

OHIO GENERAL ASSEMBLY  
JOINT COMMITTEE ON AGENCY RULE REVIEW

**Senate Members**

THERESA GAVARONE

VICE CHAIR

STEPHANIE KUNZE  
HEARCEL F. CRAIG

ANDREW O. BRENNER  
BILL DeMORA



**House Members**

JAMIE CALLENDER

CHAIR

BRETT HUDSON HILLYER  
MICHAEL J. SKINDELL

ADAM MATHEWS  
TAVIA GALONSKI

GREG FOUCHE  
INTERIM DIRECTOR

**R.C. 121.93 Required Report**

- 1) **Date:** April 6, 2023
- 2) **Agency:** Ohio Bureau of Workers' Compensation
- 3) **Agency Contact**
  - a) Name: Pete Mihaly
  - b) Email: [pete.mihaly@bwc.state.oh.us](mailto:pete.mihaly@bwc.state.oh.us)
  - c) Phone: (614) 466-3186
- 4) Provide the number of operations reviews that your agency completed during the governor's recently expired term.

The Ohio Bureau of Workers' Compensation (BWC) reviewed a total of 160 operational policies during Governor Mike DeWine's recently expired term (1/14/2019 – 1/8/2023):

- 30 Employer Services policies
- 6 Self-Insuring Employer policies
- 4 Safety & Hygiene policies
- 88 Claims policies
- 12 Vocational Rehabilitation policies
- 20 Medical policies

- 5) List any principles of law or policies described in [R.C. 121.93\(A\)](#) that your agency identified in your operations review(s).

Upon review of the 160 operational policies noted in the response to Question 4, principles of law or policy that BWC determined needed to be incorporated into Administrative Rule are identified in the response to Question 7.

- 6) Describe your agency's considerations regarding the identified principles of law or policies under [R.C. 121.93\(B\)](#).

BWC review of operational policies includes consideration of the following:

## JOINT COMMITTEE ON AGENCY RULE REVIEW

- Whether anything in the policy under review is inconsistent with, or conflicts with, statute, rule, or case law.
- Whether anything in the policy under review is inconsistent with, or conflicts with, other BWC policies or Ohio Industrial Commission (IC) policies (i.e., Adjudications Before the Ohio Industrial Commission, IC Resolutions).
- Whether anything in the policy under review meets the definition of a “rule” under R.C. 119.01, or enlarges the scope of the rule or statute from which it derives rather than simply interprets it (see *State ex rel. Saunders v. Indus. Comm.*, 101 Ohio St.3d 125, 2004-Ohio-339) such that the policy or policy provision should be adopted or incorporated into rule.

7) List any principles of law or policies for which your agency determined rulemaking is indicated or for which your agency has commenced the rulemaking process under [R.C. 121.93\(C\)](#).

Rules amended or adopted to incorporate principles of law pursuant to statutory changes:

**OAC 4123-3-08 Preparation and filing of applications for compensation and/or benefits.**

Amended effective 5/1/22 to change the filing time limitation for claims for occupational disease or death resulting from occupational disease arising on or after September 28, 2021 from two years to one year to implement changes enacted by HB 75 of the 134<sup>th</sup> General Assembly.

**OAC 4123-3-10 Awards.** Amended effective 5/1/22 to remove the provision prohibiting an authorization for an attorney or employee of an attorney to cash or endorse a check on behalf of a claimant to implement changes enacted by HB 75 of the 134<sup>th</sup> General Assembly.

**OAC 4123-3-18 Appellate procedure and OAC 4123-3-34 Settlement of state fund claims.**

Amended twice (effective 7/1/19 and 10/8/21) to implement the intent to settle process enacted by HB 27 of the 132<sup>nd</sup> General Assembly and HB 81 of the 133<sup>rd</sup> General Assembly.

**OAC 4123-3-38 Surplus fund charge of qualified motor vehicle accident claims.** Amended effective 7/1/19 to implement changes to the eligibility criteria for compensation and benefits in a motor vehicle accident claim to be charged to the statutory surplus fund account as enacted by HB 27 of the 132<sup>nd</sup> General Assembly.

**OAC 4123-5-20 Payment of compensation when advancements are made during period of disability.** Amended effective 7/1/19 to implement changes in the treatment of supplemental sick leave benefits and temporary total compensation when the employer and claimant agree in writing as enacted by HB 52 of the 131<sup>st</sup> General Assembly.

**OAC 4123-17-15 to 4123-17-15.7 Professional employer organizations / alternate employer organizations.** Amended effective 1/13/22 to add provisions relating to alternate employer organizations (AEOs) to the existing professional employer organization rules in response to

## JOINT COMMITTEE ON AGENCY RULE REVIEW

the enactment of R.C. Chapter 4133 by SB 201 of the 133rd General Assembly and the amendment of certain R.C. Chapter 4133 statutes by HB 75 of the 134th General Assembly.

**OAC 4125-1-01 Wage loss compensation.** Amended effective 7/1/22 to eliminate references to “voluntary” retirement and “voluntary” limitation of hours worked in response to changes to R.C. 4123.56 enacted by HB 81 of the 133<sup>rd</sup> General Assembly, and to eliminate a provision allowing payment of non-working wage loss at a pro-rated rate in cases where the injured worker fails to accept a good faith offer of suitable employment in response to the decision of the Ohio Supreme Court in *State ex rel. Ryan Alternative Staffing, Inc. v. Moss*, et al., 166 Ohio St.3d 467, 2021-Ohio-3539.

Rules amended or adopted to incorporate principles of policy:

**OAC 4123-3-07 Applications for death benefits.** Amended effective 4/15/22 to revise language clarifying that, to be considered a dependent, a person must be a member of the family of the deceased employee, or bear to the employee the relation of surviving spouse, lineal descendant, ancestor, or brother or sister, in accordance with existing R.C. 4123.59.

**OAC 4123-3-23 Limitations on the filing of fee bills.** Amended effective 4/15/22 to add language to provide that the limitation that fee bills for medical or vocational rehabilitation services rendered in a claim must be submitted to BWC or the IC for payment within one year does not apply to requests for reimbursement made by the Department of Veterans Affairs, in accordance with existing federal law.

**OAC 4123-3-37 Lump sum advancements.** Amended effective 7/1/19 to add language to provide the BWC Administrator may commute an award of compensation to a lump sum payment under special circumstances, in accordance with existing R.C. 4123.64.

**OAC 4123-6-10 Payment to providers.** Amended effective 4/1/21 to add language requiring a provider to exercise reasonable diligence to identify and quantify overpayments and to report and return any identified overpayment to the bureau, QHP or self-insuring employer within sixty days of identifying the overpayment.

**OAC 4123-6-02.2 Provider access to the HPP - provider certification criteria.** Amended effective 9/1/20 to modify the eligibility criteria for certification of providers to participate in BWC’s Health Partnership Program, including removing the permanent ineligibility language regarding felony convictions and replacing it with an appendix to the rule which provides for differing periods of ineligibility based on specific statutory convictions.

**OAC 4123-6-02.51 Provider access to the HPP -- Denial of provider, entity or MCO enrollment/certification based on criminal conviction or civil action.** Amended effective 4/1/21 to modify the criteria for denial or decertification of providers to participate in BWC’s Health Partnership Program, in accordance with the changes made to OAC 4123-6-02.2 effective 9/1/20.

OHIO GENERAL ASSEMBLY  
JOINT COMMITTEE ON AGENCY RULE REVIEW

**OAC 4123-6-25 Payment for medical supplies and services.** Amended effective 2/1/22 to revise language clarifying that medical supplies and services will be considered for payment when they are reasonably related to the work related injury, the requested services are reasonably necessary for treatment of the work related injury, and the costs of the services are medically reasonable, in accordance with existing OAC 4123-6-16.2(B) and *State, ex rel. Miller v. Indus. Comm.*, 71 Ohio St. 3d 229, 643 NE 2d 113 (1994).

**OAC 4123-6-31 Payment for miscellaneous medical services and supplies.** Amended effective 4/1/21 to add language providing once payment for orthotic devices, artificial teeth or other dentures, eyeglasses, contact lenses, or hearing aids has been made, replacement requests may be denied in instances of malicious damage, neglect, culpable irresponsibility, or wrongful disposition.

**OAC 4123-6-39 Payment for prosthetic device or other artificial appliances.** Amended effective 2/1/22 to add language providing once payment for the artificial appliance has been made, replacement requests may be denied in instances of malicious damage, neglect, culpable irresponsibility, or wrongful disposition, and providing BWC will not pay the cost of purchasing or repairing a prosthetic device that is designed solely to enable the injured worker to engage in sports, hobbies, or other recreational activities.

**OAC 4123-6-34 Payment for treatment of concussion injuries.** Adopted effective 1/1/20 to implement criteria for reimbursement for services in an allowed workers' compensation claim related to concussion.

**OAC 4123-6-35 Payment for spinal cord stimulator.** Adopted effective 9/1/22 to implement criteria for reimbursement for a spinal cord stimulator for treatment of allowed conditions in a claim resulting from an allowed work related injury or occupational disease.

**OAC 4123-6-40 Payment of claimant travel expenses.** Amended effective 2/1/22 to add language to provide that BWC would reimburse claimants for travel for required medical examinations or medically necessary exceeding forty-five miles round trip. The rule had previously not included the mileage, but had stated "[t]he minimum mileage distance for reimbursement shall be published periodically by the bureau."

**OAC 4123-18-03 Guidelines for referral to and acceptance into vocational rehabilitation.** Amended effective 10/7/19 to modify the criteria for eligibility for vocational rehabilitation services in an allowed workers' compensation claim.

**OAC 4125-1-02 Electronic submission and acceptance of documents.** Amended effective 7/1/22 to add the word "mailing" to the rule to provide that BWC and the IC may approve of and provide for the electronic submission and sending of applications, notices, evidence, and other documents, when the relevant statute requires the document "be in writing, mailed, or requires a signature."