

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Bureau of Workers' Compensation

Regulation/Package Title: HPP MCO Operational Rules

Rule Number(s): 4123-6-03.2, 4123-6-03.7, 4123-6-03.9, 4123-6-05.2, 4123-6-05.3, 4123-6-06.1 (AMEND); 4123-6-03.3, 4123-6-03.6, 4123-6-05.1 (RESCIND)

Date: January 31, 2013

Rule Type:

X New

✓ X Amended

5-Year Review

✓ Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

Chapter 4123-6 of the Administrative Code contains BWC rules implementing the Health Partnership Program (HPP) for state fund employers, including rules governing the operation of BWC's managed care organizations (MCOs). The major substantive changes proposed for the HPP MCO operational rules relating to MCO contracting:

- Rescind the rules relating to MCO capacity (OAC 4123-6-03.3), MCO contract termination (OAC 4123-6-03.6), and MCO marketing (OAC 4123-6-6-05.1), as these matters will be governed by the terms of the contract between the MCO and BWC.
- Eliminate cross-references to deleted rules OAC 4123-6-03.3, OAC 4123-6-03.6, and OAC 4123-6-05.1.
- Revise OAC 4123-6-03.7 to reflect the reasons for MCO decertification set forth in recently amended O.R.C. 4121.44(G)(1), and to clarify that any MCO decertification will be conducted in accordance with OAC 4123-6-17 and O.R.C. Chapter 119.
- Add a definition of “affiliated with an MCO” to the MCO “firewall” rule OAC 4123-6-03.9.
- Clarify that the MCO “anti-kickback” rule OAC 4123-6-05.3 applies to an MCO, or any person, corporation, or entity affiliated with an MCO as defined in MCO “firewall” rule OAC 4123-6-03.9.
- Remove the provision relating to the payment of “lead fees” in the MCO “anti-kickback” rule OAC 4123-6-05.3 as redundant and unnecessary.
- Modify language in employee education rule OAC 4123-6-06.1 to make the provision of MCO identification cards by the MCO permissive, at the request of the employer or upon the MCO's own initiative, rather than mandatory.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation. The background law for these rules is in Ohio Revised Code 4121.44 and 4121.441, as amended by the State of Ohio biennial budget, Amended Substitute House Bill 59 (Am.Sub.H.B. 59).

3. 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.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

Not applicable.

5. 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 changes are in response to *Frank Gates Managed Care Services, Inc. v. Ohio BWC*, Case No. 12CV5616, recent legislative changes enacted by Amended Substitute House Bill 59 (Am.Sub.H.B. 59) effective September 29, 2013, and contract negotiations conducted in late 2013 between BWC and interested MCO representatives for the 2014-2015 MCO contract.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes? Success is measured by compliance of the 17 MCOs certified to participate in the Health Partnership Program who have executed a 2014-2015 MCO contract with BWC with the rule and contract requirements.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

BWC's proposed changes to the HPP MCO operational rules relating to MCO contracting were e-mailed to the following lists of stakeholders on November 26, 2013 for review and comment through December 3, 2013:

- BWC's Managed Care Organizations (MCOs) and the MCO League representative
- BWC's internal medical provider stakeholder list representing 56 medical provider associations/groups
- BWC's internal provider list serve (over 700 interested parties)
- BWC's Healthcare Quality Assurance Advisory Committee
- Ohio Association for Justice
- Employer Organizations
 - o Council of Smaller Enterprises (COSE)
 - o Ohio Manufacturer's Association (OMA)
 - 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

In addition, the draft rules were sent to the MCOs on November 18, 2013 in the course of negotiating the 2014-2015 MCO contract between BWC and the MCOs.

8. **What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?** BWC received no stakeholder input on the proposed rules.
9. **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.
10. **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.
11. **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.
12. **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 and contracting with managed care organizations certified under Ohio Revised Code 4121.44.
13. **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 primary staff impacted by the rules are generally involved with the development and vetting of recommended MCO rule changes, so in-depth training is not needed. The MCO Business Operations unit will be responsible for managing the activities resulting from these rules, which include updating the MCO Policy Reference Guide, which all staff have access to, as well as modifying any related MCO contract language. The staff will also prepare a presentation to be delivered at the next MCO quarterly training following the successful completed review of the rule through the JCARR process.

Adverse Impact to Business

14. **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;**
 - b. **Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**
 - 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.

The impacted community is the 17 MCOs certified to participate in the Health Partnership Program who have executed a 2014-2015 MCO contract with BWC. There is minimal anticipated cost of compliance. MCO capacity, MCO marketing, and MCO contract termination will be dealt with exclusively in contract and no longer in rule. Grounds for MCO decertification have been updated to reflect changes in recently amended O.R.C. 4121.44(G)(1), and decertification remains subject to Ohio Revised Code Chapter 119 hearing.

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

BWC and interested MCO representatives conducted negotiations for the 2014-2015 MCO contract in late 2013 which addressed these issues, and which included a workgroup specific to MCO marketing led by a representative from Frank Gates Managed Care Services, Inc. These proposed rule changes are in accordance with those negotiations, *Frank Gates Managed Care Services, Inc. v. Ohio BWC*, Case No. 12CV5616, and recent legislative changes enacted by Amended Substitute House Bill 59 (Am.Sub.H.B. 59) effective September 29, 2013.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain. No. All MCOs must meet the certification criteria set forth in Ohio Revised Code 4121.44 and Ohio Administrative Code 4123-6-03.2, and all must sign the same MCO contract between BWC and the MCOs. All MCOs must provide the same services to Ohio’s injured workers and employers.

17. 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?

BWC will comply with Ohio revised Code 119.14 to the extent applicable.

18. What resources are available to assist small businesses with compliance of the regulation?

Policies and/or procedures for compliance with these rules will be included in the 2014-2015 MCO contract and in the MCO Policy Reference Guide, which is posted on the BWC website at www.bwc.ohio.gov. Also, MCOs can contact BWC’s Medical Services Division for assistance.