CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Bureau of Workers' Compensation

Regulation/Package Title: Records to be Retained by MCO

Rule Number(s): 4126-6-14.1

Date: January 11, 2013

Rule Type:

- ☐ **New**
- ✓ **Amended**
- ☐ **5-Year Review**
- ☐ **Rescinded**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 rule outlines the records retention requirements for Managed Care Organizations (MCO) contracted by BWC to provide services under the Health Partnership Program (HPP) created under ORC 4121.44. The language in the rule is being updated to reflect the impact of new technologies and current business requirements.

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.**

   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)?**

   To ensure records are retained the appropriate length of time by the MCOs.

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

   Failure of the MCO to be able to produce records in response to a request from BWC will indicate a failure.

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 proposed amended rule was emailed to the following stakeholders on January 15, 2013 with a comment period open from January 16, 2013 through January 30, 2013:

   - BWC's MCOs and the MCO League representative
   - BWC's internal medical provider stakeholder list – 68 persons representing 56 medical provider associations/groups
   - Ohio Association for Justice
   - Employer Organizations
     - Council of Smaller Enterprises (COSE)
     - Ohio Manufacture'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

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

   Stakeholder Feedback attached .

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?**

    The MCOs are the custodians of claim specific records, such as medical bills, checks to providers, etc. and as custodians must retain claim specific records for the duration of the workers' compensation claim. BWC has determined that for audit purposes, the retention on non-claim specific records should be changed to seven years.

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.***

    N/A

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

    These rules are specific to BWC, and the retention of records by BWC's MCOs. Since BWC is the only state agency that administers workers' compensation in Ohio, there is no duplication between these rules and other rules in the Ohio Administrative Code.

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.**

    Policies and/or procedures for implementation and compliance with this rule will be included in the MCO Policy Reference Guide.

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.

The scope of the impacted business community is the 18 MCOs certified to participate in the Health Partnership Program. There is no anticipated cost of compliance. One change in the rule may reduce cost as the MCOs are no longer required to send materials to another MCO. The change requiring retention of certain documents for seven years from three years should not have a financial impact.

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

BWC does not anticipate any adverse impact to the regulated business community.

Regulatory Flexibility

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

No. These record retention requirements are applied equitably across all MCOs. The MCOs are the custodians of claim specific records, such as medical bills, checks to providers, etc. and as custodians must retain claim specific records for the duration of the workers' compensation claim.

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?

BWC will comply with R.C. 119.14 to the extent applicable.

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

Policies and/or procedures for compliance with this rule will be included in the MCO Policy Reference Guide, which is posted on the BWC website at Ohiobwc.com. Also, MCOs can contact BWC's Medical Services Division for assistance.