

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Bureau of Workers' Compensation

Regulation/Package Title: MCO participation in the HPP – MCO application for certification or recertification

Rule Number(s): 4123-6-03.2

Date: February 10, 2012

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Rescinded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 the application process for the initial certification or re-certification of a Managed Care Organization (MCO) for participation within the Health Partnership Program (HPP). The rule lists the minimum information that must be included in the application and is needed by BWC to review and make a decision. This list of information was developed by reviewing the related statutes and the requirements of the MCO contract.

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Proposed changes are:

- Require the MCO application to include attestation of intent to obtain and maintain insurance coverage as required by the MCO contract, with proof of such coverage to be submitted to the bureau prior to execution of the contract rather than the prior requirement to submit proof of specific types of insurance.
- Require the MCO application to include attestation of intent to obtain and maintain professional accreditations as required by the MCO contract, with proof of such accreditations to be submitted to the bureau prior to execution of the contract. While the current rule does not include this requirement, the MCO must have specified accreditations prior to being able to execute an MCO contract.
- Provide that BWC may require that the application be accompanied by an application fee, which shall not exceed the amount sufficient to cover the cost of processing the application. While the current rule does not reference an application fee, past practice was the requirement of a \$250 fee for an application for initial certification.

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

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 for an entity seeking to act as an MCO by reducing unnecessary upfront cash outlay. It also supports placing an appropriate level of administrative costs with the applicant and not Ohio's employers.

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 as an MCO as submitted.

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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 on containing the draft rule on January 13, 2012 with a comment period open from January 13, 2012 through January 27, 2012.

- a. BWC's Managed Care Organizations and the MCO League representative
- b. BWC's internal medical provider stakeholder list representing 56 medical provider associations/groups
- c. BWC's internal provider list serve (over 700 interested parties)
- d. BWC's Healthcare Quality Assurance Advisory Committee
- e. Ohio Associated for Justice
- f. Employer Organizations
 - a. Council of Smaller Enterprises (COSE)
 - b. Ohio Manufacturer's Association (OMA)
 - c. National Federation of Independent Business (NFIB)
 - d. Ohio Chamber of Commerce
- g. BWC's Self-Insured Division's employer distribution list
- h. 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?

BWC received comments from 6 Stakeholders – 2 MCOs and 4 providers. One provider agreed with the proposed changes, 2 providers did not have any recommended changes to the draft rule, one provider's comments did not relate to the rule or the proposed changes, and one MCO had a question regarding the implementation of the rule. The other MCO had comments on Section (C) of the rule; however, there are no proposed changes to that Section. The MCO questioned the need for BWC review and approval of the MCO's provider panel or provider arrangements. The need for this review and approval is required by R.C. 4121.441(C)(1).

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?

- 10. Not applicable. 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 apply to the initial regulation as created and promote a more business friendly environment. Additionally, the changes reflect usual and customary business practices.

- 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 be descriptive of what an applicant must submit in its application for certification as an MCO.

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

There is no other regulation that documents the requirements for an application to be certified or recertified as an MCO within the HPP. 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.**

We will be communicating the changes to the current MCOs via e-mail and implement the changes in the current application for initial certification that would be sent to any potential applicant for initial certification.

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;**

The rule impacts any entity wanting to be certified or recertified as an MCO to participate in the HPP. Currently there are 17 certified MCOs.

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

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BWC has not identified any adverse impacts as the changes reduce the need for upfront cash outlays and reflect the historical practice of charging an application fee.

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.

Regulatory Flexibility

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

No. The rule establishes minimum criteria that MCO applicants must meet to be eligible for HPP certification or recertification.

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. Section H of Rule 4123-6-03.2 allows an MCO applicant a 30 day period to cure any defects in its application upon notice from BWC of such defect(s).

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

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