Ohio Legislative Service Commission

Bill Analysis

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Sub. H.B. 493*

130th General Assembly
(As Reported by S. Commerce and Labor)

Reps. Sears and Henne, Hackett, Huffman, Stebelton, Wachtmann

BILL SUMMARY

Prospective payment of premiums

- Requires, rather than permits as under current law, the Administrator of Workers' Compensation (Administrator) to calculate workers' compensation premiums for most employers on a prospective, rather than retrospective, basis, beginning policy year 2015.
- Requires most employers to pay premiums on an annual basis, rather than semiannually as under current law.
- Allows the Administrator to adopt rules to permit periodic premium payments and to set an administrative fee for these periodic payments.
- Adjusts the calculation for employer payments to the Disabled Worker Relief Fund.
- Makes other changes to conform the Workers' Compensation Law to the prospective payment of premiums.

Premium security deposits

- Eliminates the requirement for most employers commencing coverage on or after July 1, 2015, to pay a premium security deposit.
- Makes an employer a "noncomplying employer" immediately upon a transfer from the Premium Payment Security Fund Account to the State Insurance Fund due to the

* This analysis was prepared before the report of the Senate Commerce and Labor Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

employer's account being uncollectible, rather than extending coverage for eight months as under current law.

Payroll reporting

- Requires, for a policy year commencing on or after July 1, 2015, a private employer other than a professional employer organization (PEO) to submit a payroll report on or before August 15 each year unless otherwise specified by the Administrator in rules.

- Requires private employers to include, for payroll reports submitted on or after July 1, 2015, the number of employees employed during the preceding policy year from July 1 through June 30.

- Eliminates the current law forfeiture penalty for failing to submit a payroll report and allows the Administrator to adopt rules setting forth a penalty, including exclusion from alternative rating plans and discount programs.

- Revises the requirements for public sector payroll reports.

Late payments and reports

- Increases, beginning policy year 2015, the additional amount of premium or assessment due from an employer who fails to timely submit a payroll report from 1% of the amount due to 10% of the amount due and eliminates the current law cap for the penalty amount.

- Requires, beginning policy year 2015, the Administrator to adopt a rule to allow the Administrator to assess a penalty on an employer who fails to pay a premium or assessment when due, at the interest rate established by the State Tax Commissioner for most delinquent taxes and eliminates the current tiered penalty system.

Professional employer organizations (PEOs)

- Requires PEOs to pay premiums and submit payroll reports on a monthly basis beginning July 1, 2015.

- Permits, rather than requires, the Administrator to adopt rules establishing a PEO security requirement for workers' compensation premiums beginning July 1, 2015.

- Requires, if a PEO fails to make timely payment of premiums or assessments, the Administrator to revoke the PEO's registration under the PEO Law.

Interstate claims

- Eliminates the requirement to obtain Ohio coverage for an out-of-state employee who temporarily works in Ohio if the employee's home state law lacks a provision similar to the Ohio law that exempts out-of-state employees temporarily working in Ohio from the duty to obtain Ohio coverage.

- Requires the Administrator or a self-insuring employer to disallow a claim in which the employee or the employee's dependents (1) receive an Ohio award after previously pursuing or otherwise electing to accept an award for that claim in another state or (2) receive an Ohio award and subsequently pursue or otherwise elect to accept an award for that claim in another state.

- Limits the ability to collect compensation and benefits from an employee or the employee's dependents in claims pursued and decided in multiple jurisdictions to only the Administrator or a self-insuring employer, instead of allowing any employer to take such an action as under current law.

- Adds an other-states' insurer as a party from whom the Administrator or self-insuring employer may recover compensation, benefits, and costs in claims pursued and decided in multiple jurisdictions.

- Requires the Administrator or a self-insuring employer to dismiss a claim for which the Administrator or self-insuring employer does not receive an election of Ohio coverage within the continuing law time period, rather than suspending the claim as under current law.

Other-states' coverage

- Allows the Administrator to provide limited other-states' coverage to provide workers' compensation coverage for Ohio employees who are temporarily working in another state in addition to other-states' coverage.

- Prescribes procedures the Administrator must follow to secure a vehicle through which to provide limited other-states' coverage, which is similar to how the Administrator selects the vehicle for other-states' coverage under continuing law.

- Eliminates the requirement that an employer that has other-states' coverage segregate payroll on the employer's annual payroll report based upon whether an employee is covered under other-states' coverage.

- Allows the Administrator to adopt rules with respect to the information to be excluded from the calculation of an employer's state fund premium when the

employer obtains other-states' coverage through the Administrator, rather than requiring the information to be excluded as under current law.

Benefit payments

- Allows the Administrator to pay for the first fill of prescriptions occurring during an earlier timeframe than under current law.

- Allows for the first fill of prescriptions to be charged to the Surplus Fund Account if the claim is ultimately denied and the employer is a state fund employer who pays assessments into that account.

Health Partnership Program

- Statutorily permits the Bureau of Workers' Compensation (BWC) to summarily suspend a health care provider's certification to participate in the Health Partnership Program (HPP) and specifies procedures regarding the suspension.

- Expands the example in the definition of "peer review committee" to include a peer review committee of BWC or the Industrial Commission that reviews the professional qualifications and performance of providers certified by BWC to participate in the HPP.

- Requires BWC's peer review committee that is responsible for reviewing the professional qualifications and the performance of providers certified to participate in the HPP to follow the confidentiality requirements pertaining to committee records and proceedings as set forth in continuing law, subject to specified exceptions.

Claims procedure

- Requires, for an appeal of an Industrial Commission decision filed with a court of common pleas on or after the bill's effective date, the notice of appeal to include the name of the Administrator.

Premium programs and assessments

- Permits public employers to participate in the BWC One Claim Program.

- Requires the Administrator to reimburse a state fund employer from the Surplus Fund Account for any assessments paid for a violation of a specific safety requirement if it is determined that the employer did not commit the violation.

- Eliminates the statutory minimum assessment amount for the Disabled Worker Relief Fund for claims arising before January 1, 1987.

Self-insuring employers

- Eliminates the requirement that most self-insuring public employers annually obtain an actuarial report certifying the sufficiency of reserved funds to cover the costs that the employer may potentially incur under Ohio's Workers' Compensation Law and the reliability of computations and statements made with regard to those funds.

Additional changes

- Requires, rather than permits as under current law, the State Board of Pharmacy to provide information from the drug database relating to a workers' compensation claimant to the Administrator upon request.

- Requires the Board to provide information from the drug database to a managed care organization's medical director if specified conditions are satisfied.

- Places the Chief Ombudsperson and assistant ombudspersons in the unclassified service, and makes changes regarding their appointment and removal.

- Requires all ombudsperson system staff to comply with Ohio's Ethics Laws and the Industrial Commission Nominating Council's human resource and ethics policies.

- Requires the Workers' Compensation Investment Committee to review the Bureau's Chief Investment Officer and any investment consultants retained by the Administrator to assure effective management of the workers' compensation funds, rather than that the best possible return on investment is achieved as required under current law.

- Requires the Administrator to have an actuarial analysis, rather than actuarial audits, of the State Insurance Fund and other funds specified in the Workers' Compensation Law made at least once a year and revises the requirements for that analysis.

- Changes the method by which "good standing" is determined for purposes of qualifying for a group rating program.

- Eliminates a requirement in the BWC budget for the FY 2014-FY 2015 biennium that any unencumbered cash balance in excess of $45 million in the Workers' Compensation Fund on June 30 of each fiscal year be used to reduce the administrative cost rate charged to employers.

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CONTENT AND OPERATION

Prospective payment

The bill requires, rather than permits as under current law, the Administrator of Workers' Compensation (Administrator), beginning in policy year 2015, to calculate and bill workers' compensation premiums on a prospective basis for all employers other than professional employer organizations (PEOs) and state employers. 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. Currently, one of those rules must provide for premium payments by each employer that are due on or before the end of the employer's coverage period. These payments are often referred to as "retrospective payments" or "payments in arrears." However, currently the Administrator, with the BWC Board's advice and consent, has the authority to adopt rules to allow for a prospective payment system – that is, a system under which an employer pays for the coverage before the coverage period starts. If the Administrator elects to adopt these rules, the rules must contain specified provisions.

The bill eliminates the retrospective payment requirement with respect to public employers other than the state and private employers other than PEOs. The bill also eliminates the requirement that these employers pay prospectively only if the Administrator adopts rules to establish a prospective payment system, and instead requires them to pay prospectively as provided in the bill.[1]

Private employers other than PEOs

Payment of premiums – private employers

Beginning with the policy year commencing July 1, 2015, the bill requires each private employer (except PEOs) and each publicly owned utility to pay premiums prospectively (policy years for private employers run from July 1 through June 30).[2] Under the bill, these employers must pay estimated premiums annually every June (instead of semiannually every January and July as under current law) for coverage during the immediately succeeding policy year. Similar to current law, these estimated premiums are fixed by the Administrator for the employment or occupation of each employer and are determined by the classifications, rules, and rates made and published by the Administrator. The bill also requires each of these employers to pay

[1] R.C. 4123.32(A) and (D)(2) (mostly repealed under the bill), 4123.322, 4123.35, and 4123.41 with conforming changes throughout the bill.

[2] See Ohio Administrative Code (O.A.C.) 4123-17-01.

any additional amount to the State Insurance Fund that is determined to be due from the employer by applying the Administrator's rules, based on the employer's actual payroll report (see "**Payroll reports and reconciliation – private employers**," below).

Continuing law requires the Administrator to adopt rules to permit private employers to make periodic payments of these premiums. Under the bill, these rules must also cover the periodic payment of assessments and must be adopted with the BWC Board's advice and consent. Additionally, the bill allows the Administrator to set an administrative fee for these periodic payments.[3]

BWC must provide an employer who makes timely premium payments a notice that, under the bill, serves as the employer's proof of workers' compensation coverage. This proof is similar to the current law certificate of compliance (see "**Proof of workers' compensation coverage**," below).[4] If a private employer or public utility fails to pay these premiums or assessments when due, the employer may be subject to the penalty charges listed in "**Charges for failure to pay premiums or assessments**," below.

Initiating coverage – private employers

After July 1, 2015, a private employer who first becomes a subscriber to the State Insurance Fund on any day other than July 1 must pay premiums according to rules adopted by the Administrator, with the BWC Board's advice and consent, for the remainder of the policy year for which the coverage is effective. Continuing law prescribes the content of these rules (which the Administrator now is required, rather than permitted, to adopt). The rules must require a private employer to file both of the following:

(1) An initial application for coverage;

(2) An estimate of the employer's payroll for the period the Administrator determines pursuant to rules the Administrator adopts (currently, the rule must require the estimate to cover the unexpired period beginning on the application date through the following June 30).

The bill now specifically requires the employer to pay an application fee (currently, this is required only if the Administrator adopt rules to establish a prospective payment system – see "**Prospective payment rules**," below). Failure to pay this fee, or, as under continuing law, to completely provide all of the information required in the application, may result in a denial of coverage. Until policy year 2015, an

[3] R.C. 4123.35.

[4] R.C. 4123.35(A) and 4123.83, with a conforming change in R.C. 4123.54.

employer who initiates coverage must pay the semiannual premiums from time to time upon the expiration of the respective periods for which payments have been made.[5]

Payroll reports and reconciliation – private employers

For policy years commencing on or after July 1, 2015, the bill requires private employers other than PEOs to submit a report to BWC on August 15 of each year that includes all of the following:

(1) The number of employees employed during the preceding policy year for the period from July 1 through June 30;

(2) The number of such employees localized in Ohio employed at each kind of employment and the aggregate amount of wages paid to these employees (similar to current law);

(3) Additional information if the employer has other-states' coverage (see "**Other-states' coverage**," below) or has employees covered under the federal Longshore and Harbor Workers' Compensation Law (continuing law).

Current law requires this payroll report to be submitted in January of each year and to include the number of employees employed during the preceding calendar year. This will continue to apply to policy years commencing prior to July 1, 2015.[6]

The bill also requires a "reconciliation" of estimated premiums with actual payroll upon the Administrator receiving the payroll report. Upon receiving an employer's payroll report, the Administrator must adjust the premium and assessments charged to the employer to account for the difference between the estimated gross payroll (as calculated under "**Payment of premiums – private employers**," above) and actual gross payroll. Any balance determined to be due to the Administrator must be immediately paid by the employer and any balance due to the employer must be credited to the employer's account (this is similar to a rule that the Administrator must, rather than may as under current law, adopt under the bill (see "**Prospective payment rules**," below)).[7]

The bill eliminates the $500 forfeiture that is required under current law for failing to file a payroll report. Instead, the Administrator may adopt rules setting forth penalties for failure to submit the payroll report, including exclusion from alternative

[5] R.C. 4123.35(A), 4123.32(F), and 4123.322(A).

[6] R.C. 4123.26, with a conforming change in R.C. 4123.27.

[7] R.C. 4123.35(A) and 4123.322(A) and (B).

rating plans and discount programs (the Administrator currently must adopt rules to establish a penalty if the Administrator elects to establish a prospective payment system).[8]

Additionally, the bill assigns to an employer who fails to file a payroll report a modified premium and assessment rate calculated at 110% of the estimated payroll of the employer. Current law requires that the employer's premium be increased by 1%, but by no less than $3 and no more than $15.[9]

The bill eliminates the requirement that the report be mailed to BWC at its main office in Columbus, and instead requires only that the report be submitted to BWC. The bill also eliminates requirements for the form on which payroll reporting must be made. Current law, which requires specific procedures for filling out the form, is replaced in the bill by a requirement that the payroll report must be submitted on a form prescribed by BWC. The bill also eliminates the current law authority of BWC to require the information be returned to BWC within the period fixed by BWC.

The bill eliminates the current law requirement that the Administrator must adopt a similar payroll estimate reporting rule and penalties for failure to timely file those estimates if the Administrator elects to adopt rules establishing a prospective pay system.[10]

Elimination of the premium security deposit

The bill eliminates, for policies effective July 1, 2015, and after, the requirement that each employer, upon instituting workers' compensation coverage, must submit a premium security deposit. Under current law and under the bill for policies effective prior to July 1, 2015, the deposit amount equals 30% of the employer's estimated premium payment for eight months of coverage. The premium security deposit may not be greater than $1,000 or less than $10.[11] Though the bill generally eliminates the premium security deposit, the bill permits the Administrator to require, if the Administrator determines that an employer is an amenable employer (see "**Premiums and assessments for amenable employers**," below) prior to the policy year

[8] R.C. 4123.26(F) and 4123.322.

[9] R.C. 4123.32(D)(1).

[10] R.C. 4123.26, 4123.32(E) (renumbered (D) by the bill), and 4123.322.

[11] R.C. 4123.32, 4123.36, and 4123.37.

commencing July 1, 2015, the employer to pay a premium security deposit (currently the employer must pay the deposit if the employer is amenable to the Law).[12]

The Premium Payment Security Fund Account

Continuing law requires the Administrator to set aside into an account of the State Insurance Fund called the Premium Payment Security Fund (renamed the Premium Payment Security Fund Account by the bill), sufficient money to pay for any premiums due from an employer and uncollected (see "**Penalties for failure to pay premiums or assessments**," below). Although the Premium Payment Security Fund is referred to as an account within the State Insurance Fund, it is also treated as a fund in the custody of the Treasurer of State subject to various commingling and accounting restrictions. The bill eliminates the special commingling and accounting restrictions.[13]

Public employers

Payment of premiums – public employers

The bill requires public employers, other than state agencies, to transition to prospective payment of premiums by the policy year commencing on January 1, 2017. Policy years for public employers run from January 1 through December 31.[14] Currently, these public employers must pay by May 15 at least 45% of the premiums due and must pay by September 1 of each year the remainder of premiums due for coverage during the previous calendar year. The following table outlines the time by which premium and assessment payments must be made by public employers during the transition period.

For payments and assessments due for a policy year that commences:	Due dates for premium and assessment payments:
On or before January 1, 2014 (current law)	• At least 45% of the total amount due by May 1 of the year immediately following the conclusion of the policy year • The remainder of the amount due by September 1 of the year immediately following the conclusion of the policy year

[12] R.C. 4123.37.

[13] R.C. 4123.34(D).

[14] See O.A.C. 4123-17-01.

For payments and assessments due for a policy year that commences:	Due dates for premium and assessment payments:
January 1, 2015	• At least 50% of the annual amount due by May 15, 2016 • The remainder of the amount due by September 1, 2016
January 1, 2016	• At least 50% of the annual premium estimated by BWC by May 15, 2016 • The remainder of the estimated premium by September 1, 2016
On or after January 1, 2017	• The total amount of the annual premium estimated by BWC by December 31 of the year immediately preceding the policy year

If a public employer fails to pay these premiums or assessments when due, the employer may be subject to the penalty charges listed in "**Charges for failure to pay premiums or assessments**," below.

Similar to private employers, the bill also requires the Administrator, with the BWC Board's advice and consent, to adopt rules to permit public employers to make periodic payments of premiums and assessments. The rules must provide for the assessment of interest charges, if appropriate, and for the assessment of penalties when an employer fails to make timely payments and may establish an administrative fee for periodic payments.[15]

Initiating coverage – public employers

Similar to continuing law, under the rules the Administrator must adopt to establish a prospective payment system (see "**Prospective payment rules**," below), a public employer other than the state or a state university or college, upon initiating coverage, must file with the application an estimate of the employer's payroll for the period the Administrator determines under rules the Administrator adopts (currently, the rule must require the payroll cover the period beginning on the application date to the following December 31). Additionally, the public employer must pay the amount the Administrator determines by rule in order to establish initial coverage.[16]

[15] R.C. 4123.41.

[16] R.C. 4123.32(F) and 4123.322.

Payroll reports and reconciliation – public employers

The bill requires BWC, for each policy year commencing on or after January 1, 2016, to furnish by November 1 to the fiscal officer of each public employer taxing district (those public employers other than the state) forms showing the estimated premium due from the public employer taxing district for the forthcoming policy year. On or before February 15 immediately following the conclusion of a policy year, the fiscal officer must report the amount of money expended by the public employer taxing district during the policy year for the services of employees covered by Ohio's Workers' Compensation Law. BWC must then reconcile the report with the premiums and assessments charged to the public employer taxing district to account for the difference between estimated gross payroll and the actual gross payroll. The public employer taxing district must immediately pay any balance due to BWC, and any balance found due to the public employer must be credited to the public employer's account (this is similar to a rule that the Administrator must, rather than may, adopt under the bill (see "**Prospective payment rules**," below)).

The bill also allows the Administrator to adopt rules setting forth penalties for failure to submit the payroll report, including exclusion from alternative rating plans and discount programs. The bill eliminates the current law requirement that the Administrator must adopt a similar payroll estimate reporting rule and penalties for failure to timely file those estimates if the Administrator elects to adopt rules establishing a prospective pay system.

Under continuing law, for policy years that begin prior to January 1, 2016, BWC is required to furnish the fiscal officer of each public employer taxing district with a form containing the premium rates applicable to the public employer. The fiscal officer must report on this form the amount of money expended during the previous 12 calendar months for the services of employees covered by the Workers' Compensation Law and must calculate on the form, the premium due. The public employer must pay the amount due according to the schedule outlined in "**Payment of premiums – public employers**," above.[17]

Revising basic rates

Under continuing law, the Administrator, with the BWC Board's advice and consent, must set the rates for each class of occupation or industry in order to maintain the solvency of the State Insurance Fund. These rates are commonly referred to as the basic or base rates.

[17] R.C. 4123.41(A) and 4123.322.

For policy years commencing prior to July 1, 2016, the bill maintains for private employers the current law requirement that revisions of these rates must be in accordance with the oldest four of the last five calendar years of the combined accident and occupational disease experience of the Administrator in the administration of the Workers' Compensation Law. For policy years commencing on or after July 1, 2016, revisions of basic rates for private employers must be in accordance with the oldest four of the last five policy years.

The bill requires that revisions for base rates of public employers must be in accordance with the oldest four of the last five policy years of the combined accident and occupational disease experience of the Administrator in the administration of the Workers' Compensation Law. For most public employers, then, the method of revision of basic rates does not change, as public employer policy years are the same as calendar years.[18]

Penalties for failure to pay premiums or assessments

Under the bill, similar to current law, whenever an employer fails to pay a premium due, and the Administrator determines the employer's account to be uncollectible, the Administrator must cover the default by transfer from the Premium Payment Security Fund Account to the State Insurance Fund. After that transfer, the employer must be considered a noncomplying employer for purposes of the Workers' Compensation Law. Under current law, the transfer amount is enough to cover the default in excess of the premium security deposit (which is eliminated under the bill), and the transfer establishes coverage of the employer for the period covered by the premium security deposit. Only after the premium security deposit coverage period (eight months) is an employer considered to be a noncomplying employer for purposes of the Workers' Compensation Law. The bill also eliminates current law procedures by which a noncomplying employer may cease being a noncomplying employer, which include reimbursing the amount transferred.[19]

The bill modifies the current law penalty charges levied against an employer who fails to pay premiums when due for a policy year commencing on or after July 1, 2015, and broadens the penalty authority to also apply to unpaid assessments.

For a policy year commencing on or after July 1, 2015, the bill allows the Administrator to assess a penalty at the certified interest rate established by the Tax

[18] R.C. 4123.34.

[19] R.C. 4123.36.

Commissioner for most overdue taxes. The rate for calendar year 2014 is 3%.[20] The bill maintains the current law penalty cap of 15% of the premium due. For a policy year commencing prior to July 1, 2015, the bill maintains the current law penalty of $30 plus an amount determined under a statutory schedule.[21]

Discounts for early payment

Continuing law allows the Administrator to grant an employer a discount for early payment of premiums. Under current law, the Administrator by rule may grant a discount to a private employer who makes the employer's semiannual premium payment at least one month prior to the last day on which the payment may be made without penalty. Current law also requires the Administrator to provide a discount to any public employer other than the state that pays its total amount due on or before May 15 of each year. The bill modifies this authority by changing the time by which the premium must be paid to reflect the bill's prospective payment of premiums. Under the bill, the discount is available only to an employer who pays the employer's annual estimated premium in full prior to the start of the policy year for which the premium is due.[22]

Collections of amounts due

Under continuing law, when an amount is payable to the state, the officer, employee, or agent responsible for administering the law under which the amount is payable must immediately proceed to collect the amount or cause the amount to be collected. If the amount is not paid within 45 days after payment is due, the officer, employee, or agent must certify the amount to the Attorney General for further collection efforts. For purposes of these continuing law collection requirements, the bill sets the due date for premiums due under the Workers' Compensation Law at 30 days after the date upon which employers must submit actual payroll reports for the corresponding policy year pursuant to the Workers' Compensation Law. All other payments required under the Workers' Compensation Law, including a payment due for purposes of continuing coverage, are due on the date specified in the Law, unless

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[20] *See* Office of Budget and Management, "Prompt Payment: Calendar Year 2014 Interest Rate for Late Payment to Vendors," October 28, 2013, http://media.obm.ohio.gov/obm/forms-memos-archives/memos/Prompt%20Pay%20Interest%20Rate%20Letter%20for%20CY%202014.pdf (accessed May 9, 2014).

[21] R.C. 4123.32.

[22] R.C. 4123.41(F) and 4123.29(B)(1).

otherwise provided in a rule adopted by the Administrator with the BWC Board's advice and consent.[23]

Disabled Workers' Relief Fund (DWRF) assessments

Under continuing law, the Administrator, with the BWC Board's advice and consent, must levy an assessment against all employers to carry out the purposes of the Disabled Workers' Relief Fund (DWRF). DWRF is a fund that used to make essentially cost-of-living payments to recipients of permanent and total disability compensation. With respect to the DWRF assessment made for claims that occurred before January 1, 1987, the bill eliminates the requirement that the Administrator annually charge a minimum assessment of 5¢ per $100 of payroll. The bill retains the requirement that the assessment cannot exceed 10¢ per $100 of payroll and retains the current law requirements with respect to DWRF assessments for claims occurring on or after January 1, 1987.[24]

The bill also adjusts the payroll period for which DWRF assessments are made to reflect the transition to prospective payment of premiums.

Under continuing law, for policy years commencing prior to July 1, 2015, private employers are levied DWRF assessments in January and July of each year upon gross payrolls of the preceding six months. For policy years commencing on or after July 1, 2015, the bill requires these assessments to be levied in the month of June immediately preceding each policy year upon gross payrolls estimated for that policy year. Similarly, public employer taxing districts continue to be assessed in January of each year upon gross payrolls of the preceding 12 months for policy years commencing prior to January 1, 2016. For policy years commencing on or after January 1, 2016, public employers are assessed in the month of December immediately preceding each policy year upon gross payrolls estimated for that policy year. The state as an employer continues to be subject to assessments levied in January, April, July, and October of each year upon gross payrolls of the preceding three months, or, as added by the bill, at other intervals that the Administrator establishes.

The assessments levied pursuant to the bill's adjusted schedules must be reconciled to account for differences between estimated payroll and actual payroll upon the employer submitting the payroll report as required under "**Payroll reports and reconciliation – private employers**" and "**Payroll reports and reconciliation – public employers**," above.

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[23] R.C. 4123.323 and R.C. 131.02, not in the bill.

[24] R.C. 4123.411(A).

The bill also eliminates a current law requirement to make transfers from the DWRF to the General Revenue Fund to reimburse the General Revenue Fund for moneys appropriated for disabled worker relief.[25]

Prospective payment rules

The bill requires, rather than permits under current law, the Administrator to adopt certain rules to establish a system of prospective payment of premiums. The bill eliminates the requirement that the Administrator adopt rules that are similar to statutory requirements for payroll reporting that are added by the bill as outlined in "**Payroll reports and reconciliation – public employers**" and "**Payroll reports and reconciliation – private employers**," above.

The requirements for the remaining rules are largely unchanged by the bill and include the rules governing initiating coverage, rules for completing periodic payroll reports, and the following rules:

(1) The assessment of a penalty for late payroll reconciliation reports and for late payment of any reconciliation premium, which must allow the Administrator to assess additional penalties if the employer's actual payroll substantially exceeds the estimated payroll;

(2) The establishment of a transition period during which time BWC must determine the adequacy of existing premium security deposits of employers, the establishment of provisions for additional premium payments during the transition, and the provision of credit of premium security deposits toward the first premium due from an employer under the specific prospective payment rules;

(3) The establishment of penalties for late payment or failure to comply with the Administrator's rules.[26]

Payment of premiums for professional employer organizations (PEOs)

Under the bill, beginning August 1, 2015, each PEO must submit a monthly payroll report containing the number of employees employed during the preceding calendar month. The report is to contain the number of those employees employed at each kind of employment and the aggregate amount of wages paid to those employees. The bill allows the Administrator to adopt rules setting forth penalties for failure to

[25] R.C. 4123.411 and R.C. 4123.419 (repealed).

[26] R.C. 4123.322.

submit these payroll reports, including exclusion from alternative rating plans and discount programs.[27]

Under the bill, for each policy year commencing on or after July 1, 2015, a PEO must pay premiums and assessments on a monthly basis. The Administrator fixes the amount of premium for the prior month based on the actual payroll of the employer. The bill also allows, rather than requires as under current law, beginning July 1, 2015, the Administrator to adopt rules under the Administrative Procedure Act to require a PEO to provide security in the form of a bond or letter of credit. Under current law, the Administrator must permit a PEO to make periodic payments of prospective premiums and assessments to BWC as an alternative to providing the security required by the rule.

Under the bill, if a PEO fails to make a timely payment of premiums or assessments as required by the Workers' Compensation Law, the Administrator must revoke the PEO's registration pursuant to the continuing law PEO revocation procedures. Upon revocation, under continuing law each client employer associated with that PEO must file payroll reports and pay premiums directly to the Administrator on its own behalf at a rate determined by the Administrator based solely on the claims experience of the client employer.[28]

Estimating the state's contribution

Continuing law requires the Administrator, on or before July 1 of each year, to estimate the gross payroll of all state employers for the succeeding biennium or fiscal year. The Administrator must then determine and certify for the Office of Budget and Management the rates that must be applied to that payroll estimate to produce an amount equal to the estimated cost of awards or payments made during that fiscal period. The resulting rate must be applied and made part of the gross payroll calculation for that period and amounts collected must be remitted to BWC.

Under the bill, if the historical amounts remitted to BWC are greater or less than historical awards or claim payments, the difference must be returned to the state employer or recovered by BWC in a manner determined by the Administrator. This provision appears to require BWC to reconcile amounts paid by the state for workers' compensation coverage with amounts paid by BWC for claims of employees of state

[27] R.C. 4123.26(C) and (F).

[28] R.C. 4123.35(A), 4123.32(D)(4), and 4125.05, and R.C. 4125.06, not in the bill.

employers for the corresponding period. Current law prescribes a reconciliation process, based on whether errors in estimating payroll occurred.[29]

Proof of workers' compensation coverage

Continuing law requires BWC to issue a notice upon receiving an employer's premium stating that the employer is in compliance with the Workers' Compensation Law. The employer must then post this notice (to provide notice to the employer's employees that the employer has coverage or is in compliance with the Law, in the case of a self-insuring employer).

The bill requires BWC to issue the notice at least annually, rather than at the time of payment. To reflect the change to a prospective payment system, the notice must state that it is proof of workers' compensation coverage and that the coverage is contingent on the employer continuing to make payments of premiums and assessments due. Currently, the notice indicates the time period for which the payment is made, since the premium is paid after the coverage period.[30]

Interstate workers' compensation claims

Workers' compensation coverage for nonresidents

Continuing law generally requires every employer to carry workers' compensation coverage for their employees. The bill eliminates the requirement for an employer to obtain coverage under Ohio's Workers' Compensation Law for an out-of-state employee who temporarily works in Ohio if the employee's home state law lacks a provision similar to the Ohio law that exempts out-of-state employees who temporarily work in Ohio from the duty to obtain Ohio coverage. Under continuing law, if a nonresident employee is insured under the workers' compensation law or similar laws of another state, the employee and the employee's dependents are not entitled to receive compensation or benefits under Ohio's Workers' Compensation Law on account of injury, disease, or death arising out of or in the course of employment while temporarily within Ohio. The rights of the employee and the employee's dependents under the other state's laws are the exclusive remedy against the employer on account of the injury, disease, or death.[31]

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[29] R.C. 4123.40.

[30] R.C. 4123.83, with conforming changes in R.C. 1561.31, 4123.35(A), and 4123.54.

[31] R.C. 4123.01(A)(1)(d) (repealed) and R.C. 4123.54(H).

Claims in multiple jurisdictions

Continuing law prohibits an employee or the employee's dependents who receive a decision on the merits of a claim for compensation or benefits under Ohio's Workers' Compensation Law (an "Ohio award") from filing a claim for the same injury, occupational disease, or death in another state under that state's workers' compensation laws. Similarly, an employee or the employee's dependents who receive a decision on the merits of a claim under another state's workers' compensation laws cannot file a claim for an Ohio award for the same injury, occupational disease, or death. A decision on the merits is a decision determined or adjudicated for compensability of a claim and not on jurisdictional grounds.[32]

Under the bill, the Administrator or a self-insuring employer must disallow a claim if either of the following circumstances occur:

(1) An employee or the employee's dependents receive an Ohio award for the same injury, occupational disease, or death for which the employee or the employee's dependents *previously* pursued or otherwise elected to accept workers' compensation benefits and received a decision on the merits under another state's laws or recovered damages under another state's laws (similar to current law, as discussed below).

(2) An employee or the employee's dependents receive an Ohio award and *subsequently* pursue or otherwise elect to accept workers' compensation benefits or damages under another state's laws for the same injury, occupational disease, or death as the claim for which the Ohio award was made.

In addition to disallowing the claim, similar to current law the bill permits the Administrator or the self-insuring employer to collect from the employee or the employee's dependents the amounts paid in the Ohio award and any interest, attorney's fees, and costs incurred in collecting that payment. Additionally, with respect to the circumstance described under (2) above, the bill allows the Administrator or self-insuring employer also to collect the amounts paid in the Ohio award from the employee's other-states' insurer. Continuing law allows the Administrator or self-insuring employer to collect any costs incurred by an employer in contesting or responding to any claim filed by the employee or the employee's dependents for the same injury, occupational disease, or death that was filed after the original claim for which the employee or the employee's dependents received a decision on the merits.[33]

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[32] R.C. 4123.542.

[33] R.C. 4123.54(H)(2), renumbered to (H)(2) and (3).

Under continuing law, amounts collected under an Ohio award by the Administrator are not charged to a state fund employer's experience (a state fund employer is one that pays premiums into the State Insurance Fund to receive workers' compensation coverage). Continuing law requires, if the Administrator collects any costs incurred by an employer, those costs to be forwarded to the employer, but the bill limits those costs to only the costs incurred by the employer in contesting or responding to the claim. The bill removes the requirement to forward on to the employer any interest, awards, or attorney's fees the Administrator collects.[34]

Currently, in addition to the Administrator, *any* employer may pursue the collection activities described immediately above if an employee or the employee's dependents pursue or receive an Ohio award for a claim on which the employee or dependents pursued and received a decision on the merits in another state or in which the employee or dependents recovered damages under another state's laws. Additionally, the bill eliminates the current requirement that if any employee or the employee's dependents pursue workers' compensation benefits or recover damages from the employer under another state's laws, the amount awarded or recovered, whether paid or to be paid in future installments, must be credited on the amount of any award of compensation or benefits made to the employee or the employee's dependents by BWC.[35]

Continuing law requires an employee or the employee's dependents to sign an election affirming the employee's decision to receive an Ohio award. The bill requires the Administrator or self-insuring employer to dismiss a claim for an Ohio award if the election is not signed within 28 days after the Administrator or self-insuring employer submits the request. Currently, that claim is suspended until the signed election is received.[36]

Claimant election

The bill creates an exception to the prohibition against a claimant filing an Ohio claim after receiving a decision on the merits of the claim in another state. Under the bill, in the event a workers' compensation claim has been filed in another jurisdiction *on behalf of* an employee or the employee's dependents, and the employee or dependents subsequently elect to receive an Ohio award, the employee or dependent must withdraw or refuse acceptance of the workers' compensation claim filed in the other jurisdiction in order to pursue an Ohio award. If the employee or dependents were

[34] R.C. 4123.54(H)(2), renumbered to (H)(4) by the bill.

[35] R.C. 4123.54(H)(2).

[36] R.C. 4123.54(H)(5), renumbered to (H)(6) by the bill.

awarded workers' compensation benefits or had recovered damages under the other state's laws, any compensation and benefits awarded under Ohio law are to be paid only to the extent to which those payments exceed the amounts paid under the other state's laws. If the employee or dependent fails to withdraw or to refuse acceptance of the workers' compensation claim in the other jurisdiction within 28 days after a request made by the Administrator or a self-insuring employer, the Administrator or self-insuring employer must dismiss the employee's or employee's dependents' Ohio claim.[37]

Other-states' coverage

Currently an employer may obtain other-states' coverage from the Administrator, if the Administrator elects to offer it, or from an other-states' insurer. "Other-states' coverage" is currently defined as insurance coverage purchased by an employer for workers' compensation claims that arise in another state or states and that are filed by the employer's employees or those employees' dependents, as applicable, in that other state. An "other-states' insurer" is an insurance company that is authorized to provide workers' compensation insurance coverage in any of the states that permit employers to obtain insurance for workers' compensation claims through insurance companies.

The bill creates two types of other-states' coverage. The first, "other-states' coverage," is similar to the current law type of other-states' coverage, and is limited to covering employees who are in employment relationships localized in another state. The second is "limited other-states' coverage," which is coverage provided by the Administrator to an eligible employer for workers' compensation claims of employees who are in an employment relationship localized in Ohio but are temporarily working in another state, or those employees' dependents. Under the bill, "other-states' coverage" also generally refers to coverage secured by an eligible employer for workers' compensation claims that arise in a state other than Ohio where an employer elects to obtain coverage through either the Administrator or an other-states' insurer.[38]

Similar to current law, under the bill if the Administrator elects to secure a vehicle through which the Administrator will provide other-states' coverage or limited other-states' coverage, the Administrator must go through the state's competitive bidding process to select one or more insurers. The Administrator, with the advice and consent of the BWC Board, must award the contract to provide other-states' or limited

[37] R.C. 4123.54(H)(6) and 4123.542.

[38] R.C. 4123.01(L), (M), and (N) and 4123.82.

other-states' coverage to one or more other-states' insurers that are the lowest and best bidders.[39]

If the Administrator elects to offer other-states' coverage or limited other-states' coverage, under continuing law the Administrator must adopt rules to implement that coverage. Similar to the immunity provided in continuing law for other-states' coverage, under the bill the BWC Board and the individual Board members, the Administrator, and BWC do not incur any obligation or liability if another state determines that the limited other-states' coverage does not satisfy the requirements specified in that state's workers' compensation law for obtaining workers' compensation coverage in that state.[40]

Similar to current law, if an employer elects to obtain other-states' coverage or limited other-states' coverage, under the bill the employer must submit a written notice to the Administrator stating that election on a form prescribed by the Administrator (current law, with respect to other-states' coverage, does not require a particular form to be used). If the employer elects to obtain that coverage through an other-states' insurer, as under continuing law the employer also must submit the name of the other-states' insurer through whom the employer has obtained that coverage.[41]

The bill revises the current law procedures for calculating the premiums applicable to a state fund employer that has other-states' coverage through the Administrator. Currently, the Administrator, when calculating that employer's state fund premium, must exclude the expenditure of wages, payroll, or both attributable to the labor performed or services provided to which the other-states' coverage applies. The bill maintains this method of premium calculation for employers with other-states' coverage through an other-states' insurer. However, for employers that obtain other-states' coverage through the Administrator, the Administrator may establish in rule an alternative calculation of the employer's state fund premium to appropriately account for the expenditure of wages, payroll, or both attributable to the labor performed or services provided to which the other-states' coverage applies.[42]

The bill eliminates the current law procedures for calculating other-states' coverage premiums excluding expenditures for wages, payroll, or both for labor performed and services provided that are covered through the State Insurance Fund.

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[39] R.C. 4123.292(B) and (C).

[40] R.C. 4123.292(D) and (E).

[41] R.C. 4123.292(A) and (C).

[42] R.C. 4123.29(A)(2).

The bill also eliminates the requirement that the Administrator calculate an employer's other-states' coverage premium separate from the premium calculated for the State Insurance Fund.[43] Additionally, the bill removes the current law requirement that an employer segregate the employer's payroll in the employer's annual payroll report based upon whether the labor performed or services provided are covered through the State Insurance Fund or through other-states' coverage. Instead, for purposes of the employer's annual payroll report, the employer must list information only for the employees whose employment is localized in Ohio and any other information the Administrator requires in rules the Administrator adopts with the advice and consent of the BWC Board.[44]

Under the bill, if an employer fails to pay the employer's premium for other-states' coverage, the Administrator must consider the employer to be noncompliant for the purposes of having other-states' coverage. The employer's Ohio premiums for any and all noncompliant periods of time must be calculated in the same manner as otherwise required under the bill and continuing law, using both the wages reported in Ohio and the wages that the employer claimed would be reported to the other-states' insurer for securing coverage. Currently, if the employer fails to pay the other-states' coverage premium, the employer is considered to be noncompliant for purposes of other-states' coverage but not for purposes of Ohio's Workers' Compensation Law.[45]

Payment for first fill of prescriptions

The bill allows the Administrator to pay certain medical benefits earlier than when those benefits must be paid under current law. Currently, the payment of medical benefits commences upon the earlier of either the date of the issuance of the staff hearing officer's order under the statutory appeals process or the date of the final administrative or judicial determination.

The bill allows the Administrator, in the rules the Administrator adopts regarding medical benefits under continuing law, to adopt rules specifying the circumstances under which BWC may make immediate payment for the first fill of prescription drugs for medical conditions identified in an application for compensation or benefits under the Workers' Compensation Law that occurs prior to the date the Administrator issues an initial determination order granting or denying compensation, benefits, or both.

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[43] R.C. 4123.292(C) and (E), repealed by the bill.

[44] R.C. 4123.26(A) and (B).

[45] R.C. 4123.292(A).

If the claim or additional condition is ultimately disallowed in a final administrative or judicial order, and if the employer is a state fund employer who pays assessments into the Surplus Fund Account in the State Insurance Fund, the payments for the first fill of prescription drugs for that claim or condition must be charged to and paid from the Surplus Fund Account and not charged through the State Insurance Fund to the employer against whom the claim or additional condition was filed.[46]

The Health Partnership Program

Summary suspension of certification

The Health Partnership Program (HPP) is the managed care portion of Ohio's Workers' Compensation system used by employers who pay premiums into the State Insurance Fund. A health care provider must be certified by BWC to participate in the HPP, and the Administrator may limit provider access to claimants by requiring a claimant to pay an appropriate out-of-plan copayment for selecting a medical provider not within the HPP.[47]

The bill statutorily permits BWC to summarily suspend the certification of a provider to participate in the HPP without a prior hearing. BWC currently has this ability, and may even revoke a certification, under rules adopted by the Administrator for the HPP. Under the bill, BWC may summarily suspend the certification of a provider other than a hospital if BWC determines any of the following apply to the provider:

- The professional license, certification, or registration held by the provider to practice the provider's profession has been revoked or suspended for an indefinite period of time or for a period of more than 30 days, subsequent to the provider's certification to participate in the HPP (similar to the administrative rule).

- The provider has been convicted of or has pleaded guilty to workers' compensation fraud or engaging in a pattern of corrupt activity, or has been convicted of or pleaded guilty to any other criminal offense related to the delivery of or billing for health care services (same as the administrative rule).

[46] R.C. 4123.511(I) and 4123.66.

[47] R.C. 4121.44 and 4121.441, not in the bill.

- BWC determines, by clear and convincing evidence that the continued participation by the provider in the HPP presents a danger of immediate and serious harm to claimants (similar to the administrative rule).[48]

The bill permits BWC to suspend the certification of a provider to participate in the HPP for the suspension or revocation of a provider's professional qualifications as explained above, even if the suspension or revocation of those professional qualifications is stayed by a court or agency order.

Under the bill, BWC must issue a written order of summary suspension by certified mail or in person in accordance with the Administrative Procedure Act. A court may stay execution of the order during pendency of any appeal if the court finds that execution of the order pending appeal will cause an unusual hardship to the appellant and that staying execution of the order will not threaten the health, safety, or welfare of the public. If the provider subject to the summary suspension requests an adjudicatory hearing by BWC, the bill requires the date set for the hearing to be not later than 15 days, but not earlier than seven days, after the provider requests the hearing, unless otherwise agreed to by both BWC and the provider.[49]

Any summary suspension imposed under the bill remains in effect, unless reversed on appeal, until a final adjudication order issued by BWC pursuant to the bill and the Administrative Procedure Act takes effect. BWC must issue its final adjudication order within 75 days after completion of its hearing. A failure to issue the order within the 75-day time period results, under the bill, in dissolution of the summary suspension order but does not invalidate any subsequent, final adjudication order.

The bill also requires that the summary suspension of a certification of a provider not affect the ability of that provider to receive payment for services rendered prior to the effective date of the suspension.[50]

Peer review committee

Definition

The bill expands the example in the definition of peer review committee to include a peer review committee of BWC or the Industrial Commission that reviews the professional qualifications and performance of providers certified by BWC to

[48] R.C. 4121.443(A); O.A.C. 4123-6-02.5.

[49] R.C. 4121.443(B), by reference to R.C. 119.07 and R.C. 119.12, not in the bill.

[50] R.C. 4121.443(C).

participate in the HPP. Continuing law requires the BWC or Commission peer review committee to review the professional qualifications and the performance of providers conducting medical examinations or file reviews for BWC or the Commission.[51]

Confidentiality of proceedings and records

Continuing law prohibits proceedings and records resulting from a peer review committee from being subject to discovery or from being introduced into evidence in any civil action against a health care entity or health care provider. However, under continuing law, this prohibition does not bar the discovery or use in a civil action of information, documents, or records that are available from their original sources so long as the information, document, or record is obtained from the original source and not the committee's records or proceedings.

Nevertheless, the release of information, documents, or records that were produced or presented during a peer review committee or created to document the proceedings does not, under continuing law, affect the confidentiality of other information, documents, or records produced or presented during the committee or created to document the proceedings. Only the information, documents, or records actually released cease to be privileged.

In addition, continuing law allows for health care entities to share information, documents, or records produced or presented during a peer review committee or created to document proceedings as long as the information, documents, or records are used only for peer review purposes.

Similarly, any individual who attends a peer review committee meeting, serves as a member of the committee, works for or on behalf of the committee, or provides information to a committee, is prohibited from testifying in any lawsuit as to evidence or other matters presented during the committee proceedings, or the actions of any committee member. However, continuing law permits an individual to testify as to matters within the individual's knowledge, but the individual cannot be asked about the individual's testimony before the committee, information provided to the committee, or any opinion formed as a result of the committee's activities.[52]

The bill makes the peer review committee confidentiality requirements in continuing law, as explained above, applicable to a BWC peer review committee that is responsible for reviewing the professional qualifications and the performance of providers certified by BWC to participate in the HPP. However, the bill provides that

[51] R.C. 2305.25(E)(2)(j).

[52] R.C. 2305.252(A).

the proceedings and records within the scope of the peer review committee are subject to discovery or court subpoena and may be admitted into evidence in a criminal, administrative, or civil action that is initiated, prosecuted or adjudicated by BWC. The bill also permits BWC to share proceedings and records within the scope of the peer review committee, including claimant records and claimant file information, with law enforcement agencies, licensing boards, and other governmental agencies involved in prosecuting, adjudicating, or investigating an alleged violation of applicable law or administrative rule. BWC's sharing of a record with a law enforcement agency, a licensing board, or another governmental agency does not affect the confidentiality of the record. If BWC chooses to share a confidential record, the recipient is required to take appropriate measures to maintain the confidentiality of the information.[53]

Notice of appeal in workers' compensation claim cases

Current law generally allows a claimant or employer who is subject to an order of the Industrial Commission to appeal that order to the appropriate county court of common pleas. The same sort of appeal is allowed if a claimant or employer is subject to an order of a staff hearing officer, and the Commission refuses to hear an appeal of that decision. In either case, the party wishing to appeal the decision must file a notice of appeal with the common pleas court. The bill requires the name of the Administrator to be included on the notice, in addition to the current law requirement that the notice of appeal state the names of the claimant and the employer, the claim number, the date of the order appealed from, and the fact the appellant is appealing the order.[54]

Ombudsperson system

The Workers' Compensation Ombudsperson System assists claimants and employers in matters dealing with the BWC and the Industrial Commission. The bill places the Chief Ombudsperson and the assistant ombudsperson in the unclassified service (other system staff remain in the classified service). The Chief Ombudsperson, under the bill, serves at the pleasure of the Industrial Commission Nominating Council. As under current law, the Chief Ombudsperson serves a six-year term and cannot be transferred, demoted, or suspended during the Chief's tenure. However, under the bill, the Chief Ombudsperson can be removed by the Nominating Council upon a vote of no fewer than nine Nominating Council members. Currently, the Chief Ombudsperson and assistant ombudspersons can be removed only for malfeasance or neglect of duty upon a notice and a hearing.

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[53] R.C. 2305.252(B).

[54] R.C. 4123.512(B).

The bill requires only the Chief Ombudsperson, rather than all ombudspersons as under current law, to devote the Chief Ombudsperson's full time and attention to the duties of the ombudsperson's office.

Under the bill, in the event of a vacancy in the position of Chief Ombudsperson, the Nominating Council may appoint a person to serve as acting chief ombudsperson until a chief ombudsperson is appointed. The acting chief ombudsperson is under the Nominating Council's direction and control and may be removed by the Nominating Council with or without just cause.

With respect to the assistant ombudspersons, the bill eliminates their six-year terms of service and instead requires them to serve at the pleasure of the Chief Ombudsperson. The bill also eliminates the limitation that an assistant ombudsperson can be removed only on the grounds of malfeasance or neglect of duty upon notice and public hearing. Additionally, the current law restrictions on transfers, demotions, or suspensions no longer apply to assistant ombudspersons under the bill.

The bill requires the ombudsperson system staff, including the Chief Ombudsperson, to comply with Ohio's Ethics Laws and the Nominating Council's human resource and ethics policies. Additionally, the bill applies the current law prohibition against the Chief Ombudsperson or assistant ombudspersons expressing any opinions as to the merit of a claim the correctness of a decision by the various officers or agencies as the decision relates to a claim for benefits or compensation to all ombudsperson system staff. The staff also have a right to examine claim files consistent with the current law authority of the Chief and assistant ombudspersons to examine those files and discuss the contents with the parties in interest.[55]

Public employers and the One Claim Program

The bill permits a state fund, taxing district employer to participate in the One Claim Program.[56] Under that Program, the employer may mitigate the impact of a significant claim that comes into the employer's experience for the first time and that is a contributing factor in the employer being excluded from a group-rated plan under the BWC's group rating program. Currently, only private sector state fund employers may participate in the One Claim Program.

[55] R.C. 4121.45.

[56] R.C. 4123.29(A)(4).

Violation of specific safety requirement assessments

Under continuing law, an employer is prohibited from violating a specific safety requirement to which the employer is subject. If the employer does violate the requirement, and an injury, disease, or death results from the violation, the claimant, under the Ohio Constitution, is entitled to an award of not greater than 50% nor less than 15% of the maximum award established by law in addition to the compensation received under the law for the claim. This is commonly referred to as a VSSR award.

Under the bill, if a state fund employer has paid an assessment for a VSSR, and, in a final administrative or judicial action, it is determined that the employer did not violate the specific safety requirement, the Administrator must reimburse the employer from the Surplus Fund Account created in continuing law for the amount of the assessment the employer paid for the violation.[57]

Actuarial reporting requirement

The bill eliminates the current law requirement that a self-insuring public employer, except for a board of county commissioners with respect to the construction of a sports facility, a board of a county hospital, or a publicly owned utility, have prepared an actuarial report certifying whether the employer's reserved funds, which are required under continuing law, meet all of the following requirements:

- The funds are sufficient to cover the costs the public employer may potentially incur to remain in compliance with Ohio's Workers' Compensation Law.
- The funds are computed in accordance with accepted loss reserving standards.
- The funds are fairly stated in accordance with sound loss reserving principles.[58]

Access to the drug database maintained by the State Board of Pharmacy

The bill requires, rather than permits as under current law, the State Board of Pharmacy, upon receipt of a request from the Administrator, to provide to the Administrator information from the drug database relating to a workers' compensation claimant. This includes any information in the database related to prescriptions for the

[57] R.C. 4123.512(H).

[58] R.C. 4123.353.

claimant that were not covered or reimbursed under the Workers' Compensation Law. Under continuing law, the Board may establish and maintain a drug database. The Board must use the drug database to monitor the misuse and diversion of controlled substances and other dangerous drugs the Board includes in the database pursuant to rules adopted by the Board.

Additionally, under the bill the Board must provide, on receipt of a request from a pharmacist or the pharmacist's Board-approved delegate, to the pharmacist information from the database relating to a current patient of the pharmacist, if the pharmacist certifies in a form specified by the Board that it is for the purpose of the pharmacist's practice of pharmacy involving the patient who is the subject of the request. Currently the Board is permitted, but not required to provide this information.

On receipt of a request from the medical director of a managed care organization (MCO), under the bill the Board must provide to the medical director information from the database relating to a workers' compensation claimant assigned to the MCO, including information in the database related to prescriptions for the claimant that were not covered or reimbursed under the Workers' Compensation Law, if both of the following apply:

(1) The MCO has entered into a contract with the Administrator to participate in the HPP;

(2) The MCO has entered into a data security agreement with the Board.

The required data security agreement governs the MCO's use of the Board's drug database.[59]

Review of workers' compensation fund investment policy and management

Under continuing law, the Workers' Compensation Investment Committee is required to review the performance of the BWC Chief Investment Officer and any investment consultants who are retained by the Administrator. This review is conducted to assure that the investments of the assets of the various workers' compensation funds are made in accordance with the investment policy approved by the BWC Board. Currently, the review is also conducted to assure that the best possible return on investment is achieved. Under the bill, the review is no longer conducted to

[59] R.C. 4729.80 and 4121.447, with a conforming change in R.C. 4729.86.

assure the best possible return on investment is achieved and is instead conducted to assure compliance with the investment policy and effective management of the funds.[60]

Annual actuarial analysis

The bill requires the Administrator to have an actuarial analysis, rather than actuarial audits as under current law, of the State Insurance Fund and other funds specified in the Workers' Compensation Law made at least once a year. The analysis required under the bill must be made and certified by recognized credentialed property or casualty actuaries selected by the BWC Board rather than by recognized insurance actuaries selected by the Board as under current law. The Workers' Compensation Investment Committee must recommend to the Board the actuarial firm to perform the analysis. Currently, the Committee recommends the accounting firm.

The bill also eliminates the current law requirement that the audits (or analysis under the bill) specifically cover the premium rates, classifications, and all other matters involving the administration of the State Insurance Funds and all other funds specified in the Workers' Compensation Law.[61]

Premiums and assessments for amenable employers

If the Administrator finds that an employer is subject to the Workers' Compensation Law (an "amenable" employer), continuing law requires the Administrator to determine the period of time during which the employer was an amenable employer and to provide notice of the determination to the employer. Upon receiving the determination, the employer must provide BWC with payroll covering the period included in the determination. If the employer is an amenable employer at the time of the determination, the employer must pay the amount of premium applicable to that payroll. Under the bill, the amenable employer must also pay assessments applicable to that payroll. Continuing law prescribes procedures for appealing and collecting the amount assessed.[62]

Group-rating

Continuing law requires that each employer seeking to enroll in a group for workers' compensation coverage must have an account in good standing with BWC. The bill requires the Administrator to adopt rules setting forth the criteria by which the Administrator will determine whether an employer's account is in good standing.

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[60] R.C. 4121.129(C).

[61] R.C. 4123.47, with conforming changes in R.C. 4121.129.

[62] R.C. 4123.37, with a conforming change in R.C. 4123.291.

Under current law eliminated by the bill, an account is in good standing if at the time that the agreement is processed no outstanding premiums, penalties, or assessments are due from the employer. The bill also adjusts eligibility to participate in the Group-Rating Program, requiring the group to have at least 100 employer-members (continuing law), or the aggregate premiums of the members, as determined by the Administrator are estimated (rather than expected under current law) to exceed $150,000 during the coverage period.[63]

Self-insuring PEOs and client employers

Under the bill, the Administrator must work with self-insuring PEOs (a PEO that pays benefits and compensation directly to claimants) and with other stakeholders to address the issue of the appropriate experience rating to assign to a client employer that leaves such a PEO to obtain coverage through the State Insurance Fund. The Administrator must prepare a report of the Administrator's findings on the issue and must submit that report to the General Assembly by December 31, 2014.[64]

Unencumbered cash balance in the Workers' Compensation Fund

The bill eliminates a provision of the BWC budget for the FY 2014-FY 2015 biennium that requires any unencumbered cash balance in excess of $45 million in the Workers' Compensation Fund (Fund 7023) on June 30 of each fiscal year be used to reduce the administrative cost rate charged to employers.[65]

Application of statutory changes

With respect to the changes made by the bill to the portions of the Workers' Compensation Law governing other-states' coverage and interstate claims, the bill applies to all claims filed pursuant to the Law on or after the bill's effective date. With respect to the changes described under "**Notice of appeal in workers' compensation claim cases**" above, the bill applies to appeals filed on or after the bill's effective date.[66]

Severability

The bill includes a severability provision. Under this provision, the items of law contained in the bill, and their applications, are severable. If any item of law contained in the bill, or if any application of these items, is held invalid, the invalidity does not

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[63] R.C. 4123.29(A)(4).

[64] Section 8.

[65] Sections 3 and 4.

[66] Sections 6 and 7.

affect other items of law contained in the bill and their applications that can be given effect without the invalid item of law or application.[67]

HISTORY

ACTION	DATE
Introduced	03-18-14
Reported, H. Insurance	04-09-14
Passed House (88-4)	04-09-14
Reported, S. Commerce & Labor	---

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[67] Section 9.