

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

Agency Name: Ohio Bureau of Workers' Compensation

Regulation/Package Title: Miscellaneous Rules

Rule Number(s): Chapter 4123-5 of the Administrative Code (6 rules)

Date: April 23, 2014

**Rule Type:**

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 Rescinded                |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

Chapter 4123-5 of the Administrative Code contains miscellaneous rules on mostly claims related issues in the workers' compensation system. The rules of Chapter 4123-5 are due for five-year rule review under Section 119.032 of the Revised Code. The rule review date for

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the rules is July 1, 2014. BWC performed a five-year rule review of the rules in 2009, at which time BWC rescinded one rule and amended most of the other rules. Legal Operations reviewed the content of the rules with BWC Policy, and have identified the changes to the rules indicated below.

No Change rules:

4123-5-11 Employer's reports must be signed by officer or person in employ of employer.

4123-5-21 Abatement of claims.

Amended rules:

4123-5-01 Assignment of duties to the bureau's operational units.

4123-5-13 Expenses related to the death of an injured worker.

4123-5-18 Medical proof required for payment of compensation.

4123-5-20 Payment of compensation when advancements are made during period of disability.

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

4121.12 , 4121.121 , 4121.13 , 4121.30, 4121.31

**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)?**

Rule 4123-5-01, "Assignment of duties to the bureau's operational units," is required by statute to advise the public of the organization of the Bureau. The remaining rules define areas of the workers' compensation law that support and explain Bureau policies and procedures in claims administration.

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

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These rules do not lend themselves to measurement. The success of these rules is measured in the ability of workers' compensation stakeholders understanding and following the rules.

### **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 Bureau has distributed these rules for comments to:

- BWC's Managed Care Organizations and the MCO League representative
- BWC's internal medical provider stakeholder list - 68 persons representing 56 medical provider associations/groups
- BWC's Healthcare Quality Assurance Advisory Committee
- Ohio Association 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
- The Bureau's rules distribution list, and
- The general public via the E-Notification System

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

The Bureau will forward all input from the general public as soon as it is received.

**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?**

These rules generally follow statutory mandates. For example, rule 4123-5-13, "Expenses related to the death of an injured worker," is based upon statutory regulations related to what the Bureau can pay on behalf of the funeral expenses for an injured worker in a death claim. The statutes provide the basic parameters of the regulation; these rules simply inform stakeholders of the procedures and policies the Bureau will use to implement these regulations.

**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.***

Performance based regulations are not appropriate for the content of these rules.

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

The Bureau is the only state agency regulating workers' compensation claims, and thus there is not another agency promulgating rules on these subjects.

**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.**

The Bureau will post the rules on its website, [www.ohio.bwc.gov](http://www.ohio.bwc.gov), and will distribute the rules to affected parties.

**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.*

- a. The impacted community includes injured workers, employers, and providers in the workers' compensation system.
- b. The most significant adverse impact is the requirement in rule 4123-5-18, "Medical proof required for payment of compensation," that an injured worker who seeks the payment of compensation in a claim submit periodic reports from his or her provider. This is a paperwork and reporting requirement and burden, justified by the Bureau's need for current medical evidence to pay compensation benefits in a claim.
- c. Generally, providers do not charge an injured worker to complete reports needed for the payment of compensation. Thus, the impact on injured workers and providers is difficult to quantify.

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

These rules generally follow statutory mandates. The statutes provide the basic parameters of the regulation; these rules simply inform stakeholders of the procedures and policies the Bureau will use to implement these regulations. Therefore, the regulatory intent of these rules is justified by the need for the Bureau to comply with statutory mandates.

**Regulatory Flexibility**

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

No.

**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. None of these rules have provisions that would result in fines or penalties to employers.

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

Bureau rules and policies are available on [www.ohio.bwc.gov](http://www.ohio.bwc.gov). Also, BWC personnel are available to assist stakeholders in answering workers' compensation inquiries.