

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Bureau of Workers' Compensation

Regulation/Package Title: Vocational Rehabilitation – Living Maintenance Allowance and Individualized Written Vocational Rehabilitation Plan.

Rule Number(s): 4123-18-04 and 4123-18-05

Date: 04/18/14

Rule Type:

- | | |
|---|--|
| <input checked="" type="checkbox"/> New | <input type="checkbox"/> 5-Year Review |
| <input checked="" type="checkbox"/> Amended | <input type="checkbox"/> Rescinded |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.

Please include the key provisions of the regulation as well as any proposed amendments.

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OAC 4123-18-05 provides guidance on the types of individualized written vocational rehabilitation plans in the Ohio workers' compensation system and the required elements and timeframes for each.

The major substantive changes proposed for OAC 4123-18-05 are the addition of:

- An Assessment Plan type, the expectations of the plan type and the timeframe in which it needs to be completed;
- A Comprehensive Plan type and the expectations of the plan type; and
- Two additional reasons for plan closure:
 - The injured worker has completed a comprehensive vocational rehabilitation plan; and
 - The injured worker is determined to be no longer feasible for vocational rehabilitation services as defines in rule 4123-18-03 of the Administrative Code.

OAC 4123-18-04 provides guidance on when an injured worker may receive Living Maintenance compensation while participating in an approved vocational rehabilitation plan.

The major substantive changes proposed for OAC 4123-18-04 reflect the two additional plan types as proposed in 4123-18-05 above (Assessment Plans and Comprehensive Plans) and the allowance of Living Maintenance compensation at the initiation of the Assessment Plan.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

R.C. 4121.61, R.C. 4121.63

**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)?

The public purpose of the proposed changes is to clarify and strengthen the workers' compensation goal of having a robust and comprehensive evaluation and determination of a qualifying injured worker's service needs prior to that injured worker being placed in a

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comprehensive vocational rehabilitation plan. The goal of a Comprehensive Vocational Rehabilitation Plan is to align the right type of vocational rehabilitation services in a way that works to successfully and safely return an injured worker back to work. A solid and sound assessment of an injured worker's needs is critical for identifying and selecting the right type of vocational rehabilitation services. While under the current approach, conducting an appropriate assessment of an injured workers need is indicated, neither the activity nor the expectations are identified as clearly as they should be, which has undermined the quality of the assessment and the resulting comprehensive plans. Additionally, the expectation is that the injured worker must be an active participant in the assessment activities, and living maintenance is currently paid when an injured worker is participating in a vocational rehabilitation plan. Therefore, by creating an Assessment Plan, as a category of a vocational plan type, clarity is created regarding the service expectations, and the objectives of living maintenance payments will continue to be supported.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

BWC will measure the success of the changes by the percent increase in successful return-to-work outcomes for those injured workers for which a Comprehensive Vocational Rehabilitation Plan was implemented and completed, subsequent to and reflecting the incorporation of identified services resulting from an Assessment Plan being completed for that injured worker.

Development of the Regulation

7. 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.

These proposed rules 4123-18-05 and 4123-18-04, were emailed to the following list of stakeholders for feedback on March 4, 2014 with a two week comment period closing on March 18, 2014:

- BWC's Managed Care Organizations and the MCO League representative
- BWC's internal medical provider stakeholder list representing 56 medical provider associations/groups
- BWC's Healthcare Quality Assurance Advisory Committee
- Ohio Association for Justice
- Council of Smaller Enterprises (COSE)
- Ohio Manufacturer's Association (OMA)
- National Federation of Independent Business (NFIB)
- Ohio Chamber of Commerce
- BWC's Labor Management Government Advisory Council

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In addition, these draft rules were presented to BWC's Labor-Management-Government Advisory Council (LMG) on March 20, 2014.

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

One comment on the rules was submitted. The comment focused on when Living maintenance payments starts. The stakeholder suggested that Living Maintenance payments should start on the date the claimant "agrees" to participate in vocational rehabilitation.

Under the current rules, an injured worker's Living Maintenance payment begins when the injured worker began "active" participation in a vocational rehabilitation plan. The purpose of the current approach to the timing of the Living Maintenance payment is to recognize actions that clearly exemplify the commitment of an injured worker to work with the vocational services provider to address the results of a workplace injury. The recommended changes to the rules do not supplant the original underlying purpose of the current language as that purpose is still appropriate. What the language does is to clarify that "active" participation also includes participation of the injured worker in activities in the Assessment Plan phase of the process. The proposed rule changes will cut the current time period in half to approximately 3 weeks from agreement to injured worker plan participation and receipt of Living Maintenance payment. Therefore, further modification to the period in which Living Maintenance payments are made was deemed as not warranted.

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?

Qualitative reviews of vocational rehabilitation plans put in place to assist injured workers in return to work revealed inefficient and ineffective outcomes due to insufficient assessment and planning being performed prior to beginning a return to work plan. This data supports these rule changes by implementing structured requirements for building a vigorous Assessment and Comprehensive return to work plan, and adding a mechanism for the injured worker's Living Maintenance payments to begin at the start of the assessment period. BWC believes this stronger planning up front will lead to more successful outcomes in a more efficient manner.

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?

BWC did not consider any alternative regulations as the changes we are proposing to the regulation clarifies existing rule language and further facilitates the achievement of one of the underlying goals and objectives of the current language that being to ensure an effective assessment of an injured worker's vocational rehabilitation service needs thereby supporting the development and implementation of an appropriate plan of action leading to the injured worker's successful and safe return to work.

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.

12. No. This entire rule is designed to set forth minimum expectations for a provider and injured worker relative to vocational services plan development activities and Living Maintenance payments. The rule is not overly prescriptive in how stakeholders must achieve compliance with those minimum expectations. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

These rules are specific to BWC's vocational rehabilitation program. Since BWC is the only state agency that administers workers' compensation in Ohio, there is no duplication between these rules and other rules in the Ohio Administrative Code.

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.

In the summer of 2014 BWC training will be provided to the MCOs and BWC staff responsible for management and oversight of vocational rehabilitation plan development services and activities. Additionally, training will be offered to all relevant vocational rehabilitation service providers. The trainings will cover the different vocational rehabilitation plan types, timing of the payment of Living Maintenance and how the related activities will be reimbursed. BWC will utilize current staff performance expectation measures to evaluate the effectiveness and consistency of the BWC staff in providing oversight and management of relevant activities and responsibilities. The MCOs will also be evaluated on their consistency and effectiveness in providing oversight to the relevant vocational rehabilitation services providers. Providers will be also be reintroduced to the process for submitting issues and complaint to BWC regarding any aspect of challenge with the process.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

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a. Identify the scope of the impacted business community;

The changes in these rules do not expand the rule's current scope of impact which is to employers with injured workers receiving the relevant vocational rehab services and Living Maintenance payments, injured workers receiving the services, and approximately 266 vocational rehab services providers.

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

The adverse impact will be to the vocational services providers to attend training to understand the application of the new rules, and to comply with minimum increases in documentation needed to validate an effective assessment has been performed and document injured worker's participation so as to facilitate appropriate payment of Living Maintenance.

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.

Overall training time will be less than 8 hours. Cost for training will be negligible as BWC will provide training at no cost to the providers. Compliance with the minimum increases in documentation will also be negligible and offset by the reimbursement to providers for performing those services.

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

A core objective of BWC is the resolving of injured worker's lost time claims by successfully and safely returning the injured worker to work. Through the recommended changes to the current rule, the afore stated BWC core objective can be achieved in a more efficient and effective way through the facilitation of thoughtful planning at the outset of a case. A solid and sound assessment of an injured worker's needs is critical for identifying and selecting the right type of vocational rehabilitation services that will assist in returning an injured worker back to the workforce.

Regulatory Flexibility

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

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No. The regulation applies equally to all state fund employers and vocational rehabilitation services providers to ensure consistency and equality of service access to covered employees having vocational services needs.

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?

Not applicable.

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

BWC will be providing training for providers on all new changes around these rules as well as best practices to be successful in returning injured workers to work. Additionally, the MCOs will provide supportive direction and information to providers to assist in executing on the requirements of the regulations. Providers and employers will be reminded of the mediums available to them to submit issues and/or concerns directly to BWC for review and further handling.