

*** DRAFT - NOT YET FILED ***

4123-6-01.1 **Applicability of medical rules.**

Unless specifically stated otherwise, the rules of this chapter governing payment of medical services and supplies shall apply to payments to health care providers in all claims for industrial injuries and/or occupational diseases before the bureau, self-insuring employers, MCOs, QHPs, and the industrial commission.

However, nothing in these rules shall inhibit or diminish the commission's right to establish adjudicatory policy under Chapters 4121., 4123., 4127., and 4131. of the Revised Code, or otherwise prevent the full adjudication of claims properly before the commission or its hearing officers.

Five Year Review (FYR) Dates:

Certification

Date

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Statutory Authority: 4121.12, 4121.121, 4121.30, 4121.31, 4121.44,
4121.441, 4123.05, 4123.66
Rule Amplifies: 4121.121, 4121.44, 4121.441, 4123.66
Prior Effective Dates: 3/5/10

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4123-6-02.9

Provider access to the HPP - provider marketing.

- (A) No bureau certified provider shall engage in any advertising or solicitation directed to injured workers which is false, fraudulent, deceptive, or misleading.
- (B) No bureau certified provider shall hire, arrange for, or allow any other individual or entity to engage in any advertising or solicitation directed to injured workers on behalf of the provider which is false, fraudulent, deceptive, or misleading.
- (C) No bureau certified provider shall pay, allow, or give, or offer to pay, allow, or give, any consideration, money, or other thing of value to an injured worker (including but not limited to free or discounted examinations, treatment, or other goods or services) as an inducement to or in return for the injured worker ordering or receiving from the provider any goods or services for which payment may be made by the bureau, MCO, QHP, or self-insuring employer under Chapter 4121., 4123., 4127., or 4131. of the Revised Code.
- (D) A bureau certified provider that violates this rule may be subject to decertification or disciplinary sanctions pursuant to the rules of this chapter of the Administrative Code.

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4123-6-03

MCO participation in the HPP - generally.

A managed care organization that satisfies the certification requirements of this chapter shall be certified by the bureau as an MCO eligible to contract with the bureau to provide medical management and cost containment services in the HPP. The bureau shall continue to certify MCOs and shall periodically, at least annually, update its list of MCOs.

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4123-6-03.4

MCO participation in the HPP - MCO certification.

- (A) Upon review by and satisfactory to the bureau that the managed care organization has met bureau certification standards, the bureau shall certify an MCO as eligible to contract with the bureau to provide medical management and cost containment services for injured workers and employers.
- (B) MCO certification by the bureau shall be for a period of two years. Upon approval by the bureau, an MCO may expand its coverage area after the first year of certification and every year thereafter.
- (C) The bureau may certify any number of MCOs for each county or statewide.
- (D) The bureau shall maintain a current list of all bureau certified MCOs. The list shall include the name and address of each MCO and the counties in which the MCO is certified.
- (E) An MCO may apply to the bureau for recertification beyond the first two years of certification.

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4123-6-03.10

Conflict of interest.

No individual who is an officer or employee of an MCO shall represent a claimant or employer in any matter before the industrial commission, the bureau of workers' compensation, or a court of competent jurisdiction.

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4123-6-04.4

MCO scope of services - fee bill review and audit process.

- (A) The MCO shall review all bills submitted to it for payment by a provider consistent with the MCO's previous treatment reimbursement approval/denial of the service billed, the MCO's utilization standards, the criteria set forth in rule 4123-6-25 of the Administrative Code, applicable industry standards, and the requirements of the MCO contract.

- (B) The MCO shall have in place and operating a grievance hearing procedure allowing a provider, employer, or employee to grieve a disputed bill payment.

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4123-6-05.2

Employer access to the HPP - employer enrollment and selection of MCO.

- (A) An employer may select any bureau certified MCO that has contracted with the bureau, and has not been placed at capacity pursuant to rule 4123-6-03.3 of the Administrative Code, during an open enrollment period as provided in this rule. The bureau shall develop a process for verifying an employer's MCO selection.
- (B) The bureau shall select an MCO for a state fund employer that fails to select an MCO, as necessary.
- (C) If an MCO merges into or is acquired by another MCO, the bureau shall assign the employers formerly assigned to that MCO to the surviving MCO.
- (D) If the administrator decertifies an MCO or terminates any agreement or contract between the bureau and an MCO, the bureau shall randomly assign the employers formerly assigned to the decertified or terminated MCO to all remaining, eligible MCOs.
- (E) Selection of an MCO by an employer or selection by the bureau shall be until the next open enrollment period. At the bureau's discretion or upon the employer's request, the bureau may reassign an employer from the MCO if the bureau determines that the reassignment is in the best interest of both the employer and the MCO.
- (F) Once the MCO has been selected by either the employer or the bureau, the employer shall notify all employees of the selection.
- (G) The bureau shall establish an open enrollment period during which time an employer may change its selection of an MCO at least once every two years, but no more than once in a year. During an open enrollment period, an employer may:
 - (1) Select a new MCO; or
 - (2) Continue with the employer's current MCO. In such case, the employer is not required to notify the bureau during the open enrollment period.
- (H) The bureau shall maintain and make available to employers electronically the list of all MCOs contracting with the bureau, and shall provide adequate notice to employers in writing of the deadline for new MCO selection.

- (I) An MCO may not refuse to accept an employer that has selected it or has been assigned to it by the bureau, unless the MCO has placed itself at capacity pursuant to rule 4123-6-03.3 of the Administrative Code.

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2/1/10

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4123-6-05.3 **Employer access to the HPP; certain solicitation practices by MCOs prohibited.**

(A) In soliciting employers as provided under rule 4123-6-05.1 of the Administrative Code, an MCO, or any individual or entity affiliated with the MCO as defined in rule 4123-6-05.1 of the Administrative Code, or any other individual or entity acting on behalf of an MCO or for the benefit of an MCO, shall not:

(1) Pay, allow, or give, or offer to pay, allow, or give, to any prospective employer or to any other person, firm, or corporation not an employee or agent of the MCO, either directly or indirectly, as an inducement to or in return for an employer's selection of the MCO, any rebate, premium, or kickback, or any special favor or advantage, or any other valuable consideration or inducement not provided for under Chapter 4123-6 of the Administrative Code.

(2) Pay, allow, or give, or offer to pay, allow, or give any commission, consideration, money, or other thing of value to any person, firm, or corporation not an employee or agent of the MCO for soliciting, negotiating, procuring, placing, writing, renewing, forwarding, or transmitting to the bureau an employer's selection of the MCO.

(3) Pay, allow, or give, or offer to pay, allow, or give a lead fee to any person, firm, or corporation other than an employee or agent of the MCO. For purposes of this rule, "lead fee" is defined as payments by an MCO to any person, firm, or corporation other than an employee or agent of the MCO for referrals of prospective employers where such payments are:

(a) Conditioned on the prospective employer selecting the MCO; and/or

(b) Not reasonably related to actual expense reimbursement by the MCO to the person, firm or corporation referring the prospective employer.

(B) Notwithstanding paragraph (A) of this rule, the MCO may reimburse to a trade or business association certain expenses in accordance with the following requirements:

(1) The trade or business association shall meet the requirements for being a sponsoring organization for group rating under section 4123.29 of the Revised Code and rules 4123-17-61 to 4123-17-68 of the Administrative Code.

- (2) The MCO may reimburse to the trade or business association only its actual and reasonable expenses incurred in educating its member employers on bureau and MCO medical management and cost containment services and related rules, policies, and processes.
 - (3) The MCO may reimburse to the trade or business association only its actual and reasonable expenses incurred in marketing the MCO to its member employers, subject to the limits set forth in paragraph (B)(4) of this rule, so long as such marketing is in compliance with rule 4123-6-05.1 of the Administrative Code.
 - (4) The reimbursement of a trade or business association's actual and reasonable expenses incurred in marketing the MCO to its member employers during a calendar year shall not exceed sixteen one-hundredths of one per cent of the premium of those employers that are members of the trade or business association and that have selected the MCO. The premium used in calculating allowable reimbursement under this rule shall be the premium used by the bureau to calculate payments to the MCO under the payment provisions of the MCO contract.
 - (5) The MCO and the trade or business association shall keep accurate records of all marketing and education services provided to its member employers for a period of four years from the date of performance of any such service. The MCO and the trade or business association shall provide the bureau with access to such records within a reasonable time after a request for audit of such records by the bureau.
- (C) Except as provided in paragraph (B) of this rule, no person, firm, or corporation not an employee or agent of the MCO shall knowingly receive any payment, commission, lead fee, rebate, premium or kickback, or any other valuable consideration or thing of value prohibited under paragraph (A) of this rule.
- (D) For purposes of this rule, "affiliated with an MCO" shall have the same meaning as in paragraph (E) of rule 4123-6-05.1 of the Administrative Code.
- (E) For purposes of this rule, "agent" of the MCO means:
- (1) An insurance agent or broker contracted by the MCO and licensed by the Ohio department of insurance pursuant to Title XXXIX of the Revised Code;
 - (2) An entity contracted by the MCO to conduct non-telephonic marketing that has not had and does not contemplate having activities of any nature with the

Ohio workers' compensation system so as to create a conflict of interest or the appearance of a conflict of interest under rule 4123-6-03.9 of the Administrative Code;

- (3) A telemarketer or telemarketing firm contracted by the MCO who has obtained a certificate of registration from the Ohio attorney general in accordance with Chapter 4719. of the Revised Code.

"Agent" of the MCO does not include the following: a third party administrator, group rating sponsor, business or trade association, or an individual or entity affiliated with the MCO that has had or contemplates having activities with the Ohio workers' compensation system so as to create a conflict of interest or the appearance of a conflict of interest under rule 4123-6-03.9 of the Administrative Code.

- (F) An MCO that violates this rule shall be subject to the penalties specified in paragraph (H) of the rule 4123-6-05.1 of the Administrative Code.

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4123-6-14.1

Records to be retained by MCO.

- (A) An MCO shall retain records received from providers and subcontractors that are utilized by the MCO to develop electronic billings to the bureau. The MCO shall retain any records obtained from the providers and subcontractors that are utilized by the MCO to perform its medical management functions or to substantiate the delivery, value, necessity, and appropriateness of goods and services provided to injured workers. The MCO shall retain records relating to a claim so long as the industrial commission and bureau of workers' compensation have continuing jurisdiction over the claim pursuant to section 4123.52 of the Revised Code For records that do not relate to a specific claim, including but not limited to monthly bank statements, monthly bank records and reconciliations, and monthly check registers, the MCO shall also create, maintain, and retain for a period of seven years from the date of the transaction records documenting transactions with the injured worker, providers, and subcontractors.
- (B) The failure of an MCO to create, maintain, and retain such records shall be sufficient cause for the bureau to deny payment for goods or services, or for performance fees, or for declaring overpaid previous payments made to the MCO, and may be cause for decertification.
- (C) As used in this rule, "records" includes, but is not limited to, "record" and "electronic record" as defined in rule 4125-1-02 of the Administrative Code.

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4123-6-16.1 **HPP medical treatment guidelines.**

In reviewing medical treatment reimbursement requests pursuant to rule 4123-6-16.2 of the Administrative Code and conducting independent reviews of medical disputes pursuant to rule 4123-6-16 of the Administrative Code, the MCO and the bureau shall refer to treatment guidelines adopted by the bureau. In the event of a conflict between these guidelines and any provision of this chapter of the Administrative Code, the provisions contained in the Administrative Code shall control.

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