establish

requirements for the settlement of state fund claims and employer disability relief. These rules are proposed without changes. OAC 4123-3-36 establishes the procedure for immediate allowance of specific medical conditions and payment of medical bills. The rule is amended to remove duplicative requirements and to remove language concerning an employer's right to contest immediate payment pursuant to ORC 4123.111. The rule also contains an appendix that lists International Classification of Disease codes, which is amended to remove the title. OAC 4123-3-37 concerns the commutation of an award of compensation to a lump sum payment for the purpose of providing financial relief or furthering rehabilitation. The rule is proposed without changes. OAC 4123-3-38 sets forth requirements for charges to the surplus fund for compensation and benefits related to a claim based on a motor vehicle incident involving a third party. The rule includes amendments that remove language requiring BWC to limit any adjustment 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 prior to the application filing.

During early stakeholder outreach, BWC sent the proposed rules to industry stakeholders for feedback, including managed care organizations, medical providers, the Ohio Association for Justice, the Council of Smaller Enterprises, the Ohio Manufacturers' Association, the National Federation of Independent Business, the Ohio Chamber of Commerce, and stakeholder lists for the BWC Self-Insured Division and Employer Services Division. One comment was received during that time which stated the stakeholder found no typographical, contextual, or substantive errors. No comments were received during the CSI public comment period.

The business community impacted by the rules includes injured workers, representatives, employers, medical providers, and managed care organizations. The adverse impacts created by the rule are primarily the time and effort to comply with claim application procedures for injured workers to receive compensation and medical benefits. These requirements can include time limits for document or information submission, maintaining records of injuries or occupational diseases, furnishing proof of claims, and other processes. BWC notes that the costs and time necessary to comply with these requirements vary based on the relevant circumstances of each claim. BWC states that the adverse impacts created by the rules are necessary to inform workers and businesses of the procedures for filing claims and payment of benefits.

Recommendations

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

Conclusion

The CSI Office concludes that BWC should proceed in filing the proposed rules with the Joint

Committee on Agency Rule Review.