

Business Impact Analysis

Agency Name: Bureau of Workers' Compensation

Regulation/Package Title: QHP Rules - Chapter 4123-6 - 1st set.

Rule Number(s): OAC 4123-6-51(Am); 4123-6-52 (New); 4123-6-53 (Am); 4123-6-54 (NC); 4123-6-55 (Am); 4123-6-58 (NC); 4123-6-59 (Am); 4123-6-65 (NC); 4123-6-69 (NC); 4123-6-70 (NC); 4123-6-72 (Am)

Date: July 18, 2014

Rule Type:

New

5-Year Review

Amended

Rescinded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 4123-6 of the Administrative Code contains BWC rules implementing the Qualified Health Plan (QHP) system for self-insuring employers who choose to provide medical, surgical, nursing, drug, hospital, and rehabilitation services and supplies through a QHP. BWC enacted the Chapter 4123-6 QHP rules (OAC 4123-6-50 to 4123-6-73) in September 1996. The rule review date for these rules are November 1, 2014. BWC performed a five-year rule review of the rules in 2009, at which time BWC made numerous

changes, mostly rescinding unnecessary and/or duplicative rules, or combining some rules into existing rules. As a result of the 2009 review, there are relatively few changes proposed in this current review. BWC is proposing the following:

New rule:

4123-6-52 Employer participation in the QHP system – bureau recertification of QHPs.

Amend rules:

4123-6-51 Employer participation in the QHP system – bureau certification of QHPs.

4123-6-53 Employer participation in the QHP system – QHP quality assurance program required.

4123-6-55 Employer participation in the QHP system – bureau’s authority to decertify, to refuse to certify a QHP.

4123-6-59 Provider access to the QHP system – QHP provider selection.

4123-6-72 Confidentiality.

No Change rules:

4123-6-54 Employer participation in the QHP system – QHP certification application.

4123-6-58 Provider access to the QHP system – provider participation in QHP system and other related health care program not linked.

4123-6-65 Payment in the QHP system – employer payment to vendor that provides medical management and cost containment services and/or QHPs.

4123-6-69 QHP dispute resolution process.

4123-6-70 Evaluation of the QHP system by the bureau; reporting requirements by employers and QHPs.

The major changes to the amendments are:

- To provide that BWC is authorized to recertify QHPs at least every three years;
- To provide for a recertification process modeled after the HPP provider recertification process set forth in OAC 4123-6-02.4;
- Remove language providing for the immediate decertification of a QHP, to clarify that all QHP decertification actions shall be conducted pursuant to the process set forth in OAC 4123-6-17.
- Correct and/or delete outdated cross-references to other statutes and rules.

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

R.C. 4121.12 , 4121.121, 4121.30 , 4121.31 , 4121.44, 4121.441, 4121.442, 4123.05, 4123.66.

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 is to provide appropriate and clear direction for and/or to self-insuring employers setting forth the protocols which facilitates their execution of their right to provide services or supplies to an employee for an injury or occupational disease through a qualified health plan. Section 4121.44 of the O.R.C. directs the Administrator of the Bureau of Workers' Compensation (BWC) to adopt rules that permit self-insuring employers to do so and to agree to abide by these QHP rules. Further, the purpose is to provide appropriate and clear directions for and/or to QHPs setting forth their service expectations. Section 4121.442 of the O.R.C. provides that the Administrator of BWC shall develop standards for QHP qualification of health care plans when providing healthcare services to injured workers.

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

Success will be measure by the compliance, certification and/or recertification of QHPs for self-insured employers which elect to implement a QHP; as well as the compliance of QHPs in executing on their duties pursuant to the standards and requirements of the Health Partnership Program 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 QHP rules were distributed via e-mail to the following lists of stakeholders for review:

- The Self Insured Division's employer distribution list;
- BWC's internal medical provider stakeholder list – 67 persons representing 52 medical provider associations/groups;
- Ohio Association for Justice;
- Ohio Attorney General's Office, Workers Compensation Section;
- BWC's Managed Care Organizations and their Medical Directors;
- BWC's Healthcare Quality Assurance Advisory Committee;

- Council of Smaller Enterprises (COSE);
- Ohio Manufacturers Association (OMA);
- National Federation of Independent Business (NFIB);

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 substantive responses from stakeholders on the QHP 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?

10. None 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. No regulatory alternatives which could be considered have been identified.

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. The regulations pursuant to the requirements of the O.R.C. are designed to articulate with clarity actions which a self-insured employer and a QHP need to take.

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 self-insuring employer workers' compensation programs.

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. Given the limited changes to the rules, minimum training on the changes with the staff will be needed. The Self Insured Employer section of BWC will communicate to the self-insured employers changes reflected in the rule via standard communication mediums and quarterly self-insured employers and TPA meeting.

Adverse Impact to Business

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

- Identify the scope of the impacted business community;**

All self-insured employers wishing to implement a QHP, as well as specifically, 14 self-insured employers who have QHPs, and their QHP programs.

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

Impact is in the nature of the employer and QHP time for compliance.

- 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.

Estimated time which an employer may need to complete the certification or recertification application is at most 10 hours.

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

BWC is attempting to meet the legislative intent of providing self-insured employers clear protocols effectively assisting those employers who wish to implement a qualified health plan approach to managing their injured workers needs. The benefit of this flexibility is greater than the identified minimum resource impact.

Regulatory Flexibility

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

No. Any self-insured employer wanting to establish a QHP is subject to the regulation as the exposure to the injured worker is the same regardless of employer size.

- 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?**

The Self-Insured Employer business unit within the Employer Division of BWC has the responsibility of providing support to any self-insured business regardless of size with respect to meeting Bureau regulations.