

## Business Impact Analysis

Agency Name: Bureau of Workers' Compensation

Regulation/Package Title: Vocational Rehabilitation Rules

Rule Number(s): 4123-18-03, 4123-18-04, and 4123-18-14

Date: April 16, 2019

**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Rescinded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.*

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

Currently, three rules in Chapter 4123-18 are being presented with proposed changes: OAC 4123-18-03, 4123-18-04, and 4123-18-14. The changes to 4123-18-03 and 4123-18-04 are consistent with, and further implement recommendations made by a joint BWC/MCO workgroup. Changes to 4123-18-14 are consistent with previous

revisions to Ohio Revised Code 4121.68

BWC is proposing the following:

Amend rules:

4123-18-03 Guidelines for referral to and acceptance into vocational rehabilitation.

4123-18-04 Living maintenance allowance.

4123-18-14 Injured workers suffering compensable injuries, occupational diseases or death while in an approved vocational rehabilitation plan.

The substantive changes proposed for OAC 4123-18-03 Guidelines for Referral to and Acceptance into Vocational Rehabilitation are:

- Rename the title of paragraph (B) to better reflect the content of the paragraph.
- Revise the language regarding eligibility and feasibility to reflect BWC will determine eligibility and the MCO will make a recommendation on feasibility.
- Add language that clarifies BWC will issue an order approving or denying the injured worker's participation in vocational rehabilitation services.
- Remove as a qualifying eligibility criterion that the injured worker has received or been awarded a permanent partial award under Ohio Revised Code 4123.57(A) and has documented job restrictions in the claim.
- Modify the qualifying eligibility criterion that the injured worker has been determined to have reached maximum medical improvement and replace it with the criterion that the injured worker is not currently receiving compensation and has job restrictions in the claim.
- Remove as an eligibility criterion that the injured worker was receiving living maintenance wage loss not more than 90 days prior to the date of referral, has continuing job restrictions documented by the physician of record as a result of the allowed conditions in the claim, and has lost his or her job through no fault of his or her own.
- Clarify that an employee of a state agency or state university may receive vocational rehabilitation services when the state agency or state university has certified the employee's claim and the employee and employer agree upon a program of rehabilitation services.
- Add language clarifying that an injured worker is not eligible for vocational rehabilitation services if the injured worker successfully completed a vocational rehabilitation plan and then is terminated or resigns from employment for reasons other than the allowed conditions in the claim.

- Remove language providing for diagnostic evaluations as redundant based on language in OAC 4123-18-05, which provides for assessment services, and Ohio Revised Code 4121.66.
- Restructure the language of paragraph (G) and remove redundant language for clarity.
- Add language to paragraph (H) clarifying that BWC will issue an order which is appealable to the Industrial Commission.
- Eliminate the current language of paragraph (J), and add language clarifying an injured worker's right to living maintenance and that denial of participation in vocational rehabilitation services does not affect their right to other compensation or benefits under Chapters 4123., 4127., and 4131., of the Revised Code for which they may otherwise qualify.

The substantive changes proposed for OAC 4123-18-04 Living Maintenance Allowance are:

- Add language to paragraph (B)(2) clarifying that the injured worker, the employer or their representatives may make a request to the MCO for a medical hold, which the MCO then forwards to the bureau for determination.
- Create a new section (C) that clarifies, other than as part of a gradual return to work plan, living maintenance is not payable during any period the injured worker has returned to work while their vocational rehabilitation plan is still open. However, if the injured worker stops working while their plan is still open, living maintenance payments may resume.
- In the new section (D), revise the reference from “ordering termination” to simply state that living maintenance will terminate when the injured worker's vocational rehabilitation plan has closed.
- Revise the language of paragraph (F) to reflect that appeals of BWC orders regarding living maintenance payments are appealable to the Industrial Commission.

The substantive changes proposed for OAC 4123-18-14 Injured Workers Suffering Compensable Injuries, Occupational Diseases or Death While in an Approved Vocational Rehabilitation Plan are:

- Remove the language that provides for BWC to be named as an employer in a claim arising out of participation in a vocational rehabilitation plan.

- Add language clarifying that a self-insuring employer will pay compensation and benefits in these circumstances as part of the claim.

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

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

**3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?**

*If yes, please briefly explain the source and substance of the federal requirement.*

No

**4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

Not applicable.

**5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**

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

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

Success will be measure by the providers’, injured workers’ and employers’ compliance with the modifications to the rules. Additionally, success will be measured by the reduced number of appeals, change in return to work rates, and the increased use of vocational rehabilitation services and programs impacted by the limited changes to the rules.

**Development of the Regulation**

**7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**

*If applicable, please include the date and medium by which the stakeholders were initially contacted.*

The proposed vocational rehabilitation rule changes were posted on BWC's website for stakeholder feedback on March 14, 2019, with a comment period open from March 14, 2019, through March 28, 2019, and notice was e-mailed to the following lists of stakeholders:

- BWC's Managed Care Organizations
- BWC's Medical Services Division's medical provider stakeholder list
- BWC's Healthcare Quality Assurance Advisory Committee
- Ohio Association for Justice (OAJ)
- Employer Organizations:
  - o Council of Smaller Enterprises (COSE)
  - o Ohio Manufacturer's Association (OMA)
  - o National Federation of Independent Business (NFIB)
  - o Ohio Chamber of Commerce Ohio Association for Justice (OAJ)
- BWC's Self-Insured Division's employer distribution list
- BWC's Employer Services Division's Third-Party Administrator (TPA) distribution list.

BWC also distributed the proposed rule changes to the following stakeholder groups for feedback: The International Association of Rehabilitation Professionals (IARP); the Ohio Physical Therapy Association (OPTA); Rehab PRO; the Ohio Association of Rehabilitation Facilities (OARF).

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

BWC did receive stakeholders' feedback and it is summarized in the attached "Stakeholders' 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?**

None

**10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?**

None. No regulatory alternatives which could be considered have been identified.

**11. Did the Agency specifically consider a performance-based regulation? Please explain.**

*Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.*

No. The regulations pursuant to the requirements of the O.R.C. are designed to articulate with clarity program parameters and service actions which all parties engaging in the use or

provision of Ohio vocational rehabilitation services must take to ensure vocational rehabilitation services access, quality and cost efficiencies, which leads to a successful and safe return to work for injured workers, as well as a productive and safe return of an injured worker to the employer or Ohio workforce.

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

BWC is the only state agency responsible for regulating vocational rehabilitation services for Ohio's workers' compensation programs.

**13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.**

In preparation of the rules being approved and through the JCARR process, the BWC staff have reviewed all impacted vocational rehabilitation policies and procedures. Applicable policy and procedure changes are being made. Once finalized, these will be shared with our managed care organization (MCO) partners and their feedback will be gathered. Any necessary changes will be made. Given the limited changes to the rules, minimum training on the changes with the staff will be needed. The Vocational Rehabilitation policy unit of BWC will coordinate communication and training to internal BWC staff, including but not limited to the claims division Disability Management Coordinators. The MCO Business unit in concert with Vocational Rehabilitation policy unit will ensure communication and training of changes to the MCO, specifically the MCOs' vocational rehabilitation coordinators. The Vocational Rehabilitation policy unit staff will also ensure communications to injured workers, employers and providers regarding changes reflected in the rules via standard communication mediums, such as provider e-news, policy guide updates, BWC web announcements, etc.

**Adverse Impact to Business**

**14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:**

**a. Identify the scope of the impacted business community;**

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

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

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

**c. Quantify the expected adverse impact from the regulation.**

*The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.*

Estimated time which providers, employers, and MCOs may need to adjust to the changes is at most 10 hours.

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

BWC is attempting to meet the legislative intent of setting forth the opportunity for vocational rehabilitation services provision within the Ohio workers’ compensation environment. The rules have been reviewed and minimally modified to remove duplication and redundancy, clarify responsibilities between MCO and BWC staff and create a simplified, efficient and effective program. Furthermore, these changes add additional clarity of program parameters and service actions which all parties engaging in the use or provision of Ohio vocational rehabilitation services must take to ensure vocational services access, quality and cost efficiencies, which leads to a successful and safe return to work for injured workers, as well as a productive and safe return of an injured worker to the employer or Ohio workforce.

**Regulatory Flexibility**

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

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

**17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?**

Not applicable.

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

The MCOs have a responsibility in their contract with BWC to provide training and support to all providers in managing the medical and vocational care of the injured workers assigned to them. Additionally, by contract the MCOs are responsible for providing education and support to injured workers and employers on all workers' compensation services and programs, including vocational rehabilitation services. The Vocational Rehabilitation Services business unit within the Chief Medical Officer Division of BWC will also provide support and direction to impacted businesses, regardless of size, with respect to meeting Bureau regulations.