

Other states coverage policy rules 4123-17-24				
Stakeholder feedback and recommendations				
	Stakeholder	Section	Suggestion/Concerns	BWC Response
1.	National Federation of Independent Business Ohio (NFIB/Ohio)	(B)(3) OSCP Application Inspections	<p>We believe there should be more guidance here. "Reasonable inspection" should either be defined in section (A) or, at minimum, limited in some capacity as to what can be inspected. Leaving it broadly defined opens up a realm of possibilities of what could be inspected – entire books of the employer, ledgers, contracts not related to coverage, discussion with employees, etc. It would be helpful if the BWC would identify what documents are necessary for the application, and then this should be limited to inspection of only those documents.</p> <p>The BWC should be required to provide notice of this inspection as well. This is not like a safety inspection where you need to see the day-to-day operations in process to determine if safety rules are being followed, so there is no reason notice cannot be provided so that the employer can make time for the inspection to occur.</p>	<p>Language was added to (B)(3) to specify what BWC would be reviewing during an application inspection.</p> <p>BWC did not intend this inspection to be random, so language was added to reflect that the employer will receive prior notice of any such inspection.</p>
2.	The Ohio Manufacturers' Association (OMA)	(B)(3) OSCP Application Inspections	<p>The rule language is too vague. There should be more guidance and a definition so that an employer understands what is expected of a "reasonable inspection." Notice of inspection should be considered so that an employer is prepared to make any inspection by BWC as efficient as possible.</p>	<p>Language was added to (B)(3) to specify what BWC would be reviewing during an application inspection.</p> <p>BWC did not intend this inspection to be random, so language was added to reflect that the employer will receive prior notice of any such inspection.</p>
3.	NFIB/Ohio	(B)(4)(a) Ohio Location	<p>We think the BWC should make an attempt to define what "Primarily located" means so there are no questions.</p>	<p>Due to the diverse demographics of BWC's policyholders it is difficult to further define <i>primarily located</i>. Any attempt to would be arbitrary and may not adequately reflect the unique situations of our policyholders.</p> <p>BWC's preference is to establish underwriting guidelines in policy which</p>

				sets a threshold for out-of-state payroll.
4.	OMA	(B)(4)(a) Ohio Location	The OMA understand the reasoning for a company to be “primarily located” in Ohio to receive coverage under this new policy. However more guidance or a definition of “primarily located” will help employers understands who qualifies for the coverage.	Due to the diverse demographics of BWC’s policyholders it is difficult to further define <i>primarily located</i> . Any attempt to would be arbitrary and may not adequately reflect the unique situations of our policyholders. BWC’s preference is to establish underwriting guidelines in policy which sets a threshold for out-of-state payroll.
5.	Ohio Chamber of Commerce	(B)(4)(a) Ohio Location	We believe that this eligibility requirement should be strengthened to only allow companies primarily doing business within Ohio to be eligible for the OSCP offered by the BWC. The current draft appears to allow a company that is headquartered in Ohio but primarily does business in other states to meet the eligibility requirement under this section. This could lead to attempts from companies outside of Ohio to create a shell headquarters within Ohio in order to take advantage of the OSCP rates offered by the BWC.	BWC will establish underwriting guidelines in policy requiring a percentage of an employer’s payroll be reported in Ohio. BWC is open to making the requirement headquartered and primarily located in Ohio if the stakeholders feel strongly about this requirement.
6.	OMA	(B)(4)(c) Lapses	This timeframe is inconsistent with normal workers’ compensation policy coverage. For normal coverage an employer cannot lapse more than 40 days in a twelve month period. Changing the rule to be consistent with current BWC policy would be beneficial to employers. With the new prospective payment system, there is a chance more companies may lapse for a short period of time over a twelve month timeframe until they become accustomed to the new system.	Although we understand that the threshold for most BWC programs is 40 days in a twelve month period, we feel that a greater standard is required for this optional policy offering. It is essential to the success and continuation of BWC’s policy offering to issue policies to employees with exceptional payment histories and we believe that no lapses in a year is a reasonable requirement. In addition, if the lapse were truly due to a clerical error, it could be resolved through BWC’s current resolution methods, including the Governor’s one-time-forgiveness.

7.	Ohio Chamber of Commerce	(B)(4)(c) Lapses	<p>The second concern is with 4123-17-24(B)(4)(c). Anecdotally, the change to prospective billing has created some confusion among employers as to when bills are due and what must be paid. This has led to some employers paying a few days late or sometimes the wrong amount which could lead to a temporary lapse in coverage. Many times this is an innocent mistake and not a nefarious act. These employers should not be denied coverage due to a mere clerical error. We would recommend changing the requirement so that the policy would have to lapse for thirty days or more in the prior twelve month period for OSCP eligibility to be denied.</p>	<p>Although we understand that the threshold for most BWC programs is 40 days in a twelve month period, we feel that a greater standard is required for this optional policy offering.</p> <p>It is essential to the success and continuation of BWC's policy offering to issue policy to employees with exceptional payment histories and we believe that no lapses in a year is a reasonable requirement.</p> <p>In addition, if the lapse were truly due to a clerical error, it could be resolved through BWC's current resolution methods, including the Governor's one-time-forgiveness.</p>
8.	Ohio Chamber of Commerce	(B)(4)(c) (B)(4)(d) Lapses and Past Due Balances	<p>The BWC Administrator should have the ability to waive the eligibility requirements under 4123-17-24(B)(4)(c) or (d) in extraordinary circumstances where a policy has lapsed or there is a past due balance. This will allow the Administrator discretion to intervene in situations where an employer would be denied for a reason that may not be in the spirit of the rule.</p>	<p>We believe that if a lapse or past balance is due to extraordinary circumstances, it could be resolved through BWC's current resolution methods, including the Governor's one-time forgiveness.</p> <p>We believe granting the Administrator the discretion to waive eligibility requirement could have negative consequences on the optional policy offering.</p>
9.	NFIB/Ohio	(B)(5) Underwriting Guidelines	<p>We believe the underwriting guidelines should be identified within the rule. Sections (a) and (b) are a good start, but the rule leaves it open for the BWC to make this up as they go along, and that is not fair to employers.</p>	<p>BWC's preference is to establish underwriting guidelines in policy, which can be shared with employers. This would allow BWC to outline the preferred guidelines, while maintaining the necessary ongoing flexibility insurers must have in evaluating risks to insure.</p> <p>In addition to underwriting guidelines set in policy, BWC is also subject to the underwriting guidelines of the contracting carrier as to ensure fairness in selection and pricing of OSCP policies.</p>
10.	OMA	(B)(5) Underwriting Guidelines	<p>While the rule outlines some of the underwriting guidelines for making a determination, in order to be fair to employers all the guidelines should be identified within the rule</p>	<p>BWC's preference is to establish underwriting guidelines in policy, which can be shared with employers. This would</p>

				<p>allow BWC to outline the preferred guidelines, while maintaining the necessary ongoing flexibility insurers must have in evaluating risks to insure.</p> <p>In addition to underwriting guidelines set in policy, BWC is also subject to the underwriting guidelines of the contracting carrier as to ensure fairness in selection and pricing of OSCP policies.</p>
11	Ohio Chamber of Commerce	(B)(6) Employers not eligible	<p>Under 4123-17-24(B)(6), we believe that temporary employment agencies and other staffing entities who have an active state fund workers' compensation policy should be eligible for an OCSP. These entities pay premiums into the state fund in the same way all other employers do and with the same class codes that other employers use. Though policies for these types of employers may be difficult to underwrite, we believe that these employers, who have an active state fund policy, should be able to participate in the same way as all other employers who meet the qualifications.</p>	<p>Temporary employment agencies and staffing entities have a unique employer/employee relationship as it relates to workers' compensation. BWC has developed an approach to provide coverage under the definition of employer as established in Ohio for workers' compensation purposes.</p> <p>As BWC has further studied our planned out of state coverage offering, we have found that there are significant differences in the manner in which each jurisdiction deals with defining of the employer/employee relationship, with each having their own rules and regulations for how temporary employment agencies and staffing entities satisfy their workers' compensation requirement and subsequently assign payroll.</p> <p>At this time, BWC does not feel that it is in a position to extend out of state coverage to temporary staffing entities that conduct business outside the state of Ohio. This position is consistent with that taken by other State Fund entities that have extended out of state coverage to their policyholders.</p> <p>In addition, there are other options available for temporary employment agencies and other staffing entities to secure coverage, including through the</p>

				private market and the various state funds. We will continue to study the issue.
12.	National Association of Professional Employer Organizations (NAPEO)	(B)(6) Employers not eligible	<p>We are concerned the draft prohibits professional employer organizations (PEOs) and our client companies from utilizing the Bureau of Workers' Compensation (BWC)-sponsored other states coverage policy offering.</p> <p>The draft rule outlines eligibility requirements for employers to participate in the BWC other states coverage policy offering. NAPEO believes that if a PEO or a PEO client company has an active state fund workers' compensation policy and meets the other stipulated criteria, they should not be arbitrarily deemed ineligible and instead be treated in the same fashion as any other employer. As currently written, the rule puts PEOs at a competitive disadvantage as compared to other businesses and would also unnecessarily burden small businesses that utilize PEO services.</p>	<p>PEOs have a unique employer/employee relationship as it relates to workers' compensation. BWC has developed an approach to provide coverage under the definition of employer as established in Ohio for workers' compensation purposes.</p> <p>As BWC has further studied our planned out of state coverage offering, we have found that there are significant differences in the manner in which each jurisdiction deals with defining of the employer/employee relationship, with each having their own rules and regulations for how PEOs satisfy their workers' compensation requirement and subsequently assign payroll.</p> <p>At this time, BWC does not feel that it is in a position to extend out of state coverage to PEOs that conduct business outside the state of Ohio. This position is consistent with that taken by other State Fund entities that have extended out of state coverage to their policyholders.</p> <p>In addition, there are other options available for PEOs to secure coverage, including through the private market and the various state funds</p> <p>We will continue to study the issue.</p>
13.	NFIB/Ohio	(B)(7) Bureau Discretion	<p>NFIB/Ohio thinks there should be some sort of appeal process here for employers. If there is not an appeal process, the Administrator should be required to issue a detailed decision so that the Employer thoroughly understands why they were denied OSCP so that the Employer can reapply when/if the requirements are met. This is not helpful to employers if it is a one-shot chance, especially when there is very little guidance as to what is needed for an OSCP application to be approved</p>	<p>Given that OSCP is optional coverage for out of state exposures, BWC does not believe an appeal process is warranted.</p> <p>BWC will provide notice to employers of why they were denied for coverage. The rule has been edited to reflect that language.</p>

				There is no time limit for when they can reapply as long the reason for denial is remedied.
14.	OMA	(B)(7) Bureau Discretion	The rules gives the administrator the sole discretion to approve or deny an application. While this provides flexibility to the bureau it does not necessarily provide opportunity to the employer. The rule should include an appeal process or at the very least require the administrator to outline through a finding why the company was denied. This would allow a company to make an educated decision in whether to reapply.	<p>Given that OSCP is optional coverage for out of state exposures, BWC does not believe an appeal process is warranted.</p> <p>BWC will provide notice to employers of why they were denied for coverage. The rule has been edited to reflect that language.</p> <p>There is no time limit for when they can reapply as long the reason for denial is remedied.</p>
15.	Cathy Miller, Sheakley	(B)(7) Bureau Discretion	The guidelines indicate there is no appeal rights if the BWC denies coverage. Can you explain why? If the policy is denied, and they cannot appeal, is there a time limit on when they may reapply?	<p>Given that OSCP is optional coverage for out of state exposures, BWC does not believe an appeal process is warranted.</p> <p>BWC will provide notice to employers of why they were denied for coverage. The rule has been edited to reflect that language.</p> <p>There is no time limit for when they can reapply as long the reason for denial is remedied.</p>
16.	NFIB/Ohio	(C)(2) Coverage effective when OSCP issued	Is there a timeframe that the BWC is looking at for coverage to be issued? Employers could be waiting and waiting with no guidelines for how long the underwriting process will take.	At this time, BWC cannot estimate how long it will take to underwrite a policy as this depends on many factors including the volume and completeness of applications, and the complexity of employers' operations.
17.	NFIB/Ohio	(D)(3) (D)(4) Renewals	Clarification is needed here as to when the BWC will consider the premium "paid." Will they go by the post-mark/tendered date, or is it receipt of payment by the BWC? Section (3) leaves this open, while section (4) is confusing because in one sentence it reads that payment is determined by the date it's tendered yet indicates if reinstated, the BWC will go by the date payment was received. This needs to be consistent.	<p>BWC will consider the premium paid when it is received by BWC.</p> <p>The rule language has been clarified.</p>

18.	OMA	(D)(3) (D)(4) Renewals	Sections (D)(3) and (D)(4) should clarify what BWC considers the date "paid". The two sections should be rewritten with consistent terms.	BWC will consider the premium paid when it is received by BWC. The rule language has been clarified.
19.	NFIB/Ohio	(E)(3) Audits and Inspections	Our concerns here are very similar to those regarding section (B)(3), except that what is to be audited is defined in this section. There needs to be notice of the final audit, and it should be limited to one, final audit. The rules could be interpreted to include multiple audits if the BWC chooses.	Ohio Administrative Code 4123-17-17 addresses auditing and adjustment of payroll records. This rule already covers OSCP and thus, additional language is not necessary. The rule has been edited to reflect the change.
20.	NFIB/Ohio	(E)(6) Audit Finality	Employers are giving up their rights to dispute the findings if appeal language is not inserted here.	BWC will make every attempt to work with the insured to resolve any audit disputes. If resolution between the bureau and the insurer cannot be made, the audit findings can be appealed to the extent allowable under the laws and procedures of the jurisdiction for which coverage is being provided. Language has been added to (E)(6) to reflect this.
21.	OMA	(E)(6) Audit Finality	The section denies the right to employers to dispute any finding in the audits and inspections. This should be removed.	BWC will make every attempt to work with the insured to resolve any audit disputes. If resolution between the bureau and the insurer cannot be made, the audit findings can be appealed to the extent allowable under the laws and procedures of the jurisdiction for which coverage is being provided. Language has been added to (E)(6) to reflect this.
22.	Cathy Miller, Sheakley	(E)(6) Audit Finality	The final audit/inspection is not final/appealable. Why not? What if there is a clear mistake? How will situations like this be handled?	BWC will make every attempt to work with the insured to resolve any audit disputes. If resolution between the bureau and the insurer cannot be made, the audit findings can be appealed to the extent allowable under the laws and procedures of the jurisdiction for which coverage is being provided.

				Language has been added to (E)(6) to reflect this.
23.	NFIB/Ohio	(F)(1) Policy Cancellation	We think this essentially means “including, but not limited to” and it’s unreasonable for an employer to not understand what could get their policy canceled. This needs to be limited by the reasons provided in the rule.	BWC believes that the rule incorporates all reasons an OSCP may be cancelled. The referenced language has been removed from the rule.
24.	OMA	(F)(1) Policy Cancellation	The language should be limiting. An employer has the right to know how their policy could be canceled.	BWC believes that the rule incorporates all reasons an OSCP may be cancelled. The referenced language has been removed from the rule.
25.	NFIB/Ohio	(F)(1)(e) Policy Cancellation	What constitutes a “refusal”?	Non-compliance by the insured
26.	NFIB/Ohio	(F)(2) Cancellation Finality	Employers are giving up their rights to dispute the findings if appeal language is not inserted here.	An OSCP policy cancellation must follow the laws of the state for which the coverage is being provided. If an employer were to dispute their cancellation, they would need to do so with the insurance regulator of the state for which coverage is being provided. (F) (2) has been edited to reflect this.
27.	OMA	(F)(2) Cancellation Finality	There is no avenue for an employer to dispute the cancelation if this provision is not removed. There should be an option for employers if the bureau cancels the policy.	An OSCP policy cancellation must follow the laws of the state for which the coverage is being provided. If an employer were to dispute their cancellation, they would need to do so with the insurance regulator of the state for which coverage is being provided. (F) (2) has been edited to reflect this.
28.	OMA	(G) Use of loss and payroll information	There is real concern over how a separate policy for OSCP can impact the experience of the policy that covers in-state employees. This rule is too vague to determine the many issues and scenarios that have the potential to occur.	BWC only intends to include payroll and loss information for limited other states coverage where an employer is not reporting any payroll out of state. Language has been added to (G) to reflect that.
29.	Cathy Miller, Sheakley	(G) Use of loss and payroll	I would like a further explanation of what this means. My understanding is that any claims/payroll that the policy has while under the separate insurance policy, may be reviewed and used to	BWC only intends to include payroll and loss information for limited other states coverage where an employer is not

		information	determine their current EM? How will this work exactly, since the claims are not tracked by Ohio BWC?	reporting any payroll out of state. Language has been added to (G) to reflect that. The vendor will be tracking all claims in the program and reporting these back to BWC.
30.	Cathy Miller, Sheakley	(G) Use of loss and payroll information	Since the claims are being managed by the out of state policy, if the claims come back to the employer's policy in Ohio, will Ohio claim numbers being assigned then, and the claim be calculated in the employer's EM? Our concern is that we TPA and BWC may lose a period of time when the employer is under the OSCP policy, for managing the claim appropriately.	BWC only intends to include payroll and loss information for limited other states coverage where an employer is not reporting any payroll out of state. Under an OSCP the insured employer would work directly with the contracting carrier on filed claims and would have access to all claims information. The employer will have the same rights as any other insured employer under the laws and procedures of the jurisdiction for which coverage is being provided.
31.	Cathy Miller, Sheakley	General Question	Will the BWC have any communication with the OSCP provider, for keeping track of any claims that occur under that policy?	Yes, BWC will be reinsuring all claims cost for this program and will monitor all losses associated with the policies.
32.	NFIB/Ohio	Whole Rule	The rules do not say anything about providing a payment plan for the premiums (monthly or quarterly payments) like what is now allowed with prospective billing. Is this something the BWC will consider?	At this time, BWC is not able to provide payment plans for an OSCP. However, BWC would consider offering payment plans at a later date as IT resources become available.
33.	NFIB/Ohio	Whole Rule	Also, there is no mention about how an employer gets a "quote" or proposal before accepting the coverage.	Language in (C)(1) has been added to reflect how the quote will work. <i>An employer whose application for coverage is approved by the bureau will receive a quote for the cost of coverage.</i>
34.	Professional Independent Agents Association of Ohio, Inc.	Whole Rule	PIAA is highly supportive of the efforts of the Ohio Bureau of Workers' Compensation (BWC) to implement an other-states' coverage program for Ohio employers. We support the draft rule related to BWC's other-states' coverage policy offering and appreciate the bureau's continued commitment to providing Ohio's businesses and the independent insurance agent community with a solution to the long-standing problem with other state reciprocity agreements, recognition of Ohio	We thank PIAA for their positive feedback.

			coverage and lack of out-of-state coverage options for Ohio employers operating in other states.	
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