CSI - Ohio
The Common Sense Initiative

Business Impact Analysis

Agency Name: **Ohio Bureau of Workers' Compensation**

Regulation/Package Title: **Provider access to the HPP -- provider credentialing criteria**

Rule Number(s): **4123-6-02.2**

Date: **11/18/13 (Revised)**

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- ☐ **Rescinded**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.

   This regulation serves to provide notice to potential workers' compensation service providers or entities the requirements necessary to be certified as a specific type of provider or a

provider of a specific type of services in the Ohio workers' compensation system. These requirements provide minimum baseline expectations which serve to ensure and to communicate to BWC staff, Manage Care Organizations (MCOs), injured workers and employers that a provider is cable of performing and rendering quality workers' compensation healthcare services.

The major substantive changes proposed for BWC's Health Partnership Program (HPP) provider credentialing criteria Rule 4123-6-02.2 are to add three new types, as follows:

1. Employment Specialist

BWC recommends that the new provider type "Employment Specialist" consisting of providers of Job Placement, Job Development, Job Seeking Skills Training (JSST), Job Club and Job Coaching services be added to the rule. To be certified as an Employment Specialist, providers would have to possess one of the following minimum qualifications and/or credentials:

- Certification for American Board of Vocational Experts (ABVE), Certified Rehabilitation Counselor (CRC), Certified Case Manager (CCM), Global Career Development Facilitator (GCDF), Associate Certified Coach (ACC), Professional Certified Coach (PCC), Master Certified Coach (MCC), Certified Disability Management Specialist (CDMS), or Commission on Accreditation of Rehabilitation Facilities (CARF) accreditation for employment and community services in job development or employment supports; or
- Evidence of completion of three or more courses, seminars or workshops prior to application for certification, totaling a minimum of eighty hours and approved by the bureau or an entity offering a certification referenced in paragraph (16)(a)(i) of this rule, in at least two of the following domain areas (these providers would also have to complete 20 hours of continuing education, including 3 hours of ethics, every 2 years):
    - Job Development, Job Placement, and Career and Lifestyle Development
    - Vocational Consultation and Services for Employers
    - Professional Roles and Practices, Ethics and Utilization of Community Resources; or
- Evidence of bureau reimbursement to the provider for job placement, job development, job seeking skills training, job club, and/or job coaching services to injured workers for dates of service beginning not less than eighteen months prior to the effective date of this rule.
- Employment specialists certified pursuant to paragraphs (16)(a)(ii) or (16)(a)(iii) of this rule must complete twenty hours of continuing education, including three hours of ethics, every two years to maintain certification under this rule.

2. Hospice

BWC recommends that the Hospice provider type be added to the rule. To be certified as a Hospice, providers would have to possess a license from the Ohio Department of Health, and be approved by the Centers for Medicare and Medicaid services (CMS) for Medicare or Medicaid certification.

3. Ocularist

BWC recommends that the Ocularist provider type be added to the rule. To be certified as an Ocularist, providers would have to possess a license from the Ohio Optical Dispensers Board.

There are also minor change recommendations to the Ambulatory Surgical Centers and Residential Care/Assisted Living facilities certification requirements. It is recommended that those requirements be expanded to reflect current industry standards.

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.**

   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)?**

   Rule 4123-6-02.2 defines the credentialing criteria providers or entities must have to participate and provide ongoing care in BWC's managed care program.

   The primary purpose of the proposed changes to the rule is to recognize and certify new provider types in the BWC system. Certification sets a standard to ensure provider credentialing integrity and uniformity, thereby providing quality providers serving Ohio's injured workers.

   This regulation not only provides clarity to providers regarding baseline expectations Ohio has of providers to render services in the Ohio workers' compensation environment, but also

to ensure that providers are qualified to render requested services. Further, the regulations provide a base level of assurance to the administrators of the workers' compensation system (BWC and MCOs), injured workers and employers from whom services are requested, can provide quality services. The proposed rule changes expands certification criteria to include two additional medically indicated provider categories needed to serve Ohio's injured worker population. The proposed rule changes also tighten the existing rehabilitation provider criteria to create standards whereby those persons assisting Ohio's injured workers for employment services have industry qualifications and training to become BWC certified and assure quality service delivery.

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

   BWC will measure the success of this regulation by tracking the number of providers certified and maintaining the minimum required credentials. As well, success will be measured in the number of providers that are recruited with the minimum credentials required by the regulations. BWC monitors provider credentials at the time of a provider's initial application to participate in the HPP and at recertification, which may occur every two years. During interim times, BWC monitors professional licensure reports to identify providers who no longer meet the minimum criteria.

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.

   Proposed HPP provider credentialing Rule 4123-6-02.2 was emailed to the following list of stakeholders for feedback on July 5, 2013 with a two week comment period closing on July 19, 2013:

   - BWC's Managed Care Organizations and the MCO League representative
   - BWC's internal medical provider stakeholder list representing 56 medical provider associations/groups
   - BWC's internal provider list-serve (over 700 interested parties)
   - BWC's Healthcare Quality Assurance Advisory Committee
   - Ohio Association for Justice
     - Employer Organizations o 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
• BWC's Labor Management Government Advisory Council

In addition, initially drafted recommendations for the Employment Specialist provider certification were presented to BWC's Labor-Management-Government Advisory Council (LMG) on May 16, 2013. Those same recommendations were also presented to the International Association of Rehabilitation Professionals (IARP) on April 19, 2013.

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

We received over 40 comments relative to the recommendations being proposed. The vast majority of those comments were relevant to the Employment Specialist new provider recommendations. Comments generally fell into four areas as indicated below.

1. Assertion that BWC certification is not needed. And request to add the Certified Disability Management Specialist (CDMS) to the allowable certifications. (approximately 13 stakeholders commented on this issue)

   - BWC added the CDMS credential to the allowable credentials for BWC certification.

2. The 80 hour alternative class/seminar requirement would stress small businesses as a certification requirement, and the exact way the requirements would be evidenced and validated are vague. (approximately 12 stakeholders commented on this issue)

   - No change needed.

3. The rule makes no allowance for grandfathering current providers. (approximately 13 stakeholders commented on this issue)

   - BWC will grandfather those employment service specialists who have evidence of bureau reimbursement to the provider for job placement, job development, job seeking skills training, job club, and/or job coaching services to injured workers for dates of service beginning not less than eighteen months prior to the effective date of this rule.

4. Other minor grammatical language and title corrections.

- BWC made relevant and applicable grammatical language and title corrections.

See Addendum A - stakeholder feedback grid

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?**

   Not applicable.

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?**

    No alternatives were considered. Pursuant to statute this regulation is the appropriate method for regulating certification of providers of workers' compensation services.

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. Primarily this is not a performance based issue, but rather the regulation is designed to provide standards for when the administrator may certify and recertify providers to participate and provide services in the workers' compensation system.

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

    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 providers, 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.**

    The relevant medical services division staff have been involved in the review and development of the rule and therefore understand the recommended changes being proposed. The leader of the provider relations unit will ensure that unit's staff is trained on the new requirements, and that their review of applications for certification and/or recertification will reflect the new minimum required credentials. BWC will implement changes via the public HPP provider application form, and internal BWC review of received applications to ensure requirement changes are met. Ongoing review of the certified provider database with the provider recertification process will ensure continued compliance.

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 provider or entity wanting to be certified or recertified to provide related services or participate in the HPP. Currently there are over 70,145 certified providers. Specifically, the proposed amendments to the rule will primarily affect the new provider types added (Employment Specialists, Hospice, and Ocularists).

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

The potential adverse impact would be in the form of license fees or educational costs that a provider or entity may incur to comply with the credential requirements of the rule.

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.

The impact on providers of Employment Services for BWC who already meet the requirements for certification will be the added post-certification requirement to complete 20 continuing education units (CEUs) every two years. This number of required CEUs is in keeping with all other credentials in the field of vocational rehabilitation. The cost for CEUs varies. There are many avenues by which CEUs may be obtained.

The annual BWC Safety Congress runs a vocational rehabilitation track and provides approximately 15 CEUs per year free of charge. BWC's Learning Center also offers free CEU opportunities throughout the year. An example of a seminar that is put on by IARP (International Association of Rehabilitation Professionals) every Spring and Fall provides 6 CEUs at a cost of $85. - $105, depending on whether you are a member of the association.

There are online CEUs available for free and some for very little cost. The impact on providers of Employment Services who are unable to be grandfathered and who do not have one of the qualifying credentials, and who choose to qualify through the

BWC provider certification option, will be the cost of obtaining 80 CEUs or classroom hours prior to application. The cost for these again varies. If a provider chooses to take one college level, 3-credit course, this would equate to 45 CEUs or classroom hours. A 3-credit hour class at Columbus State Community College costs $397.20.

The impact on providers who are unable to be grandfathered and who choose to qualify through one of the 9 established credentialing bodies, will be at least the cost of sitting for the exam and payment for the membership/credential. The costs for these vary depending upon which credential a provider is pursuing. For the credentials of ABVE, CRC, CCM and CDMS the current range of fees is $345. to $385. For the ACC ($100. to $500.), PCC ($300. to $775.) and MCC ($575 to $775.) the range is $100. to $775. The current fee for a "single site" provider seeking the CARF accreditation is $2,600. The GCDF credential requires specific training along with the application and annual fees and would cost approximately $4,125. All of these credentials require renewal with CEUs on a three to five year rotation.

The additional non-vocational rehabilitation providers added – Hospice and Occularists – are both already required to have licensure in Ohio to provide these specific services to all Ohioans across the state. Hospice providers are also to be approved by the Centers for Medicare and Medicaid. These are existing statewide and national standards for these health care service providers, and therefore should not impose a negative impact for requirements to be qualified to work with BWC's injured workers.

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

Without this regulation the Administrator is not able to execute on the statutory requirement of adopting rules to implement the HPP, including standards and criteria for certifying and recertifying providers or entities. Moreover, this regulation provides transparency to potential affected business community of the criteria which the Administrator considers in arriving at a determination to certify or recertify a provider or entity for participation in the HPP. This regulation facilitates the Administrator's fiduciary responsibility to provide an environment which meets the needs of injured workers and employers, while ensuring integrity in the system. It is necessary for BWC to have minimum criteria for providers to participate in the HPP in order to ensure the health and well-being of injured workers.

Regulatory Flexibility

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

    No. Any provider or entity wishing to provide related services in the HPP must meet the minimum credentialing requirement indicated for those services. Recognizing there may be differences in the provider community the regulation does provide flexibility in the manner in which a provider or entity can meet the credentialing requirements of the rule.

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. Per Rule 4123-6-02.5(A), providers are given thirty days notice to cure any defects in their application for HPP certification or recertification.

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

    BWC's Provider Relations Unit oversees the review of applications and any actions for certification, recertification and decertification/termination of medical providers and other medical service entities and is available to assist applicants with any questions.