

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Bureau of Workers' Compensation

Regulation/Package Title: Provider access to the HPP – Denial of provider, entity or MCO certification based on criminal conviction or civil action

Rule Number(s): 4123-6-02.51

Date: February 08, 2013

Rule Type:

New

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Rescinded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.

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

This rule describes terms under which the administrator may refuse to certify or recertify, or may decertify a provider, entity or Managed Care Organization (MCO) from participation within the Health Partnership Program (HPP). Additionally the rule describes the basis for which the administrator may terminate an agreement with a person, health care provider or MCO or its owner, as well as cease reimbursement to that person, health care provider or MCO or its owner. Proposed changes are:

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- To add that the administrator may refuse to certify or recertify or may decertify a provider, entity or MCO that:

Is owned directly, or indirectly, by an individual or entity who has engaged in specific conduct which demonstrates financial irresponsibility. Such conduct shall include, but not be limited to:

- i. Specific examples of financial decision-making which has had a significant negative financial impact on past businesses;
 - ii. Specific examples of failures to pay debts or judgments;
 - iii. Specific examples of activity which has defrauded any person, entity or organization, regardless of whether such activity has resulted in criminal prosecution;
 - iv. Any finding of fraud in a civil or administrative proceeding related to any compensation or benefits payable under Chapter 4121, 4123, 4127 or 4131 of the Ohio Revised Code or the equivalent laws of another state.
- To address language in the rule which created a conflict with OAC 4123-6-17 by modifying paragraph (F) of the rule as indicated:

~~(F) Actions taken by the administrator pursuant to paragraph (A) of this rule shall be subject to rule 4123-6-17 of the Administrative Code. Actions taken by the administrator pursuant to paragraph (B) of this rule shall include a clear indication of the beginning date of such action and the specific medical services or dates of medical services or supplies that shall be excluded from payment, and shall be final unless the person, provider, managed care organization or owner, within seven days of the action, requests a hearing before the administrator where the person, provider, managed care organization or owner shall show cause why the action should not be final. The action of the administrator shall remain in force during the pendency of the show cause hearing.~~

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

R.C. 4121.44, R.C. 4121.441.

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.

N/A

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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)?

Public policy is to promote increased clarity and efficiency of the basis for which the administrator can certify, recertify, decertify and/or terminate any provider, entity or MCO from participating in the HPP. Additionally, the rule provides the minimum criteria possible which affords the administrator the ability to exercise the fiduciary duty of protecting the workers' compensation insurance fund and ensuring program integrity.

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

The processing and consideration of applications for certification, recertification or denial of a provider, entity or MCO as submitted.

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.

The following stakeholders were sent an e-mail containing the draft rule on February 11, 2013 with a comment period open from February 12, 2013 through February 26, 2013.

- 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 internal provider list serve (over 700 interested parties)
- BWC's Healthcare Quality Assurance Advisory Committee
- Ohio Associated for Justice
- Employer Organizations
 - Council of Smaller Enterprises (COSE)
 - Ohio Manufacturer's Association (OMA)
 - National Federation of Independent Business (NFIB)
 - 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

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

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Feedback is currently being collected.

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?

N/A.

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 will better enable the administrator to execute on the fiduciary responsibility of protecting the workers' compensation insurance fund and ensuring program integrity.

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.*

No. This entire rule is designed to establish minimum criteria applicable when the administrator proposes to deny to certify, recertify, or decertify any provider, entity or MCO from participating in the HPP.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

Per R.C. 4121.441(A)(11) and (A)(12), BWC is the only agency charged with adopting rules to implement the HPP, including standards and criteria for certifying and decertifying MCOs, so there is no possibility of conflicting regulation by another agency.

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.

BWC will implement changes via public HPP provider and MCO application forms, and internal BWC review of received applications and actions to ensure requirement changes are met. Ongoing review of the certified provider and MCO database, along with the provider and MCO recertification process, will ensure continued compliance.

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;**

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The rule impacts any provider, entity or MCOs wanting to be certified, recertified, or participate in the HPP. Currently there are 17 MCOs and 70,145 certified providers.

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

BWC has not identified any adverse impacts as the changes as there are no new fees or additional expectations of any provider, entity, or MCO.

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.

None.

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

BWC has not identified any adverse impacts. The proposed changes to the rule serve to clarify expectations and establish minimum criteria for provider, entity, and MCO certification.

Regulatory Flexibility

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

No. The proposed changes to the rule serve to clarify expectations and establish minimum criteria for provider, entity, and MCO certification.

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?

N/A

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

BWC’s Provider Relations Unit oversees the review of applications and any actions for certification, recertification and decertification/termination of medical providers and other medical service entities and is available to assist applicants with any questions.

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BWC's MCO Business & Reporting Unit oversees the review of review of MCO applications and any actions for certification, recertification and decertification and is available to assist applicants with any questions.