

Business Impact Analysis

Agency Name: Bureau of Workers' Compensation

Regulation/Package Title: Vocational Rehabilitation Rules - Chapter 4123-18

Rule Number(s): Chapter 4123-18 of the Administrative Code (13 rules)

Date: _____

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Rescinded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 4123-18 of the Ohio Administrative Code contains BWC rules providing for the vocational rehabilitation of injured workers in the Ohio workers' compensation system. The rules were first published as Industrial Commission (IC) rules in the early 1980's, and were converted to BWC rules in the early 1990's when H.B. 222 transferred authority over vocational rehabilitation services from the IC to BWC. As part of the current Chapter 4123-18 five-year rule review process, this chapter has again been thoroughly reviewed and appropriate changes have been proposed.

The rule review date for these rules is October 1, 2014. As part of the current Chapter 4123-18 five-year rule review process, this chapter has been thoroughly reviewed and appropriate changes have been proposed. There are thirteen rules in this Chapter 4123-18 five year rule review package: nine rules will be amended, two rules will be rescinded, and two rules will be retained without change.

BWC is proposing the following:

Amend rules:

- 4123-18-01 Provision of vocational rehabilitation services.
- 4123-18-02 Goals of vocational rehabilitation.
- 4123-18-03 Guidelines for referral to and acceptance into vocational rehabilitation.
- 4123-18-05 Individualized written vocational rehabilitation plan.
- 4123-18-08 Payment for rehabilitation services and related expenses from the surplus fund.
- 4123-18-11 Incentive payments to employers who hire or retain injured workers who have completed a rehabilitation ~~plan~~ program.
- 4123-18-14 Injured workers suffering compensable injuries, occupational diseases or death while in an approved vocational rehabilitation plan.
- 4123-18-18 Labor-management-government advisory council.
- 4123-18-21 Wage loss payments to injured workers who complete rehabilitation ~~programs~~ plans.

Rescind Rules:

- 4123-18-12 Bureau authorized to employ and secure cooperation of others required to meet its goals.
- 4123-18-13 Referral to rehabilitation services commission permitted.

No Change rules:

- 4123-18-04 Living maintenance allowance.
- 4123-18-16 Self-insuring employer's obligation to provide vocational rehabilitation services.

The major substantive changes proposed for the vocational rehabilitation rules pursuant to the five-year rule review:

- Delete outdated reference to an annual report of vocational rehabilitation activities. OAC 4123-18-01
- Update reference to the Opportunities for Ohioans with Disabilities agency. OAC 4123-18-02
- Clarify that a medical and/or indemnity lump sum settlement renders an injured worker ineligible for vocational rehabilitation. OAC 4123-18-03
- Clarify that diagnostic evaluations may be used in determining feasibility for vocational rehabilitation prior to comprehensive vocational plan implementation. OAC 4123-18-03

- Add criteria for a job retention plan to the vocational rehabilitation plan rule. OAC 4123-18-05
- Add references to job retention plans throughout Chapter 4123-18. OAC 4123-18-03, OAC 4123-18-08, OAC 4123-18-21
- Clarify that there are three types of approved vocational rehabilitation plans: vocational rehabilitation assessment plans, comprehensive vocational rehabilitation plans, or job retention plans. OAC 4123-18-08
- Clarify the rule regarding incentive payments to employers who hire or retain injured workers who have completed a rehabilitation program. OAC 4123-18-11
- Rescind two rules that are duplicative of statutes R.C. 4121.62 and R.C. 4121.69. OAC 4123-18-12, OAC 4123-18-13
- Add language to clarify that claims for injury, occupational disease or death incurred in the course of and arising out of participation in an approved vocational rehabilitation plan shall be charged to the surplus fund, and not charged to the employer against which the claim was allowed, if the employer pays assessments into the surplus fund. OAC 4123-18-14
- Increase the number of members on the BWC's Labor-Management-Government Advisory Council (LMG) from 12 to 15 to conform to current R.C. 4121.70. OAC 4123-18-18
- Clarify that living maintenance wage loss payments may be paid to injured workers who complete an approved comprehensive vocational rehabilitation plan or job retention plan, successfully return to work, and experience a wage loss while employed. OAC 4123-18-21
- Clarify that to receive living maintenance wage loss payments, an injured worker must provide proof of earnings at least every four weeks, or on a quarterly basis if the injured worker has a substantial variation in income. OAC 4123-18-21
- Clarify how appeals of living maintenance wage loss determinations are processed. OAC 4123-18-21

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

R.C. 4121.441, R.C. 4121.61.

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 of program parameters and service actions which all parties engaging in the use or provision of Ohio vocational rehabilitation services must take to ensure vocational services access, quality and cost efficiencies, which leads to a successful and safe return to work for injured workers, as well as a productive and safe return of an injured worker to the employer or Ohio workforce. Ohio Revised Code 4121.61 provides that the Administrator, with the advice and consent of the BWC Board of Directors, shall “adopt rules, take measures, and make expenditures as it deems necessary to aid claimants who have sustained compensable injuries or incurred compensable occupational diseases . . . to return to work or to assist in lessening or removing any resulting handicap.”

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

Success will be measure by the providers’ and employers’ compliance with the modifications to the rules. Additionally, success will be measured by the change in return to work rates, and the increased use of vocational rehabilitation services and programs impacted by the limited changes to 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 Vocational Rehabilitation 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)
- The BWC Labor-Management-Government Advisory Council

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

BWC did receive input and responded as indicated below.

One vocational rehabilitation services provider expressed a concern with the proposed elimination of the requirement that the Bureau prepare an annual report of vocational rehabilitation activities during the prior calendar year. BWC informed the stakeholder that the report of vocational rehabilitation activities is included as part of the HPP Outcomes Report, which is made a part of BWC's Agency Annual Report. Relevant data and historical information is preserved within the HPP Outcomes and Agency Annual Reports. Therefore, no modification to the recommendation was needed.

A second stakeholder expressed a concern that there is no provision made for re-education of an injured worker into another field of potential employment when as a result of a workplace injury the injured worker cannot return to his/her field of employment. BWC informed the stakeholder that the current vocational rehabilitation services setup does provide for appropriate retraining. The stakeholder was informed that the re-education opportunities included both short and long term educational opportunities in fields which are compatible with an injured worker's interest and capability, per an extensive assessment performed on the injured worker's cognitive abilities. Therefore, no modification to the recommendation was needed.

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?

None

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?

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 program parameters and service actions which all parties engaging in the use or provision of Ohio vocational rehabilitation services must take to ensure vocational rehabilitation services access, quality and cost efficiencies, which leads to a successful and

safe return to work for injured workers, as well as a productive and safe return of an injured worker to the employer or Ohio workforce.

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 vocational rehabilitation services for Ohio's 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 Vocational Rehabilitation Services business section of BWC will coordinate communication and training to internal BWC staff, including but not limited to the Field Operations Disability Management Coordinators. The Managed Care Organization (MCO) Business unit in concert with Vocational Rehabilitation Services will ensure communication and training of changes to the MCO, specifically the MCOs' vocational rehabilitation coordinators. The Vocational Rehabilitation Services staff will also ensure communications to injured workers, employers and providers regarding changes reflected in the rules via standard communication mediums, such as provider e-news, policy guide updates, BWC web announcements, etc.

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;

All vocational rehabilitation services providers, all employers who have injured workers utilizing vocational rehabilitation services, and MCOs.

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

Impact is in the nature of vocational rehabilitation services providers, employers, and MCOs time for reviewing or receiving educations on the limited changes, as well as applying any modifications (which should also be limited) to relevant systems.

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 providers, employers, and MCOs may need to adjust to the changes 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 setting forth the opportunity for vocational rehabilitation services provision within the Ohio workers’ compensation environment. The rules have been reviewed and minimally modified to add additional clarity of program parameters and service actions which all parties engaging in the use or provision of Ohio vocational rehabilitation services must take to ensure vocational services access, quality and cost efficiencies, which leads to a successful and safe return to work for injured workers, as well as a productive and safe return of an injured worker to the employer or Ohio workforce.

Regulatory Flexibility

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

No. The rules are to provide guidance and clarity of program parameters and actions which all parties engaging in the use or provision of Ohio vocational rehabilitation services need to take to ensure vocational rehabilitation services access, quality and cost efficiencies, which leads to a successful and safe return to work for injured workers, as well as a productive and safe return of an injured worker to the employer or Ohio workforce.

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 MCOs have a responsibility in the under their contract with BWC to provide training and support to all providers in managing the medical and vocational care of the injured workers assigned to them. Additionally, by contract the MCOs are responsible for providing education and support to injured workers and employers on all workers’ compensation services and programs, including vocational rehabilitation services. The Vocational

Rehabilitation Services business unit within the Chief Medical Officer Division of BWC will also provide support and direction to impacted businesses, regardless of size, with respect to meeting Bureau regulations.