
BUREAU OF WORKERS' COMPENSATION

- Allows the Administrator of Workers' Compensation, with the advice and consent of the Bureau of Workers' Compensation (BWC) Board of Directors, to adopt rules to provide for a system of prospective payment of workers' compensation premiums.
- Requires, if the Administrator establishes a prospective payment system, all private sector employers and all public employers other than state agencies and state universities and colleges to pay premiums in accordance with the requirements for that system.
- Requires, if the Administrator adopts rules to establish a prospective payment system, the rules to include requirements to convert to that system; requirements for payroll reports and payment due dates; penalties for late payroll reconciliation payments, payroll estimates, and payroll reconciliation reports; and penalties for inaccurate payroll estimates.
- Statutorily allows BWC to enter into a contract with a managed care organization (MCO) to provide medical management and cost containment services in the Health Partnership Program.
- Requires a contract with an MCO to include incentives that may be awarded based on the MCO's compliance and performance and penalties, including contract termination, that may be imposed based on the MCO's failure to reasonably comply with or perform terms of the contract.
- Permits a contract entered into with an MCO to include provisions limiting, restricting, or regulating any marketing or advertising by the MCO, or by any individual or entity that is affiliated with or acting on behalf of the MCO, under the Health Partnership Program.
- Lists reasons for which an MCO may be decertified.
- Requires the Administrator to adopt rules establishing the criteria a private sector employer must satisfy to have specified requirements, which the Administrator may waive under continuing law, potentially enabling the employer to self-insure workers' compensation claims.
- Allows the Administrator to include in the waiver rules a requirement that the employer must pay a security in accordance with continuing law requirements in addition to the employer's contribution to the Self-Insuring Employers' Guaranty Fund.

Prospective payment of workers' compensation premiums

(R.C. 4123.322, 4123.35, and 4123.41)

Continuing law requires the Administrator, with the advice and consent of the Bureau of Workers' Compensation (BWC) Board of Directors, to adopt specific rules with respect to the collection, maintenance, and disbursement of the State Insurance Fund. Among the rules the Administrator must adopt is a rule providing for premium payments by each employer that are due on or before the end of the employer's coverage period.²²⁹ Because these payments are made at the end of the period for which corresponding workers' compensation coverage is granted, they are often referred to as "retrospective payments" or "payments in arrears."

The act allows the Administrator, with the Board's advice and consent, to adopt rules to provide for a system of prospective payment of workers' compensation premiums notwithstanding the continuing law requirements described above. If the Administrator elects to establish a prospective payment system, the act requires the Administrator to include in those rules several specific provisions. If the Administrator adopts rules to implement the system, private sector employers, publicly owned utilities, and public employers other than state agencies or state universities or colleges, must pay premiums fixed for the employment or occupation of the employer, determined by the classifications, rules, and rates made and published by the Administrator and based upon estimates and reconciliations required by rules the Administrator adopts.

Rules – payroll estimates

Under the rules adopted under the act, a private sector employer must file payroll estimates with BWC on or before June 30 of each year for the upcoming year (under continuing law, every employer must file a payroll report with BWC each January). A public employer, other than a state agency or a public university or college, under the rules must file payroll estimates with BWC on or before January 1 of each year for the upcoming year. The Administrator may establish alternative due dates for these payroll estimates.

The rules must also provide that upon initial application for coverage, a private sector employer must file with the application an estimate of the employer's payroll for the unexpired period from the date of the application to the period ending on the following June 30. A public employer, other than a state agency or state university or college, must file the estimate from the date of the application to the period ending on

²²⁹ R.C. 4123.32, amended by the act for other purposes.



the following December 31. Alternative dates may be established by the Administrator. Employers must then pay an amount that the Administrator determines by rule in order to establish coverage under a written binder (temporary coverage while the application is being processed) for the employer.

Reconciliation

The rules also must require that every employer complete periodic payroll reports of actual expenditures for previous coverage periods for reconciliation with the estimated payroll reports.

The act requires, for purposes of reconciliation, an employer to make timely payment of any premium owed when the employer's actual payroll expenditures exceed estimated payroll. If estimated payroll exceeds actual payroll, the employer will receive a premium credit.

Penalties

The rules adopted by the Administrator must establish the assessment of penalties for payroll estimates, payroll reconciliation reports, and reconciliation premium payments that are not timely filed or paid. Additionally, the act allows the Administrator to assess additional penalties on a reconciliation premium if the employer's actual payroll substantially exceeds the employer's estimated payroll.

Transition

The rules adopted by the Administrator must also establish a transition period, during which time BWC must determine all of the following:

- The adequacy of employers' existing premium security deposits;
- The establishment of provisions for additional premium payments during the transition;
- The provision of a credit of employers' existing premium security deposits toward the first premium due from an employer under the prospective payment rules;
- The establishment of penalties for late payment or failure to comply with the rules.

Health Partnership Program

(R.C. 4121.44 and 4121.441, with a conforming change in R.C. 4123.93)

Managed care organization contracts

(R.C. 4121.44 and 4121.441)

The Health Partnership Program (HPP) is the medical management portion of Ohio's workers' compensation system. Under continuing law, BWC certifies managed care organizations (MCO; also referred to as vendors and external vendors in the Workers' Compensation Law) to provide medical management and cost containment services in the HPP. The act statutorily permits BWC, to implement the HPP, as under continuing law, and to ensure the efficiency and effectiveness of the public services provided through the HPP, as added by the act, to enter into a contract with any MCO that is certified by the BWC, pursuant to continuing law, to provide medical management and cost containment services in the HPP. The act expands the Administrator's rule-making authority with respect to implementing the HPP to include regulating contracts with MCOs pursuant to the Workers' Compensation Law.

A contract entered into pursuant to the act must include both of the following:

- (1) Incentives that may be awarded by the Administrator, at the Administrator's discretion, based on the MCO's compliance and performance;
- (2) Penalties that may be imposed by the Administrator, at the Administrator's discretion, based on the MCO's failure to reasonably comply with or perform terms of the contract, which may include termination of the contract.

Under the act, notwithstanding a prohibition contained in Ohio's Administrative Procedure Act, a contract entered into pursuant to the act, and rules adopted to implement the HPP, may include provisions limiting, restricting, or regulating any marketing or advertising by the MCO, or by any individual or entity that is affiliated with or acting on behalf of the MCO, under the HPP. Under Ohio's Administrative Procedure Act an agency is prohibited from making rules that would limit or restrict the right of any person to advertise in compliance with law.

The act prohibits an MCO from receiving compensation under the HPP unless the MCO has entered into a contract with the BWC pursuant to the act.

The act also makes consistent the terminology used to refer to MCOs under the Workers' Compensation Law, eliminating references to "vendor" or "external vendor."



MCO decertification

(R.C. 4121.44(G) and 4121.441(A))

The act statutorily permits the Administrator to decertify a MCO if the MCO does any of the following:

- Fails to maintain any of the requirements set forth continuing law to obtain certification;
- Fails to reasonably comply with or to perform in accordance with the terms of a contract entered into under the act;
- Violates a rule adopted under continuing law with respect to HPP implementation.

The Administrator must provide each MCO that is being decertified with written notice of the pending decertification and an opportunity for a hearing pursuant to rules adopted by the Administrator. Under rules adopted by the Administrator, the Administrator already provides a notice and conducts a hearing in accordance with the Administrative Procedure Act.

The act eliminates the requirement that the Administrator adopt rules to establish criteria for BWC to utilize in penalizing or decertifying a health care provider from participating in the HPP and rules establishing standards and criteria for BWC to utilize in penalizing or decertifying an MCO.

Self-insurance eligibility

(R.C. 4123.35(B))

In Ohio, an employer may cover the employer's workers' compensation obligations in one of two ways: (1) by paying premiums into the State Insurance Fund (see "**Prospective payment of workers' compensation premiums**," above), or (2) by being granted the privilege to pay claims directly, referred to as self-insurance. Continuing law lists requirements that a private sector employer must satisfy to be allowed to self-insure. Under continuing law, the following requirements may be waived by the Administrator:

(1) The employer employs a minimum of 500 employees in Ohio;

(2) The employer has operated in Ohio for a minimum of two years or has purchased, acquired, or otherwise succeeded to the operation of a business, or any part thereof, situated in Ohio that has operated for at least two years in Ohio;



(3) The employer's financial records, documents, and data must be certified by a certified public accountant.

With respect to (3) above, continuing law requires the Administrator must adopt rules to establish criteria that an employer must meet in order for the Administrator to waive the requirement. The act requires the Administrator also to adopt rules to establish criteria that an employer must meet in order for the Administrator to waive the requirements under (1) and (2) above. Similar to the continuing law authority for waiving the requirement under (3) above, the act allows the Administrator to include in the waiver rules adopted under the act a requirement that the employer must pay a security in accordance with continuing law requirements in addition to the employer's contribution to the Self-Insuring Employers' Guaranty Fund.

