



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Sean McCullough, Director

Business Impact Analysis

Agency, Board, or Commission Name: Bureau of Workers' Compensation

Rule Contact Name and Contact Information:

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Regulation/Package Title (a general description of the rules' substantive content):

Provisional Treatment Pilot Program

Rule Number(s): 4123-6-01.2

Date of Submission for CSI Review: October 6, 2021

Public Comment Period End Date: October 25, 2021

Rule Type/Number of Rules:

New/___ rules

No Change/___ rules (FYR? ___)

Amended/ 1 rules (FYR? N)

Rescinded/___ rules (FYR? ___)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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Reason for Submission

1. **R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.**

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. **Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- b. **Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- c. **Requires specific expenditures or the report of information as a condition of compliance.**
- d. **Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

Regulatory Intent

2. **Please briefly describe the draft regulation in plain language.**

Please include the key provisions of the regulation as well as any proposed amendments.

Rule OAC 4123-6-01.2 established a pilot program under which one or more managed care organizations within the workers' compensation system (MCOs) could authorize medical treatment reimbursement requests, without disclaimer, for the first 60 days from the initial allowance of an identified at-risk claim for any conditions:

- within the same body part or parts as the conditions initially allowed in the claim;
- presumed to be causally related to the same industrial injury or occupational disease; and
- during such time as the conditions for which treatment reimbursement is authorized but which are not yet allowed are being considered for allowance or being adjudicated.

The rule also specified that the pilot program shall not impair in any manner the right of an employer to appeal a claim, additional allowance, or medical treatment reimbursement determination.

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BWC proposes that rule OAC 4123-6-01.2 be amended to extend the pilot program for an additional year, through December 31, 2022.

3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.

Authorize: R.C. 4121.12, 4121.121, 4123.66

Amplify: R.C. 4121.12, 4121.121, 4121.441

4. 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.

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

Not applicable.

6. 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 extension of this rule facilitates the Administrator's charge as set forth in R.C. 4121.441(A), which provides that the BWC Administrator, with the advice and consent of the BWC Board of Directors, shall adopt rules for implementation of the Health Partnership Program (HPP) "to provide medical, surgical, nursing, drug, hospital, and rehabilitation services and supplies" to injured workers.

The public purpose of the HPP is to effectively and efficiently address the needs of injured workers arising out of a workplace injury. The extension of this pilot program rule helps BWC's effort to develop innovative practices which will effectively address the needs of injured workers. The rule focuses on quality care, comprehensive treatment planning, and coordination between all parties.

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

- Reduction in lost days;
- Reduction in average duration of lost-time claims;
- Reduction in average employer costs;
- Reduction in opiate and other narcotic medications.

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8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?

No.

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

Not applicable.

Development of the Regulation

9. 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.

BWC's provisional treatment pilot program rule OAC 4123-6-01.2 was e-mailed to the following stakeholders and available on BWC external website on August 4, 2021 with comments due back by August 16, 2021.

- BWC's Managed Care Organizations
- BWC's internal medical provider stakeholder list
- BWC's Healthcare Quality Assurance Advisory Committee
- Ohio Association for Justice
- 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
- BWC's Self-Insured Division's employer distribution list
- BWC's Employer Services Division's Third-Party Administrator (TPA) distribution list
- Ohio Medical and Pharmacy Boards

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

Stakeholder responses received by BWC are summarized on the attached Stakeholder Feedback Summary Spreadsheet.

11. 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?

A critical action step involved in the current ECP pilot was an external entity assessing the pilot program and providing objective insights and strategies on the next step BWC should

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take with the Program. To execute this work BWC entered into a contract in October 2016 with The Ohio State University to provide that assessment.

The first assessment phase of OSU's work occurred between September 15, 2016 and December 15, 2016; which focused on reviewing the design of the pilot program and evaluating the integrity of how the pilot program has been implemented. Along with other specific positives, OSU reported that in most respects the program was overall achieving its initial goals and reaching expected benchmarks.

As a result of those preliminary findings, Medical & Health Services determined that our recommendation to the Administrator would be to expand the program from northeast Ohio to statewide.

The expansion to statewide started in July 2018 with an emphasis on physician recruitment beginning in January 2019. The goal was to conduct an internal analysis of the program, as well as have an external entity review the data to support removing the pilot status. Due to the COVID-19 pandemic, this analysis was not completed in time for the proposed rule. Due to this, we are recommending another year of the pilot program. Early analysis indicates the outcomes established in #7 are favorable.

BWC will be issuing a solicitation to select a vendor to conduct this study, and intends to have a vendor selected and analysis completed prior to the expiration of this final extension.

12. 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.

13. 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.

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

This pilot program is exclusive to workers compensation, and BWC is the only state entity with the authority to initiate such regulation pertaining to workers compensation.

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

The Bureau will provide notifications to employers, injured worker representative, providers, and MCOs via written communications that the pilot program will be extended an additional year.

Adverse Impact to Business

16. 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; and

Employers with pilot claims, MCOs which have pilot claims, employers, and medical providers participating in and managing pilot claims.

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

Employers may experience increased administrative time associated with the more robust management of pilot claims and increase in return to modified work. MCOs will see marginal increase in coordination and support activities relative to pilot claims and the medical providers rendering services on those claims. Providers will experience potential increased time in managing and coordination care on ECP Pilot claims.

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.

For providers wishing to participate in the pilot the adverse impact will be the additional time required for coordinating care of the injured workers with other health care providers and specialists. The amount of additional time is unknown, as such is dependent on a number of independent factors for each potential injured worker that cannot be quantified at this time. However, it should be noted that additional compensation will be paid to providers undertaking this additional coordination of care task. Additionally, the pilot providers will need to complete an ECP Provider Addendum as a requirement which will be a one-time commitment of less than 2 hours.

Employer time commitment should be negligible given the actions supporting an injured worker’s return to work are generally what is expected now. However, success of the program may increase the number of claims for which the employer may need to support

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accommodations. Also, there may be increased medical costs associated with pilot claims, and although a successful return to work would reduce total claim cost, an incentive program for employers having claims in the pilot is being developed as part of the pilot program implementation.

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

The public purpose of the HPP is to effectively and efficiently address the needs of injured workers arising out of a workplace injury. The extension of this pilot program will facilitate BWC's effort to develop innovative practices which will effectively address the needs of injured workers. Due to the COVID-19 pandemic and based on the success of the pilot program to date, BWC is proposing to extend the pilot program for an additional year, through December 31, 2022.

Regulatory Flexibility

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

No. However, in establishing the parameters of the pilot issues impacting small businesses will be considered, with appropriate incentives included in the pilot program to mitigate any negative impacts.

19. 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.

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

Education and communication materials are available which explain the specifics of the program and any actions that any small business needs to take to comply with protocols.

Additionally, participating BWC claims offices and MCOs received specific training on the pilot's operations and specific administrative protocols and are the front line assistance to small businesses addressing pilot operational issues.

4123-6-01.2 Provisional treatment reimbursement approval - pilot program.

Notwithstanding any provision to the contrary in any other rule of the bureau, the administrator may, for purposes of a pilot program, allow one or more managed care organizations to authorize medical treatment reimbursement requests for the first sixty days from the initial allowance of an identified at-risk claim for any conditions within the same body part or parts as the conditions initially allowed in the claim, and presumed to be causally related to the same industrial injury or occupational disease, without disclaimer, during such time as the conditions for which treatment reimbursement is authorized but which are not yet allowed are being considered for allowance or being adjudicated.

The operation of the pilot program authorized under this rule ~~shall~~ does not impair in any manner the right of an employer to appeal a claim, additional allowance, or medical treatment reimbursement determination under section 4123.511 of the Revised Code or rule 4123-6-16 of the Administrative Code.

The pilot program authorized under this rule ~~shall be~~ is extended through December 31, ~~2021~~ 2022; provided, however, that the administrator may terminate the pilot program early at the administrator's discretion.



Bureau of Workers' Compensation

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Administrator/CEO **Stephanie McCloud**

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Stakeholder Feedback Health Partnership Program
Ohio Administrative Code 4123-6-01.2
Provisional treatment reimbursement approval – pilot program

Stakeholder feedback comment period August 4 – 16, 2021

Line	Rule #/ Subject Matter	Stakeholder	Draft Rule Suggestions	Stakeholder Rationale	BWC Response	Resolution
1	4123-6-01.2	James M. Anthony, MD, FAAFP BSMH System Medical Director of Occupational Health Medical Director Harness Health Partners Occupational Health - Lorain Chair of the Board – Mercy Health Select			I agree with the proposed change without changes.	No Change