BWC Board of Directors

Governance Committee Agenda

Thursday, March 19, 2009
William Green Building
Level 2, Room 3
8:00 am-10:00 am

Call to Order
Alison Falls, Committee Chair

Roll Call
Tom Woodruff, Scribe

Approve Minutes of February 19, 2009 meeting
Alison Falls, Chair

New Business/Action Items

1. Dispute Resolution for HPP Medical Issues, Rule 4123-6-16 (Second reading)
   Bob Coury, Chief, Medical Services and Compliance
   Freddie Johnson, Director, Managed Care Services
2. Metal Casting Safety, Rule 4123:1-7 (First reading)
   Don Bentley, Interim Superintendent, Division of Safety and Hygiene
3. Steel Making, Manufacturing & Fabricating, Rule 4123:1-9 (First reading)
   Don Bentley, Interim Superintendent, Division of Safety and Hygiene
4. Laundering & Dry Cleaning, Rule 4123:1-11 (First reading)
   Don Bentley, Interim Superintendent, Division of Safety and Hygiene
5. Approval of Superintendent of Safety and Hygiene
   Marsha P. Ryan, Administrator

Discussion Items

1. Rule Review Calendar
   Don Berno, Board Liaison
2. Committee Calendar

Adjourn
Alison Falls, Committee Chair

Next Meetings: Tuesday, April 28, 2009 2:00 pm – 5:00 pm
Wednesday, April 29, 2009 8:00 am - 9:15 am 3/20/2009 1:03 PM

BWC Board of Directors

Executive Summary

HPP Alternative Dispute Resolution Rule

Introduction

Chapter 4123-6 of the Ohio Administrative Code contains BWC rules implementing the Health Partnership Program (HPP) for state fund employers. BWC initially enacted the bulk of the Chapter 4123-6 HPP operational rules (Ohio Administrative Code 4123-6-01 to 4123-6-19) rules, including the HPP Alternative Dispute Resolution (ADR) rule (Ohio Administrative Code Rule 4123-6-16), in February 1996.

Background Law

Ohio Revised Code 4121.441(A)(1) provides that the Administrator, with the advice and consent of the BWC Board of Directors, shall adopt rules for implementation of the HPP including, but not limited to, "[p]rocedures for the resolution of medical disputes between an employer and an employee, an employee and a provider, or an employer and a provider, prior to an appeal under section 4123.511 of the Revised Code."

Pursuant to this statute, BWC adopted Ohio Administrative Code 4123-6-16, "Dispute resolution for HPP medical issues," in February 1996. The HPP ADR rule has been amended numerous times since then as operational needs dictated.

Proposed Change

This ADR rule has been reorganized and the language modified for greater ease of readability and customer friendliness, in accordance with Governor Strickland's Executive Order 2008-04S: **"**Implementing Common Sense Business Regulation." Therefore, BWC is proposing the rule be rescinded in its current form and re-promulgated as a new rule, even though much of the "new" rule has not substantively changed.

The major substantive changes in the new ADR rule are as follows:

- Previously the MCO was restricted to peer to peer provider reviews when an individual health care provider was involved in the dispute. The new ADR rule modifies this to provide that after one or more peer reviews have been obtained in disputes involving the same or similar treatment, the MCO may obtain a review from a different perspective reviewer. This review will add insight from a specialist perspective to provide case direction in medically complex cases.

- The new ADR rule provides that the MCO may recommend that an injured worker be scheduled for an independent medical examination. This recommendation shall toll the MCO's time frame for completing the ADR process; however, the MCO must submit its recommended ADR decision to the bureau electronically within seven days after receipt of the independent medical examination report. This mirrors the September 25, 2008 change to the ADR rule tolling BWC's time frame for completing the ADR process when BWC obtained an independent medical examination.

- Finally, the new ADR rule provides that the MCO shall submit its recommended ADR decision electronically to the BWC, which is then published by BWC within two business days of receipt and mailed to all parties. This eliminates the BWC level of ADR review.

Agency Rule Review

Chapter	Title	# of rules	Legal Authority			Type of Review		JCARR review	Staff Contact	Review due	Proposed Sched	Proposed Timeline						Filed
			S	J	O	5YRR	Non 5 YRR					complete internal review	complete external review	Senior Staff Review Date	BOD Bk. Ddln*	BOD 1st read	BOD Vote	
4123-5	Miscellaneous Provisions	6		x	x	x		Yes	K. Robinson	2009	Apr. 09	complete		4/2/09	10-Apr	29-Apr	29-May	
4123-9	General Policy	12	x		x	x		Yes	J. Smith, TK, RM	2008	11/08-1/09							
4123-18	Rehab of Inj and Dis Workers	16	x		x	x		Yes	K.Fitsimmons, K Robinson	2008	11/08-1/09	complete	in process	4/2/09	10-Apr	29-Apr	29-May	
4123:1-7	Metal casting	14	x			x		Yes	M. Ely	2008	Mar. 09	Complete	2/24/09	2/26/09	6-Mar	19-Mar	30-Apr	
4123:1-9	Steel Making, Manuf, & Fabrica.	5	x			x		Yes	B. Loughner	2008	Mar. 09	complete	2/15/09	2/26/09	6-Mar	19-Mar	30-Apr	
4123:1-11	Laundry & Dry Cleaning	5	x			x		Yes	R. Gaul	2008	Mar. 09	complete	2/24/09	2/26/09	6-Mar	19-Mar	30-Apr	
TBD New Rule	2009 Vocational Rehab Services Fee Schedule						x		K. Fitzsimmons, Graff			4/30/09	5/15/09	5/28/09	5-Jun	18-Jun	31-Jul	
4123-14	Non-complying employer	6	x			x		Yes	D.C. Skinner	2008	11/08-1/09			4/30/09	8-May	29-May	29-Jun	
4123:1-1	Elevators	5	x			x		Yes	R. Gaul	2008	Mar. 09	complete	2/24/09	4/2/09	10-Apr	29-Apr	29-May	
4123:1-13	Rubber & Plastics	4	x			x		Yes	M. Lampl	2008	Mar. 09	complete	3/17/09	4/2/09	10-Apr	29-Apr	29-May	
4123:1-17	Window Cleaning	7	x			x		Yes	D. Feeney	2008	Apr. 09	complete	3/24/09	4/2/09	10-Apr	29-Apr	29-May	
4123-6-08	2009 Provider & Service Fee Schedule						x		Graff			3/15/09	4/10/09	4/2/09	10-Apr	29-Apr	29-May	
4123-6-01 to 18	HPP- Program	49	x	x	x	x		Yes	F. Johnson	2009	Jun/Jul 09	4/6/09	5/7/09	5/28/09	5-Jun	18-Jun	31-Jul	
4123-6-50 to 73	HPP/QHP	24	x	x	x	x		Yes	F. Johnson	2009	Apr/May 09	5/1/09	6/14/09	7/2/09	10-Jul	30-Jul	28-Aug	
4123-6-16.2	C9 Rule Change						x		Phillips			5/1/09	6/1/09	7/2/09	10-Jul	30-Jul	28-Aug	
4123-6-19 to 46	HPP- Provider	33	x	x	x	x		Yes	F. Johnson	2009	Aug/Sept 09			8/27/09	4-Sep	24-Sep	30-Oct	
4123-6-37.1	2010 Inpatient Fee Schedule						x		Graff, Casto			6/1/09	7/25/09	8/27/09	4-Sep	24-Sep	30-Oct	
4123 - 7	Payments to Health Care Prov.	30	x	x	x	x		Yes	F. Johnson	2009	Aug/Sept 09	7/15/09	9/15/09	10/1/09	9-Oct	29-Oct	20-Nov	
4123-6-37.3	2010 ASC Fee Schedule						x		Graff, Casto			7/15/09	9/1/09	10/1/09	9-Oct	29-Oct	20-Nov	
4123-6-37.2	2010 Hospital Outpatient Fee Schedule						x		Casto, TBD			8/15/09	9/30/09	10/22/09	31-Oct	19-Nov	17-Dec	
4123:1-5	Workshops & Factories	32	x			x		Yes	M. Ely	2008	Oct. 09	7/15/09	7/17/09	7/30/09	7-Aug	27-Aug	24-Sep	
	total rules for 08-09	248																

* materials in final form

S=Statutory
J=Judicial
O=Operational

4123-6-01 to 18: Some of these rules may not be completed for presentation until July versus the June dates.

#	RULE	ORIGINAL PARAGRAPH	CHANGE
1	4123:1-11-01	4121:1-11-01	~~4121:1-11-01~~ 4123:1-11-01
2	4123:1-11-01 (A) Scope	The purpose of these safety requirements is to provide reasonable safety for life, limb and health of employees. In cases of practical difficulty or unnecessary hardship, the Ohio bureau of workers' compensation may grant exceptions from the literal provisions of these requirements or permit the use of other devices or methods when, in the opinion of the **industrial commission**, equivalent protection is thereby secured.	The purpose of these safety requirements is to provide reasonable safety for life, limb and health of employees. In cases of practical difficulty or unnecessary hardship, the Ohio Bureau of Workers' Compensation may grant exceptions from the literal provisions of these requirements or permit the use of other devices or methods when, in the opinion of the ~~industrial commission~~ Superintendent of the Division of Safety & Hygiene, equivalent protection is thereby secured.
3	4123:1-11-01 (B)(6)(a) Definitions	(a) "Class IA" shall include liquids having flashpoints below seventy-three degrees Fahrenheit (22.8 degrees Celsius) and having a boiling point at or **above** one hundred degrees Fahrenheit (37.8 degrees Celsius)	(a) "Class IA" shall include liquids having flashpoints below seventy-three degrees Fahrenheit (22.8 degrees Celsius) and having a boiling point at or ~~above~~ below one hundred degrees Fahrenheit (37.8 degrees Celsius)
4	4123:1-11-04 (A) Electrical Equipment	All electrical equipment shall be located outside the drycleaning room or be of an approved typed for hazardzous locations when any flammable liquid with a flash point below **138.2** degrees Fahrenheit is used for drycleaning.	All electrical equipment shall be located outside the drycleaning room or be of an approved typed for hazardsous locations when any flammable liquid with a flash point below ~~138.2~~ one hundred degrees Fahrenheit (37.8 degrees Celsius) is used for drycleaning.
		Review Committee Members	**Comments**
		Rick Gerlach - Director of Safety & Health for Cintas; member of TRSA Safety Committee	Spoke with Mr. Gerlach several times on phone. Sent electronic copy of info. He declined meeting invite.
		David Field - Executive Director for Ohio Cleaners Association, and the following Officers of the Ohio Cleaners Association: Larry Long, President; Timoth Blankenship, Sr., President Elect; Dennis L. Bell, Vice-President; George Gardner, Secretary/Treasurer	Spoke with Mr. Field. Sent electronic copy of info on Feb 11. Per his request, I contacted and sent electronic copies to 4 Ohio Cleaners Assn board members. Mr. Field indicated that he will attend review meeting. I received the following email on behalf of the Executive Board for the Ohio Cleaners Association: "The Ohio Cleaners Association Executive Committee has reviewed the proposed changes and has no objection to any of them. Thank you for the opportunity to view them in advance."
		Charles Tomlinson - Director of Human Resources and Safety Compliance, Textile Rental Services Association (TRSA)	Spoke with Mr. Tomlinson several times. Sent electronic copy of info on Feb 11. Mr. Tomlinson forwarded info to local Ohio representatives. Mr. Tomlinson declined meeting invite. Email message: "I do not take issue with any of the four proposed revisions to the OAC as written." No response yet from local reps.
		Vann Seawell - Manager, Unite Here, District Office in Cincinnati	Phone called on Feb 17, 18, 20. Left messages. Spoke with Mr. Seawell on Feb 23 and sent electronic copy. Vann forwarded info to Corporate Safety and Health Program Director, Belinda Thielen (see comments below)
		Belinda Thielen - Unite Here, Occupational Safety & Health Program	Feb 24 - Belinda sent detailed response and expressed concerns about how outdated these rules are and the need to revise them to address modern processes and technology.
		Steve Ridley - Supervisor, Unite Here, Local 84 Toledo	Phone called on Feb 17. Spoke with Steve on Feb 20. Sent electronic copy of info on Feb 20.
		Eric Frumin - National Health and Safety Director, Unite Here, National	Left phone message for Mr. Frumin, Feb 11. No response
		Service Employees International Union (SEIU) 1199	

Common Sense Business Regulation (BWC Rules)

(Note: The below criteria apply to existing and newly developed rules)

Rules 4123-6-16

Rule Review

1. ☒ The rule is needed to implement an underlying statute.
   Citation: __O.R.C. 4121.441(A)(1)_____

2. ☒ The rule achieves an Ohio specific public policy goal.

   What goal(s): _ The rule changes will allow MCOs to obtain a specialist perspective to provide case direction in medically complex cases, toll the MCO's time frame for completing the ADR process when the MCO obtains an independent medical exam, and eliminates the BWC level of ADR review._____

3. ☒ Existing federal regulation alone does not adequately regulate the subject matter.

4. ☒ The rule is effective, consistent and efficient.

5. ☒ The rule is not duplicative of rules already in existence.

6. ☒ The rule is consistent with other state regulations, flexible, and reasonably balances the regulatory objectives and burden.

7. ☒ The rule has been reviewed for unintended negative consequences.

8. ☒ Stakeholders, and those affected by the rule were provided opportunity for input as appropriate.
   Explain: The proposed rules were reviewed and commented on by BWC's Health Care Provider Quality Assurance Committee, The MCO Medical Directors Committee and the Ohio Association for Justice, and were presented at BWC/IC Cross-Training and HPP stakeholder meetings.

9. ☒ The rule was reviewed for clarity and for easy comprehension.

10. ☒ The rule promotes transparency and predictability of regulatory activity.

11. ☒ The rule is based on the best scientific and technical information, and is designed so it can be applied consistently.

12. ☒ The rule is not unnecessarily burdensome or costly to those affected by rule.
    If so, how does the need for the rule outweigh burden and cost? _____
    _____

13. ☒ The Chief Legal Officer, or his designee, has reviewed the rule for clarity and compliance with the Governor's Executive Order.

Alternative Dispute Resolution (ADR)

Bob Coury, Chief Medical Services and Compliance

Freddie Johnson, Director Managed Care Services

March 19, 2009

Ohio | Bureau of Workers' Compensation

ADR
Introduction and Guiding Principle

- **Legal Requirements**

- **Guiding Principle**

  To ensure quality medical treatment decisions, and the management and resolution of treatment disputes

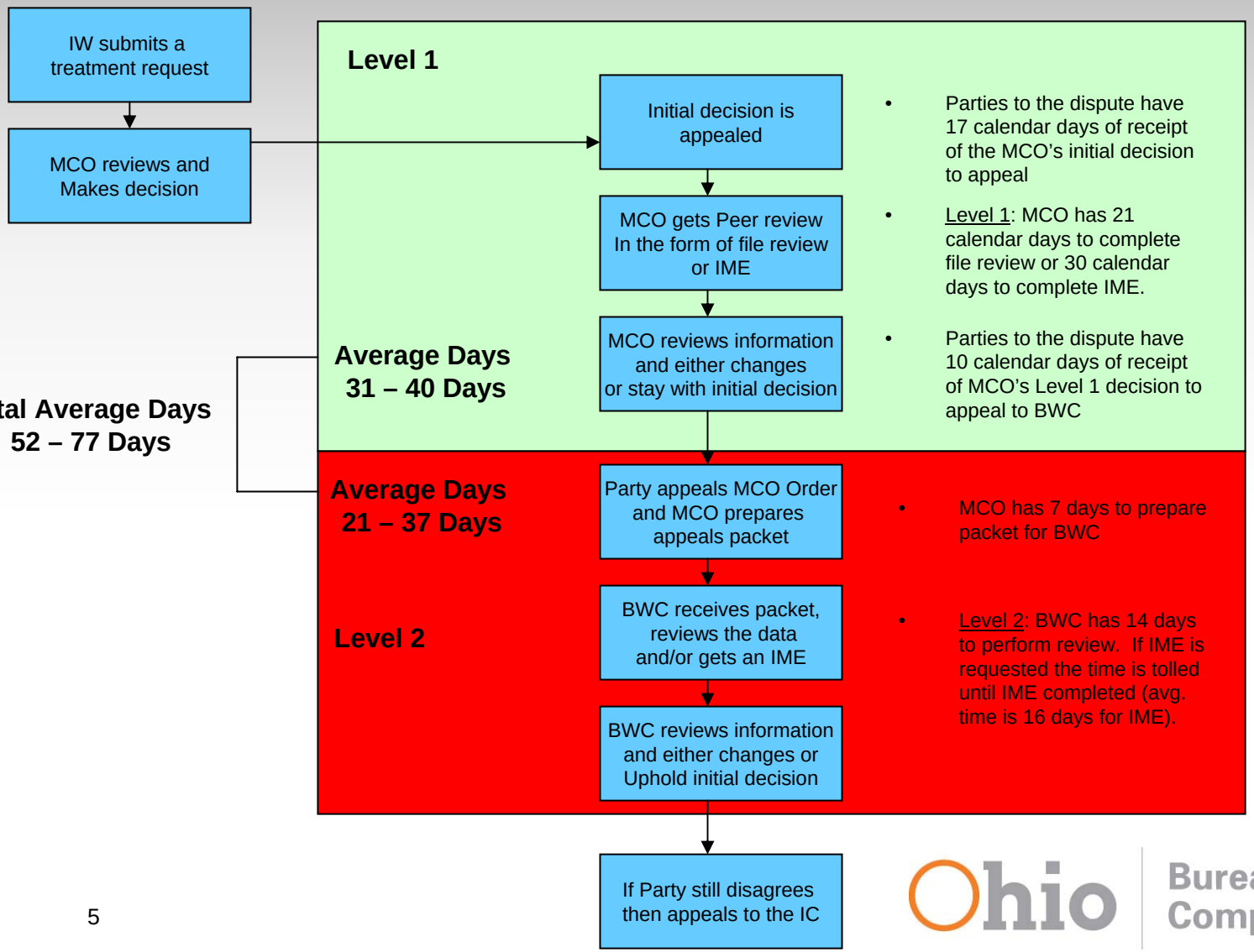
ADR Recommended Reforms: How Did We Get Here?

- **Administrator Objective**
  - Identify BWC processes and workflows and eliminate inefficiencies
  - Medical Services Identified ADR as inefficient process
- **ADR Internal Audit -** March 2008
  - Findings
    - The lengthy appeal process may prevent timely medical treatment.
  - Recommendations include
    - Determine the feasibility of eliminating levels of ADR process
    - Implement controls to ensure appropriate MCO treatment decisions
- **Deloitte Study**
  - Further supported eliminating second tier ADR at BWC
- **BWC/MCO Workgroup and Stakeholder input**

ADR Reform Goals

- Facilitate resolution of medical treatment disputes – timely, effectively, efficiently
- Maintain fairness and due process
- Ensure robust Quality Control of treatment decisions
- Improve parties' satisfaction

The Dispute Process



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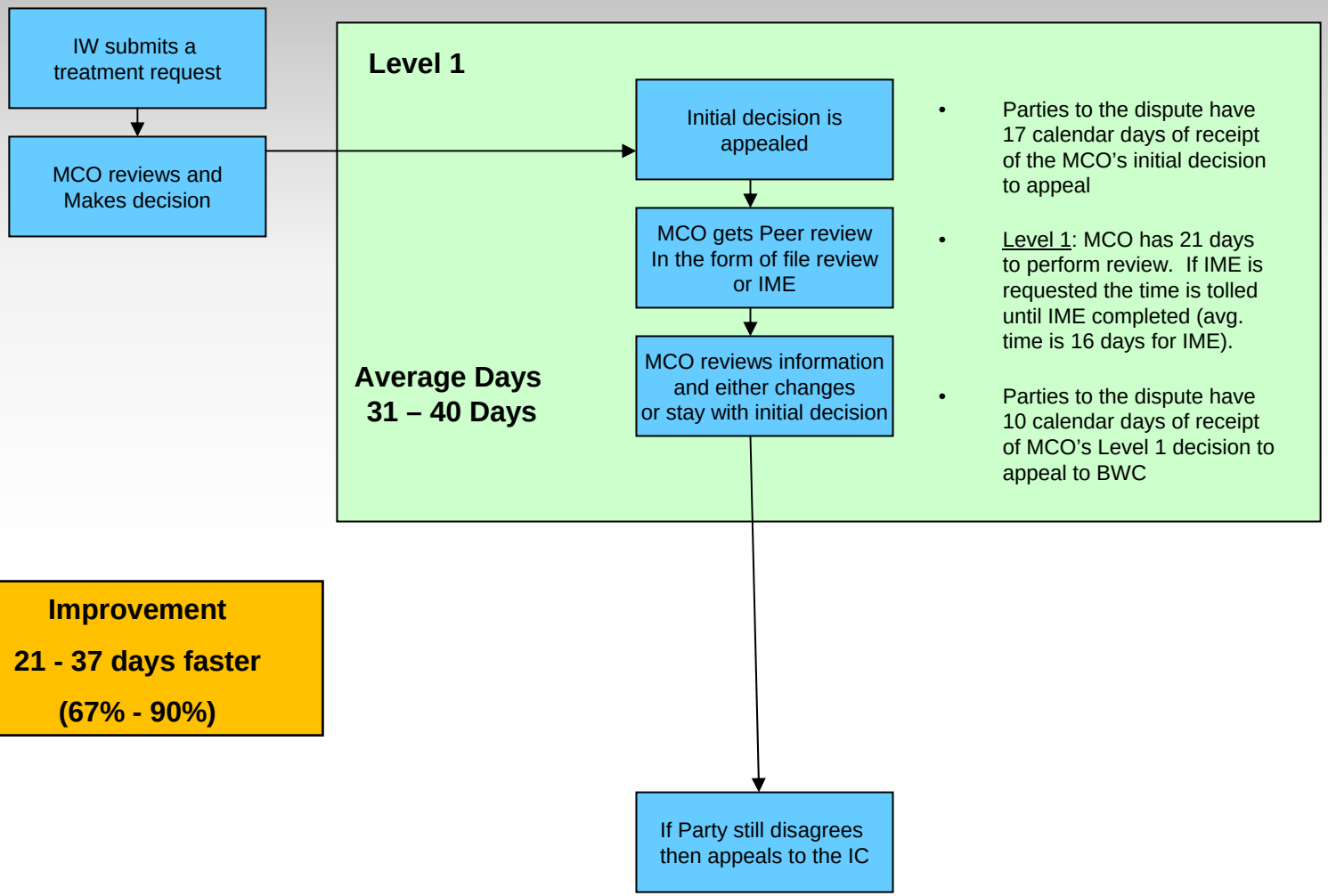
The Dispute Process Revised



- Parties to the dispute have 17 calendar days of receipt of the MCO's initial decision to appeal
- Level 1: MCO has 21 days to perform review. If IME is requested the time is tolled until IME completed (avg. time is 16 days for IME).
- Parties to the dispute have 10 calendar days of receipt of MCO's Level 1 decision to appeal to BWC

Improvement

21 - 37 days faster

(67% - 90%)

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ADR Proposed Rule Changes

- **Allow MCOs to obtain a review from a more specialized area of medicine**
  - Previously reviews conducted by a physician having a like practice as the physician requesting the treatment
  - Facilitate resolution of medical treatment disputes – timely, effectively, efficiently

- **Allow the MCO time frame for completing the ADR process to be suspended during the time an independent medical examination is obtained**
  - MCOs have a 21 to 30 day timeframe for performing a review and making a decision.
  - Usually, the time associated with requiring and completing an IME will result in MCOs' timeframes being exceeded.

- **Reflect the requirement that within the time specified the MCO must submit a recommendation to BWC, from which BWC will then issue an Order to all parties**
  - This clarifies BWC's expectation of the MCO in the time handling of disputes
  - This also facilitates Robust Quality control of treatment decisions

ADR Proposed Rule Changes – Additional Rule Language Updates

The following are two changes made to the initial language of the recommended rule as previously submitted.

- **Paragraph (D): Modified the sentence to add “agreement” instead of negotiation**
- **Paragraph (G) (2): Modified last sentence to add “or Industrial Commission”**

ADR Projected Implementation Timeline

- **Completing rule change approval process**
  - *Timeline*: Board and JCARR review Completed in May/June - 2009
- **Implement workflow and IT system changes** - Example, MCO electronic IME scheduling, electronic submission of draft orders
  - *Timeline*: June/July - 2009

Alternative Dispute Resolution (ADR)

Thank you

Appendix

Stakeholder Feedback

- Labor Management 1199 SEIU: Expressed concern regarding existing ADR Staffing
  - BWC's has indicated that the current staffing resources will be utilized in areas within the agency to further facilitate BWC's continued operational excellence
- Health Care Provider Quality Assurance Committee (HB222): Expressed concern regarding the MCO's potential bias in the process for selecting reviewers.
  - In the short term the MCO's will continue to utilize their vendors for file reviews. Independent Medical Exams (IME) will continue to be performed by DEP reviewer.
  - The future plan is for all customers (internal and external) to utilize the same panel for file reviews and IME's.
- MCOs expressed concern that Panel selection would be limited if only DEP reviewers are used.
  - Solutions are same as those listed for the HB222 above.
- The Ohio Association of Claimants Council (OACC): Wanted to ensure that a negotiation component remained a strong part of the process. Also concern that IMEs would increase.
  - Emphasize that negotiation is a critical component of the process
  - Will continue develop training and other tools to further encourage and facilitate effective use of negotiation between claim parties.
  - Shared the developed criteria that MCOs must follow in order to obtain a file review vs. IME.
- Industrial Commission: Similar concerns as raised by OACC.
  - Solutions are same as those listed for OACC above.

Stakeholder Feedback and Recommendations

02/09/09 & 02/13/09 Email Recommendations for changes to the draft ADR rule 4123-6-16:

ADR Draft Rule Recommendations	Draft Rule Questions	Clarification	Rule Change	Policy solution
N/A	Para (G) (1) of this speaks only to being able to use the previous peer review. Does this language cover the circumstances for when we determine that the appeal can no longer be pended, and we need to move forward with a new peer review (when new and changed circumstance have come in, or the IC has overturned the appeal that we have the current appeal pended against)?	Yes. The "*if appropriate*" language is there to provide that the MCO is to resume the ADR process by using the old peer review if appropriate, and to get a new peer review if not (the "if appropriate" is the exception to the general rule that the MCO needs to get a review).	N/A	N/A
Modify (G) (2) concerning the pending of a request for treatment or service for condition(s) not allowed the last sentence should be modified to state, " Once the bureau ***or Industrial Commission*** has made a decision on the allowance of the additional condition, the MCO shall review...."	N/A	N/A	This is an important step in the process therefore; we agree to add this language to the draft rule.	N/A

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Stakeholder Feedback and Recommendations

ADR Draft Rule Recommendations	Draft Rule Questions	Clarification	Rule Change	Policy solution
N/A	Will the MCO's continuing following the, " …current process and tracking the additional allowances through the IC – to SHO decision?"	Yes. The MCO's will continue to track appeals through the IC to ensure that the IC's final decision is documented and acted upon	N/A	N/A
"Add a paragraph to rule to allow appeal to be dismissed if a treating provider or physician of record or other party to the claim submits a dispute for a medical treatment reimbursement request that the treatment request has been dismissed per 4123-6-16.2 (D), (E), (F) or (G) of the Ohio Administrative code (the C-9 rule)." Additional Comment: Since the C-9s can be dismissed for these reasons, the appeals should be able to be dismissed as well.	N/A	N/A	An ADR rule change is not necessary in this case as when C-9's are dismissed they do not contain appeal language therefore; there is no decision to appeal.	N/A

Stakeholder Feedback and Recommendations

ADR Draft Rule Recommendations	Draft Rule Questions	Clarification	Rule Change	Policy solution
N/A	How can we fix the workflow when we have a C9 processed, then appealed and the ADR processed at L1, then L2 BWC ADR order (in the new scenario only one level). The BWC ADR order is appealed, however upon scheduling the DHO hearing, the AOR **dismisses the C9**. (I have seen a few where the **appeal is dismissed**, but not many, as this would stop the process because of the need to file appeals timely.) The C9 is dismissed I assume because the AOR is 'not ready' to argue the issue in front of the DHO. Since the C9 is dismissed, they get the POR to re-file the C9, and then start the entire process over again…	The BWC has no authority to stop this practice. Once a BWC order is appealed to the IC, we lose jurisdiction, and the IC has the power to grant dismissal of a C-9. The MCO may, however, use the previously generated peer review if the C-9 is refiled and taken through ADR again.	N/A	N/A

ADR – Disputed Issues

- **Disputed issues include**:
  - Decisions regarding medical treatment and diagnostic testing
  - Request for consultation
  - Feasibility of Voc Services/Closure of rehabilitation case
  - Authorization of medical equipment, supplies and services
  - Nursing services

ADR Activity Levels

- **ADRs are about 3% of total treatment request volumes**
  - Current active claims = 1,291,455
  - C-9's filed in 2008 = 484,582

- **MCO Level 1 appeals experience about 28,000 per year**
  - 22 MCO's

- **BWC Level 2 appeals experience about 14,000 per year**
  - 16 Nurses
  - Conduct 6-9 reviews daily

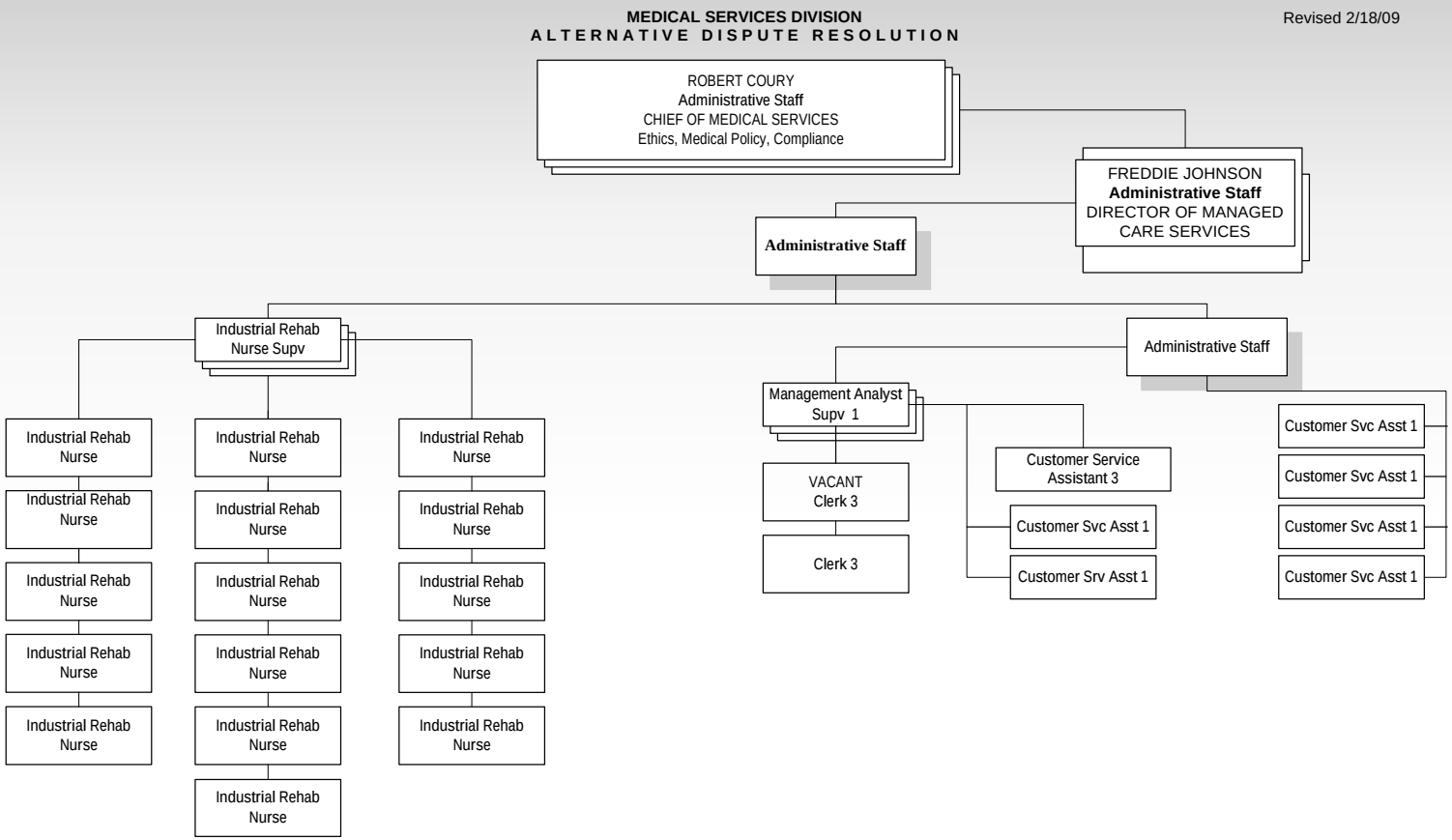
- **Number of ADR IMEs completed in 2008**
  - 198 at a Total cost of $85,000.00
  - IME Cost $450 per
  - File Review $30 per 10 minute up to 18 units ($20 X 180 = $360 maximum)

- **BWC file review costs for 2008**
  - $165,380.40

2008 File Review and IME's per DEP Provider (450 Members)

- **All BWC ADR Generated File Reviews and IME**
  - File Reviews $165,380.40 684 9.37 Average per day
  - IME $ 85,000.00 198 1.32 Average per day
- **File (73 reviewers):**
  - 1 file = 33% or 24 reviewers
  - 2-10 files = 55% or 40 reviewers
  - 11-25 files = 5% or 4 reviewers
  - 26-50 files = 3% or 2 reviewers
  - 51-75 files = 1% or 1 reviewer
  - >75 files = 3% or 2 reviewers
- **IME's (150 Examiners):**
  - 1 IME's = 41% or 62 Examiners
  - 2-10 IME's = 51% or 77 Examiners
  - 11-25 IME's = 3% or 5 Examiners
  - 26-50 IME's = 2% or 3 Examiners
  - 51-75 IME's = 1% or 2 Examiners
  - >75 IME's = 1% or Examiners

ADR Organization



Ohio Bureau of Workers' Compensation

4123-6-16 Alternative dispute resolution for HPP medical issues.

(A) Pursuant to section 4121.441(A)(1) of the Revised Code, this rule shall provide procedures for an alternative dispute resolution (ADR) process for medical disputes between an employer, an employee, or a provider and an MCO arising from the MCO's decision regarding a medical treatment reimbursement request (on form C-9 or equivalent). An employee or employer must exhaust the dispute resolution procedures of this rule prior to filing an appeal under section 4123.511 of the Revised Code on an MCO's decision regarding a medical treatment reimbursement request.

(B) Within fourteen days of receipt of an MCO decision giving rise to a medical dispute, an employee, employer, or provider may submit the dispute in writing (on form C-11 or equivalent) to the MCO. The written medical dispute must contain, at a minimum, the following elements:

(1) Injured worker name.

(2) Injured worker claim number.

(3) Date of initial medical treatment reimbursement request in dispute.

(4) Specific issue(s) in dispute, including description, frequency/duration, beginning/ending dates, and type of treatment/service/body part.

(5) Name of party making written appeal request.

(6) Signature of party making written appeal request or their authorized representative.

Written medical disputes that do not contain the minimum elements set forth in this paragraph may be dismissed by the MCO or bureau.

(C) Upon receipt of a written medical dispute, the MCO shall initiate the ADR process. The MCO's ADR process shall consist of one independent level of professional review as follows.

(1) If an individual health care provider eligible to be physician of record would be providing the services requested in the dispute, the independent level of professional review shall consist of a peer review conducted by an individual or individuals licensed pursuant to the same section of the Revised Code as the health care provider who would be providing the services requested.

(2) Notwithstanding paragraph (C)(1) of this rule, if the MCO has already obtained one or more peer reviews during previous disputes involving the same or similar treatment, the MCO may obtain a different perspective review from a licensed physician who falls outside the peer review criteria set forth above.

(3) If an individual health care provider not eligible to be physician of record would be providing the services requested in the dispute, the independent level of professional review shall consist of a provider review conducted by an individual or individuals eligible to be physician of record whose scope of practice includes the services requested.

(4) If the MCO receives a dispute where the requested treatment appears to be the same as or similar to a previous treatment request for which the MCO conducted a professional review, and the previous treatment request was ultimately denied based on the

professional review, the MCO may use the previous professional review to satisfy the independent level of professional review requirement of this paragraph.

(5) The MCO shall submit a copy of the professional review to the bureau, and the bureau shall provide the parties to the claim access to the professional review electronically.

(D) If, upon consideration of additional evidence or after agreement with the party that submitted the written medical dispute, the MCO reverses the decision under dispute or otherwise resolves the dispute to the satisfaction of the party, the MCO may issue a new decision and dismiss the dispute.

(E) Unless the MCO reverses the decision under dispute pursuant to paragraph (D) of this rule, the MCO shall complete the ADR process and submit its recommended ADR decision to the bureau electronically within twenty-one days of the MCO's receipt of the written medical dispute. The MCO may recommend that the employee be scheduled for an independent medical examination. This recommendation shall toll the MCO's time frame for completing the ADR process, and in such cases the MCO shall submit its recommended ADR decision to the bureau electronically within seven days after receipt of the independent medical examination report.

(F) Within two business days after receipt of a recommended ADR decision from the MCO, the bureau shall publish a final order. This order shall be mailed to all parties and may be appealed to the industrial commission pursuant to section 4123.511 of the Revised Code. The provider and the MCO may not file an appeal of the bureau order.

(G) Notwithstanding paragraph (C) of this rule, the MCO may pend a written medical dispute under the following circumstances:

(1) If the MCO receives a written medical dispute involving a medical treatment reimbursement request that appears to be the same as or similar to a previous treatment request for which the MCO conducted a provider review, and the previous treatment request is pending before the bureau or industrial commission, the MCO may pend the new dispute until the previous treatment request has been resolved. Once the previous treatment request has been resolved, the MCO shall resume the ADR process, and may proceed in accordance with paragraph (C)(4) of this rule if appropriate.

(2) If the MCO receives a written medical dispute involving a medical treatment reimbursement request relating to the delivery of medical services for a condition that is not allowed in the claim, and the issue of the allowance of the additional condition is pending before the bureau, the MCO may pend the dispute until the bureau has made a decision on the allowance of the additional condition. Once the bureau or industrial commission has made a decision on the allowance of the additional condition, the MCO shall resume the ADR process.

(H) Notwithstanding paragraph (C) of this rule, an MCO may submit its recommended ADR decision to the bureau electronically without obtaining an independent level of professional review under the following circumstances:

(1) The MCO receives a written medical dispute involving a medical treatment reimbursement request relating to the delivery of medical services that have been approved by the MCO pursuant to standard treatment guidelines, pathways, or presumptive authorization guidelines.

(2) The MCO receives a written medical dispute involving a medical treatment reimbursement request relating to the delivery of medical services for a condition that is not allowed in the claim, and the issue of the allowance of the additional condition is not pending before the bureau.

Effective: _____

R.C. 119.032 review dates: 07/09/2008 and 09/01/2013

Promulgated Under: 119.03

Statutory Authority: 4121.12, 4121.121, 4121.30, 4121.31, 4123.05

Rule Amplifies: 4121.121, 4121.44, 4121.441, 4123.66

Prior Effective Dates: 2/16/96; 6/6/97; 1/1/99; 11/8/99; 1/1/01; 1/1/03, 4/1/07; 9/25/08

[To Be Rescinded]

~~4123-6-16 Dispute resolution for HPP medical issues.~~

~~(A) This rule shall provide for procedures for the resolution of medical disputes that may arise between any of the following: an employer, an employee, a provider, the bureau, or an MCO. This rule applies to reviews of records, medical disputes arising over issues such as, but not limited, to quality assurance, utilization review, determinations that a service provided to an employee is not covered, is covered or is medically unnecessary; or involving individual health care providers. Within fourteen days of receipt of written notice of an MCO determination giving rise to a medical dispute, an employee, employer, or provider may request, in writing, that the MCO initiate the medical dispute resolution process provided for in paragraph (C) of this rule. Such written request must comply with paragraph (F) of this rule.~~

~~(B) An employee or employer must exhaust the dispute resolution procedures of this rule prior to filing an appeal under section 4123.511 of the Revised Code on an issue relating to the delivery of medical services.~~

~~(C) Any MCO participating in the bureau's HPP must have a medical dispute resolution process that includes one independent level of review. Except as provided below, if an individual health care provider is involved in the dispute, the independent level of review shall consist of a peer review conducted by an individual or individuals licensed pursuant to the same section of the Revised Code as the health care provider. The MCO must identify the providers performing the peer review. If the MCO receives a dispute where the requested treatment appears to be the same as or similar to a previous treatment request for which the MCO conducted a peer review pursuant to this rule, and the previous treatment request was ultimately denied based on the peer review, the MCO may refer the new dispute to the bureau for a determination as to whether peer review is needed for the independent level of review in the new dispute. If the MCO receives a dispute where the requested treatment appears to be the same as or similar to a previous treatment request for which the MCO conducted a peer review pursuant to this rule, and the previous treatment request is pending before the bureau or industrial commission, the MCO may defer consideration of the new dispute until the previous treatment request is resolved. Once the previous treatment request has been resolved, the MCO shall refer the new dispute to the bureau for a determination as to whether peer review is needed for the independent level of review in the new dispute and shall resume the dispute resolution process under this rule. If, upon consideration of additional evidence or after negotiation with the party requesting dispute resolution, the MCO reverses the determination under dispute or otherwise resolves the dispute to the satisfaction of the party, the MCO may issue a new determination and dismiss the dispute without prejudice. The MCO must complete its internal medical dispute resolution process and must notify the parties to the dispute and their representatives of the decision in writing within twenty-one days of notice of a dispute. The twenty-one days shall be measured from the time the written notice of the medical dispute is received by the MCO. However, if the MCO elects to refer the employee for an independent medical examination as part of the dispute resolution process, the MCO shall have thirty days to complete its internal medical dispute resolution process and notify the parties to the dispute and their representatives of the decision in writing. Upon written notice of the dispute, the MCO shall inform the bureau local customer service team of the dispute. Notice of the medical dispute received by telephone only does not~~

~~constitute formal notification as described in this paragraph. Within seven days of receipt of written notice of the MCO's decision, the employer, injured worker or provider may request, in writing, that the dispute be referred to the bureau for an independent review. Such written request must comply with paragraph (F) of this rule. The MCO shall refer the requested dispute to the bureau within seven days of written notice of the request. All disputes shall be referred by the MCO to the bureau within seven days of the expiration of the referral period for tracking purposes.~~

~~(D) Upon receipt of an unresolved medical dispute from the MCO, if the bureau determines that the MCO has not satisfactorily completed its internal medical dispute resolution process as set forth in paragraph (C) of this rule and the MCO contract, the bureau may return the dispute to the MCO for completion. The return of a dispute to the MCO pursuant to this rule does not toll the MCO's time frame for completing disputes. Within fourteen days after receipt of a completed, unresolved medical dispute from the MCO, the bureau shall conduct an independent review of the unresolved medical dispute received from the MCO and enter a final bureau order pursuant to section 4123.511 of the Revised Code. The bureau order may include a determination that the employee be scheduled for an independent medical examination. This determination shall toll the bureau's time frame for completing the dispute, and in such cases the bureau shall enter a final bureau order within seven days after receipt of the independent medical examination report. This order shall be mailed to all parties and may be appealed to the industrial commission pursuant to section 4123.511 of the Revised Code. Neither the provider nor the MCO is a party entitled to file an appeal under section 4123.511 of the Revised Code.~~

~~(E) If an MCO receives a medical treatment reimbursement request relating to the delivery of medical services for a condition or part of the body that is not allowed in the claim, the MCO may deny the request for the reason that the condition or part of the body is not allowed in the claim. The provider may recommend an additional allowance on a recommendation for additional conditions form (Form C-9 or equivalent) with supporting medical evidence, or the claimant may file a motion requesting an additional allowance. The bureau shall review the recommendation or motion and shall consider the additional allowance. If a party has requested medical dispute resolution of the issue under this rule while the motion or issue on the allowance of the additional condition is pending before the bureau, the MCO may defer consideration of the dispute until the issue of the allowance of the additional condition is resolved, notwithstanding the time limits for resolution of the dispute as provided in paragraph (C) of this rule. Once the bureau has made a decision on the additional allowance, the MCO shall resume the dispute resolution process under this rule. If a dispute is filed where the claimant has not filed a motion for allowance of the condition or the bureau has not allowed the condition as recommended by the provider on the treatment plan form, the MCO may refer the matter directly to the bureau for an order under paragraph (D) of this rule.~~

~~(F) If the MCO receives a dispute where the requested treatment relates to the delivery of medical services that have been approved by the MCO pursuant to standard treatment guidelines, pathways, or presumptive authorization guidelines, the MCO may refer the matter directly to the bureau for an order under paragraph (D) of this rule.~~

~~(G) A written request to initiate the medical dispute resolution process under paragraph (A) of this rule or to refer the dispute to the bureau for an independent review under~~

~~paragraph (C) of this rule (written appeal request) must contain, at a minimum, the following elements (form C-11 or equivalent):~~

~~(1) Injured worker name.~~

~~(2) Injured worker claim number.~~

~~(3) Date of initial medical treatment reimbursement request (form C-9 or equivalent) in dispute.~~

~~(4) Specific issue(s) in dispute, including description, frequency/duration, beginning/ending dates, and type of treatment/service/body part.~~

~~(5) Name of party making written appeal request.~~

~~(6) Signature of party making written appeal request or their authorized representative.~~

~~Only one medical treatment reimbursement request (form C-9 or equivalent) may be addressed in a single written appeal request under paragraph (A) or paragraph (C) of this rule. Written appeal requests that do not contain the minimum elements set forth in this paragraph may be dismissed without prejudice by the MCO or bureau.~~

~~Effective: -- -- --~~

~~Prior Effective Dates: 2-16-96; 6-6-97; 1-1-99; 11-8-99; 1-1-01; 1-1-03; 4-1-07~~

Common Sense Business Regulation (BWC Rules)

(Note: The below criteria apply to existing and newly developed rules)

Rule 4123:1-7

Rule Review

1. ☒ The rule is needed to implement an underlying statute.

   Citation: __R.C. 4121.13 and 4121.47_____

2. ☒ The rule achieves an Ohio specific public policy goal.

   What goal(s): __ Protection of workers in the metal casting industry.

3. ☒ Existing federal regulation alone does not adequately regulate the subject matter.

4. ☒ The rule is effective, consistent and efficient.

5. ☒ The rule is not duplicative of rules already in existence.

6. ☒ The rule is consistent with other state regulations, flexible, and reasonably balances the regulatory objectives and burden.

7. ☒ The rule has been reviewed for unintended negative consequences.

8. ☒ Stakeholders, and those affected by the rule were provided opportunity for input as appropriate.

   Explain: Several employer and employee organizations were contacted. The Ohio Cast Metals Association and the United Steel Workers agreed to participate in the review process. Due to scheduling problems and health issues with one of the committee members, a face to face meeting was not able to be implemented. Both organizations have stated they are satisfied with the proposed change and have no further changes to add at this time.

9. ☒ The rule was reviewed for clarity and for easy comprehension.

10. ☒ The rule promotes transparency and predictability of regulatory activity.

11. ☒ The rule is based on the best scientific and technical information, and is designed so it can be applied consistently.

12. ☒ The rule is not unnecessarily burdensome or costly to those affected by rule.

    If so, how does the need for the rule outweigh burden and cost? _____

13. ☒ The Chief Legal Officer, or his designee, has reviewed the rule for clarity and compliance with the Governor's Executive Order.

Ohio | Bureau of Workers' Compensation

Governor **Ted Strickland**
Administrator **Marsha P. Ryan**

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Columbus, OH 43215-2256
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02/09/09 & 02/13/09 Email Recommendations for changes to the draft ADR rule 4123-6-16:

ADR Draft Rule Recommendations	Draft Rule Questions	Clarification	Rule Change	Policy solution
N/A	Para (G) (1) of this speaks only to being able to use the previous peer review. Does this language cover the circumstances for when we determine that the appeal can no longer be pended, and we need to move forward with a new peer review (when new and changed circumstance have come in, or the IC has overturned the appeal that we have the current appeal pended against)?	Yes. The "*if appropriate*" language is there to provide that the MCO is to resume the ADR process by using the old peer review if appropriate, and to get a new peer review if not (the "if appropriate" is the exception to the general rule that the MCO needs to get a review).	N/A	N/A
Modify (G) (2) concerning the pending of a request for treatment or service for condition(s) not allowed the			This is an important step in the process	

ADR Draft Rule Recommendations	Draft Rule Questions	Clarification	Rule Change	Policy solution
last sentence should be modified to state, "Once the bureau ***or Industrial Commission*** has made a decision on the allowance of the additional condition, the MCO shall review…."	N/A	N/A	therefore; we agree to add this language to the draft rule.	N/A
N/A	Will the MCO's continuing following the, "…current process and tracking the additional allowances through the IC – to SHO decision?"	Yes. The MCO's will continue to track appeals through the IC to ensure that the IC's final decision is documented and acted upon	N/A	N/A
"Add a paragraph to rule to allow appeal to be dismissed if a treating provider or physician of record or other party to the claim submits a dispute for a medical treatment reimbursement request that the treatment request has been dismissed per 4123-6-16.2 (D), (E), (F) or (G) of the Ohio Administrative code (the C-9 rule)." Additional Comment: Since the C-9s can be dismissed for these reasons, the appeals should be	N/A	N/A	An ADR rule change is not necessary in this case as when C-9's are dismissed they do not contain appeal language therefore; there is no decision to appeal.	N/A

ADR Draft Rule Recommendations	Draft Rule Questions	Clarification	Rule Change	Policy solution
able to be dismissed as well.				
N/A	How can we fix the workflow when we have a C9 processed, then appealed and the ADR processed at L1, then L2 BWC ADR order (in the new scenario only one level). The BWC ADR order is appealed, however upon scheduling the DHO hearing, the AOR **dismisses the C9**. (I have seen a few where the **appeal is dismissed**, but not many, as this would stop the process because of the need to file appeals timely.) The C9 is dismissed I assume because the AOR is 'not ready' to argue the issue in front of the DHO. Since the C9 is dismissed, they get the POR to re-file the C9, and then start the entire process over again…	***BWC Legal:*** I don't think BWC has any authority to stop this practice. Once BWC's order is appealed to the IC, we lose jurisdiction, and the IC has the power to grant dismissal of a C-9. The MCO can use the previously generated peer review if the C-9 is refiled and taken through ADR again because it wasn't Zamora'd. I don't think we have the authority to put in the ADR (or C-9) rule that the MCO can dismiss a refiled C-9 that has been previously dismissed by the IC.	N/A	N/A

BWC Board of Directors

Executive Summary

Metal Casting Industry

Introduction

Chapter 4123:1-7 of the Ohio Administrative Code contains BWC rules addressing occupational safety and health rules for the metal casting industry. Chapter 4123:1-7 was initially enacted in 1964 by the Industrial Commission and has been reviewed many times since that time. The last revision occurred in 2003 under the rules conventions of the Industrial Commission and the Bureau of Workers' Compensation.

Background Law

The Ohio Constitution, Article II, Section 35, and R.C. 4121.13 empower the BWC to adopt rules which establish worker safety standards. Article II, Section 35, of the Ohio Constitution and R.C. 4121.47 provide that an injury due to a violation of a specific safety rule (VSSR) can result in an employer paying a 15% to 50% penalty added to the compensation payable to an injured worker.

Ohio Administrative Code 4123:1-7 on metal casting has no direct analog in the OSHA regulations. In any event, federal regulations, including OSHA, are not relevant in determining a violation of Ohio specific safety requirements. *State ex rel. Roberts v. Industrial Commission* (1984), 10 Ohio St. 3d 3.

Proposed Change

The only proposed change to this rule is an update to 4123:1-7-01(A). Specifically, the current reference to Chapter 4121:1-5 should be changed to reflect 412<u>3</u>:1-5. It is recommended that the remainder of the rule remain the same.

Stakeholder Involvement

Stakeholders from both management and labor organizations were contacted and invited to participate in the review process. The Ohio Cast Metals Association and the United Steel Workers agreed to participate. A face to face meeting was scheduled but was cancelled the day it was to go forward due to participant health issues and scheduling difficulties. Both organizations have stated they are satisfied with the proposed change and have no further changes to offer at this time.

Common Sense Business Regulation

Rule 4123-1-9 Steel Making, Manufacture, Fabricating

Rule Review

1. ☒ The rule is needed to implement an underlying statute.

   Citation: __R.C. 4121.13 and 4121.47_____

2. ☒ The rule achieves an Ohio specific public policy goal.

   What goal(s): __ BWC 5 year rule review and update. The goal is to ensure that employers in the state of OHIO comply with the OAC requirements to provide a workplace safe from recognized workplace hazards and to protect employees safety and health. This also aligns with the mission of the Ohio BWC to "protect injured workers and employers from a loss as a result of workplace accidents, and to enhance the general health and well-being of Ohioans and the Ohio economy"

3. ☒ Existing federal regulation alone does not adequately regulate the subject matter.

4. ☒ The rule is effective, consistent and efficient.

5. ☒ The rule is not duplicative of rules already in existence.

6. ☒ The rule is consistent with other state regulations, flexible, and reasonably balances the regulatory objectives and burden.

7. ☒ The rule has been reviewed for unintended negative consequences.
8. ☒ Stakeholders, and those affected by the rule were provided opportunity for input as appropriate.

   Explain: Contact Date 10-24-08

American Iron & Steel Institute - Ohio members
http://www.steel.org/map/Ohio.pdf

Association for Iron & Steel Technology - Ohio chapters
Northeastern Ohio: http://www.aist.org/chapters/mc_northeasternohio.htm
Ohio Valley: http://www.aist.org/chapters/mc_ohiovalley.htm

United Steelworkers - Ohio
http://legacy.usw.org/usw/program/content/1272.php

National organizations:

American Coke and Coal Chemicals Institute (Washington DC)
http://www.accci.org/

Steel Manufacturers Association (Washington DC)
http://www.steelnet.org/

Specific Companies contacted 10-30-08 to 11-15-08

United Steel Workers Union
ArcelorMittal – Warren, OH
NUCOR Corporation – Cincinnati, OH
AK Steel Corporation – Mansfield, OH
United States Steel Corporation – Leipsic, OH
AK Steel Corporation – Middletown
ArcelorMittal – Cleveland, OH
Cliffs Natural Resources Inc. – Cleveland, OH
ArcelorMittal – Richfield, OH
United States Steel Corporation – Lorain, OH
The Timken Company – Canton, OH
McDonald Steel- Youngstown OH

Committee set up contact dates 10-30-08 to 11-15-08
Opportunity for public comment 11-26-08 to 2-20-09
Face to face meeting date 2-12-09 Canton OH
Final revisions sent to committee for review, 2-20-09

9. ☒ The rule was reviewed for clarity and for easy comprehension.

10. ☒ The rule promotes transparency and predictability of regulatory activity.

11. ☒ The rule is based on the best scientific and technical information, and is designed so it can be applied consistently.

12. ☒ The rule is not unnecessarily burdensome or costly to those affected by rule.

    If so, how does the need for the rule outweigh burden and cost? _____

13. ☒ The Chief Legal Officer, or his designee, has reviewed the rule for clarity and compliance with the Governor's Executive Order.

*** DRAFT – NOT FOR FILING ***

4123:1-7-01 **Scope and definitions.**

(A) Scope.

The purpose of this chapter of the Administrative Code is to provide reasonable safety for life, limb and health of employees. In cases of practical difficulty or unnecessary hardship, the Ohio bureau of workers' compensation may grant exceptions from the literal provisions of the rules of this chapter or permit the use of other devices or methods when, in the opinion of the bureau, equivalent protection is thereby secured.

The specific requirements of this chapter supplement those of Chapter ~~4121:1-5~~ - 4123:1-5 of the Administrative Code, and are minimum requirements of an employer for the protection of such employer's employees and no others and apply to the manufacture of castings containing iron, steel, brass, copper, tin, zinc, lead, aluminum, or any of the baser metals, but do not apply to steel making or any processes used in conjunction with steel manufacturing and fabricating.

Installations or constructions built or contracted for prior to the effective date of any requirement shall be deemed to comply with the provisions of these requirements if such installations or constructions comply either with the provisions of these requirements or with the provisions of any applicable specific requirement which was in effect at the time contracted for or built.

(B) Definitions.

(1) "Core" means a preformed sand aggregate inserted into a mold to shape the interior of a casting.

(2) "Core box" means a wood, metal or plastic structure used to shape sand into a core.

(3) "Crucible" means a ceramic pot or receptacle used in melting molten metal, transporting it or both.

(4) "Cupola" means a cylindrical furnace lined with refractories for melting metal in direct contact with the fuel by forcing air under pressure through openings near its base.

(5) "Factor of safety" means the ratio between the ultimate breaking stress and the working stress of the material, structure, or device. For example, the term "factor of safety of four" means the material, structure or device shall be constructed of such strength that the maximum load will be one-fourth the designed ultimate breaking load. Where other factors of safety appear, they shall apply in the same

manner. The standards of the "American Society for Testing Materials" shall be used in determining the strength of material except as otherwise provided herein.

(6) "Flask" means the frame which holds the sand or other substance forming the mold.

(7) "Gallery" means a corridorlike platform, passage or walkway, especially one projecting from a wall and open at the outer edge.

(8) "Guard" means the covering, fencing, railing, or enclosure which shields an object from accidental contact.

(9) "Guarded" means that the object is covered, fenced, railed, enclosed, or otherwise shielded from accidental contact.

(10) "Ladle" means a metal receptacle frequently lined with refractories used for transporting and pouring molten metal.

(11) "Mold" means the form into which molten metal is poured to produce a casting.

(12) "Operator" means any employee assigned or authorized to work at the specific equipment.

(13) "Passageway" means a well defined aisle, gangway, walkway, etc., used for movement of employees and equipment, but does not include the space between molds unless regularly used for such movement.

(14) "Pig hole" means the opening into which the excess molten metal is poured.

(15) "Pig mold" means a mold used to hold excess molten metal.

(16) "Pouring floor or area" means the floor or area where molten metal is poured.

(17) "Shall" is to be construed as mandatory.

(18) "Substantial" means construction of such strength, of such materials, and of such workmanship that the object will withstand the wear, usage or shock for which it is designed.

(19) "Trunnion" means the cylindrical metal support attached to the side of a ladle or flask.

(20) "Tumbling mill" means a rotating barrel in which castings are cleaned.

BWC Board of Directors

Executive Summary

OAC Steel Making, Manufacturing, and Fabricating

Introduction

Chapter 4123-1-9 of the Ohio Administrative Code (OAC) contains BWC rules which set safety standards in steel making, manufacturing, and fabricating. BWC owns and maintains the revision and update process for this section of the OAC. These specific requirements supplement the safety standards contained in OAC 4123:1-5 on workshops and factories but do not apply to the manufacture of metal castings.

Background Law

The Ohio Constitution, Article II, Section 35 and R.C. 4121.13 empower the BWC to adopt rules which establish worker safety standards. Article II, Section 35, of the Ohio Constitution and R.C. 4121.47 provide that an injury due to a violation of a specific safety rule (VSSR) can result in an employer paying a 15% to 50% penalty added to the compensation payable to an injured worker.

Ohio Administrative Code 4123:1-9 on steelmaking has no direct analog in the OSHA regulations. In any event, federal regulations, including OSHA, are not relevant in determining a violation of Ohio specific safety requirements. *State ex rel. Roberts v. Industrial Commission* (1984), 10 Ohio St.3d 3.

Proposed Change

The proposed changes to the steel making rule were first offered by our stakeholders. All of their recommendations which follow are sound safety practices. All of the proposed changes are consistent with OSHA regulations and ANSI (American National Standards Institute) standards.

RECOMMENDATIONS: (11)

4123:1-9-01(A)Scope.
End of second paragraph: "manufacture of metal castings" would be more accurately expressed in current terminology as “foundry type operations”.

4123:1-9-01 (B) Definitions. It is recommended that outdated terminology be removed.

4123: 1-9-02 Coke plants (A) (2), 4123:1-9-03 Blast Furnaces (H), 4123:1-9-04 Steel Making (B), (F) (2). These sections currently contain similar operations and require “audible OR visual warning devices”. It is recommended that we expand safety protection to include “audible AND visual warning devices”.

4123:1-9-03(C) Blast Furnaces.
It is recommended that a gas-carrying lines safety standard be added and 4123:1-9-02 on Coke Plants should also incorporate the upgraded standard which requires both audible and visual warning devices.

4123:1-9-04(F) Steel Making.
It is recommended that open hearth furnace standards be incorporated in to (D) Oxygen furnaces or (E) Electric furnaces or both. The stakeholder committee elected to expand these standards to both sections and remove Open Hearth Furnaces because advances in technology have occurred which have resulted in there being no open hearth furnaces utilized in the industry any more.

4123:1-9-05(H)
It is recommended that for the sake of consistency in the context of rolling operations that we use the term “discharging” uniformly throughout and discontinue the use of the similar term “drawing”.

Stakeholder Involvement

The review committee process consisted of contacting 12 Ohio Steel Manufacturers, 6 Steel Industry Associations, and the Ohio United Steel Workers Union. Six parties participated in the committee review culminating in a personal meeting in Canton on February 12, 2009. Several electronic, phone and face to face meetings were held. Representatives from both labor and management participated in the review process. The Committee participants included:

United Steel Workers Union Ohio District 1
Timken Company
United States Steel Corporation
Serverstal North America Inc.
McDonald Steel Corporation
AIST Northeastern Ohio Chapter

BWC Board of Directors

Executive Summary

Laundering and Dry Cleaning

Introduction

Chapter 4123:1-11 of the Ohio Administrative Code (OAC) contains BWC rules addressing Laundering and Dry Cleaning. BWC owns and maintains the revision and update process for this section of the OAC.

Background Law

Article II, Section 35, of the Ohio Constitution and R.C. 4121.13 allow BWC to adopt rules establishing worker safety standards. Article II, Section 35, and R.C. 4121.47 provide that if an injury is caused by a violation of a specific safety requirement (VSSR), the injured worker can receive an additional 15% to 50% of compensation payable in the claim. This additional award is a penalty to the employer.

OAC Chapter 4123:1-11 has no direct analog in the OSHA regulations. In any event, federal regulations, including OSHA, are not relevant in determining a violation of Ohio's specific safety requirements. *State ex rel. Roberts v. Industrial Commission* (1984), 10 Ohio St 3d 3.

Proposed Changes

Recommendations (4)

4123:1-11-01 Scope and Definitions.
We recommend correcting a typographical error by changing the rule number from 4121:1-11-01 to 4123:1-11-01.

4123:1-11-01(A) Scope.
We recommend replacing "industrial commission" with "Superintendent of the Division of Safety & Hygiene" because the Industrial Commission no longer has jurisdiction over the rule.

4123:1-11-01(B)(6)(a) Definitions.
We recommend correcting a typographical error by changing the definition of a Class IA liquid from a liquid having a boiling point at or "above" 100 degrees Fahrenheit to a liquid having a boiling point at or "below" 100 degrees Fahrenheit. This change makes the definition consistent with OSHA's definition of a Class IA flammable liquid.

4123:1-11-04(A) Electrical Equipment.
In the restrictions on using electrical equipment when a flammable liquid is used for dry cleaning, we recommend changing the relevant standard to a flammable liquid with a flash point "below one hundred degrees Fahrenheit (37.8 degrees Celsius)" instead of a flammable liquid with a flash point "below 138.2 degrees Fahrenheit" This change makes the rule consistent with OSHA's definition of a "flammable liquid."

Review Committee Process

The review committee consisted of 12 representatives from both management and labor associations.

Participating management associations included:

- Ohio Cleaners Association
- Textile Rental Services Association (TRSA)

Participating labor associations included:

- Unite Here (a combination of the Hotel Employees and Restaurant Employees International Union and the Union of Needle Trades, Industrial and Textile Employees)

Unfortunately, attempts to involve representatives from the Service Employees International Union (SEIU) were unsuccessful.

Although none of the committee members objected to the four proposed changes, several members commented that the current rules should be reviewed more frequently to ensure that they keep pace with technological advances in the industry. All agreed that this project would require a long-term effort. A proposal was therefore made to form a standing committee to conduct an ongoing rules review and update.

Common Sense Business Regulation (BWC Rules)

(Note: The below criteria apply to existing and newly developed rules)

Rule 4123:1-11

Rule Review

1. ☒ The rule is needed to implement an underlying statute.

   Citation: __R.C. 4121.13 and 4121.47_____

2. ☒ The rule achieves an Ohio specific public policy goal.

   What goal(s): _Protect the safety and health of Ohio workers in the Laundering and Drycleaning industries._____

3. ☒ Existing federal regulation alone does not adequately regulate the subject matter.

4. ☒ The rule is effective, consistent and efficient.

5. ☒ The rule is not duplicative of rules already in existence.

6. ☒ The rule is consistent with other state regulations, flexible, and reasonably balances the regulatory objectives and burden.

7. ☒ The rule has been reviewed for unintended negative consequences.

8. ☒ Stakeholders, and those affected by the rule were provided opportunity for input as appropriate.

Explain: In late January and early February, 2009, phone contact was made and electronic copies of proposed changes were forwarded to the committee members. Committee members reviewed material and submitted comments between February 1 and February 24. A face-to-face review committee meeting was held at OCOSH (BWC – Ohio Center for Occupational Safety & Health) in Pickerington, Ohio on Wednesday, February 25th.

Review Committee Members:

Textile Rental Services Association (TRSA)

- Charles Tomlinson – Director of Human Resources and Safety Compliance for TRSA
- Rick Gerlach – Director of Safety and Health for Cintas; member of TRSA Safety Committee.

Ohio Cleaners Association

- David Field – Executive Director, OCA
- Larry Long – President, OCA
- Timothy Blankenship, Sr. – President Elect, OCA
- Dennis Bell – Vice President, OCA
- George Gardner – Secretary/Treasurer, OCA

Unite Here (combination of the Hotel Employees & Restaurant Employees International Union and Union of Needle Trades, Industrial & Textile Employees)

- Eric Frumin – National Health and Safety Director
- Dallas Sells – State Director, Ohio State Council
- Vann Seawell – Manager, District Office Cincinnati
- Steve Ridley – Supervisor, Local 84 Toledo

9. ☒ The rule was reviewed for clarity and for easy comprehension.

10. ☒ The rule promotes transparency and predictability of regulatory activity.

11. ☒ The rule is based on the best scientific and technical information, and is designed so it can be applied consistently.

12. ☒ The rule is not unnecessarily burdensome or costly to those affected by rule.

    If so, how does the need for the rule outweigh burden and cost? _____

13. ☒ The Chief Legal Officer, or his designee, has reviewed the rule for clarity and compliance with the Governor's Executive Order.

4123:1-11-01 Scope and definitions.

(A) Scope.

The purpose of these safety requirements is to provide reasonable safety for life, limb and health of employees. In cases of practical difficulty or unnecessary hardship, the Ohio bureau of workers' compensation may grant exceptions from the literal provisions of these requirements or permit the use of other devices or methods when, in the opinion of the ~~industrial commission~~ superintendent of the division of safety and hygiene, equivalent protection is thereby secured.

These specific requirements supplement Chapter 4123:1-5 of the Administrative Code, "Specific Safety Requirements of the Ohio Bureau of Workers' Compensation Relating to All Workshops and Factories," and are minimum requirements of an employer for the protection of such employer's employees and no others and apply to places of employment wherein laundering or drycleaning processes are performed.

Installations or constructions built or contracted for prior to the effective date of any requirement shall be deemed to comply with the provisions of these requirements if such installations or constructions comply either with the provisions of these requirements or with the provisions of any applicable specific requirement which was in effect at the time contracted for or built.

(B) Definitions.

(1) "Air contaminants," as used in this rule, means hazardous concentrations of fibrosis-producing toxic dusts, toxic fumes, toxic mists, toxic vapors, or toxic gases, or a combination of these, suspended in the atmosphere.

(2) "Approved" means accepted or certified by a nationally recognized testing agency, such as "Underwriters' Laboratories," "Factory Mutual Engineering Corporation," or a responsible governmental agency.

(3) "Centrifugal extractor" means a machine used for removing moisture from textile articles by centrifugal action.

(4) "Drycleaning" means a method of cleansing wearing apparel, household furnishings and other textile materials by means of immersion and mechanical action in drycleaning solvents, either petroleum distillates or chlorinated hydrocarbons and fluorocarbons, with the addition of soaps and other cleansing aids.

(5) "Drying box or cabinet" means a heated, stationary enclosure used for drying, smoothing, or finishing textile articles.

(6) "Flammable liquid" means any liquid having a flashpoint below one hundred degrees Fahrenheit (37.8 degrees Celsius), except any mixture having components

with flashpoints of one hundred degrees Fahrenheit (37.8 degrees Celsius) or higher, the total of which make up ninety-nine per cent or more of the total volume of the mixture. Flammable liquids shall be known as "Class I" liquids. "Class I" liquids are divided into three classes as follows:

(a) "Class IA" shall include liquids having flashpoints below seventy-three degrees Fahrenheit (22.8 degrees Celsius) and having a boiling point at or ~~above~~ below one hundred degrees Fahrenheit (37.8 degrees Celsius).

(b) "ClassIB" shall include liquids having flashpoints below seventy-three degrees Fahrenheit (22.8 degrees Celsius) and having a boiling point at or above one hundred degrees Fahrenheit (37.8 degrees Celsius).

(c) "Class IC" shall include liquids having flashpoints at or above seventy-three degrees Fahrenheit (22.8 degrees Celsius) and below one hundred degrees Fahrenheit (37.8 degrees Celsius).

(7) "Guard" means the covering, fencing, railing, or enclosure which shields an object from accidental contact.

(8) "Guarded" means that the object is covered, fenced, railed, enclosed or otherwise shielded from accidental contact.

(9) "Ironer" means a machine with one or more rolls or heated surfaces used for drying, ironing, or smoothing textile articles.

(10) "Laundry press" or "drycleaning press" means a machine on which textile articles are dried or finished between two surfaces pressed together.

(11) "Nonflammable liquid" means any liquid or mixture of liquids which in its original state, or after continued use or agitation, or by distillation, will not burn in a closed cup tester, or which in any state, when mixed with air, gives off vapors which are noncombustible or nonexplosive.

(12) "Operator" means any employee assigned or authorized to work at the specific equipment.

(13) "Puff iron" means a heated device for smoothing or shaping textile articles.

(14) "Shall" is to be construed as mandatory.

(15) "Squeeze extractor" means any mechanically, pneumatically, or hydraulically operated compacting machine for removing excess liquid from textile articles by squeezing.

(16) "Still" means an apparatus to evaporate as a gas or vapor, volatile, flammable or nonflammable liquids used as a drycleaning solvent by means of heat and to condense the same in a cooling chamber or condenser as a purified product.

(17) "Substantial" means construction or such strength, of such materials, and of such workmanship that the object will withstand the wear, usage or shock for which it is designed.

(18) "Tumbler" means a machine in which textile articles are shaken out or dried by tumbling within a rotating cylinder.

(19) "Washer/extractor" means any machine in which the washing and extraction operations are performed.

(20) "Wringer" means one or more power-driven rolls used for removing excess liquid.

4123:1-11-04 DRYCLEANING.

(A) Electrical equipment.

All electrical equipment shall be located outside the drycleaning room or be of an approved type for hazardous locations when any flammable liquid with a flash point below ~~138.2~~ one-hundred degrees Fahrenheit (37.8 degrees Celcius) is used for drycleaning.

(B) Stills and condensers.

Stills and condensers shall be of substantial construction, mounted on fire-resistive foundations and shall be of a type which will not expose the fluid or vapor to the atmosphere outside the still or condenser during any part of the process of reclamation.

(C) Brushing and prespotting.

(1) Brushing and prespotting operations with flammable liquid solvents shall be performed in a drycleaning room, on a brushing table or in a tub.

(2) Flammable liquid solvents used for brushing or prespotting shall be stored in approved portable safety containers.

(D) Drycleaning with nonflammable liquid solvents.

(1) Where nonflammable solvents giving off air contaminants are used for drycleaning in quantities of more than one gallon, such operations shall be performed in fluid-tight machines, systems or apparatus.

(2) Such apparatus shall be vented to the open air at a point no less than twenty-five feet from any window or other openings, and so used and operated to prevent the escape of air contaminants therefrom into the workrooms and work spaces.

12-Month Governance Committee Calendar

Date	March 2009	Notes
3/19/2009	1. Five Year Rule Review (9 am – 11 am) Level 2 Room 3	
Date	**April 2009**	
4/28/2009	1. Five Year Rule Review (2 pm – 5 pm) Room TBD	
4/29/2009	1. Launch Administrator's Review (8 am – 9:30 am) Room TBD	
Date	**May 2009**	
5/28/2009	1. Finalize Administrator's Review – No Rules	
	2. Launch Board Self- Assessment	
Date	**June 2009**	
6/17/2009	1. Five Year Rule Review (if needed)	
6/18/2009	1. Finalize Board Self- Assessment	
	2. Committee Membership Recommendations	
	3. Develop Education Plan	
	4. Administrator's objectives for 2009/10	
Date	**July 2009**	
7/29/2009	1.Five Year Rule Review	
7/30/2009	1. Five Year Rule Review	
Date	**August 2009**	
8/27/2009	1. Five Year Rule Review	
Date	**September 2009**	
9/23/2009	1. Five Year Rule Review	
9/24/2009	1. Governance Guidelines	
	2. Committee Charters	
Date	**October 2009**	
10/29/2009	1. Five Year Rule Review	
Date	**November 2009**	
11/19/2009	1. Committee Charters	
	2. Five Year Rule Review	

12-Month Governance Committee Calendar

Date	December 2009	
12/16/2009	1. Committee Charters	
Date	**January 2010**	
Date	**February 2010**	