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):

Chapter 4123-6 Second Batch Rules

Rule Number(s): 4123-6-01(AM), 4123-6-01.1(AM), 4123-6-02(AM), 4123-6-02.21(AM), 4123-6-02.3(AM), 4123-6-02.4(AM), 4123-6-02.6(AM), 4123-6-02.51(AM), 4123-6-02.6(AM), 4123-6-02.7(AM), 4123-6-02.8(AM), 4123-6-02.9(AM), 4123-6-03.4(AM), 4123-6-03.7(NC), 4123-6-03.9(NC), 4123-6-10(NC), 4123-6-04.3(R), 4123-6-04.3(N), 4123-6-04.4(R), 4123-6-04.5(AM), 4123-6-04.6(AM), 4123-6-05.3(AM), 4123-6-05.4(AM), 4123-6-06.1(R), 4123-6-07(AM), 4123-6-10(AM), 4123-6-14(AM), 4123-6-14.1(AM), 4123-6-15(AM), 4123-6-16(AM), 4123-6-16.1(NC), 4123-6-16.2(AM), 4123-6-16.3(AM), 4123-6-17(AM), 4123-6-18(AM), 4123-6-19(NC), 4123-6-20(AM), 4123-6-20.1(AM), 4123-6-21(AM), 4123-6-21.1(AM)

Date of Submission for CSI Review: _____

Public Comment Period End Date: _____

Rule Type/Number of Rules:

- ✓ New/ 1 rule(s)
- ✓ Amended/ 32 rules (FYR? Yes)
- ✓ No Change/ 5 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- ✓ Rescinded/ 3 rules (FYR?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.

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 4123-6 of the Administrative Code contains BWC rules implementing the Health Partnership Program (HPP) for state fund employers, including rules governing payment to providers. BWC enacted the bulk of Chapter 4123-6 HPP provider payment rules in January and February 1997.

The rule review date for these rules are August 1, 2020. BWC performed a five-year rule review of the rules in 2015, at which time BWC made numerous changes, mostly amending existing rules.

In accordance with Ohio Revised Code 119.04 and 106.03, BWC makes the proposals listed below as to Chapter 4123-6 rules scheduled for 5-year review.

Amending:

4123-6-01 Definitions.
4123-6-01.1 Applicability of medical rules.
4123-6-02 Provider access to the HPP – generally.
4123-6-02.21 Provider access to the HPP - non-certified provider enrollment.
4123-6-02.3 Provider access to the HPP - provider application and certification criteria.
4123-6-02.4 Provider access to the HPP - provider recertification.
4123-6-02.5 Provider access to the HPP - provider not certified.
4123-6-02.51 Provider access to the HPP -- Denial of provider, entity or MCO enrollment - certification based on criminal conviction or civil action.
4123-6-02.6 Provider access to the HPP -- selection by an MCO.
4123-6-02.7 Provider access to the HPP - provider decertification procedures.
4123-6-02.8 Provider requirement to notify of injury.
4123-6-02.9 Provider access to the HPP - provider marketing.
4123-6-03.4 MCO participation in the HPP - MCO certification.
4123-6-04.5 MCO scope of services - bureau claims management.
4123-6-04.6 Return to work assessment.
4123-6-05.3 Employer access to the HPP; certain solicitation practices by MCOs prohibited
4123-6-05.4 Employer access to the HPP; payment for referrals prohibited
4123-6-07 Services and supplies never covered.
4123-6-10 Payment to providers.
4123-6-14 MCO bill submission to bureau.
4123-6-14.1 Records to be retained by MCO.
4123-6-15 Confidentiality of records.
4123-6-16 Alternative dispute resolution for HPP medical issues.
4123-6-16.2 Medical treatment reimbursement requests.
4123-6-16.3 Reimbursement of retroactive medical treatment reimbursement requests.
4123-6-17 Bureau refusal to certify or recertify, action to decertify a provider or MCO - standards and procedures for adjudication hearings.
4123-6-18 Data gathering and reporting.
4123-6-20 Obligation to submit medical documentation and reports.
4123-6-20.1 Charges for copies of medical reports.

4123-6-21 Payment for outpatient medicatin.
4123-6-21.1 Payment for outpatient medication by self-insuring employer.

Enacting:

4123-6-04.3 MCO scope of services - MCO medical management and claims management assistance.

Rescinding:

4123-6-04.3 MCO scope of services - MCO medical management and claims management assistance.
4123-6-04.4 MCO scope of services - fee bill review and audit process.

4123-6-06.1 Employee access to medical services -- education by MCO and employer.

No Change:

4123-6-03.7 MCO participation in the HPP - bureau's authority to decertify, to refuse to certify or recertify an MCO.
4123-6-03.9 MCO participation in the HPP - MCO disclosure of relationship.
4123-6-03.10 Conflict of interest.
4123-6-16.1 HPP medical treatment guidelines.
4123-6-19 Remain at work services.

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?**
   No.
   If yes, please briefly explain the source and substance of the federal requirement.

   N/A

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 supportis 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?**

   No.

   If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

   N/A

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 September 15, 2020 with a comment period open through September 25, 2020, 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?

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?

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, 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.

Regulatory Flexibility

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

No. The rules are to provide guidance and clarity of program parameters and actions which all parties engaging in the administration, use or provision of HPP services must take to ensure service access, quality and cost efficiencies, and timely provider reimbursements, which leads to quality medical care, as well as a successful and safe return to work for injured workers.

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?

N/A

20. 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.