

**10:00 a.m. (EST)**  
**1-866-362-9768**  
**552-970-8972#**



# **Safety & Workers' Compensation Committee**

**Wednesday, February 27, 2019**

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**2019 Safety & Workers'  
Compensation Committee  
Calendar**

**Meetings begin at 10:00 a.m.**  
**Thursday, May 23, 2019**  
**Wednesday, October 2, 2019**

**OMA Safety & Workers' Compensation Committee  
Meeting Sponsor:**





## OMA Safety & Workers' Compensation Committee

February 27, 2019

### AGENDA

<b>Welcome &amp; Self-Introductions</b>	Larry Holmes, Fort Recovery Industries Inc.
<b>BWC Board Update</b>	Tracie Sanchez, Lima Pallet Company
<b>BWC Update</b>	Brian Jackson, OMA Staff
<b>Medical Marijuana Update</b>	Joëlle Khouzam, Bricker & Eckler LLP
<b>Public Policy Report</b>	Rob Brundrett, OMA Staff
<b>Guest Speaker</b>	Stephanie McCloud, Administrator, Ohio BWC
<b>OMA Counsel's Report</b>	Joëlle Khouzam, Bricker & Eckler LLP

Please RSVP to attend this meeting (indicate if you are attending in-person or by teleconference) by contacting Denise: [dlocke@ohiomfg.com](mailto:dlocke@ohiomfg.com) or (614) 224-5111 or toll free at (800) 662-4463.

Additional committee meetings or teleconferences, if needed, will be scheduled at the call of the Chair.

**Thanks to Today's Meeting Sponsor:**



## **Administrator/CEO Stephanie McCloud**



Ohio Governor Mike DeWine nominated Stephanie B. McCloud Administrator/CEO of the Ohio Bureau of Workers' Compensation in January 2019. She leads the largest state-run insurance system in the United States with more than 1,800 employees who serve 242,000 employers and manage nearly 700,000 open claims.

McCloud is a veteran executive with a diverse background that includes 20 years of experience in public administration and workers' compensation. She most recently served as senior vice president at Sedgwick Claims Management Services while managing her private Columbus law firm, McCloud Law LLC.

She began her career as a staff attorney at BWC before serving as legal counsel to both former Governor George Voinovich and the Ohio Department of Transportation. She later joined the office of former Attorney General Jim Petro, first as senior deputy attorney general before advancing to chief counsel.

McCloud is also a former Truro Township Trustee and active community leader. She served six years on the Counselors, Social Workers, Marriage & Family Therapists Board and sits on the board of the Maryhaven behavioral health and addiction treatment center.

McCloud earned a bachelor's degree in journalism from Ohio University and a law degree from the Capital University Law School.

She was a recipient of Columbus Business First's "40 Under 40 Award" in 2010.

**TO: OMA Safety and Workers' Compensation Committee**  
**FROM: Rob Brundrett**  
**RE: Safety and Workers' Compensation Report**  
**DATE: February 27, 2019**

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### **Overview**

2019 brings change to the BWC. Governor DeWine appointed Stephanie McCloud to the lead the Bureau. Former Administrator Morrison will continue to work for the agency in an advisory capacity until she is formally confirmed by the U.S. Senate and takes her seat on the federal bench. The Bureau recently passed a 20% private employer rate cut that will start in the summer. With a new legislature seated, the BWC and IC budget bills will begin the legislative process. Those bills are required to be signed by the Governor by the end of June.

### **Legislation and Rules**

#### **House Bill 79 – Industrial Commission Budget**

The IC budget will get its first hearing this week in the House. Traditionally the IC budget is non-controversial and usually only contains operating appropriations. The bill must be passed and signed by the end of June.

#### **House Bill 80 – Bureau of Workers' Compensation Budget**

Administrator McCloud provided testimony on the budget Tuesday in front of the House Insurance Committee. The budget bill has a 7% increase in funding due to the extra pay period in 2019. The bill traditionally does not contain much policy in the introduced versions. However the General Assembly has been known to make substantive changes to BWC law when debating the bill. Like the IC budget, this bill must be passed and signed in to law by the end of June.

### **BWC Agency Notes**

#### **BWC Board Approves Largest Private Employer Rate Decrease in 60 Years**

This week the Ohio Bureau of Workers' Compensation (BWC) Board of Directors approved a 20% reduction in the average premium rate it charges private employers, which is the largest rate cut in nearly 60 years.

Fewer workplace injuries and falling estimates of future medical costs are driving the recommendation.

The rate reduction is effective July 1 and is projected to save private employers \$244 million over premiums for fiscal year 2019.

Premiums paid to BWC not only cover health care and wages for injured workers, they support BWC's Safety & Hygiene Division, which offers grants, training, consultations and other services to help employers improve workplace safety.

The 20% rate cut represents an average statewide change. The actual premium paid by individual private employers depends on a number of factors, including the expected future claims costs in their industry, their company's recent claims history and their participation in various BWC rebate programs.

### BWC Board Releases MCO Study

The board of directors recently heard a presentation on a second phase of a study of managed care organization (MCO) performance in the Ohio system.

Unlike 20 years ago when Governor Voinovich called the Ohio workers' compensation system the "silent killer of jobs," the Ohio system today is a national leader on any number of metrics, including medical.

However, that success comes at a cost. The study indicates that MCOs are paid 27% of total medical costs; meanwhile, benchmarks in from other programs are 15% of total costs for administrative costs.

That suggests a possible overpayment of \$70 to \$80 million for MCO services. Those costs, of course, are born by employers.

The BWC has established work groups to study this matter in detail.

### BWC Launches Opioid Workplace Safety Program

BWC's pilot program to support employers willing to hire workers struggling to overcome an addiction to opioids and other dangerous substances launched last fall in three counties.

The Opioid Workplace Safety Program will provide up to \$5 million over two years to help employers in Montgomery, Ross and Scioto counties hire, manage and retain workers in recovery.

BWC is partnering with county Alcohol, Drug Addiction and Mental Health boards to coordinate the pilot program. The boards will identify eligible employers and employees, disperse funding and measure results.

### Former Administrator Morrison Nominated for Judgeship

President Trump nominated BWC Administrator Sarah Morrison to serve as U.S. Federal District Court Judge for the Southern District of Ohio. Both U.S. Senators Rob Portman and Sherrod Brown recommended the President nominate Administrator Morrison for the vacancy in Columbus, Ohio, which was created upon the retirement of the Honorable Gregory L. Frost. The nomination will now be vetted by the Senate Judiciary Committee before being considered for confirmation by the full U.S. Senate. The Southern District has court locations in Cincinnati, Columbus, and Dayton and serves more than five million Ohioans in 48 counties. Her official confirmation remains pending.

### Safety Issues

#### OSHA Relieves Some Reporting for Employers with 250+ Employees

The U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) has issued a final rule that eliminates the requirement for establishments with 250 or more employees to electronically submit information from OSHA Form 300 (Log of Work-Related Injuries and Illnesses) and OSHA Form 301 (Injury and Illness Incident Report) to OSHA each year.

OSHA indicates it made this ruling to protect worker privacy.

The final rule does not alter an employer's duty to maintain OSHA Forms 300 and 301 on-site, and OSHA will continue to obtain these forms as needed through inspections and enforcement actions.

Covered establishments are still required to electronically submit information from OSHA Form 300A (Summary of Work-Related Injuries and Illnesses). The deadline for submission is March 2, 2019.

#### OSHA Penalties Increase in 2019

OSHA's civil penalties amounts for violations of workplace safety and health standards will increase in 2019 to adjust for inflation. The adjusted maximum penalty amounts will take effect upon publication in the Federal Register.

The cost-of-living adjustment multiplier for 2019, based on the Consumer Price Index (CPI-U) for the month of October 2018, not seasonally adjusted, is 1.02522. In order to compute the 2019 annual adjustment, the Department of Labor multiplied the most recent penalty amount for each applicable penalty by the multiplier, 1.02522, and rounded to the nearest dollar.

New penalties for willful and repeat violations will be \$132,598 per violation; serious, other-than-serious, and posting requirements are \$13,260 per violation; and failure to abate violations are \$13,260 per day beyond the abatement date.

#### OSHA Releases Silica FAQs for General Industry

Occupational Safety and Health Administration (OSHA) recently published a set of Frequently Asked Questions (FAQs) to provide guidance to general industry employers on application of OSHA's final rule regulating occupational exposure to respirable crystalline silica in general industry (the "silica rule").

OSHA developed the FAQs in consultation with the National Association of Manufacturers (NAM) and the American Foundry Society. Since OSHA published its final silica rule in 2016, the NAM has continued to make the case to OSHA about the rule's heavy burden on manufacturers and the need for reliable guidance to make the rule more workable. These long-awaited FAQs are a good step forward for the industry.

As Introduced

133rd General Assembly  
Regular Session  
2019-2020

H. B. No. 79

Representative Oelslager

**A BILL**

To make appropriations for the Industrial Commission 1  
for the biennium beginning July 1, 2019, and 2  
ending June 30, 2021, and to provide authorization 3  
and conditions for the operation of Commission 4  
programs. 5

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** All items in this section are hereby appropriated 6  
out of any moneys in the state treasury to the credit of the 7  
designated fund. For all appropriations made in this section, 8  
those in the first column are for fiscal year 2020, and those in 9  
the second column are for fiscal year 2021. 10

OIC INDUSTRIAL COMMISSION 11

Dedicated Purpose Fund Group 12

5W30	845321	Operating Expenses	\$	49,697,274	\$	49,885,128	13
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5W30	845402	Rent - William Green	\$	1,150,000	\$	1,150,000	14
		Building					

5W30	845410	Attorney General	\$	3,793,650	\$	3,793,650	15
		Payments					

TOTAL DPF Dedicated Purpose 16

Fund Group	\$	54,640,924	\$	54,828,778	17
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TOTAL ALL BUDGET FUND GROUPS	\$	54,640,924	\$	54,828,778	18
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RENT - WILLIAM GREEN BUILDING 19

The foregoing appropriation item 845402, Rent - William Green Building, shall be used for rent and operating expenses for the space occupied by the Industrial Commission in the William Green Building.

**Section 2.** Law contained in the main operating appropriations act of the 133rd General Assembly that applies generally to the appropriations made in that act also applies generally to the appropriations made in this act.

**Section 3.** The provisions of law contained in this act, and their applications, are severable. If any provision of law contained in this act, or if any application of any provision of law contained in this act, is held invalid, the invalidity does not affect other provisions of law contained in this act and their applications that can be given effect without the invalid provision or application.

**Section 4.** The sections of law contained in this act, and the items of law of which the sections of law contained in this act are composed, are not subject to the referendum under Ohio Constitution, Article II, Section 1d and section 1.471 of the Revised Code and therefore go into immediate effect when this act becomes law.



# Budget Recommendations for Bureau of Workers' Compensation and Industrial Commission Released

*February 14, 2019*

## Governor DeWine Recommends Additional Funding for Ohio Bureau of Workers' Compensation's Substance Use Recovery and Workplace Safety Program

(COLUMBUS, Ohio) – Ohio Governor Mike DeWine today submitted to the General Assembly his recommendations for funding the Ohio Bureau of Workers' Compensation (BWC) and the Ohio Industrial Commission (OIC) for the upcoming 2020-2021 budget biennium.

"This budget reflects our commitment to make Ohio a safe and productive place to work and to ensure those injured on the job receive excellent service and care," said Governor DeWine.

"Our number one goal is to create a culture of safety throughout Ohio," said BWC Administrator/CEO Stephanie McCloud. "This budget helps keep Ohio workplaces safe while keeping costs in check for Ohio employers."

The recommended two-year, \$645 million budget for BWC takes into consideration the proposed 20 percent reduction in the average premium rate BWC charges private employers, the largest rate reduction in nearly 60 years.

The appropriated budgets for BWC and OIC cover the agencies' administrative operations and are supported by workers' compensation premiums paid by Ohio employers. Benefits, including lost wages and medical benefits for injured workers, are paid separately from the State Insurance Fund.

As part of BWC's proposed budget, Governor DeWine is recommending a multi-million dollar increase to BWC's Substance Use Recovery and Workplace Safety Program, which helps employers hire and retain workers recovering from substance use disorders. BWC launched the program in October to support employers in Scioto, Ross, and Montgomery counties. Governor DeWine's proposal would appropriate \$15 million to the program over the biennium to help employers in other parts of the state. The proposed budget also includes \$3 million over the biennium for a statewide safety awareness and education campaign to help make employers aware of the program.

"The Substance Use Recovery and Workplace Safety Program aligns with my RecoveryOhio Plan to empower employers to help workers with substance use

disorders," said Governor DeWine. "By expanding this program, we hope to help more businesses throughout the state maintain their workforce, help suffering employees, and reduce workplace risks."

The recommendations also reflect Governor DeWine's commitment to ensuring workplace safety by proposing \$2 million to create a new Safety and Health Center of Excellence. The proposed center would utilize and expand on BWC's existing occupational safety and health infrastructure to test and deploy advances in science and technology to prevent occupational accidents, injuries, and illnesses.

In addition, the budget proposes \$40 million over the biennium for safety grants, including grants to purchase equipment and improve processes to make workplaces safer; grants to enhance safety and security in schools; and grants and programs to protect firefighters and law enforcement.

The recommended budget for the Ohio Industrial Commission maintains its current staffing levels. OIC conducts over 108,000 hearings annually regarding disputed workers' compensation claims, providing a forum for fair and impartial claims resolution.

"I thank Representative Scott Oelslager for sponsoring the bills, and I look forward to working with Speaker Householder, Senate President Obhoff, and the rest of the legislature on the upcoming budget process," said Governor DeWine.

Ohio Revised Code Section 101.532 requires that the budgets for BWC and the Industrial Commission be enacted in distinct bills, separate from the main appropriations bill. Governor DeWine will submit recommendations for the main operating budget to the General Assembly for consideration on March 15, 2019. The new state fiscal year begins on July 1.

Established in 1912, the Ohio Bureau of Workers' Compensation is the exclusive provider of workers' compensation insurance in Ohio and serves 242,000 public and private employers. With 1,800 employees and assets of approximately \$27 billion, BWC is the largest state-run insurance system in the United States.

# Legislative Budget Office of the Legislative Service Commission

## BWC & OIC Budgets in Brief

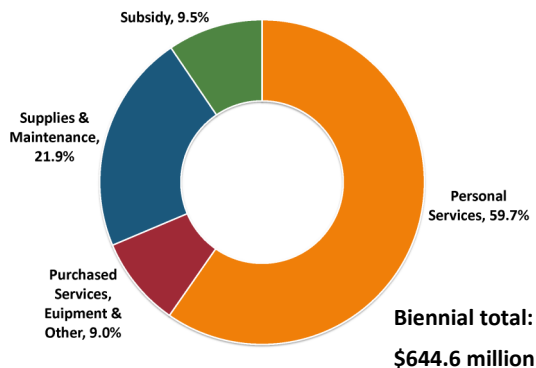
### House Bills 79 & 80 – As Introduced

[www.lsc.ohio.gov/Budget Central](http://www.lsc.ohio.gov/BudgetCentral)

- ◇ R.C. 101.532 requires the Bureau of Worker’s Compensation (BWC) and the Ohio Industrial Commission (OIC) each have its own budget bill, separate from the main operating budget bill.
- ◇ BWC and OIC budgets receive no GRF funding. They are primarily funded by administrative assessments charged to employers. A small portion of the BWC budget is supported by federal grants.
- ◇ BWC administers the largest *exclusive workers’* compensation system in the country. Under such a system, the state, not private insurers, provides workers’ compensation insurance to all public and private employers except for those that qualify for self-insurance.
  - \* Insuring approximately 240,600 Ohio employers, BWC policies cover about 60% of the state’s workforce.
  - \* The bulk of medical and lost-time benefits paid to injured workers are made from the State Insurance Fund, a trust fund that is not subject to appropriations by the General Assembly.
  - \* BWC is governed by an 11-member Board of Directors who are appointed by the Governor.
- ◇ OIC hears appeals of workers’ compensation claim decisions made by BWC and self-insured employers.
  - \* OIC is governed by a panel of three commissioners who are appointed by the Governor.

#### BWC Budget by Expense Category

##### FY 2020-FY 2021 Biennium



- ◇ As of January 2019, BWC employed 1,714 full-time permanent staffers. Personal services or payroll comprises the largest share of its budget, accounting for 59.7% of the FY 2020-FY 2021 biennial budget.
- ◇ In FY 2018, BWC paid \$1.46 billion in total benefits, consisting of \$0.53 billion in medical and \$0.94 billion in lost time benefits.
- ◇ At the end of FY 2018, BWC had about 672,000 pending claims, including about 85,000 claims that were filed in that year.

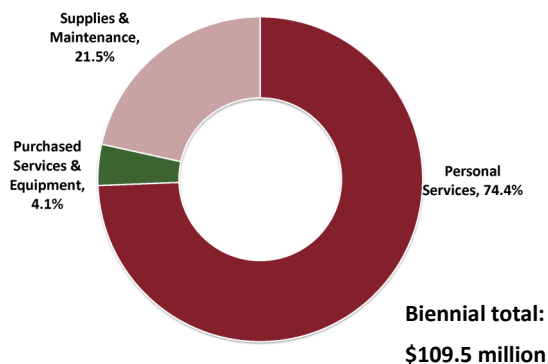
**Workplace health and safety grant (subsidy) funding totals \$28.1 million in FY 2020 and \$33.1 million in FY 2021, including the following:**

- ◇ Substance Use Recovery and Workplace Safety Program (ALI 855618): Funding for this grant program is increased from \$2.5 million in FY 2019 to \$5.0 million in FY 2020 and \$10.0 million in FY 2021.
- ◇ Safety Grants (ALI 855610): This appropriation item is flat funded at \$20.0 million per year.

**Safety and Health Center of Excellence:** The new center of excellence is funded at \$2.0 million in FY 2020 (ALI 855619) and will be located within the Ohio Center of Occupational Safety and Health.

#### OIC Budget by Expense Category

##### FY 2020-FY 2021 Biennium



- ◇ As of January 2019, OIC employed 330 full-time permanent staffers. Personal services or payroll is the largest area of its budget, accounting for 74.4% of the FY 2020-FY 2021 biennial budget.
- ◇ OIC operates five regional and seven district offices across the state to adjudicate disputed claims through three levels of hearings: district hearing officers, staff hearing officers, and the Commission.
- ◇ In FY 2018, OIC heard 112,250 claim appeals, of which 79,055 were heard by district hearing officers (first level), 32,936 by staff hearing officers (second level), and 259 by the Commission. The majority of appeal claims were filed through the Industrial Commission Online Network (ICON).
- ◇ In FY 2018, on average, it took 38 days for a first-level hearing to occur and 35 days for a second-level hearing to occur while the statutory requirement is 45 days to adjudicate the first- and second-level appeals.

# Legislative Budget Office of the Legislative Service Commission

## BWC & OIC Budgets in Brief

### House Bills 79 & 80 – As Introduced

www.lsc.ohio.gov/Budget Central

Fund	ALI	ALI Title	FY 2018 Actual	FY 2019 Estimate	FY 2020 Introduced	FY 2021 Introduced
<b>H.B. 80, As Introduced - BWC budget</b>						
<b>Dedicated Purpose Fund Group</b>						
7023	855407	Claims, Risk and Medical Management	\$107,957,594	\$119,353,057	\$120,939,816	\$124,329,031
7023	855408	Fraud Prevention	\$12,802,628	\$12,945,330	\$14,095,916	\$14,231,413
7023	855409	Administrative Services	\$104,133,380	\$110,241,072	\$117,250,236	\$116,025,396
7023	855410	Attorney General Payments	\$4,621,850	\$4,621,850	\$4,621,850	\$4,621,850
8220	855606	Coal Workers' Fund	\$150,931	\$162,931	\$186,632	\$188,487
8230	855608	Marine Industry	\$48,396	\$65,140	\$78,188	\$78,698
8250	855605	Disabled Workers Relief Fund	\$49,097	\$174,332	\$193,419	\$195,709
8260	855609	Safety and Hygiene Operating	\$21,080,114	\$22,317,031	\$24,079,350	\$23,745,661
8260	855610	Safety Grants	\$9,127,504	\$20,000,000	\$20,000,000	\$20,000,000
8260	855611	Health and Safety Initiative	\$1,245,189	\$6,000,000	\$6,000,000	\$6,000,000
8260	855612	Safety Campaign	\$843,000	\$1,624,355	\$1,500,000	\$1,500,000
8260	855613	Research Grants	\$0	\$2,000,000	\$2,000,000	\$2,000,000
8260	855618	Substance Use Recovery and Workplace Safety Program	\$0	\$2,500,000	\$5,000,000	\$10,000,000
8260	855619	Safety and Health Center of Excellence	\$0	\$0	\$2,000,000	0
<b>Dedicated Purpose Fund Group subtotal</b>			<b>\$262,059,683</b>	<b>\$302,005,098</b>	<b>\$317,945,407</b>	<b>\$322,916,245</b>
<b>% change</b>			<b>--</b>	<b>15.2%</b>	<b>5.3%</b>	<b>1.6%</b>
<b>Federal Fund Group</b>						
3490	855601	OSHA Enforcement	\$1,630,654	\$1,676,000	\$1,676,000	\$1,676,000
3FW0	855614	BLS SOII Grant	\$132,393	\$195,104	\$195,104	\$195,104
3FW0	855615	NIOSH Grant	\$150,347	\$200,000	\$24,995	\$0
<b>Federal Fund Group sub-total</b>			<b>\$1,913,394</b>	<b>\$2,071,104</b>	<b>\$1,896,099</b>	<b>\$1,871,104</b>
<b>% change</b>			<b>--</b>	<b>8.2%</b>	<b>-8.4%</b>	<b>-1.3%</b>
<b>BWC all-funds budget total</b>			<b>\$263,973,077</b>	<b>\$304,076,202</b>	<b>\$319,841,506</b>	<b>\$324,787,349</b>
<b>% change</b>			<b>--</b>	<b>15.2%</b>	<b>5.2%</b>	<b>1.5%</b>
<b>H.B. 79, As Introduced - OIC budget</b>						
<b>Dedicated Purpose Fund Group</b>						
5W30	845321	Operating Expenses	\$41,276,260	\$47,223,650	\$49,697,274	\$49,885,128
5W30	845402	Rent - William Green Building	\$1,017,838	\$1,150,000	\$1,150,000	\$1,150,000
5W30	845410	Attorney General Payments	\$3,793,650	\$3,793,650	\$3,793,650	\$3,793,650
<b>OIC budget total</b>			<b>\$46,087,747</b>	<b>\$52,167,300</b>	<b>\$54,640,924</b>	<b>\$54,828,778</b>
<b>% change</b>			<b>--</b>	<b>13.2%</b>	<b>4.7%</b>	<b>0.3%</b>
<b>H.B. 79 &amp; H.B. 80, As Introduced</b>						
<b>BWC &amp; OIC budget grand total</b>			<b>\$310,060,824</b>	<b>\$356,243,502</b>	<b>\$374,482,430</b>	<b>\$379,616,127</b>
<b>% change</b>			<b>--</b>	<b>14.9%</b>	<b>5.1%</b>	<b>1.4%</b>

As Introduced

133rd General Assembly  
Regular Session  
2019-2020

H. B. No. 80

Representative Oelslager

**A B I L L**

To make appropriations for the Bureau of Workers' 1  
Compensation for the biennium beginning July 1, 2  
2019, and ending June 30, 2021, and to provide 3  
authorization and conditions for the operation of 4  
the Bureau's programs. 5

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** All items in this section are hereby appropriated 6  
out of any moneys in the state treasury to the credit of the 7  
designated fund. For all appropriations made in this act, those in 8  
the first column are for fiscal year 2020, and those in the second 9  
column are for fiscal year 2021. 10

BWC BUREAU OF WORKERS' COMPENSATION 11

Dedicated Purpose Fund Group 12

7023 855407 Claims, Risk and \$ 120,939,816 \$ 124,329,031 13  
Medical Management

7023 855408 Fraud Prevention \$ 14,095,916 \$ 14,231,413 14

7023 855409 Administrative \$ 117,250,236 \$ 116,025,396 15  
Services

7023 855410 Attorney General \$ 4,621,850 \$ 4,621,850 16  
Payments

8220 855606 Coal Workers' Fund \$ 186,632 \$ 188,487 17

8230 855608 Marine Industry \$ 78,188 \$ 78,698 18

8250	855605	Disabled Workers Relief Fund	\$	193,419	\$	195,709	19
8260	855609	Safety and Hygiene Operating	\$	24,079,350	\$	23,745,661	20
8260	855610	Safety Grants	\$	20,000,000	\$	20,000,000	21
8260	855611	Health and Safety Initiative	\$	6,000,000	\$	6,000,000	22
8260	855612	Safety Campaign	\$	1,500,000	\$	1,500,000	23
8260	855613	Research Grants	\$	2,000,000	\$	2,000,000	24
8260	855618	Substance Use Recovery and Workplace Safety Program	\$	5,000,000	\$	10,000,000	25
8260	855619	Safety and Health Center of Excellence	\$	2,000,000	\$	0	26
TOTAL DPF Dedicated Purpose Fund Group			\$	317,945,407	\$	322,916,245	27
Federal Fund Group							28
3490	855601	OSHA Enforcement	\$	1,676,000	\$	1,676,000	29
3FW0	855614	BLS SOII Grant	\$	195,104	\$	195,104	30
3FW0	855615	NIOSH Grant	\$	24,995	\$	0	31
TOTAL FED Federal Fund Group			\$	1,896,099	\$	1,871,104	32
TOTAL ALL BUDGET FUND GROUPS			\$	319,841,506	\$	324,787,349	33
WORKERS' COMPENSATION FRAUD UNIT							34
Of the foregoing appropriation item 855410, Attorney General Payments, \$828,200 in each fiscal year shall be used to fund the expenses of the Workers' Compensation Fraud Unit within the Attorney General's Office. These payments shall be processed at the beginning of each quarter of each fiscal year and deposited into the Workers' Compensation Section Fund (Fund 1950) used by the Attorney General.							35 36 37 38 39 40 41
SAFETY AND HYGIENE							42

Notwithstanding section 4121.37 of the Revised Code, the 43  
Treasurer of State shall remit \$24,080,000 cash in fiscal year 44  
2020 and \$23,746,000 cash in fiscal year 2021 from the State 45  
Insurance Fund to the state treasury to the credit of the Safety 46  
and Hygiene Fund (Fund 8260). 47

**SAFETY GRANTS 48**

Notwithstanding section 4121.37 of the Revised Code, the 49  
Treasurer of State shall remit \$20,000,000 in cash in fiscal year 50  
2020 and \$20,000,000 in cash in fiscal year 2021 from the State 51  
Insurance Fund to the state treasury to the credit of the Safety 52  
and Hygiene Fund (Fund 8260) to be used for Safety Grants. 53

**HEALTH AND SAFETY INITIATIVE 54**

Notwithstanding section 4121.37 of Revised Code, the 55  
Treasurer of State shall remit \$6,000,000 in cash in fiscal year 56  
2020 and \$6,000,000 in cash in fiscal year 2021 from the State 57  
Insurance Fund to the state treasury to the credit of the Safety 58  
and Hygiene Fund (Fund 8260). These amounts shall be used under 59  
appropriation item 855611, Health and Safety Initiative, for the 60  
purpose of creating and operating a health and wellness program. 61

**SAFETY CAMPAIGN 62**

Notwithstanding section 4121.37 of the Revised Code, the 63  
Treasurer of State shall remit \$1,500,000 in cash in fiscal year 64  
2020 and \$1,500,000 in cash in fiscal year 2021 from the State 65  
Insurance Fund to the state treasury to the credit of the Safety 66  
and Hygiene Fund (Fund 8260). These amounts shall be used under 67  
appropriation item 855612, Safety Campaign, for the purpose of 68  
creating and operating a statewide safety awareness and education 69  
campaign. 70

**FEDERAL GRANT PROGRAMS 71**

The foregoing appropriation item 855609, Safety and Hygiene 72

Operating, may be used to provide the state match for federal 73  
grant funding received by the Division of Safety and Hygiene. 74

VOCATIONAL REHABILITATION 75

The Bureau of Workers' Compensation and the Opportunities for 76  
Ohioans with Disabilities Agency may enter into an interagency 77  
agreement for the provision of vocational rehabilitation services 78  
and staff to mutually eligible clients. The Bureau may provide 79  
funds from the State Insurance Fund to fund vocational 80  
rehabilitation services and staff in accordance with the 81  
interagency agreement. 82

RESEARCH GRANTS 83

Notwithstanding section 4121.37 of the Revised Code, the 84  
Treasurer of State shall remit \$2,000,000 in cash in fiscal year 85  
2020 and \$2,000,000 in cash in fiscal year 2021 from the State 86  
Insurance Fund to the state treasury to the credit of the Safety 87  
and Hygiene Fund (Fund 8260). These amounts shall be used under 88  
appropriation item 855613, Research Grants, for the purpose of 89  
creating and operating the occupational safety and health research 90  
program. 91

OPIOID WORKPLACE SAFETY PROGRAM 92

Notwithstanding section 4121.37 of the Revised Code, the 93  
Treasurer of State shall remit \$5,000,000 in cash in fiscal year 94  
2020 and \$10,000,000 in cash in fiscal year 2021 from the State 95  
Insurance Fund to the state treasury to the credit of the Safety 96  
and Hygiene Fund (Fund 8260). These amounts shall be used under 97  
appropriation item 855618, Opioid Workplace Safety Program, for 98  
the purpose of creating and operating the opioid workplace safety 99  
program. 100

SAFETY AND HEALTH CENTER OF EXCELLENCE 101

Notwithstanding section 4121.37 of the Revised Code, the 102



Treasurer of State shall remit \$2,000,000 in cash in fiscal year 103  
2020 from the State Insurance Fund to the state treasury to the 104  
credit of the Safety and Hygiene Fund (Fund 8260). These amounts 105  
shall be used under appropriation item 855619, Safety and Health 106  
Center of Excellence, for the purpose of creating a center of 107  
excellence at the Ohio Center of Occupational Safety and Health. 108

**Section 2.** DEPUTY INSPECTOR GENERAL FOR BWC AND OIC FUNDING 109

To pay for the FY 2020 costs related to the Deputy Inspector 110  
General for the Bureau of Workers' Compensation and Industrial 111  
Commission, on July 1, 2019, and January 1, 2020, or as soon as 112  
possible thereafter, the Director of Budget and Management shall 113  
transfer \$212,500 in cash from the Workers' Compensation Fund 114  
(Fund 7023) to the Deputy Inspector General for the Bureau of 115  
Workers' Compensation and Industrial Commission Fund (Fund 5FT0). 116

To pay for the FY 2021 costs related to the Deputy Inspector 117  
General for the Bureau of Workers' Compensation and Industrial 118  
Commission, on July 1, 2020, and January 1, 2021, or as soon as 119  
possible thereafter, the Director of Budget and Management shall 120  
transfer \$212,500 in cash from the Workers' Compensation Fund 121  
(Fund 7023) to the Deputy Inspector General for the Bureau of 122  
Workers' Compensation and Industrial Commission Fund (Fund 5FT0). 123

If additional amounts are needed, the Inspector General may 124  
seek Controlling Board approval for additional transfers of cash 125  
and to increase the amount appropriated in appropriation item 126  
965604, Deputy Inspector General for the Bureau of Workers' 127  
Compensation and Industrial Commission. 128

**Section 3.** Law contained in the Main Operating Appropriations 129  
Act of the 133rd General Assembly that applies generally to the 130  
appropriations made in that act also applies generally to the 131  
appropriations made in this act. 132

**Section 4.** The provisions of law contained in this act, and 133  
their applications, are severable. If any provision of law 134  
contained in this act, or if any application of any provision of 135  
law contained in this act, is held invalid, the invalidity does 136  
not affect other provisions of law contained in this act and their 137  
applications that can be given effect without the invalid 138  
provision or application. 139

**Section 5.** Except as otherwise specifically provided in this 140  
act, the amendment, enactment, or repeal by this act of a section 141  
of law is exempt from the referendum under Ohio Constitution, 142  
Article II, Section 1d and section 1.471 of the Revised Code and 143  
therefore takes effect immediately when this act becomes law. 144



## **House Insurance Committee**

February 26, 2019

Ohio Bureau of Workers' Compensation  
Administrator/CEO Stephanie McCloud  
House Bill 80

Good morning Chairman Brinkman, Vice Chairman Antani, Ranking Member Boggs, and members of the House Insurance Committee. My name is Stephanie McCloud, and I am the Administrator and CEO of the Ohio Bureau of Workers' Compensation, or BWC, as we call it. I am here today to provide testimony on House Bill 80, which contains BWC's budget for fiscal years 2020 and 2021.

First, allow me to give you a brief overview of our agency.

With assets totaling approximately \$27 billion, BWC is the largest state-fund workers' compensation insurance system in the United States. We are also one of the top 10 largest underwriters of workers' compensation insurance in the nation. We provide insurance coverage to approximately 60% of Ohio's workforce. The remaining workers receive coverage directly through self-insured employers whose size and financial strength allow them to retain the risk for their companies' workers' compensation claims. In fiscal year 2018, BWC provided workers' compensation insurance coverage to 242,000 employers, approved more than 85,000 new claims, and paid \$1.5 billion in wage loss and medical benefits while collecting \$1.2 billion in premium and assessment income.

Our budget for fiscal years 2020 and 2021 supports BWC's mission to protect Ohio's workers and employers through the prevention, care and management of workplace injuries and illnesses at fair rates. It also emphasizes the priorities put forth by Gov. Mike DeWine to invest in Ohio's families and future.

First and foremost, the programs and initiatives laid out in this budget reflect an investment in Ohio's future. They make Ohio's workplaces safer, ensuring more Ohio workers return home after their work day safe and sound. Our budget proposal promotes wellness and supports new

options to address the devastating substance use crisis while we continue to ensure those who are injured get the care they need to get better and back to their lives.

This budget also builds BWC's partnership with the business community. It aims to minimize bureaucracy, keep rates low and provide money saving options so employers can focus their attention and dollars on growing Ohio's economy. It also helps local governments focus their resources on items important to their communities.

In addition to what it lets us do, it also impacts how we do it. Gov. DeWine and Lt. Gov. John Husted have made it clear Ohioans deserve an efficient government that utilizes data and technology to provide better service. This budget will provide funding to support the employment of data analytics to make informed business decisions, and it allows us to continue investing in technology that ultimately saves money, improves customer service and enhances our relationship with our providers and other business partners.

In comparison to our last budget, this budget reflects an 8.7% increase over the adjusted appropriations for fiscal years 2018 and 2019. This increase can largely be attributed to the 27<sup>th</sup> additional pay period in fiscal year 2020, the 2.75% increase in wages due to the last collective bargaining agreement and additional support for our Substance Use Recovery and Workplace Safety Program. The increase would support expanding the program to other counties and providing support staff to ensure the program is running efficiently and appropriately.

In total, considering BWC's continued commitment to operate as a world-class workers' compensation system, we are proposing an annual budget of \$319.8 million for fiscal year 2020 and an annual budget of \$324.8 million for fiscal year 2021, totaling \$644.6 across the biennium.

Over the course of the last biennium, BWC strengthened our commitment to protecting Ohio's workers, improved the lives of injured workers and boosted the state's economic viability.

Among our actions:

**We issued \$2.3 billion in rebates to Ohio employers.** We issued two rebates over the past two years. In fiscal year 2018, we issued a \$1 billion rebate totaling 66% of the annual premium paid by Ohio employers. In fiscal year 2019, we issued a \$1.3 billion rebate totaling 85% of the annual premium paid. This brings the total rebates paid since fiscal year 2013 to \$4.3 billion, including \$560 million in rebates to local government employers such as schools, cities and counties.

**We reduced rates for public and private employers.** We have reduced average rates paid by private and public employers to their lowest levels in decades. At the end of fiscal year 2018, we were collecting \$2.1 billion less in premiums than we did in 2010. This includes \$1.7 billion less for private employers and \$434 million less for public employers. This was achieved by reducing average rates for private employers by 35% and for public employers by nearly 34%.

**We reduced workplace injuries and claims.** Our efforts to reach out to Ohio employers and create a culture of safety in this state are working. We've seen the number of employers using BWC safety services grow by 70% since 2010. Recently released data puts Ohio's injury rate at 2.7 injuries per 100 workers in 2017. That's compared to a national average of 3.1 injuries per 100 workers. Ohio's injury rate is also better than each of our neighboring states.

Meanwhile, our claims have fallen steadily — approximately 85,000 new claims were allowed in fiscal year 2018, down from 104,000 in 2010. Last year we launched our BeSafeOhio.com website and statewide safety campaign to encourage Ohioans to be safe at home and at work, raising awareness about the most common injuries in both places — slips, trips and falls, over-exertions and driving safety.

**We established programs to protect those who serve others.** Since 2011, BWC has grown its Safety Intervention Grant program from \$5 million to \$20 million annually. In doing so, we have also targeted dollars for workers that serve others at a risk to themselves. Over the past year, we have awarded 456 grants totaling \$4.7 million for protective equipment for firefighters. We have also awarded 50 grants totaling \$587,000 to reduce injuries among individuals who work with people with disabilities. Based on the success of those programs, we set aside \$4 million for protective equipment for law enforcement and \$4 million to improve safety in our schools.

**We created a wellness program for employees of small businesses.** Knowing an individual's health and wellness plays a role in both preventing and recovering from injuries, BWC created "Better You, Better Ohio!" This wellness program provides resources and services to employees who work for small employers in high-risk industries. The program, with 6,000 enrollees in its first year, allows workers to take ownership of their health and well-being, providing incentives for things like health assessments, biometric screenings and health coaching.

**We continued to address Ohio’s substance use epidemic.** Since 2011, BWC has been a leader in reducing the abuse of prescription opioids, putting in place rules and controls to curb opioid misuse.

Between 2011 and 2018, the number of opioid doses prescribed in the BWC system fell 66 percent. These decreases are also reflected in our drug costs. The department's total drug costs fell to \$86 million in 2017, 35% less than in 2011. That includes \$24 million less on opioids. A series of rules, including requiring best practices in prescribing and considering conservative treatment related to back injuries, have helped. In addition, our board just last week voted to remove OxyContin and generic sustained-release oxycodone from our formulary and replaced it with an abuse-deterrent form of the drug.

Last fall we launched a \$2.5 million project in Montgomery, Scioto and Ross counties to encourage employers to hire and retain workers in recovery. Our Substance Use Recovery and Workplace Safety Program pays for pre-employment, random and reasonable suspicion drug testing and provides training to help employers manage those in recovery. This budget reflects a \$5 million commitment to this program in 2020 and a \$10 million commitment for 2021 so we can expand the program to other areas of the state. We know having a good job is critical to a successful recovery and helping those in recovery work safely in the workplace keeps everyone safe. Additionally, we are considering a program to reduce the opioid medication left over in medicine cabinets across Ohio by providing an opioid neutralization bag with every “first fill” prescription.

Our budget request for 2020 and 2021 reflects our commitment to Ohio’s future. It will allow us to not only fulfill our mission of protecting Ohio’s workers and employers, but also to be a catalyst for a safe, healthy, and prosperous Ohio. Management staff and our Board of Directors have outlined the following goals to ensure BWC is well-positioned for the future:

### **Talent Management**

Talent management is critical for BWC to continue its progress toward becoming a world-class organization. We must attract, retain, and develop quality employees while offering a vibrant, positive workplace culture that makes BWC an employer-of-choice.

To that end, we are working on strategies to improve recruitment, retention, and succession planning. We will use education and training to engage and empower our workforce. We will also continue BWC’s Leadership Development Program, which is designed to allow front-line staff the opportunity to build on their competencies and grow them into future BWC leaders.

## **Communications and Outreach**

BWC will elevate communications and outreach activities to support operations, strengthen customer and partner relationships, and advance our strategic plan framework.

We will strive to better understand customer expectations while empowering staff with the authority and flexibility to meet those expectations.

We are considering the possibility of a new name and new brand for BWC. We are reviewing whether our name reflects who we are, what we do, or what we want to become – we provide much more than compensation to injured workers. We are safety, prevention, health and wellness; we provide security to Ohio’s employers; and we contribute to the economic well-being of the State. Our name should reflect this great work.

We will continue to grow and refine two annual events that provide education to thousands of Ohio employers and providers. Combined, the Ohio Safety Congress and Expo and the Ohio Workers’ Compensation Medical and Health Symposium draw more than 8,000 safety and medical experts annually and offer hundreds of courses that make workplaces safer and improve care for injured workers.

## **Strong and Stable Finances**

BWC will manage the financial and enterprise risks associated with its operations by maintaining an adequate net position.

We continue to focus on completing efforts related to the replacement of the system we use to develop base rates, expected loss rates, and experience modification factors. This will provide us with better data related to rate-making, claims management and the lump-sum settlement process.

## **Innovation and Technology**

Under innovation and technology, we will focus on efforts to increase operational efficiencies and improve the customer experience. Major targeted functions include robotic process automation, continued enhancements to our web site user experience, and developing new customer portals. We also plan functional and technical improvements to our core business system and updates to our digital storage and imaging systems. Upgrades or replacements are also planned for our Rates & Payments applications and Managed Care Organization outcome analytics. We will also implement a new analytics roadmap system, paperless options for employers, and augmented intelligent fraud detection capabilities.

In each case, our aim is to increase the capabilities of the agency to provide excellent quality, cost effective and timely services to our customers.

## **Safety and Wellness**

In safety and wellness, we will keep Ohio's workers safe, healthy, and productive by expanding our innovative safety and wellness programs while reducing the cost of on-the-job injuries and illnesses.

We are considering a **Safety and Health Center of Excellence** to position BWC as a thought leader in providing valuable resources to Ohio employers and workers.

Our **Ohio Occupational Safety and Health Research Program** will continue to provide funding for research projects up to \$250,000 per project over a duration of 12 to 24 months with Ohio not-for-profit higher education institutions.

We will continue **Safety Intervention Grant** funding at \$20 million in each year of the biennium.

Our **Enhanced Care Pilot Program (ECP)** will continue for 18 months to gather more data and measure its efficacy. This program explores a health care delivery model where the injured worker's physician of record addresses the work injury while coordinating with other physicians to address comorbidities and other barriers to recovery. This ongoing study is limited to knee-injury claims for now.

The pharmacy department will develop a **Medication Therapy Management (MTM) program** to more effectively review injured-worker medication regimens. This program will include a pharmacist review of the complete medication list for an injured worker with recommendations for additions, discontinuations and new medication or dose changes.

We will establish a review and strategic plan for the Health Partnership Program (HPP) based on the fiscal year 2019 study of the Managed Care Organizations' impact on the HPP system.

## **Nimble and Agile**

We strive to be a nimble and agile organization so we can respond quickly to changing customer needs and make meaningful service improvements. We will employ the strategic use of data analytics and other innovative practices to continue our progress on that goal.



As our use of data analytics matures, we will move toward predictive modeling to increase operational quality and excellence.

We will create a cross-functional innovation team to explore potential new products, services, processes, and business models to meet the changing needs of Ohio's workforce and the new technology driven economy to foster an innovative workplace culture.

### **Conclusion**

In summary, between these initiatives and many others that reflect BWC's commitment to operating a world-class workers' compensation system, we are proposing an annual budget of \$319.8 million for fiscal year 2020 and an annual budget of \$324.8 for fiscal year 2021. Costs for our payroll projections are consistent with BWC's workforce plan and personnel ceilings. Provisions have been made to account for an additional pay period in fiscal year 2020 and for salary increases per the approved union contracts for both fiscal years of the biennium.

We are submitting this budget request in accordance with OBM's budget guidelines. On behalf of BWC, I appreciate your consideration and look forward to further discussions relative to this submission. Thank you for your time. I am happy to answer any questions you might have.

Sincerely,

Stephanie B. McCloud  
Administrator/CEO



## NEWS RELEASE

Feb. 22, 2019

### **Average private employer workers' comp rates to drop 20 percent**

COLUMBUS — The Ohio Bureau of Workers' Compensation (BWC) Board of Directors today approved a 20 percent reduction in the average premium rate it collects from private employers. The reduction is BWC's largest in nearly 60 years.

"We're pleased to continue the trend of falling rates with a reduction that will save Ohio private employers more than \$200 million next year," said BWC Administrator/CEO Stephanie McCloud.

McCloud said safer workplaces resulting in fewer and less costly workplace injury claims and continued lower inflation of medical costs are among the factors that make the reduction possible. Claims have fallen 18 percent since 2010 to 85,136 in 2018.

The cut follows a 12 percent reduction last July for private employers and 12 percent rate reduction for public employers — counties, cities, schools and others — that went into effect Jan. 1. Overall, the average rate levels for the 242,000 Ohio employers in the BWC system are at their lowest in at least 40 years.

The 20 percent rate cut represents an average statewide change. The actual total premium paid by individual private employers depends on a number of factors, including the expected future claims costs in their industry, their company's recent claims history, participation in various BWC rebate programs as well as assessments collected to fund the operations of the system. The board will consider these assessment rates during its next meeting in March.

The reduction will be effective beginning July 1.

###

November 13, 2018

# **BWC Board Presentation**

**MCO Impact Study**

# Workers compensation managed care organization impact study



**Deliverable 1: Quantitative and qualitative report: Impacts that MCOs have had on the Ohio Workers' compensation system**



**Deliverable 2: Report identifying the strength and weakness of the current MCO environment, with recommendations on opportunities to further enhance the system**



**Deliverable 3: Assessment of the current MCO performance measurement protocol**



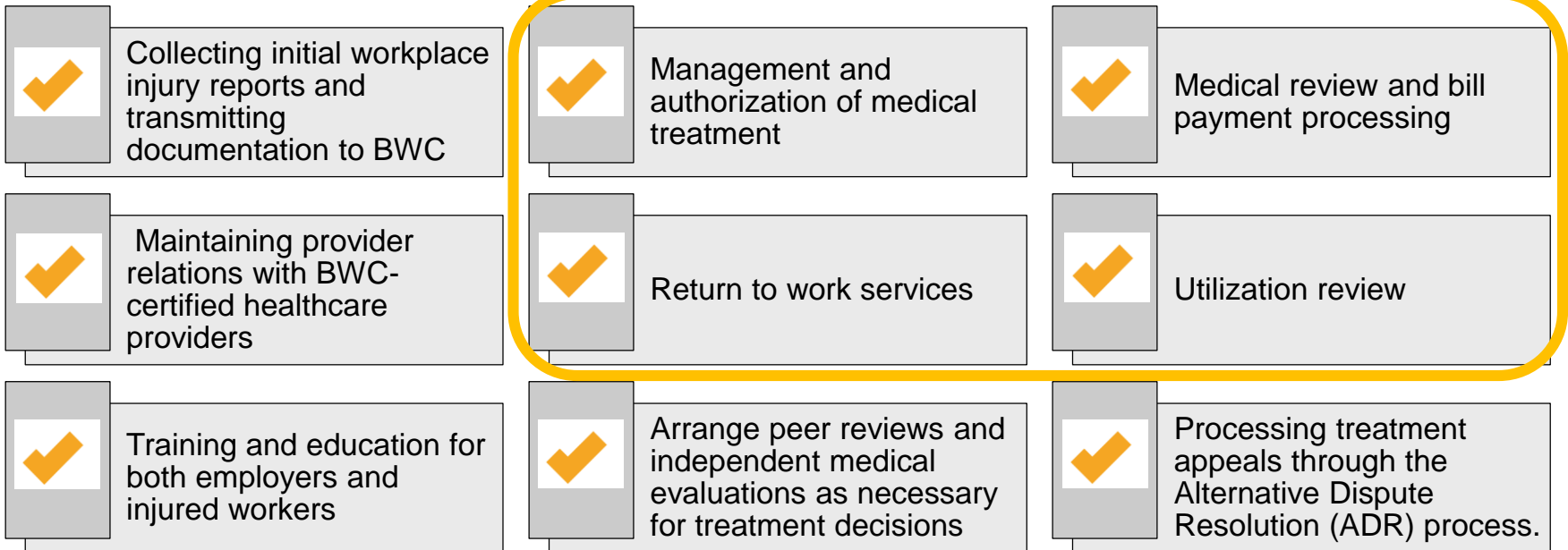
**Deliverable 4: Assessment of the current MCO payment and incentive methodology**



**Deliverable 5: Comparative analysis of BWC's current approach to procurement of medical management services**

# Objective

## Evaluation of the impact of managed care organizations on Ohio's workers' compensation system.



Satisfaction

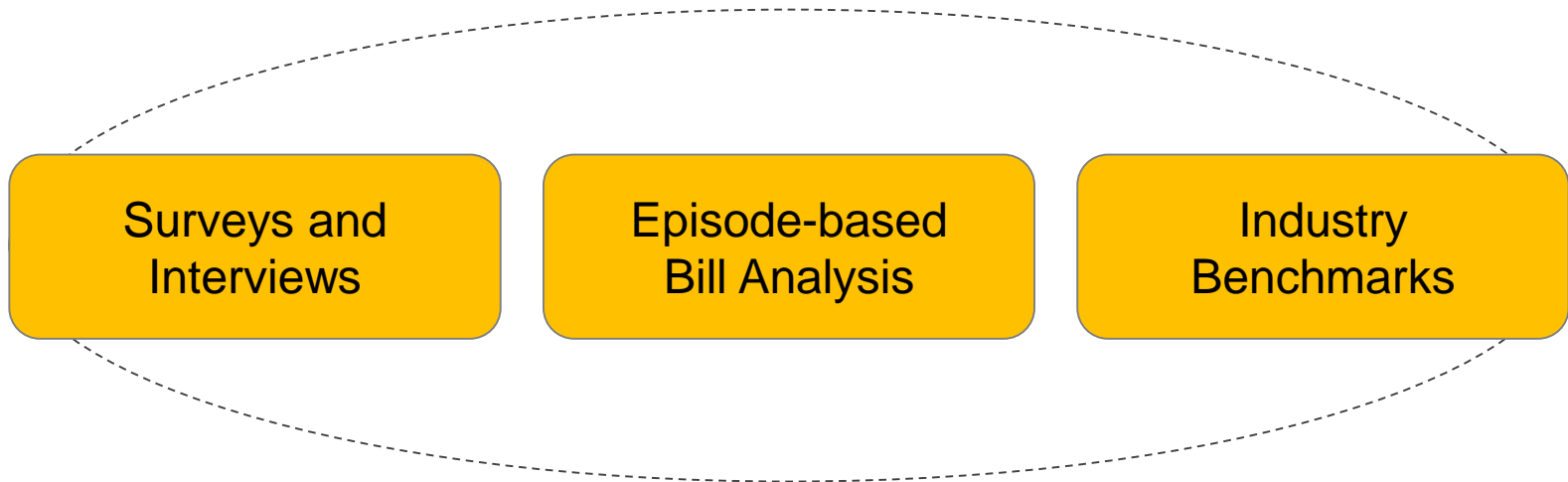
Efficiency

Benchmark

Value

# Analytic Methods

- Mixed-methods (quantitative and qualitative analysis)
- Contextualized with industry, market and medical data
- Analytical expertise in medical management of conditions studied



# Episodes of Care

An Episode of care is a defined set of services provided to treat a clinical condition or procedure

Episode of Care enhanced data allows stakeholders to focus on cost, services and quality.

- The episode of care algorithm uses codes reported on claims or bills to analyze treatment and condition groups for specific time periods
- Episodes are an analytical lens examining the value of care delivered for the treatment of specific injuries, disease conditions and procedures.



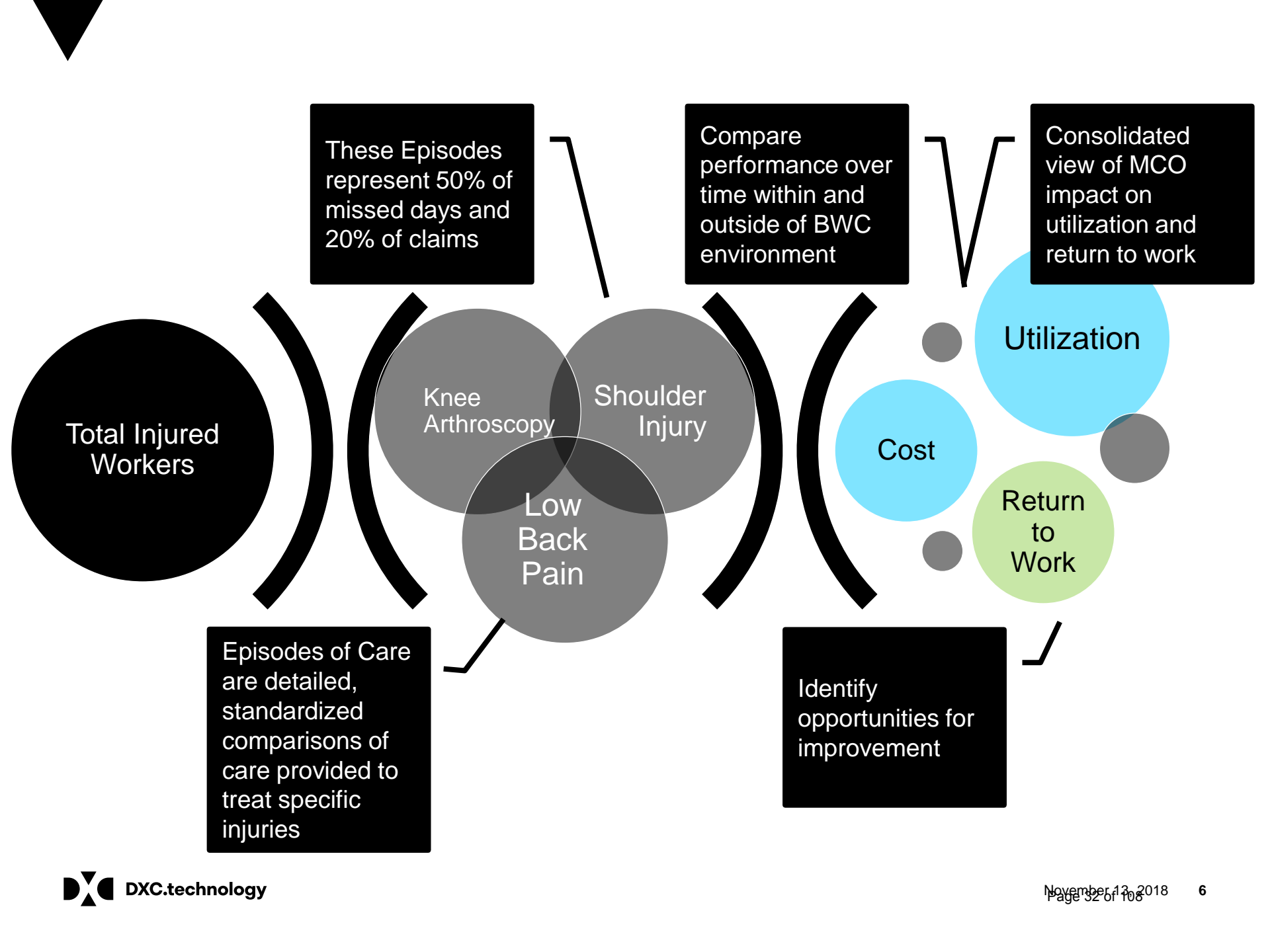
**Ohio**  
Ohio  
Department  
of Medicaid

- 43 Episodes of Care for Acute, Chronic and Behavioral Health
- 33M claims examined
- 5M Episodes Created
- 18,000+ Providers Measured



**Tennessee**  
TennCare

- 48 Episodes of Care for Acute, Chronic and Behavioral Health
- 18M claims examined
- 2.5M Episodes Created



These Episodes represent 50% of missed days and 20% of claims

Compare performance over time within and outside of BWC environment

Consolidated view of MCO impact on utilization and return to work

Total Injured Workers

Knee Arthroscopy  
Shoulder Injury  
Low Back Pain

Cost

Utilization

Return to Work

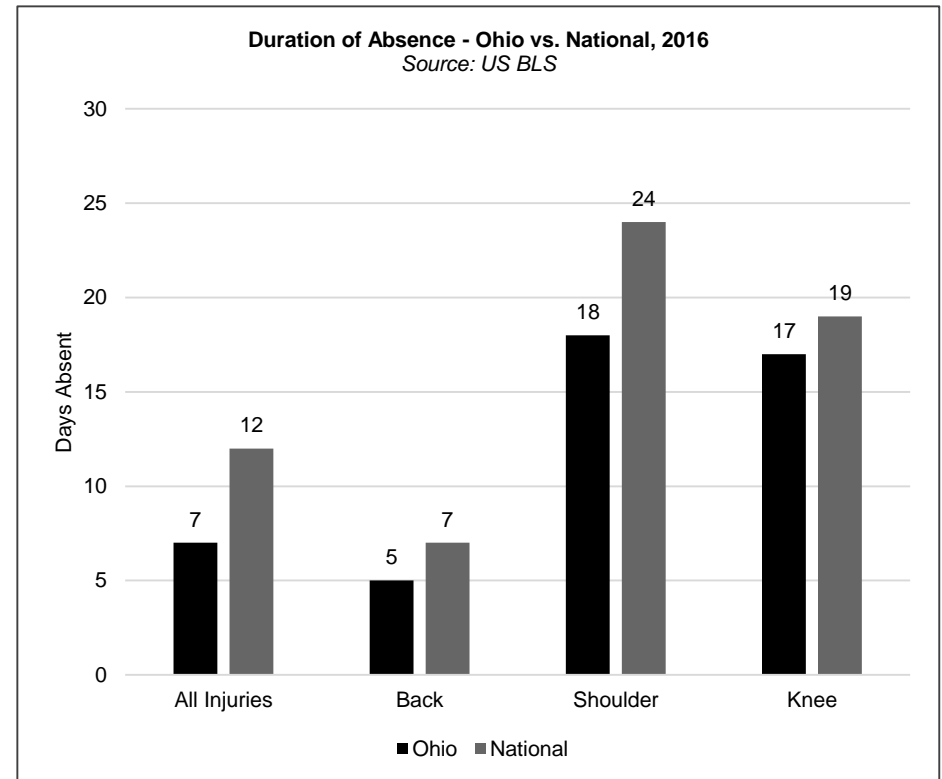
Episodes of Care are detailed, standardized comparisons of care provided to treat specific injuries

Identify opportunities for improvement



# National comparisons

- Ohio performs above the national average in return-to-work, injury incidence and cost to treat injuries
- Reflects the combined impacts of State policy, medical practice and effective claims management



# Quality Metrics



Oversight and management of prescription drugs



Appropriate follow-up care



Incremental use of advanced imaging

Consistent trend of quality management improvement

## Low Back Pain

- Rate of follow-up visits within 90 days (currently 45%)
- Reduction in inappropriate use of advanced imaging (5%)
- Reduced rate of opioid prescribing during and after triggering event (6%)

## Shoulder Injury

- Decreased rate of repeat exacerbations leading to emergency department visit (19%)
- Reduction in incremental imaging (6%)
- Minor reduction in concurrent prescription of opioids and benzodiazepines (1%)

## Knee Arthroscopy

- Reduced rate of opioid prescribing before, during and after surgery (12%)
- Minor reduction in repeat MRI use (2%)
- Minor reduction in concurrent prescription of opioids and benzodiazepines (1%)

# Episode Findings: Cost

- 5 year reduction in medical cost in each episode type

Episode Type	5 year* <b>reduction</b> in episode medical cost
Knee Arthroscopy	↓ 46% › 51%
Low Back Pain	↓ 35% › 39%
Shoulder Injury	↓ 36% › 37%

- 5 year increase in disability payments in each episode type

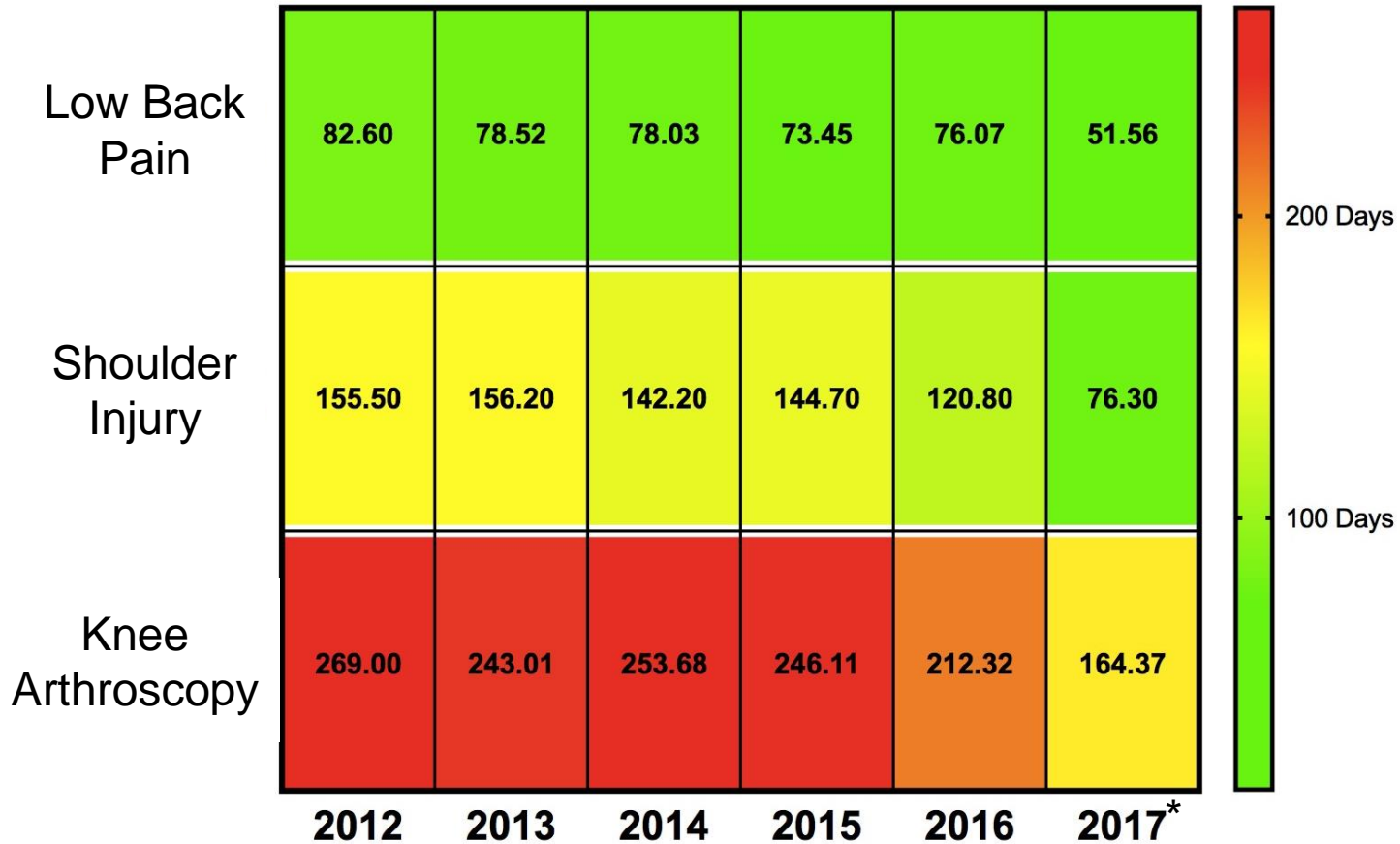
Episode Type	5 year* <b>Increase</b> in disability payments (TT/LM)
Knee Arthroscopy	↑ 24% › 14%
Low Back Pain	↑ 24% › 20%
Shoulder Injury	↑ 23% › 20%

## Influencing factors:

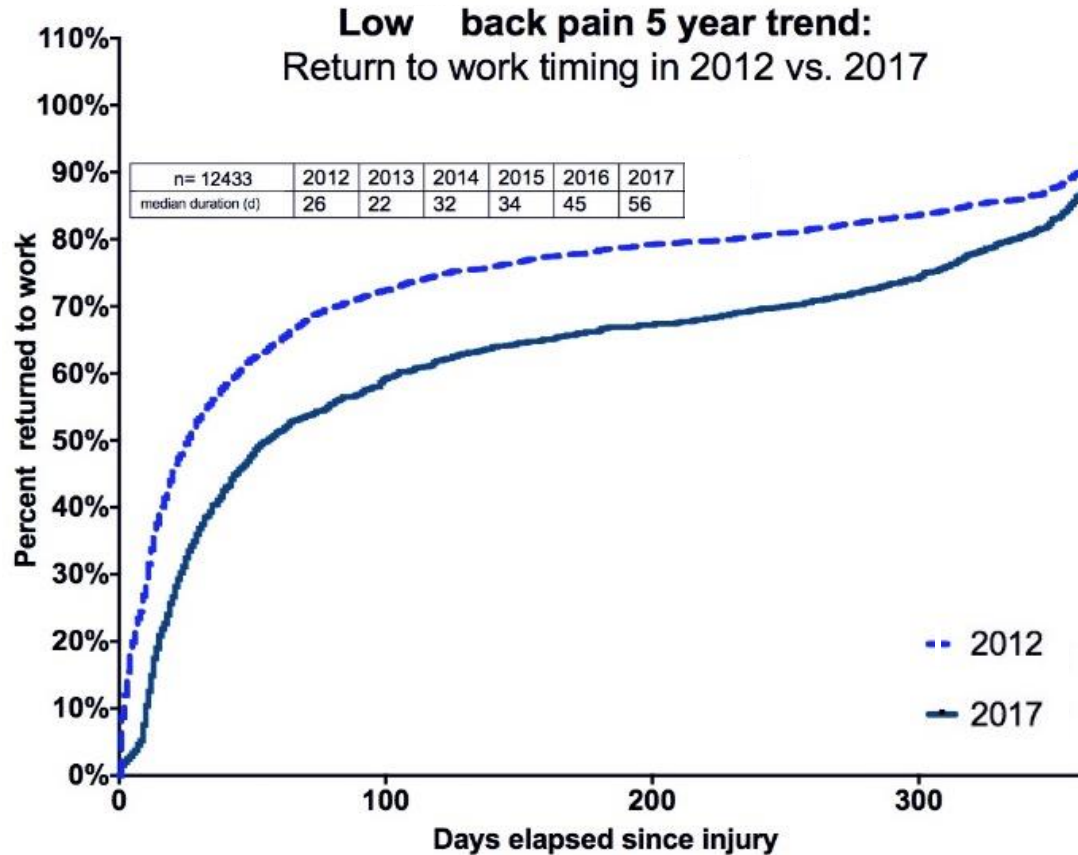
- BWC rules, policies and procedures
- Medical fee schedule and compensation rates
- Managed care organizations

# Overall, duration of disability is improving: lost time and medical only claims

Duration of initial absence

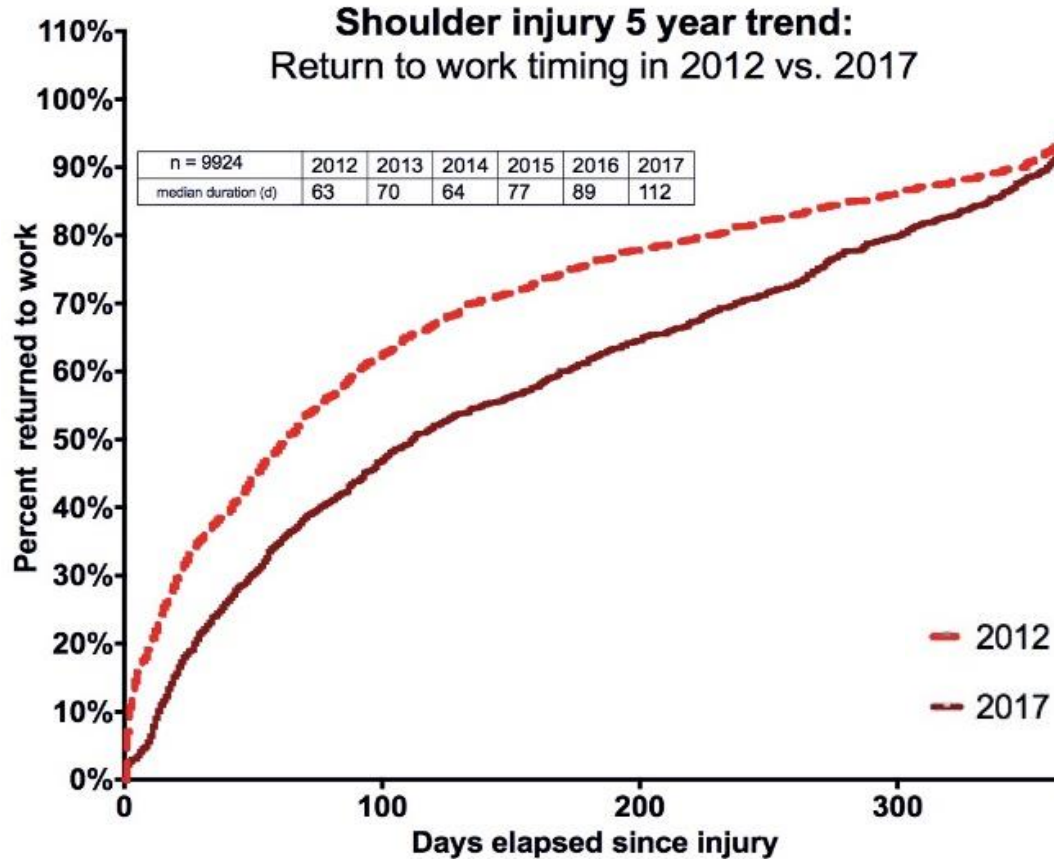


# Increase in days absent for lost time claims



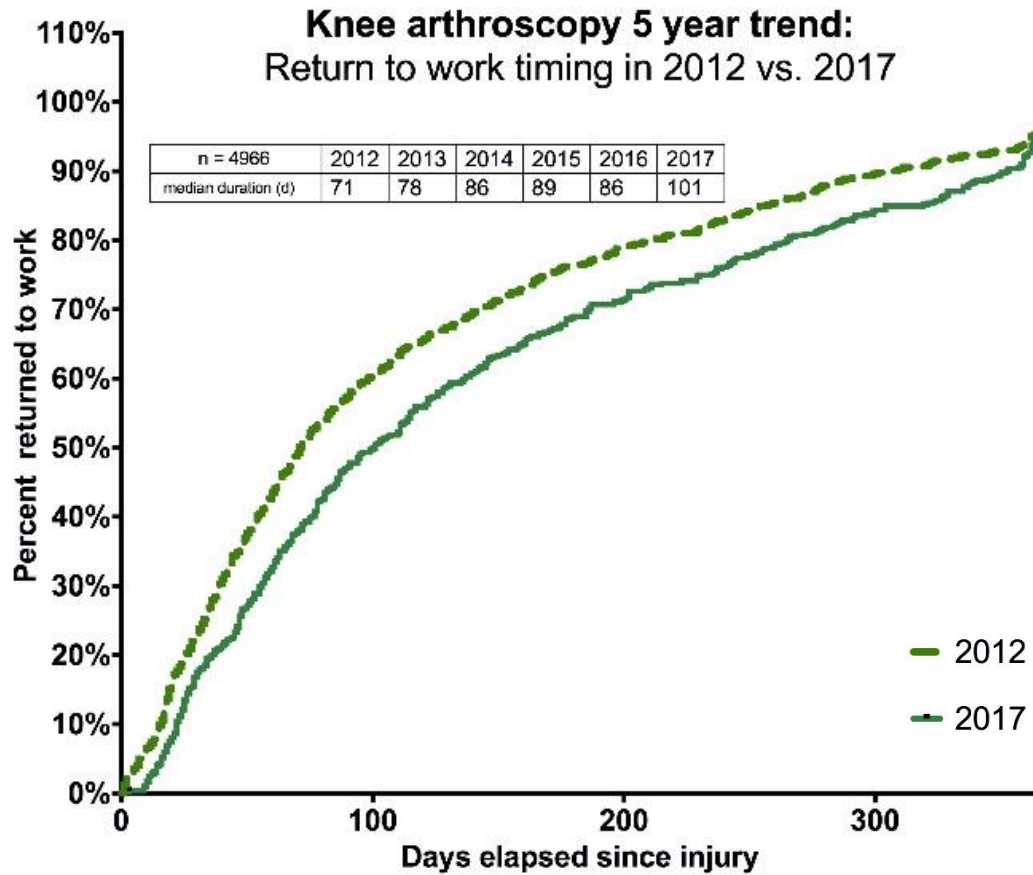
- Duration of absence within the first year following injury for employees with lost time, lower back pain claims (> 7 days absence) has not improved in the past 5 years.

# Increase in days absent for lost time claims



- Duration of absence within the first year following injury for employees with lost time, shoulder injury claims (> 7 days absence ) has not improved in the past 5 years.

# Increase in days absent for lost time claims



- Duration of absence within the first year following injury for employees with lost time, knee arthroscopy claims (> 7 days absence ) has not improved in the past 5 years.



# Episode of Care Summary

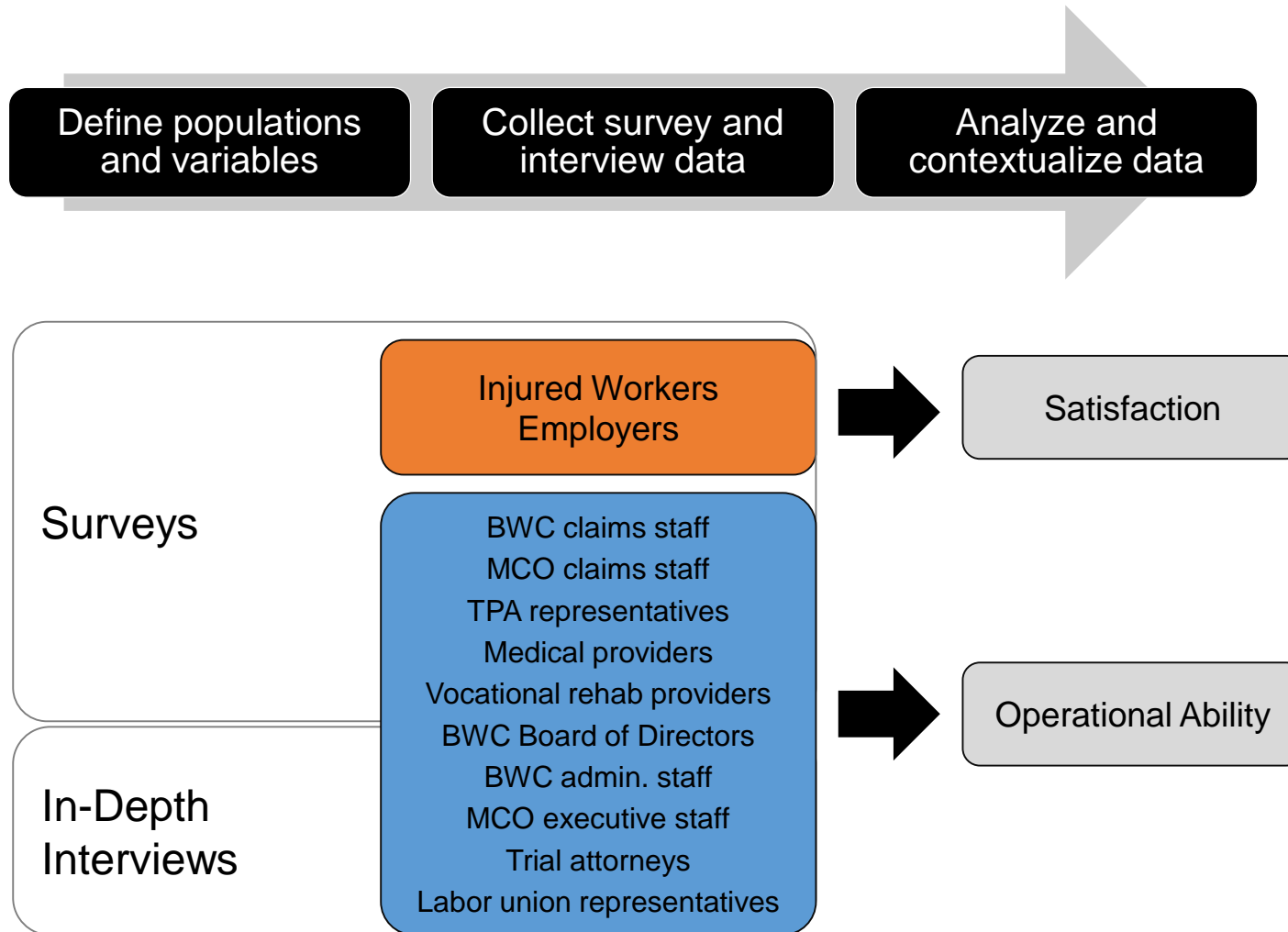
**Our Episodes of Care analysis show specific improvements benefitting employers & injured workers:**

- Significant savings in bill cost (realized through reduction in direct medical costs)
- Savings originate from combined impacts of utilization review, fee schedules & expedited return to work
- Savings are not associated with reduction in positive outcomes or quality of care

**Opportunities exist for MCO improvements in medical management and return to work for lost time claims**

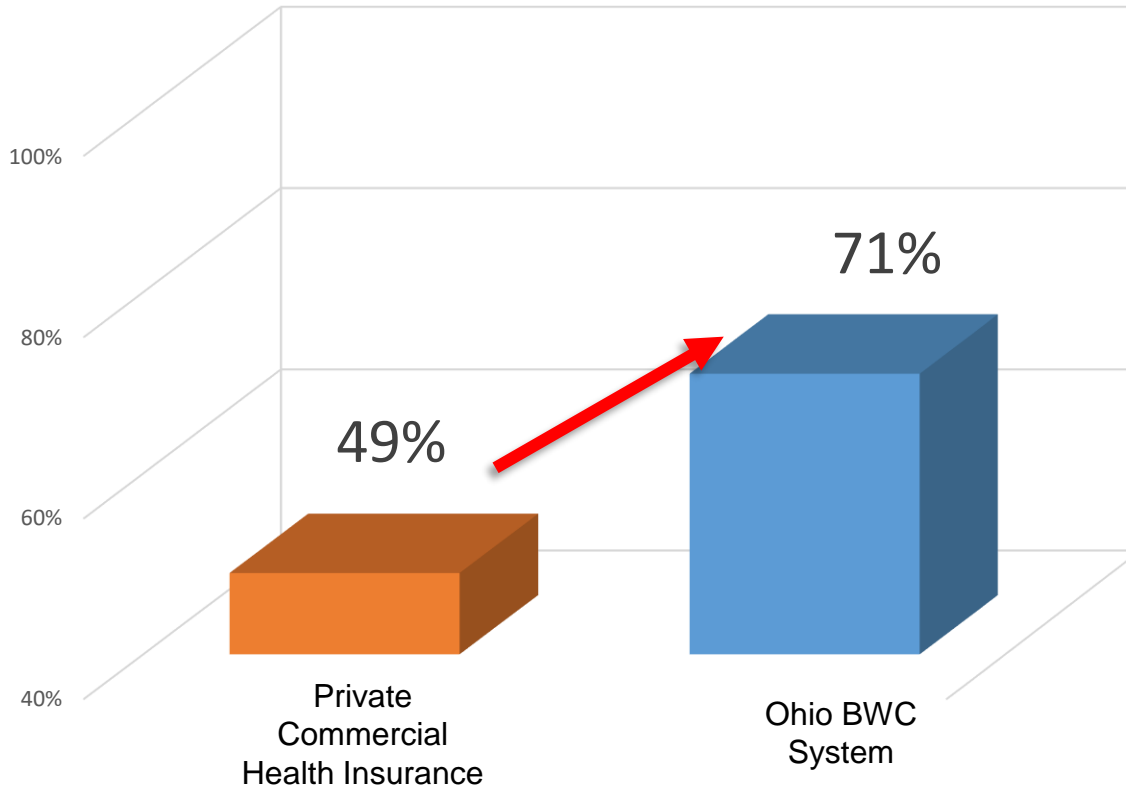


# Qualitative Study Design



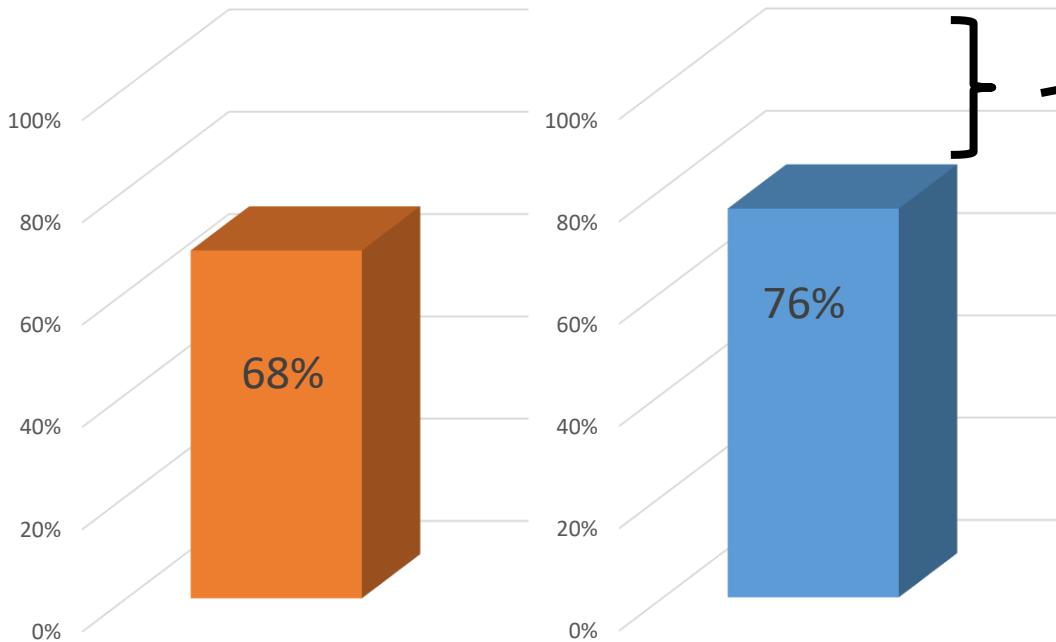
# Insights from Injured Workers

Overall high level of satisfaction across all measured variables



- Of those who had lost time claims, **67% agreed** that the program helped them get back to work.
- 25% had some amount of difficulty getting the medical care they needed.
  - 6.5% had an additional allowance claim denied
  - 5.8% believe the process took too long
  - 3.3% perceived poor communication among the MCO, BWC, and providers
  - 2.3% saw the process as too bureaucratic

# Insights from Employers



Agree that MCOs  
add value to  
Ohio's WC  
system

Are satisfied with  
their MCO

- The following quotes are illustrative of general themes among those who are dissatisfied (24%) with some aspect of the managed care environment:
  - "Employers should be able to change MCO's at any time in order to make their workers' compensation program better."
  - "Other than confirming injury and back to work dates, I am not sure what the MCO does for us or the employee. Typically, we have more contact with our TPA."
  - "The MCO system should be scrapped and in its place we should have one firm that handles medical and claimant benefits."



# Summary

- **Ohio is performing better than the national average**
- **Majority of Ohio's injured workers & employers are satisfied with MCO medical management**
- **Our Episodes of Care analysis show specific improvements benefitting employers & injured workers:**
  - Significant savings in bill cost (realized through reduction in direct medical costs)
  - Savings originate from combined impacts of utilization review, fee schedules & expedited return to work
  - Savings are not associated with reduction in positive outcomes or quality of care
- **Opportunities exist for the improving of MCO activities and BWC oversight of the MCO's**

# DXC Team



**Joe Fraser** is an Account Executive for DXC's Enterprise Services and is responsible for client satisfaction, managing financial performance and delivery to clients in the Healthcare Industry. He has been in this role for over twenty years and has experience in both Commercial and State and Local Healthcare Industry.



**Troy Breiland** is a Deputy Account Executive for DXC's Enterprise Services. He currently leads the Haven for Healthcare Analytics engagement for the Ohio Department of Medicaid. He has over 15 years of experience in the Healthcare Industry, working with both providers and Medicaid.

**Jackie Fullerton** is the former CEO of a large MCO and former participant in Ohio's HPP. Her familiarity with HPP, contacts within the industry, and expertise in delivering care for injured workers lead to her deep background in procurement, incentive, performance, and measurement for workers' compensation.

**Suzanne Pierce** provides operations excellence leadership for DXC's portfolio of managed care business in the State of Ohio. Prior to coming to DXC, she spent over 25 years in the Medicaid and commercial managed care industry. She has successfully built, grown and led a managed care program, including provider relations and contracting, marketing, operations and claims, medical management and regulatory affairs.



**Forrest Raffel** obtained his PhD in Biomedical Science prior to joining the Haven for Healthcare analytic solution team. He has seven years of pediatric basic science research ranging from brain cancer to ear infections. Forrest leads and manages the Data Science team in the development of the Episodes of Care capability and data analytic services

**Joanna Marshall** is a data scientist with a PhD in Biomedical science with a background in pediatric infectious disease and vaccine development. She has worked with the CDC, the FDA, Microsoft, and the United Nations to develop specialized public health strategies and implement big data solutions in 15 countries throughout Africa and Asia.



**Shelley Denison**, qualitative research scientist, has an MCRP, an MPA, and a background in both academic and applied mixed-methods research. She has worked with OSU, The Kirwan Institute, The United Way of Central Ohio, and The Women's Fund of Central Ohio to develop protocols for and execute surveys, focus groups, and interviews for qualitative data collection and analysis projects.





## **Ohio Workers' Compensation Managed Care Organization Impact Study**

### **Executive Summary**

Ohio's Bureau of Workers' Compensation (BWC) is one of the largest insurers in the United States. Insuring over 240,000 employers, Ohio's BWC is one of four monopolistic, and the largest state-run, workers' compensation systems. In the 1990's, stakeholders came together to develop a plan for improving specific elements of Ohio's workers' compensation system. The resulting plan was the Health Partnership Program (HPP). The HPP program introduced managed care into the workers' compensation system. The medical management of compensable workers' compensation claims was contracted to Managed Care Organizations (MCOs). Determination of compensability and the payment of indemnity benefits stayed within the Bureau of Workers' Compensation (BWC). The MCOs were further charged with employer and injured worker education regarding the new system, making the work place safer, setting up transitional/early return-to-work programs, as well as claim reporting procedures in the event of an injury. Included in their services are the processing of First Report of an Injury, Occupational Disease or Death (FROI) applications. Finally, MCOs process medical bills and make provider payments.

HPP covers all private state-fund employers as well as public employers, both state and local. HPP went into effect March 1, 1997, requiring certified MCOs to begin medically managing all injuries that occurred on March 1, 1997 or later (Phase 1). Beginning September 1, 1997, the MCOs took over medical management of all claims with dates of injury between October 20, 1993 and February 28, 1997 (Phase 2). MCOs assumed responsibility for medically managing the remainder of claims, those with dates of injury prior to October 20, 1993 (Phase 3), on December 15, 1997. The current number of MCOs is 12. This is down from the initial number of 57 when HPP was initiated in 1997.

BWC monitors MCO managed care performance. For example, it measures the effectiveness of the MCOs' return-to-work efforts using the Measurement of Disability (MoD) metric. BWC also measures MCO FROI timing, FROI data accuracy, bill timing and bill data accuracy. Further, it publishes most of these measures in an annual MCO Report Card, available on [www.bwc.ohio.com](http://www.bwc.ohio.com).

### **Study Overview**

In 2018, BWC contracted with DXC Technology to evaluate the impact MCOs have had on Ohio's workers' compensation system. The evaluation quantified the impact MCOs have had on:

- medical management of claims;
- return to work;
- claim costs;

- duration, etc.

Specifically, the evaluation focused on the following analysis vectors:

1. Identification of areas of missed opportunities when comparing Ohio's MCO environment with other payer environments.
2. Identification of areas of potential efficiencies in areas where the MCOs and BWC's duties intersect and interact.
3. Identification of opportunities for resetting the strategic administrative focus of MCOs in managing Ohio workers' compensation claims.
4. Evaluating the current return-to-work outcome measures and comparison of measures across industry and similar jurisdictions.
5. Evaluating and appropriately providing recommendations on current and potential future methodologies for reimbursing MCOs for services.
6. Evaluating and appropriately providing recommendations on current MCO performance measurements identifying.
7. Evaluating and appropriately recommending changes to current MCO report card and MCO Open Enrollment processes.
8. Evaluating and appropriately identifying best practice approaches to MCO contract negotiations, along with any strategic transition or adjustment recommendations that may be necessary or prudent.

This evaluation was divided into five reports:

1. Quantitative and qualitative impacts of MCOs on the Ohio Workers' compensation system.
2. Evaluation of specific strengths and weakness of the current MCO environment.
3. Assessment of the current MCO performance measurement protocol.
4. Assessment of the current MCO payment and incentive methodology.
5. Analysis of BWC's approach to procurement of medical management services.

## **Summary of Findings and Recommendations**

### **Ohio is a leader in workers' compensation.**

When compared to national data, Ohio has fewer work-related injuries than the national average. When injuries do occur, Ohio performs better than the national average and better than other monopolistic workers' compensation systems at getting injured workers rehabilitated and safely returned to work.

DXC collected the feedback of employers and injured workers and found that both stakeholder groups report a high level of satisfaction with the system. Injured workers report efficient, timely, and professional claim handling. Ohio's employers feel they are receiving prompt and skillful case management, improved rehabilitation, and valuable services from the workers' compensation system overall.



Ohio has a mature claims processing system with indicators in place to ensure accuracy and timeliness of data, such as FROI and bill timing and FROI and bill data accuracy. These indicators are in line with industry standards and are designed to support best practices in medical management.

Finally, the BWC holds MCOs to high standards. Currently, Ohio is the only state that requires MCOs to obtain accreditation from the national Utilization Review Accreditation Commission (URAC). Both URAC and BWC audits maintain a high level of quality assurance within MCOs.

### **MCO Environment and Public-Private Partnerships:**

Challenges and tensions are an inevitable reality of the shared responsibility occurring in public private partnership. In order to evaluate environmental strengths and weaknesses it is important to understand that there is some unavoidable functional overlap between the MCOs and the BWC. This overlap ensures that high-quality service will be provided for injured workers and employers. These shared responsibilities require a balance between accountability and innovation, and occasionally come at the expense of optimal efficiency. Second, as with any public-private partnership, Ohio's workers' compensation system deals with the tensions between regulatory oversight and market competition. These qualities of this environment must be acknowledged to understand the framework in which MCOs operate.

In identifying and evaluating opportunities for enhancement, we must acknowledge that Ohio's workers' compensation system is unique in many ways. The State has greater responsibility for oversight and management. Additionally, managed care organizations do not bear true financial risk as they do in many other managed care environments. As a result, practices that are successful in another state may be inappropriate in Ohio and vice versa. Most evaluated policies and procedures were found to be optimally suited to support this system but opportunities for potential enhancement were identified.

### **Key Recommendations**

Of the recommendations DXC has made in the five deliverables, three key recommendations are being highlighted here:

- 1) **Monitor lost time claims separately from medical only claims.** DXC found that while return to work timing has been decreasing overall, return to work timing for lost time claims (20% of Ohio's workers' compensation claims) has increased. This increase in RTW timing for lost time claims is directly correlated with an increased indemnity cost of \$700-\$1000 per claim. By monitoring lost time claims separately from med only claims, BWC can improve return to work timing and indemnity costs through increased focus on this challenging subset of claims.
- 2) **Align MCO payments to managed care industry.** Currently, BWC spends 27% of its total medical benefits on MCO medical management. This is well over what industry standards are for medical administrative payments in other environments. Industry

standards in similar environments reflects a 14% to 15% medical management spending to total medical spending. We recommend Ohio undertake a strategy which appropriately takes into account unique attributes of the Ohio environment to better align payments MCO medical management spending with the managed care industry.

- 3) **Optimize outcome payments to align with contractual expectations and drive continuous improvement.** The current system of competitive distribution of outcome payments permits rewards without improvement as long as performance surpasses that of peers. We recommend using defined performance goals to incentivize continuous improvement among MCOs as a whole rather than relative to one another. This would allow BWC to drive continuous, year-over-year improvement.

In spite of the fact that Ohio ranks at the highest level of workers' compensation performance, there are potential opportunities to further strengthen the system.

Report area	Topic	Evaluation	Recommendation
Impacts that MCOs have had on the Ohio workers' compensation system	Satisfaction	Excellent	Conduct a satisfaction survey of workers & Employers once every two years
	Operational Ability	Good	
	Cost savings	Good	
	Return to work - overall	Good	
	Return to work – lost time claims	Room For Improvement	Monitor RTW separately for lost time claims
Identifying the strengths and weaknesses of the current MCO environment	Duplication of Labor	Room For Improvement	Continued reinforcement of labor division protocols
	Clinical Editing and Medical Bill Review	Room For Improvement	MCOs adopt competitive editing & review criteria
	Development of process and outcome indicators	Room For Improvement	Updates underway to reflect performance achievement levels & drive improvement
	Market competition and Open Enrollment	Good	
Assessment of the current MCO performance measurement protocol	Administrative benchmarks	Room For Improvement	Update performance achievement levels & drive improvement
	MoD Score benchmark data	Needs Revision	Update benchmarking data & use ICD-10 codes
	MoD Accuracy	Excellent	Continue with current MoD scoring
Assessment of the current MCO payment and incentive methodology	Administrative Payments	Needs Revision	Align MCO payment to market standards
	MoD based outcome payments	Room For Improvement	Assess performance relative to acceptable thresholds
	Exceptional Performance Indicators	Room For Improvement	Continuing to collect MCO performance data on these indicators & refine benchmarks
	On-site Case management	Room For Improvement	Reevaluate guidelines for on-site case management and incentivize appropriate use when intense medical management is required.
Comparative analysis of BWC's current approach to procurement of medical management services	Quality Assurance Monitoring	Good	
	Performance Benchmarks	Room For Improvement	Increase data timing and accuracy thresholds
	State Comparisons	Excellent	
	Incentive Strategies	Room For Improvement	Optimize incentives to align with contractual expectations and drive continuous improvement

# BWC Board Presentation

## MCO Impact Study

December 19, 2018



# Workers' compensation managed care organization impact study



**Deliverable 1: Quantitative and qualitative report: Impacts that MCOs have had on the Ohio Workers' compensation system**



**Deliverable 2: Report identifying the strength and weakness of the current MCO environment, with recommendations on opportunities to further enhance the system**



**Deliverable 3: Assessment of the current MCO performance measurement protocol**



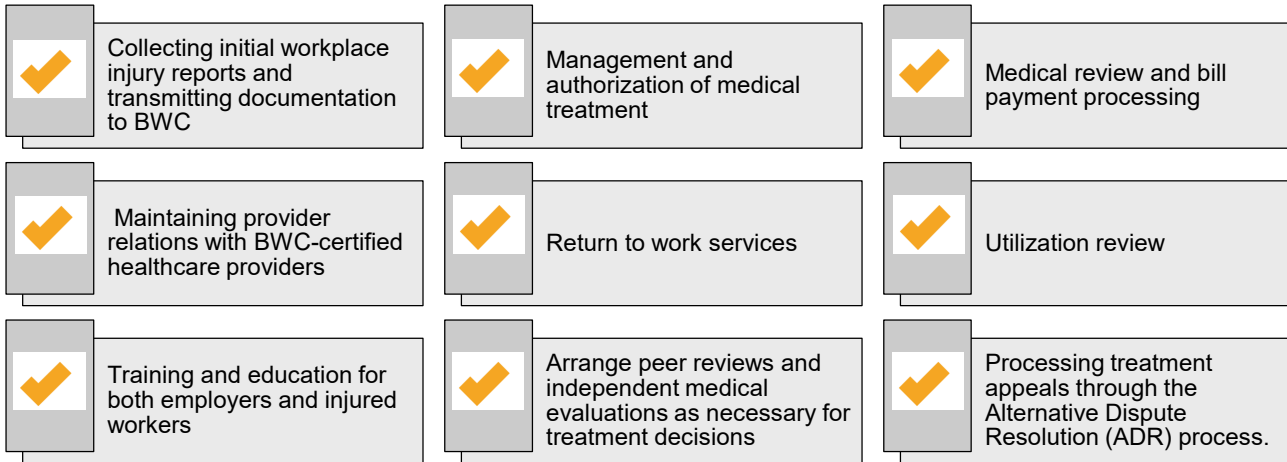
**Deliverable 4: Assessment of the current MCO payment and incentive methodology**



**Deliverable 5: Comparative analysis of BWC's current approach to procurement of medical management services**

# Objective

## Evaluation of the impact of managed care organizations on Ohio's workers' compensation system.



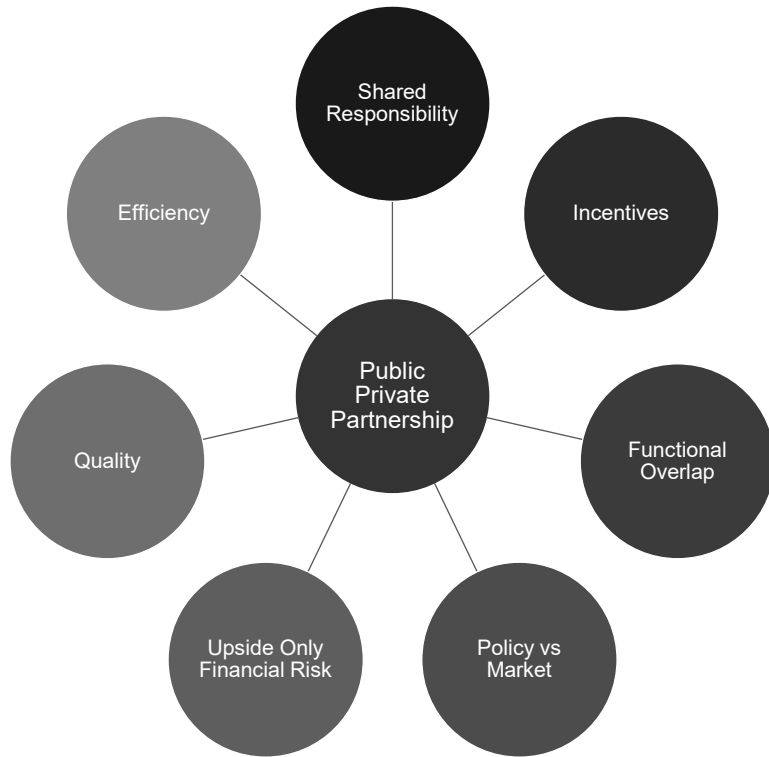
**Satisfaction**

**Efficiency**

**Benchmark**

**Value**

# MCO Environment in Ohio



- **Functional Overlap**
  - Balance between efficiency and quality. Overlap ensures that quality will be met at the expense of efficiency
- **Shared Responsibility**
  - Balance between accountability and innovation
- **Policy vs. Market**
  - Regulatory oversight vs market competition

# Overall Ohio has a lot to be proud of



**National Comparisons**



**Injured Worker and Employer Satisfaction**



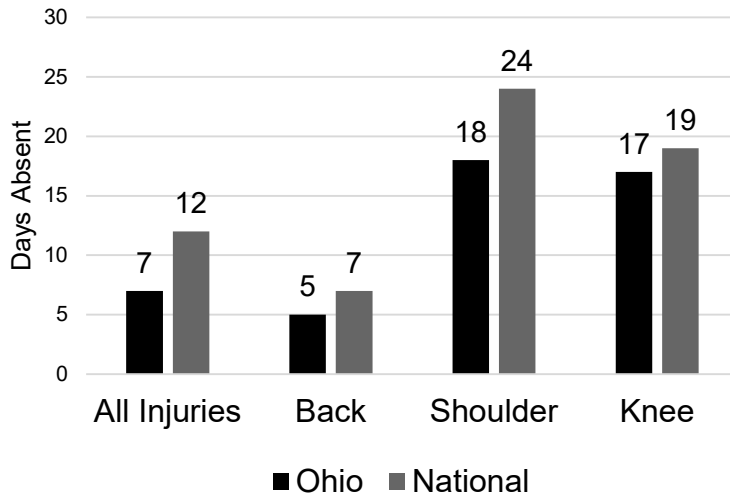
**Mature Process Indicators**



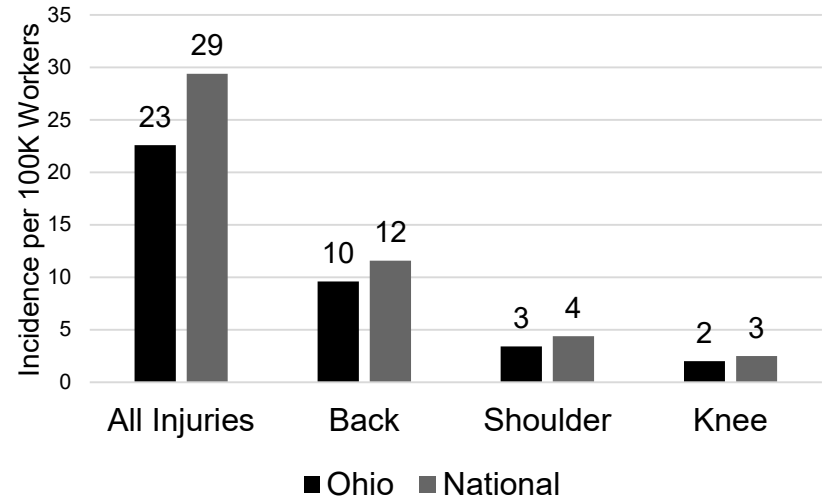
**Quality Assurance**

# National Comparisons: Ohio is a leader in workers' compensation

**Duration of Absence - Ohio vs. National, 2016**  
*Source: US BLS*

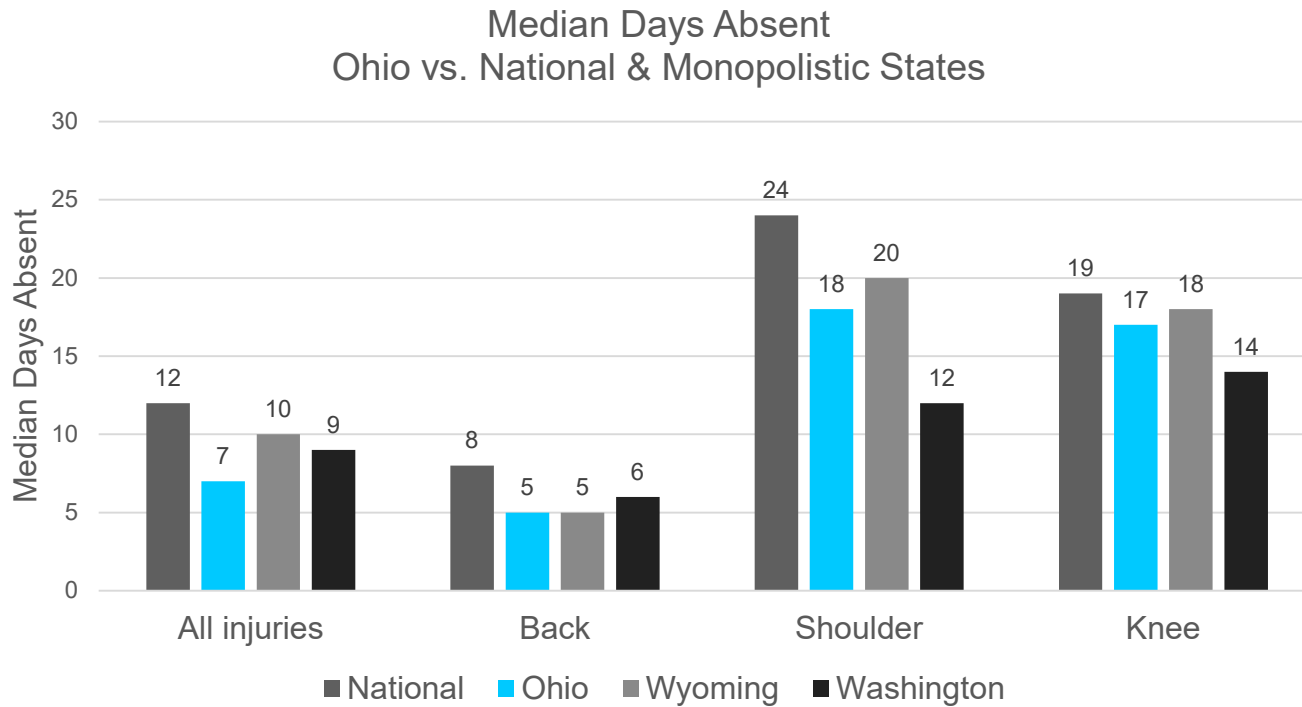


**Injury Rate per 100,000 Workers - Ohio vs. National, 2016**  
*Source: US BLS*



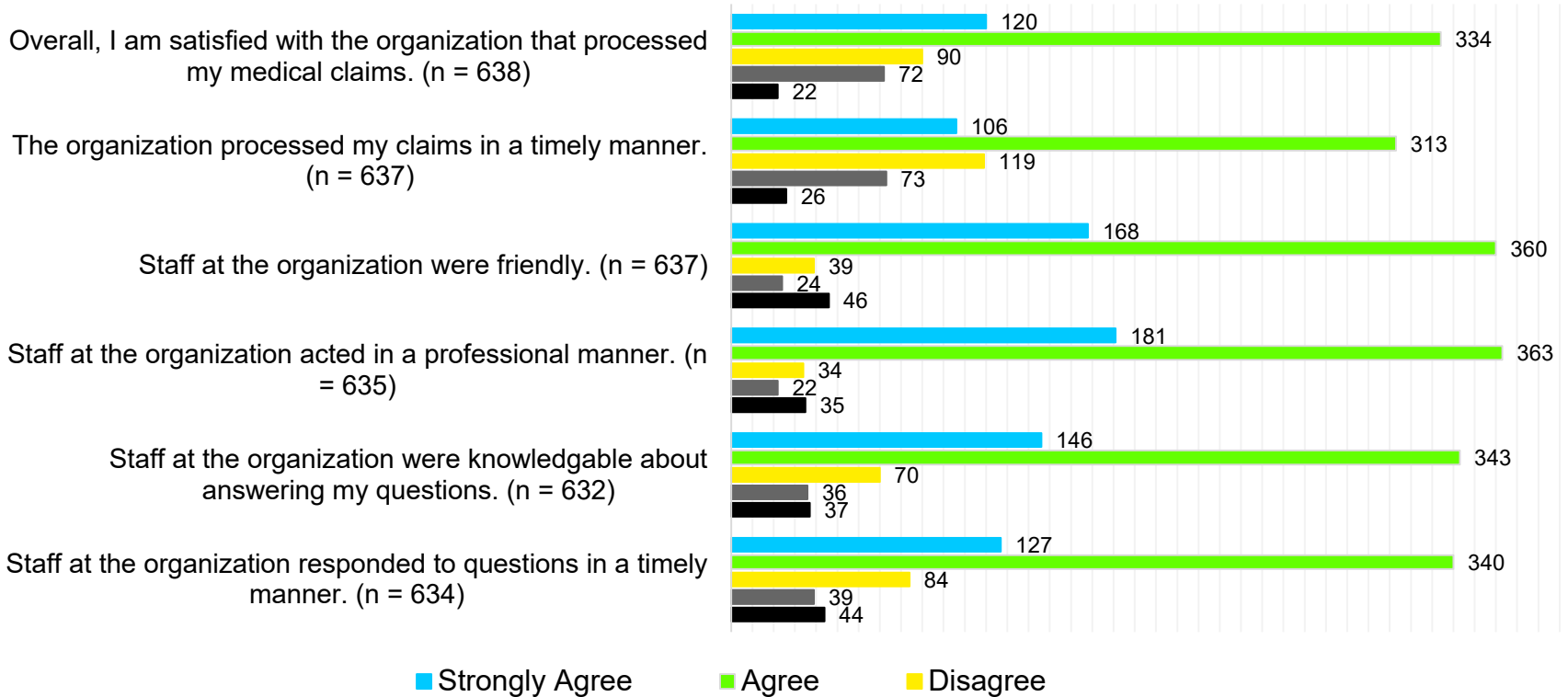


# Ohio is performing well relative to other monopolistic states \*



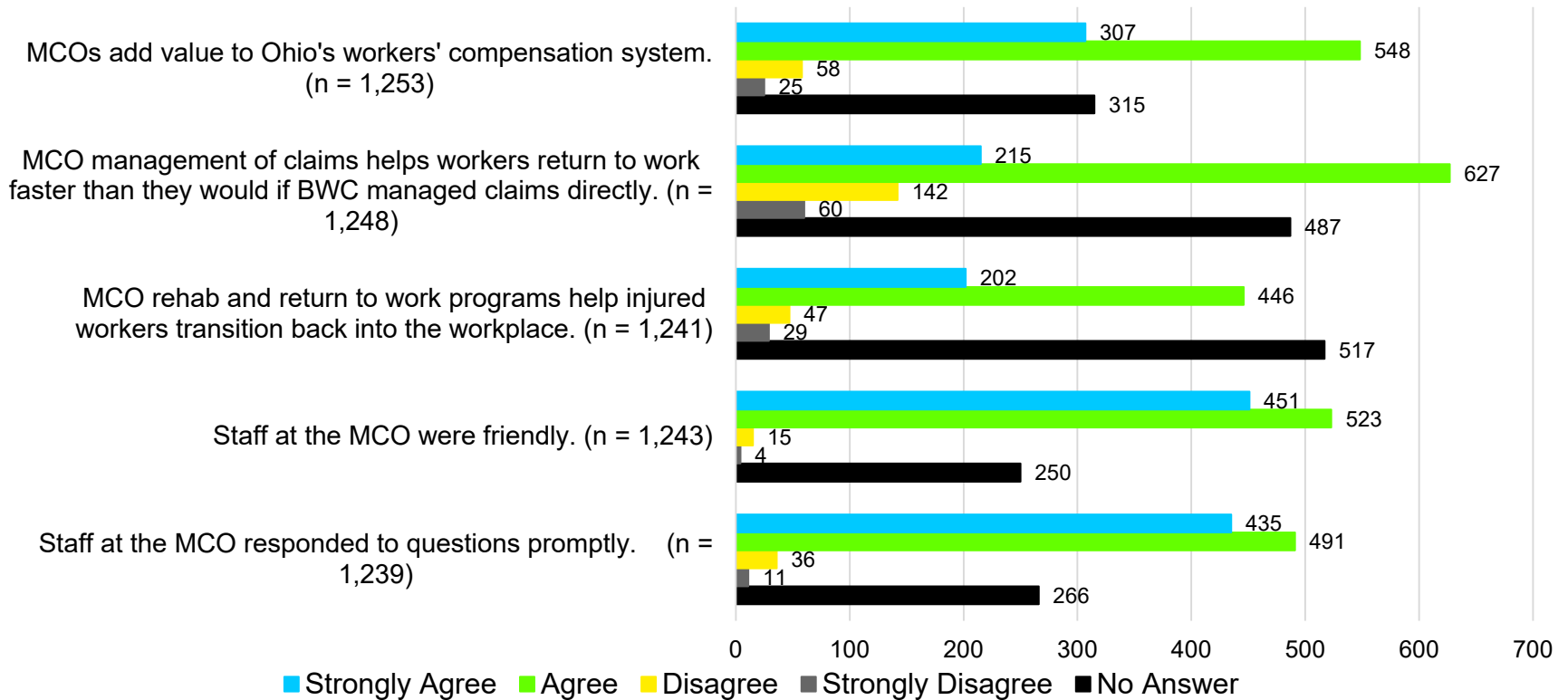
\* Comparable Data not available for North Dakota

# Injured Worker Satisfaction



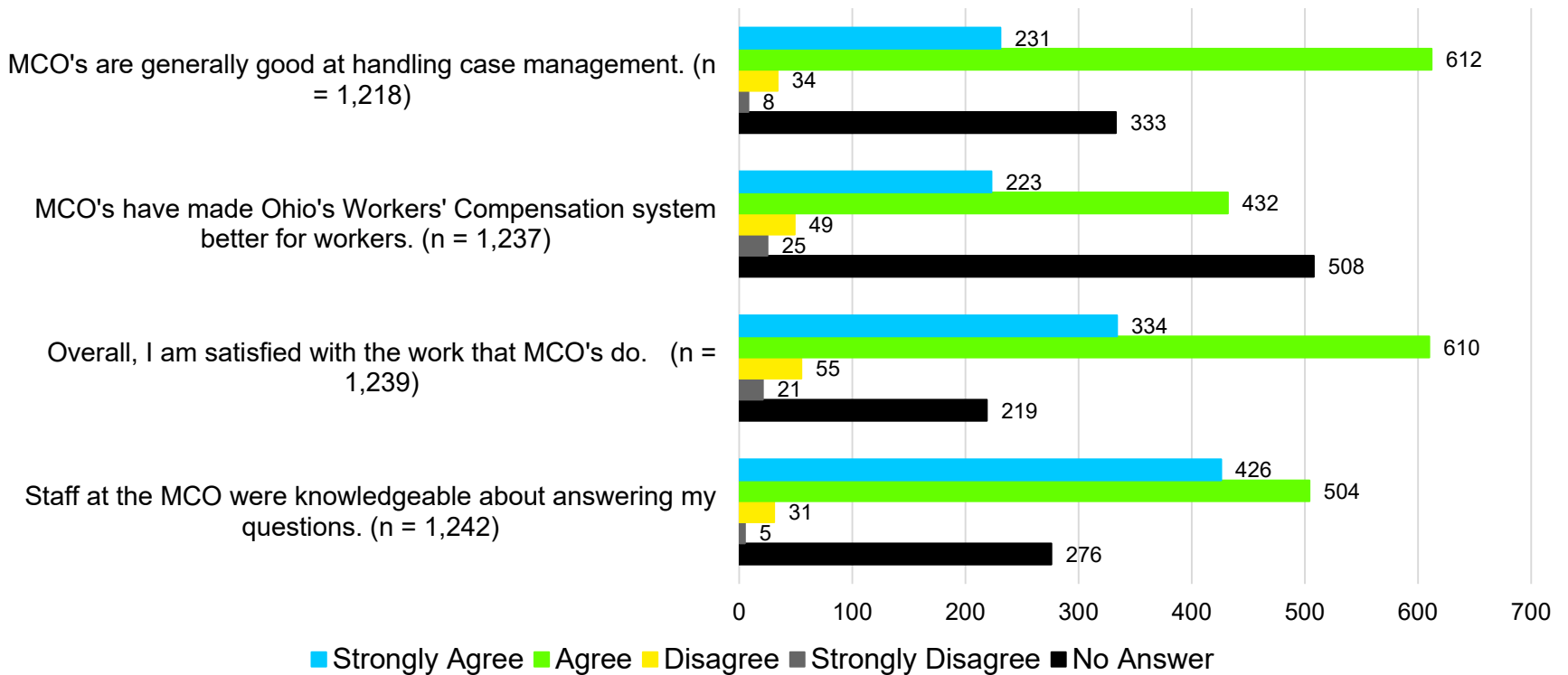
**Conclusion: Overall, injured workers feel that MCOs add value**

# Employer Satisfaction



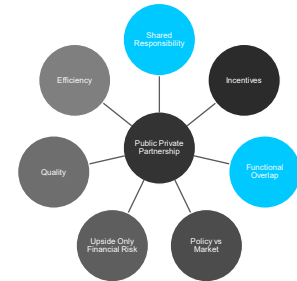
**Conclusion: Overall, employers feel that MCOs provide valuable services**

# Employer Satisfaction



**Conclusion: Overall, employers feel that MCOs provide valuable services**

# Shared Responsibility Vs. Duplication



## Three Point Contact

- Operational overlap, not design overlap
- Enforcing best-practice deadlines has led to improved FROI timing
- Positive impact on injured workers trying to navigate the workers' compensation system

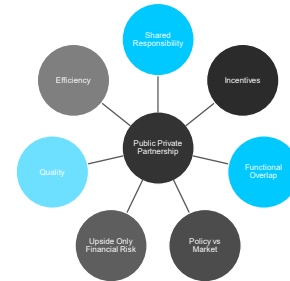
## Alternative Dispute Resolution

- Duplication of efforts prior to 2009
- Efforts to streamline the process have been successful

## Document Collection

- The Imaging Pilot Project reduced duplicative document collection and streamlined the process of information gathering

# MCO Certification Requirements: URAC



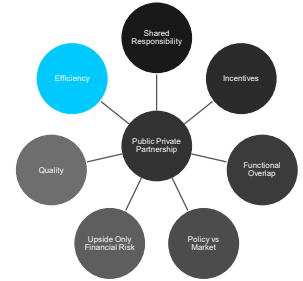
## URAC: Utilization Review Accreditation Commission

- National best-practice guidelines for healthcare industry and medical case management.
- Requires regular announced and unannounced audits of MCOs performed by URAC representative.

## Ohio requires URAC accreditation

- Serves as a basic indicator of competencies that MCOs must have in order to enter the marketplace.
- Ohio has required URAC accreditation since 2001-2002 contract years.
- Ohio is the only state that requires URAC accreditation for Workers Compensation medical management services.

# Process Indicators – Mature Indicators of Efficiency



Process indicators have historically been important tools for the BWC when efficiency has been a primary goal  
Indirectly affects medical management and the goal of returning the injured worker to work

**These activities measure areas designed to support efficiency, effectiveness and quality in the system**

- FROI timing and FROI data accuracy ensure that the injured worker is treated quickly.
- Bill timing and accuracy make sure that employer premiums are used efficiently.

MCO Responsibility	Activity	Timing
Collecting initial workplace injury reports and transmitting documentation to BWC	FROI timing	Monthly
	FROI data accuracy	Monthly
Medical review and bill payment processing	Bill timing	Monthly
	Provider bill data accuracy	Monthly
	Inpatient hospital bill payment accuracy	Quarterly

# Opportunities to Improve: Moving from better to best



**Outcome Measures** (Measurement of Disability and Exceptional Performance Indicators)



**MoD score - Focus on lost time claims**



**Process Measures**

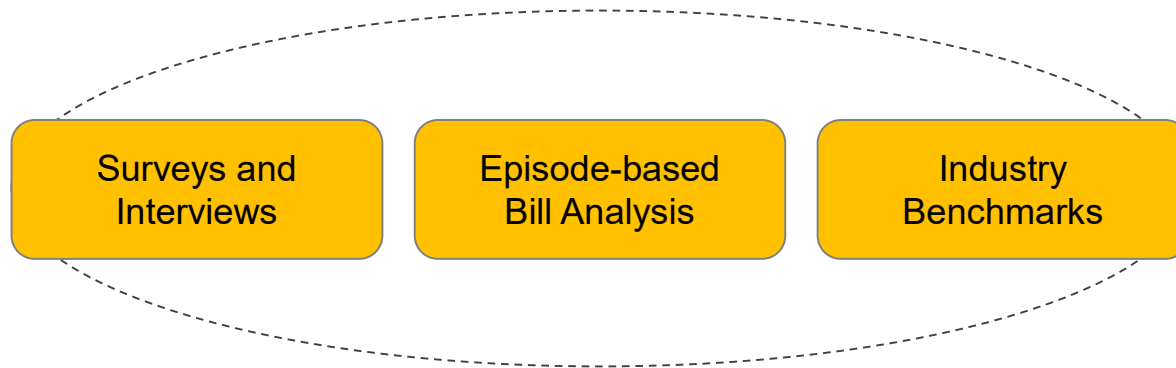


**On Site Case Management**



# Analytic Methods

- **Mixed-methods (quantitative and qualitative analysis)**
- **Contextualized with industry, market and medical data**
- **Analytical expertise in medical management of conditions studied**

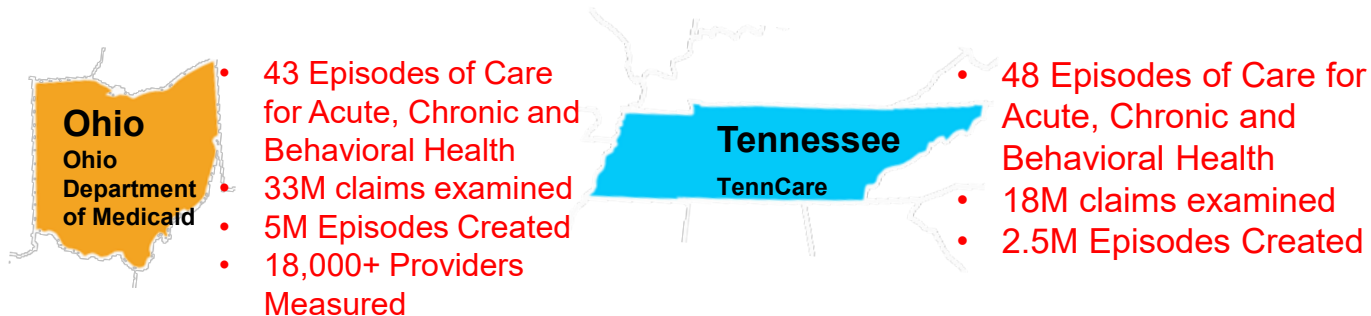


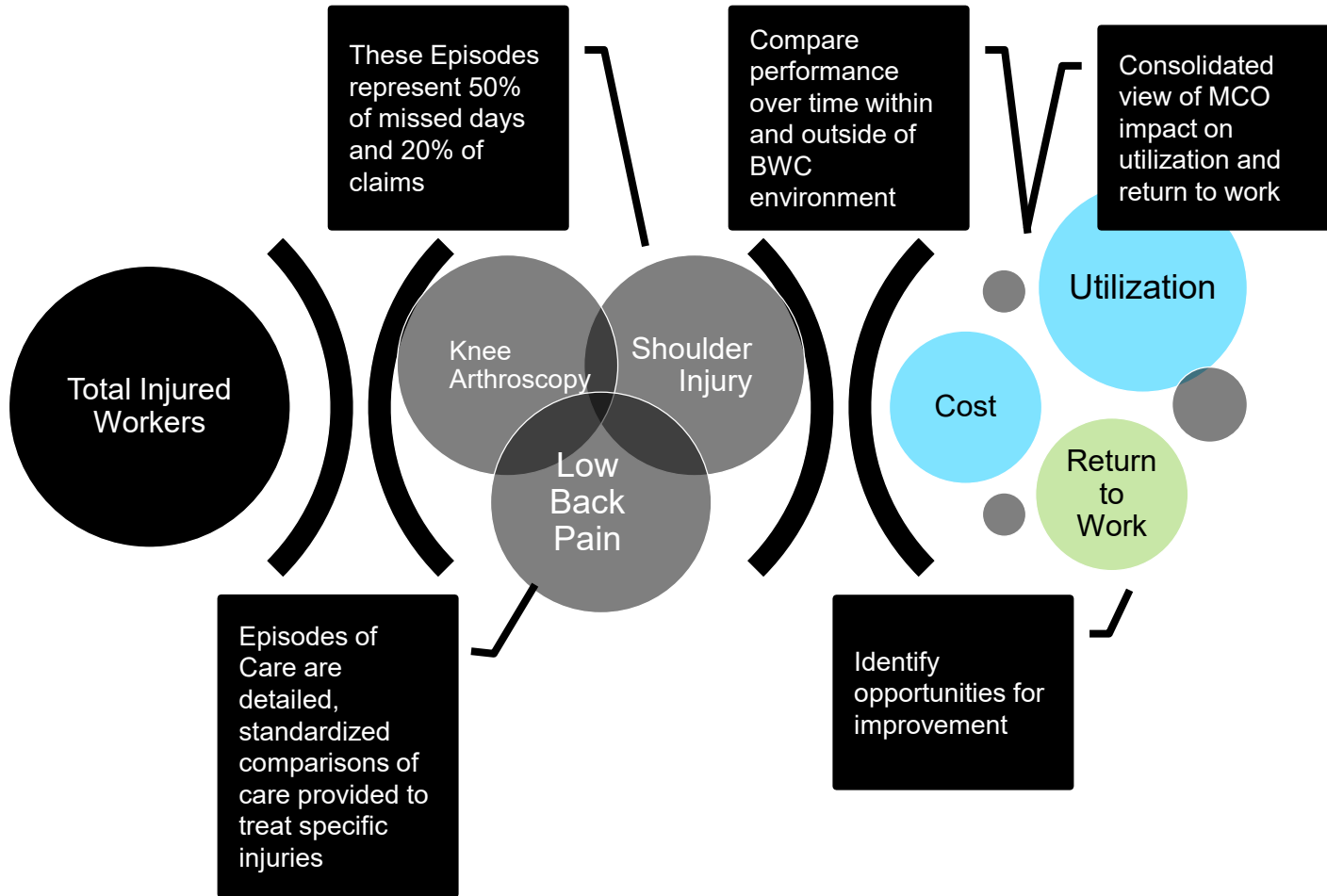
# Episodes of Care

An Episode of care is a defined set of services provided to treat a clinical condition or procedure

Episode of Care enhanced data allows stakeholders to focus on cost, services and quality.

- The episode of care algorithm uses codes reported on claims or bills to analyze treatment and condition groups for specific time periods
- Episodes are an analytical lens examining the value of care delivered for the treatment of specific injuries, disease conditions and procedures.

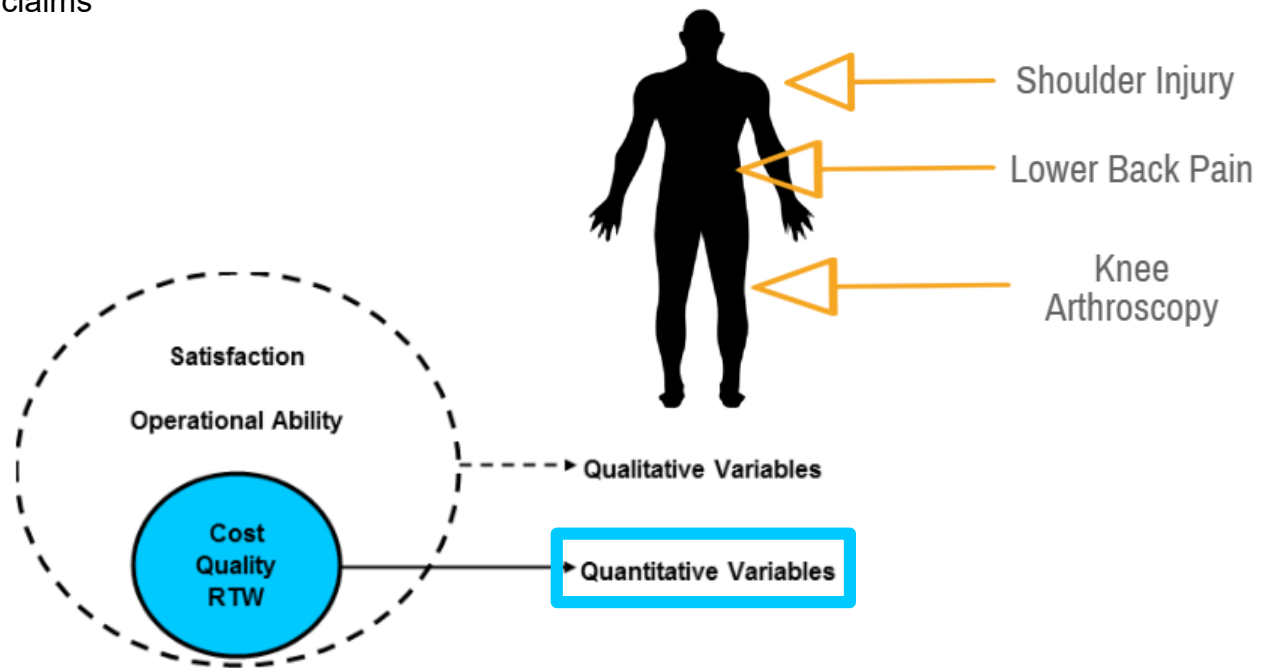




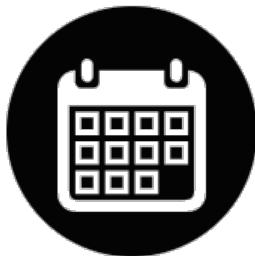
# MCO impact evaluation: Quality and Cost

Quantify the impact MCOs have had on:

- medical management of claims
- return to work
- claim costs
- duration



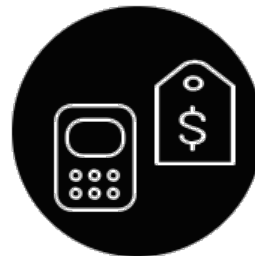
# You Can't Manage What You Can't Measure



MoD



EPIs



Episodes



Process

# Medical Care Quality & Cost Containment

## Improvement in performance on measured quality metrics

### Medication management:

- Reduction in opiate usage
- Reduction in high-risk prescribing of opioids and benzodiazepines

### Improvements in control of low value, high-cost care

- Reductions in repeated MRI, increases in conservative/incremental imaging
- Repeated emergency visits



# Medical Care Quality & Cost Containment



Improving

## Medical Only Claims

- 7 days or less off work
- Average duration of absence is improving if all claims grouped together (medical + lost time)

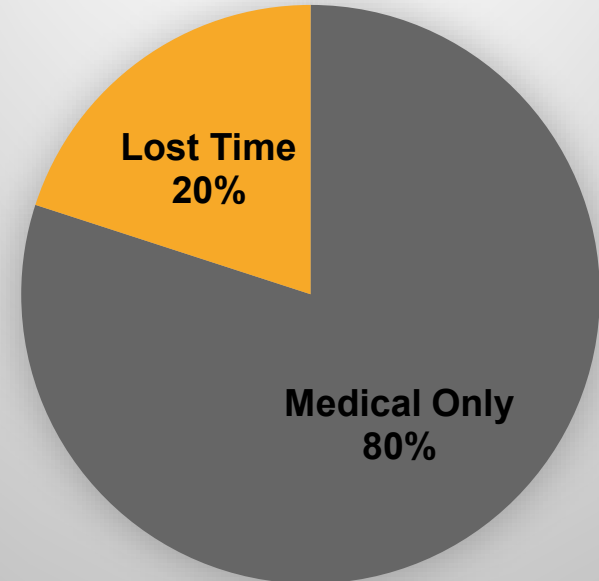


Worsening

## Lost Time Claims

- Greater than 7 days off work
- The average duration of absence is increasing if lost time claims are examined separately

## Proportion of BWC claims



# Return to work timing: improving

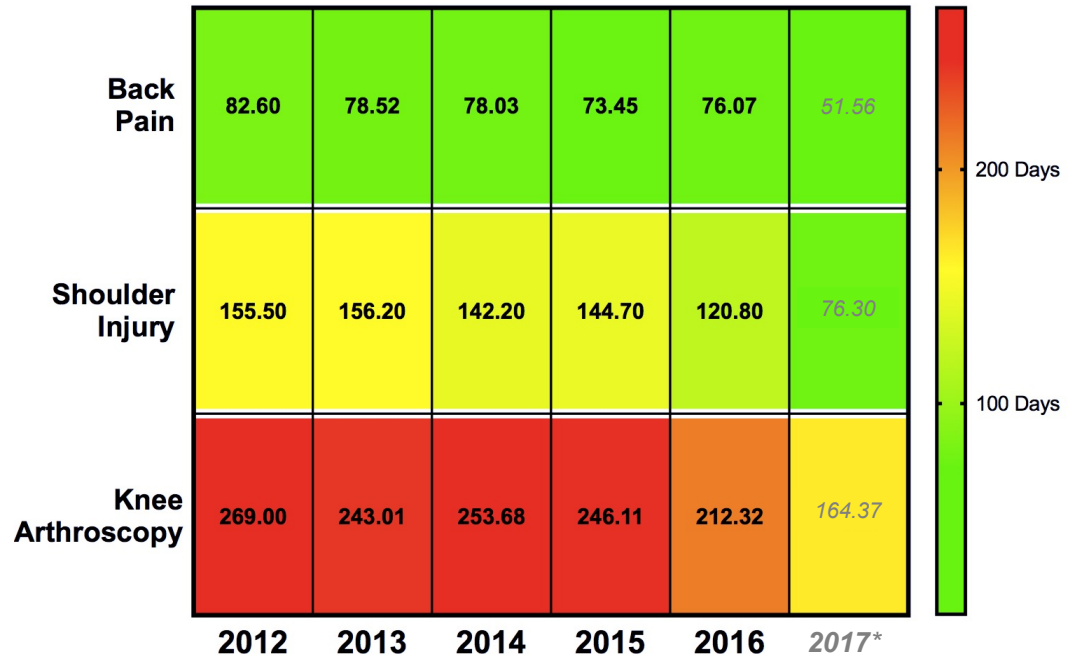
All three episode types showed improvements in return to work following injury in recent years

- Average duration of absence is decreasing for all claims when both medical only and lost time claims are evaluated together
- 80% of BWC claims are medical only



Both Medical & Lost Time

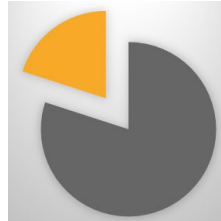
All MCO average duration of initial absence 2012-2017\*



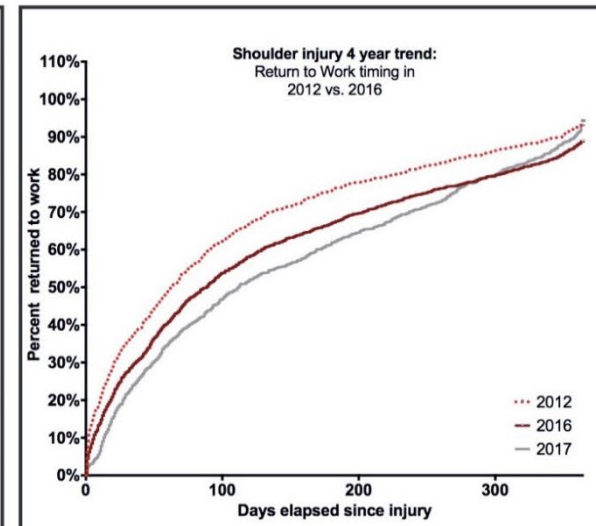
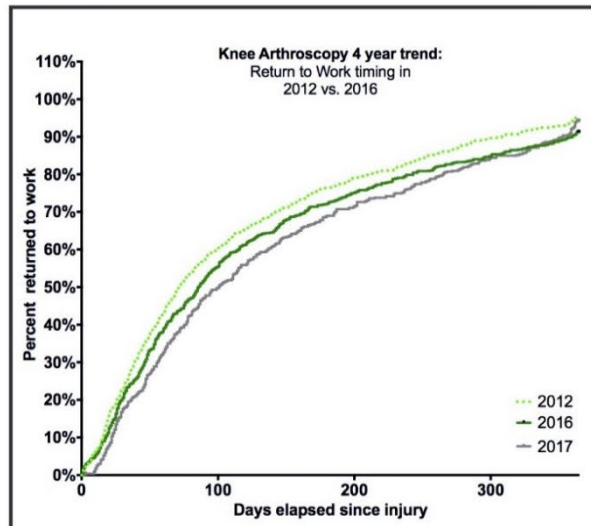
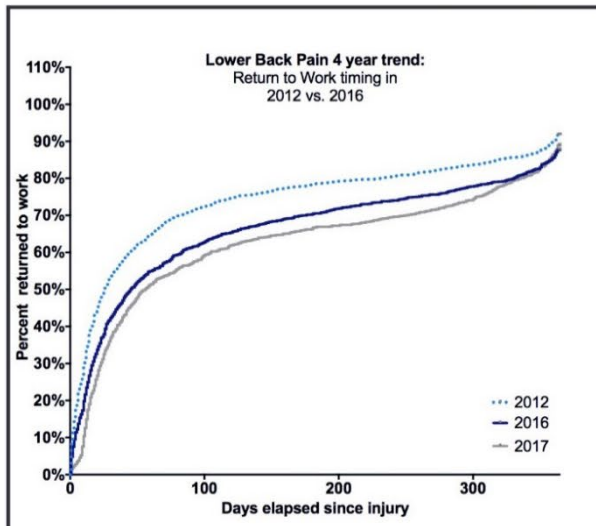


# Return to work timing:

- All three episode types showed poor RTW results when evaluating lost time claims separately from medical only claims.
- The duration of absence is not improving and is increasing for lost time claims.



Lost Time Only



*\*2017 data incomplete at time of report*

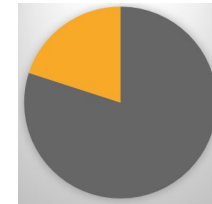
# Opportunity for improvement based on episode analytics data: RTW for lost time claims



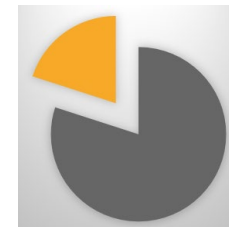
Excellent progress in the system overall



Lost time claims not experiencing the same improvement



Both Medical & Lost Time



Lost Time Only

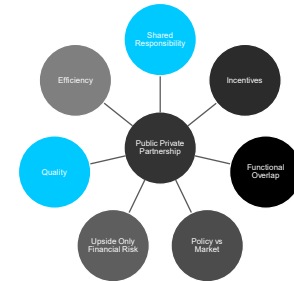
**Conclusion:** Issue of visibility for lost time claims. By grouping the two claim types, trends in this important 20% of claims are obscured.

## Recommendation:

- Continue evaluating both claim types to monitor system overall
- Stratification of medical only and lost time claims to provide greater visibility into trends in RTW for claims of each type.

# Evaluation of Outcome Performance

## Evaluation Measure: Measurement of Disability (MoD)



**Goal: Evaluate MoD metric used to measure MCO performance**

### **Official Disability Guidelines (ODG)**

- **National set of guidelines with multiple functionalities assisting medical management**
- **Also has a RTW estimator which we selected to validate**

**Set out to validate the effectiveness of MoD in terms of its ability to measure MCO performance**

# Tested MoD and ODG's Return to Work Prediction

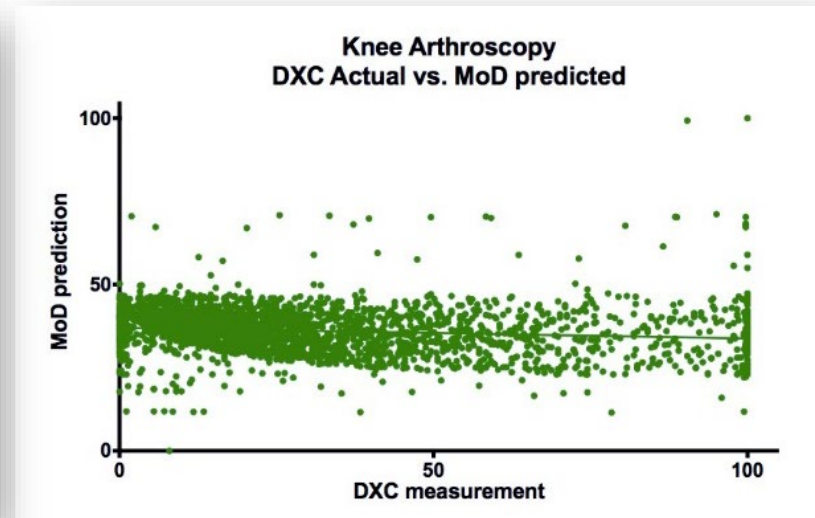
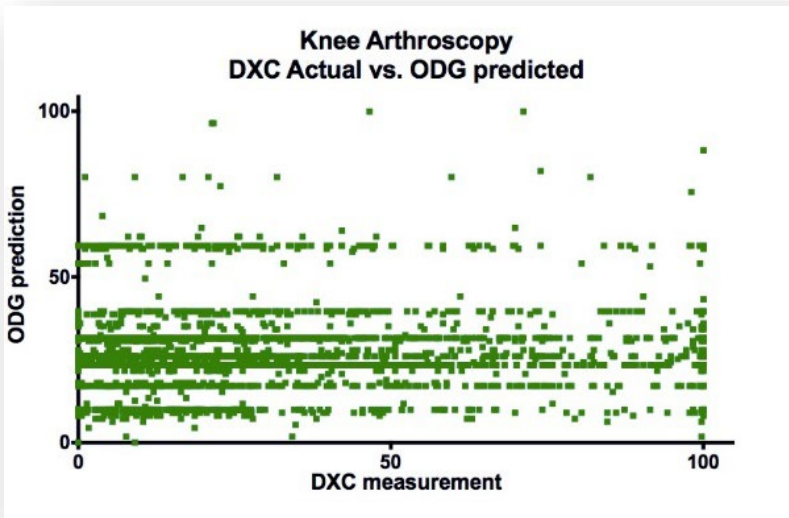
**Goal:** Determine which was more closely aligned with actual days absent

**Finding:** Greater agreement between MoD scoring and actual days absent than ODG RTW vs. days absent

**Recommendation:**

- **Maintain the calculation methodology of MoD**
- **Update diagnosis coding used for MoD calculations from ICD-9 codes to ICD-10**
- **Update the benchmark data used for evaluation of claim duration and diagnosis severity**
  - *Updating is currently in progress*

# Greater agreement between MoD scoring and days absent than ODG RTW vs. days absent.



Tighter line indicates better agreement between tested disability metric and actual duration of disability

# Exceptional Performance Indicators

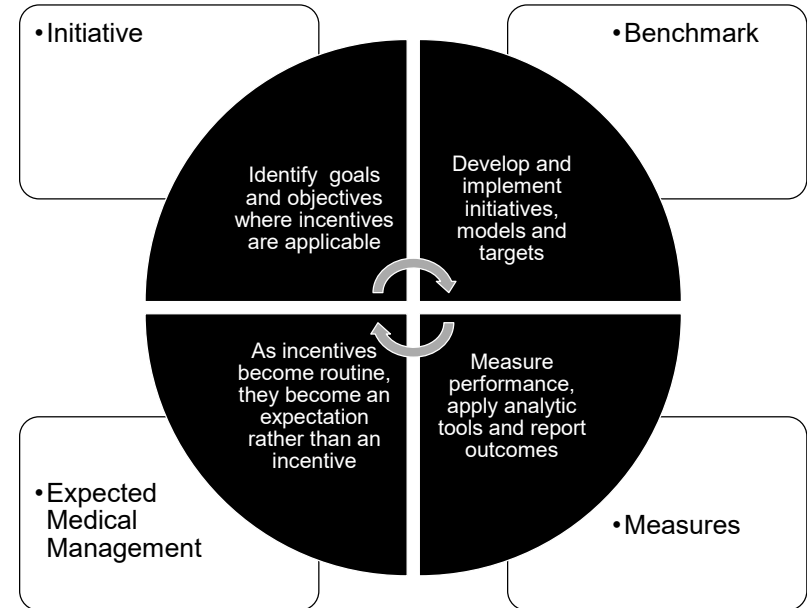


Introduced in 2016 in order to emphasize specific high-value actions in medical management

1. Medication management
2. Vocational rehabilitation
3. Transitional work
4. Legacy return to work
5. Wellness programs

**Conclusion:** Data are new, but the nature of EPIs is aligned with best practice to drive continuous improvement in a non-traditional risk-sharing model

**Recommendation:** Continue to collect MCO performance data on these indicators evolution of performance measurements and benchmarks



# On-Site Case Management



## Situations where on-site case management services may be needed include:

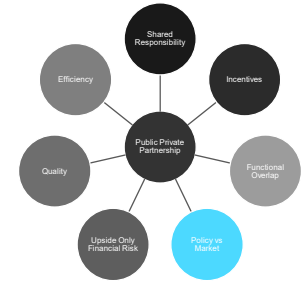
1. *Verbal communication barrier.*
2. *Disagreements or misunderstandings of treatment plan hindering RTW.*
3. *At the request of the injured employee.*
4. *Facilitate initial emergency treatment to expedite medical care.*

## Appropriate use of on-site case management for high-value cases is of great value:

- Expected as part of medical case management in other environments where MCOs bear financial risk.
- In Ohio MCOs do not share financial risks for medical costs so incentivization may be required in this environment, even though on-site case management is an expected part of claims management in other circumstances.

**We recommend that MCOs and BWC reevaluate medical management guidelines and consider development of a payment structure that would reward high-value use of on-site case management, only when intense medical management is required.**

# MCO Administrative Payments: Moving from better to best



**Aligning administrative payments with industry standard**



**Revising competitive MoD outcome payments**



# Administrative Payment Comparison

## Services provided by MCOs

- First Report of Injuries
- Medical Management Services
- Provider Relations
- Return to Work Services
- Quality Assurance
- Employer Services
- Provider Bill Processing in a timely, accurate manner
- Alternative Dispute Resolution
- Peer-review

Plan Type	Median % of Premium for Admin. Costs
Managed Care Plan, insured *	14%
Managed Care Plan, ASO	8.5%
Indemnity and PPO	15%
Indemnity and PPO, ASO	8.6%
Medicaid *	13.8%

\* Ohio BWC MCOs are most similar to these plan types based on services offered.



# Key Differences in Managed Care Environments

1. Ohio MCO provide services that are not perfectly comparable to other environments.
2. In a traditional full-risk-reward managed care environment, savings and risk are transferred to the MCO.
3. MCOs in other environments have different tools, types of leverage and obligations.
4. Differing duration of medical management.

# MCO Administrative Payments

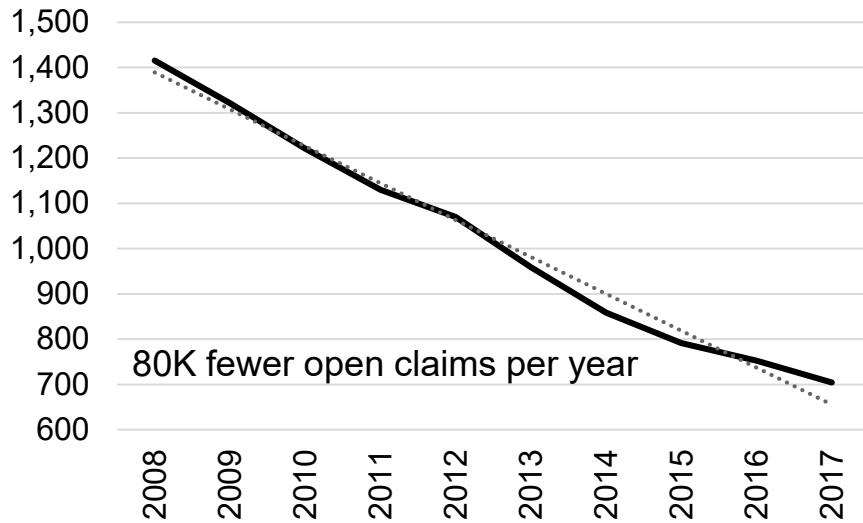
	<b>2017</b>	<b>2016</b>	<b>2015</b>
Medical Benefits Paid*	\$461,780,100	\$492,913,038	\$510,064,188
Total MCO Fees Paid	\$170,797,091	\$169,229,310	\$170,688,324
Total Paid	\$632,577,191	\$662,142,348	\$680,752,512
<b>Total MCO Fees Paid (%)</b>	<b>27%</b>	<b>26%</b>	<b>25%</b>

*\*Medical Benefits Paid do not include PBM costs.*

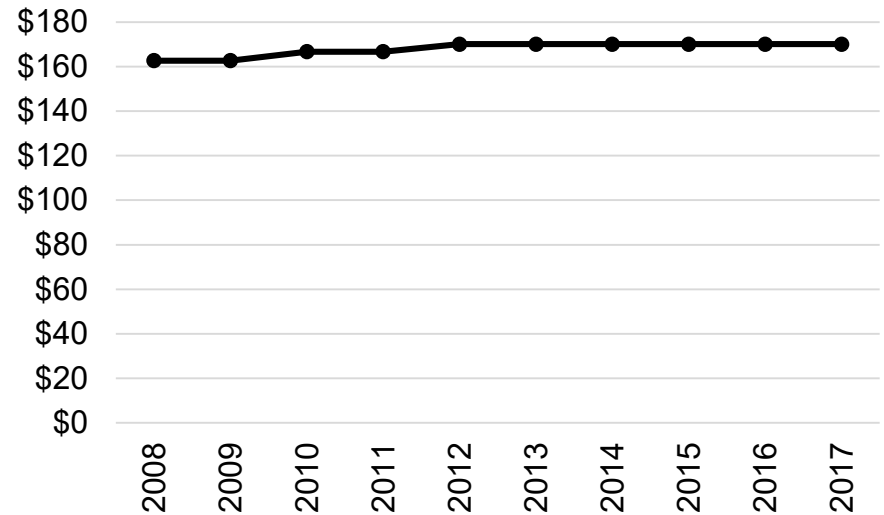
**Conclusion: Administrative payments made to Ohio MCOs is greater than that observed in other environments**

# MCO Payments

Statutorily Open Claim Volume by Year  
(In Thousands)



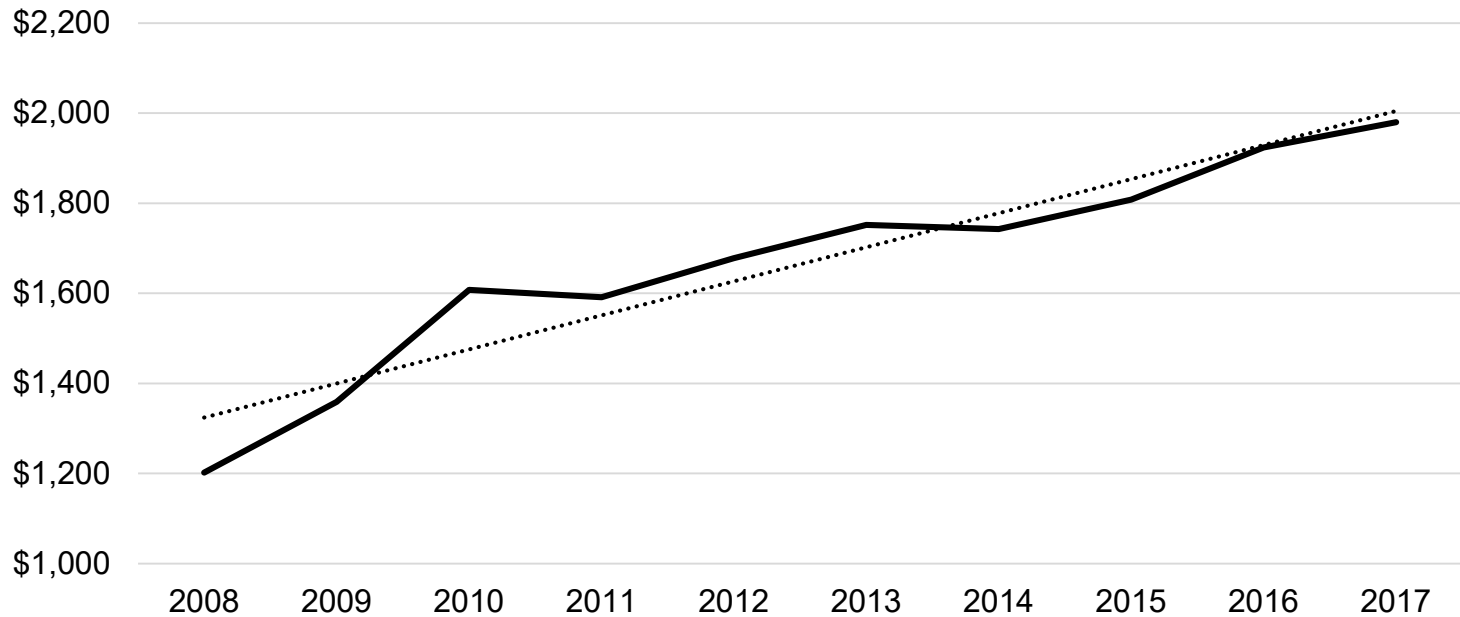
Available MCO Payment per Year  
(In Millions)



**Open Claim Volume per year has decreased but MCO payments have remained constant**

# MCO Administrative Payments

Amount Paid to MCOs per Statutorily Open Claim by Year



**The cost per statutorily open claim is increasing each year.**

# MCO Payments

## Additional Recommendations:

- Align MCO payment with industry standard in terms of MCO payments as a percentage of total expenditures.
  - While taking into account unique requirements and objectives of the HPP.
- Incentives and outcome payment methodologies should be further evaluated and reconsidered.
  - In concert with well-established benchmark targets and appropriate risk distribution.

- In order to align with industry standards, we recommend the BWC adjust the MCO medical management payment to reflect industry standards while taking into account Ohio's unique environment.
- The distribution of administrative and outcome payments need to reflect the goals and objectives of the HPP and use incentives to mirror what exists in a traditional MCO environment.

# Changes to MoD Payments

- **Current payment distribution:**
  - A pool of money is fully distributed among MCOs.
  - Success is defined relative to peers MCOs instead of an absolute threshold.
  - Competitive distribution permits rewards without improvement as long as performance surpasses that of peers.
- **Creation of an acceptable performance threshold may better serve the goals of the HPP because:**
  - Incentivize continuous improvement among MCOs as a whole rather than relative to one another.
  - Allow BWC to drive continuous, year-over-year improvement through defined performance goals.
  - Risk-reward

- **Performance Benchmarking**  
*focuses on identification and obtainment of best practices and rewards continuous improvement*
- **Competitive Benchmarking**  
*focuses on the performance in the metric and is best used when the goal is to determine the relationship and distribution of peers*

*-Six Sigma performance evaluation best practices*

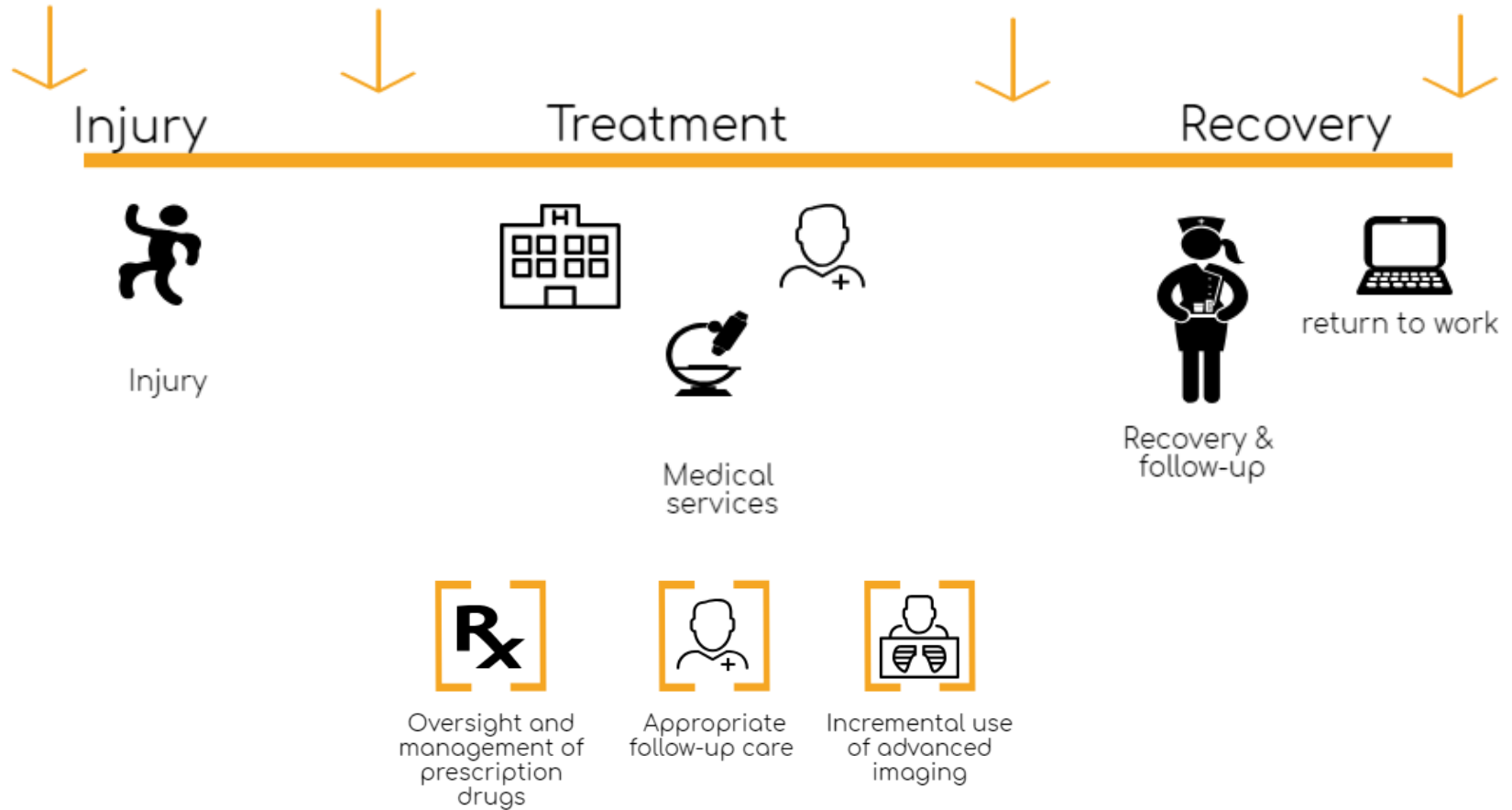
Report area	Topic	Evaluation	Recommendation
Impacts that MCOs have had on the Ohio workers' compensation system	Satisfaction	Excellent	Conduct a satisfaction survey of workers & Employers once every two years
	Return to work - overall	Excellent	
	Operational Ability	Good	
	Cost savings	Good	
	Return to work – lost time claims	Room For Improvement	Monitor RTW separately for lost time claims
Identifying the strengths and weaknesses of the current MCO environment	Market competition and Open Enrollment	Good	
	Duplication of Labor	Room For Improvement	Continued reinforcement of labor division protocols
	Clinical Editing and Medical Bill Review	Room For Improvement	MCOs adopt competitive editing & review criteria
	Development of process & outcome indicators	Room For Improvement	Updates underway to reflect performance achievement levels & drive improvement
Assessment of the current MCO performance measurement protocol	MoD Accuracy	Excellent	Continue with current MoD scoring
	Administrative benchmarks	Room For Improvement	Update performance achievement levels to drive improvement
	MoD Score benchmark data	Needs Revision	Update benchmarking data & use ICD-10 codes
Assessment of the current MCO payment and incentive methodology	Exceptional Performance Indicators	Good	Continuing to collect MCO performance data on these indicators & refine benchmarks
	MoD based outcome payments	Room For Improvement	Assess performance relative to acceptable thresholds
	On-site Case management	Room For Improvement	Reevaluate guidelines for on-site case management and incentivize appropriate use when intense medical management is required.
	Administrative Payments	Needs Revision	Align MCO payment to market standards
Comparative analysis of BWC's current approach to procurement of medical management services	Quality Assurance Monitoring	Excellent	
	State Comparisons	Excellent	Consider Trusted Provider Networks
	Performance Benchmarks	Good	Increase data timing and accuracy thresholds
	Incentive Strategies	Room For Improvement	Optimize incentives to align with contractual expectations and drive continuous improvement



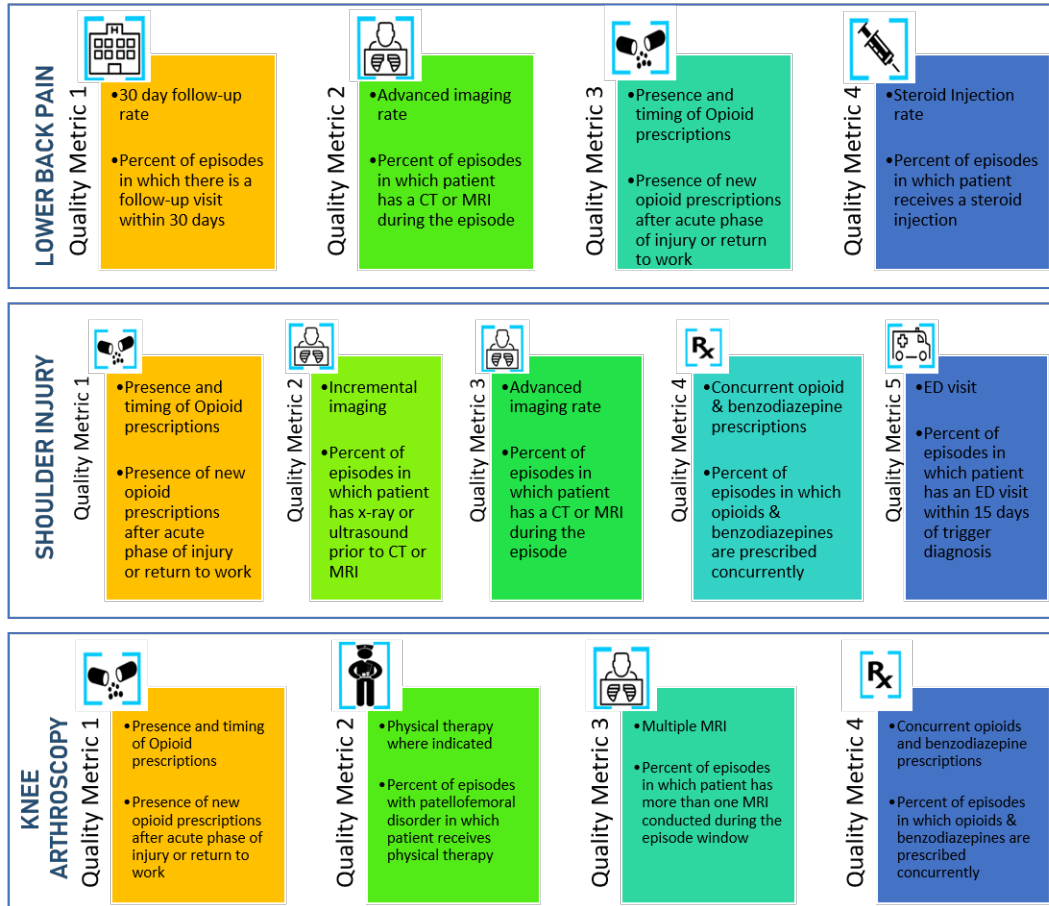
# Appendix

Additional supporting data

# Episodes of care as a measuring tool



## CLINICAL QUALITY METRICS



## **Summary: OSHA's Occupational Exposure to Respirable Crystalline Silica Frequently Asked Questions for General Industry**

On January 18, 2019, the Occupational Safety and Health Administration (OSHA) published Frequently Asked Questions (FAQs) to provide guidance to general industry employers on application of OSHA's final rule regulating occupational exposure to respirable crystalline silica in general industry. OSHA developed the FAQs in consultation with the National Association of Manufacturers and the American Foundry Society. This provides a short summary of the key interpretations from the FAQs. Members are encouraged to review the entire document.

### **Scope and Application (29 C.F.R. § 1910.1053(a))**

The standard applies to all occupational exposures to respirable crystalline silica, except the standard does not apply to: (1) construction work; (2) agricultural operations; and (3) exposures that result from the processing of sorptive clays. In addition, the standard does not apply where the employer has objective data demonstrating that employee exposure to silica will remain below the action level (AL) of 25  $\mu\text{g}/\text{m}^3$  measured as an 8-hour TWA under any foreseeable conditions.

The FAQs clarify that:

- In assessing whether certain activities are outside the scope of the standard, an employer does not necessarily need to assess exposures in the *complete* absence of controls. The intent of the standard is to exempt conditions where employees will be exposed to minimal levels of silica under any foreseeable conditions. Although engineering controls are usually a reliable means of limiting employee exposures, equipment does occasionally fail. As a result, OSHA considers the failure of most controls to be a foreseeable condition and thus employers should consider this when making their assessments. However, OSHA states that failure of some types of controls (e.g., substitution of non-silica-containing materials, fixed walls) is not possible or so improbable that it is not a foreseeable condition, and therefore employers need not account for the potential failure of such controls when determining coverage.
- In determining whether the standard applies, employers also do not need to disable, remove, or otherwise account for the potential failure of measures that may contribute, in a limited fashion, to reducing silica exposures, but that are not adopted for that specific purpose, i.e., general building ventilation or HVAC systems.

### **Exposure Assessments (29 C.F.R. § 1910.1053(d))**

The standard requires employers to ensure that no employee is exposed to an airborne concentration of silica in excess of the permissible exposure limit (PEL) of 50  $\mu\text{g}/\text{m}^3$ , calculated as an 8-hour TWA. Employers must assess the exposure of each employee who is or may reasonably be expected to be exposed to respirable crystalline silica at or above the AL using either a performance option or a scheduled monitoring option.

The FAQs clarify that:

- In assessing exposures, the employer has the option of switching from the scheduled monitoring option to the performance option, and can use air monitoring data generated during scheduled monitoring to fulfill the performance option assessment requirements.

- The term “objective data” means information demonstrating employee exposure to silica associated with a particular product or material or a specific process, task, or activity. Types of data that may qualify include: data from industry-wide surveys, equipment manufacturers, or trade associations; exposure mapping; calculations based on substance composition or chemical and physical properties; and historical air monitoring data.
- Employers do not need to sample every employee when using the scheduled monitoring option. Where several employees perform the same tasks on the same shift and in the same work area, employers may sample a representative fraction of these employees.
- The standard does not prohibit employers from requiring employees to wear personal samplers as a condition of employment, however, other state or federal laws or regulations, or collective bargaining agreements, may apply.

### **Regulated Areas (29 C.F.R. § 1910.1053(e))**

The standard requires employers to establish regulated areas wherever an employee’s exposure to airborne concentrations of respirable crystalline silica is, or can reasonably be expected to be, in excess of the PEL. Employers must demarcate regulated areas from the rest of the workplace and post signs with a specified legend at all entrances to regulated areas. Employers must limit access to regulated areas and provide, and require the use of, an appropriate respirator for each employee and designated representative who enters a regulated area.

The FAQs clarify that:

- If an employer has, and adequately enforces, work rules precluding employees from entering a particular area, then the employer does not need to treat that location as a regulated area. An area also does not need to be designated as a regulated area if the employer has and enforces work rules limiting employees’ time in the area so that there is no reasonable expectation that their 8-hour TWA exposures will exceed the PEL.
- In some facilities, exposures above the PEL may be associated with an intermittent activity. Employers do not need to treat an area as a regulated area on days when employee exposures are not reasonably expected to exceed the PEL. In such cases, employers may elect to demarcate the regulated area on just a temporary basis.

### **Methods of Compliance (29 C.F.R. § 1910.1053(f))**

The standard requires employers to use engineering and work practice controls to reduce and maintain employee exposure to silica to or below the PEL, unless they can demonstrate that such controls are not feasible. Wherever feasible engineering and work practice controls are not sufficient to reduce employee exposure to or below the PEL, the employer must reduce exposures to the lowest feasible level through these methods, and then provide appropriate respiratory protection.

The FAQs clarify that:

- Administrative controls are an acceptable means of reducing employee exposures under the standard. An employer could reduce an employee’s exposures by scheduling high-exposure

tasks to be conducted when that employee will not be working in an adjacent area. The standard also does not prohibit the rotation of employees to limit employee exposures.

### **Written Exposure Control Plan (29 C.F.R. § 1910.1053(f)(2))**

The standard requires employers to implement a written exposure control plan that contains: (1) a description of the tasks in the workplace that involve exposure to silica; (2) a description of the engineering controls, work practices, and respiratory protection used to limit employee exposure; and (3) a description of the housekeeping measures used. The plan must be reviewed and evaluated for effectiveness at least annually and updated as necessary.

The FAQs clarify that:

- Tasks that are not covered by the standard, e.g., because the employer has objective data demonstrating that employee exposures will remain below the AL under any foreseeable conditions, do not need to be included in the written exposure control plan.
- Employers may develop a single comprehensive plan for each worksite that includes all of the silica-generating tasks that employees will perform at the worksite (i.e., employers do not need separate exposure control plans for different operations).

### **Housekeeping (29 C.F.R. § 1910.1053(h))**

Under the standard, employers must not allow dry sweeping or dry brushing “where such activity could contribute to employee exposure to respirable crystalline silica unless wet sweeping, HEPA-filtered vacuuming or other methods that minimize the likelihood of exposure are not feasible.” In addition, employers must not allow compressed air to be used to clean clothing or surfaces where such activity could contribute to employee exposure to respirable crystalline silica unless (1) the compressed air is used in conjunction with a ventilation system that effectively captures the dust cloud created, or (2) no alternative method is feasible.

The FAQs clarify that:

- If an employer has objective data demonstrating that employee exposure will remain below the AL under any foreseeable conditions, the prohibition on dry sweeping, dry brushing, and the use of compressed air for cleaning clothing and surfaces does not apply
- Drivable powered industrial sweepers are not prohibited. When these types of sweepers are equipped with HEPA filters, their use is considered ‘HEPA-filtered vacuuming’ for purposes of the standard. When these types of sweepers are *not* equipped with HEPA filters, their use is considered an ‘other [housekeeping] method,’ and they are also not prohibited.
- The standard does not require employers to demonstrate that wet methods, a HEPA-filtered vacuum, or other methods are *impossible* to use in order to establish “infeasibility.” The “infeasibility” exceptions are intended to encompass situations where wet methods, HEPA-filtered vacuuming, and other exposure-minimizing methods are not effective, would cause damage, or would create a hazard in the workplace.
- In some cases, *wet sweeping* may be infeasible where the water could: make an elevated surface slick and create a fall hazard; come into contact with electrical panels or pose an

electrical hazard; come into contact with molten metal; cause the dust to harden; or adversely affect the quality of the final product. In some cases, *HEPA-filtered vacuuming* may be infeasible where: tight or obstructed spaces prevent a vacuum, hose, or nozzle from accessing or effectively cleaning the space (such as around some pipes, meters, and gauges); or very large amounts of silica-containing materials must be cleaned, and the volume of material cannot effectively be cleaned by vacuuming.

### **Medical Surveillance (29 C.F.R. § 1910.1053(i))**

The standard requires employers to make medical surveillance available at no cost, and at a reasonable time and place, to any employee who will be occupationally exposed to respirable crystalline silica at or above the PEL (or AL after June 23, 2020) for 30 or more days a year. The examinations must include a medical and work history, a physical examination, a chest x-ray, a pulmonary function test, a test for latent tuberculosis infection (initial exam only), and any other tests deemed appropriate by the health care professional.

The employee will receive a written medical report that includes: (1) the results; (2) any recommended limitations on the employee's use of respirators; (3) any recommended limitations on the employee's exposure to silica; and (4) a statement, if applicable, that the employee should be examined by a specialist. The employer must also obtain a written medical opinion from the health care professional. This opinion contains the date of the examination, a statement that the examination has met the requirements of the standard, and any recommended limitations on the employee's use of respirators. If the employee gives written authorization, the written opinion for the employer may also contain any recommended limitations on the employee's exposure to silica and/or a statement that the employee should be seen by a specialist (if applicable).

The FAQs clarify that:

- The standard limits only the information that can be included in the health care professional's written medical opinion for the employer following an examination performed for purposes of compliance with the medical surveillance provisions of the standard. If an employer receives the information through another means (e.g., workers compensation), then the prohibition does not apply.



Ohio Manufacturers' Association  
Workers' Compensation Counsel Report  
February 27, 2019

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## Regulatory Actions

### *New Rules:*

#### **The BWC filed the following rule with JCARR on October 26, 2018 effective November 5, 2018:**

4123-17-55 Transitional work development grant and performance bonus: This rule governs requirement for transitional work developers. The amended rule makes administrative changes and eliminates the "Verified experience" requirement for a transitional work developer. Verified experience includes having experience in developing transition work programs in accordance with BWC policy or mentoring experience with another developer of transition work services according to BWC policy.

#### **The BWC filed the following emergency rule with JCARR on December 31, 2018 effective December 31, 2018 with an expiration date of May 1, 2019**

4123-6-08 Bureau fee schedule (Amend) (an Original File amendment was filed on February 12, 2019 and set for hearing before JCARR on March 22, 2019 for the same change)

#### **The BWC filed the following rules with JCARR on December 26, 2018 effective January 5, 2019:**

- 4123-17-15 Professional employer organizations.
- 4123-17-15.1 PEO Agreements.
- 4123-17-15.2 Registration and reporting requirements.
- 4123-17-15.4 Financial requirements.
- 4123-17-15.5 Self-insuring PEOs.
- 4123-17-15.7 Denial or revocation of PEO registration.



**The BWC filed the following rule with JCARR on December 31, 2018 effective January 10, 2019:**

4123-6-21.3 Outpatient medication formulary (Amend)

**The BWC filed the following rule with JCARR on January 17, 2019 effective January 27, 2019:**

4123-17-07 Officers of corporations, elective coverage entities, and ministers: This rule governs individuals that qualify for elective coverage. The amendment clarifies that coverage will terminate and be reinstated in accordance with BWC policy for failure to pay premiums for elective coverage persons.

**The BWC filed the following rule with JCARR on January 22, 2019 effective February 1, 2019:**

4123-6-37.1 Payment of hospital inpatient services: This rule governs payments for services provided by hospitals. The amended rule allows providers to be reimbursed for acute or subacute detoxification services on a per diem rate. Additionally, the amended rule permits MCOs to contract with hospital for reimbursement rates pursuant. Finally, the amended rule makes administrative changes.

**The Industrial Commission filed the following rules with JCARR on January 18, 2019 effective February 1, 2019:**

- 4121-2-01 Standards of practice for attorneys, agents and representatives of claimants or employers: administrative changes only.
- 4121-3-12 Suspension of the processing of claims: administrative changes only.
- 4121-3-20 Additional awards by reason of violations of specific safety requirements: administrative changes only.
- 4121-15-01 Code of ethics, title and rules covering: administrative changes only.
- 4121-15-02 Policy: administrative changes only.
- 4121-15-03 Standard of conduct: this rule governs the standard of conduct for public employees. The amended rules provide an exception for employees to preform ministerial acts on behalf of claimants.
- 4121-15-04 Posting, distribution and employee acknowledgement and receipt: administrative changes only.
- 4121-15-07 Representatives' responsibility relative to employees' code of ethics: administrative changes only.
- 4121-15-08 Remedial action against persons exercising improper influence and engaging in favoritism: administrative changes only.
- 4121-15-09 Prohibition against unnecessary claim file possession: administrative changes only.

**The BWC filed the following rules with JCARR on January 28, 2019 to be effective July 1, 2019:**

- 4123-17-20 Employer contribution to the coal-workers pneumoconiosis fund: This rule governs employers subject to the coal-workers pneumoconiosis fund. The amended rule provides that the BWC will grant credits to qualifying employers who subscribed to the coal-workers pneumoconiosis fund prior to April 29, 2011 for the January 2, 2019 through June 30, 2019 reporting period.
- 4123-17-35 Public employer state agency contribution to the state insurance fund (Amend)
- 4123-17-71 One-claim program: this rule allows group-rated employers to participate in the one-claim program, which provides discounts to employers with "significant claims." This amended rule changes the definition of "Significant Claim" to use \$700 as the employer's total limited losses where the expected losses fall below the minimum expected loss provided in Appendix A of rule 4123-17-05.1 (\$2,000).

**The BWC filed the following rule with JCARR on February 5, 2019 to be effective July 1, 2019:**

- 4123-17-05.1 Private employer credibility table (Amend)

**The BWC and the Industrial Commission filed the following rules "without changes" as a result of their five year review**

- 4121-2-02 Suspension from practice
- 4121-15-05 Purpose: eliminating outside influence; producing impartiality in handling of claims and employer risk accounts and avoiding favoritism
- 4121-15-06 Furnishing employees' code of ethics and rules on improper influence to representatives
- 4123-1-01 Notice procedure for the adoption, amendment or rescission of rules.
- 4123-21-05 Audit and inspections
- 4123-21-08 Controversion of claims

**The following rules went before JCARR on January 14, 2019:**

- 4123-21-01 Procedures for subscription to the coal-workers' pneumoconiosis fund: administrative changes only
- 4123-21-02 Determination of coverage: administrative changes only.
- 4123-21-03 Premium payment: This rule governs how employers subject to the coal-workers' pneumoconiosis fund pay premiums. The changes to the rule switch the coal-workers' pneumoconiosis fund to prospective billing similar to other state-fund policies.

- 4123-21-04 Payroll reporting: This rule governs the BWC's required notice to employers subject to the coal-workers' pneumoconiosis fund. The entire rule was rescinded and replaced by a new rule requiring the BWC to provide employers in the coal workers pneumoconiosis fund with a notice of estimated premium, payroll reporting, and reconciliation of premium.
- 4123-21-06 Default, retroactive coverage: This rule governs employers subject to the coal-workers' pneumoconiosis fund. The amendment eliminates 60 day period after expiration date for payment of renewal premium.

**The following rule goes before JCARR on February 19, 2019:**

- 4123-21-07 Effect of cancelled subscription: administrative changes only,

**The following rules go before JCARR on March 22, 2019:**

- 4123-6-37.2 Payment of hospital outpatient services: administrative changes based on annual Medicare updates.
- 4123-6-37.3 Payment of ambulatory surgical center services: administrative changes based on annual Medicare updates and other changes to reimbursement rates for ambulatory surgical center services.

**Legislative Actions**

No new legislation; see Rob's report for status updates to pending legislation

**Judicial Decisions**

**Supreme Court:**

***State ex rel. Byington Builders, Ltd. v. Industrial Commission***

An experienced roofer was tasked with installing caps at the peak of a roof on a two-story apartment building for Byington Builders. He fell 22 feet and sustained many injuries. He was awarded workers' compensation benefits and later filed an application for an award under the violation of a specific safety requirement provision of the Ohio Constitution ("VSSR"). A VSSR is a distinct award that can be granted in addition to standard workers' compensation benefits when an employer fails to follow statutory and administrative safety requirements.

The claimant was awarded a VSSR award and the employer filed a writ of mandamus. The Court of Appeals denied the writ, finding that the Industrial Commission did not abuse its discretion in interpreting the administrative safety rules. The employer appealed to the Supreme Court of Ohio, which upheld the 10<sup>th</sup> District's decision, noting that the standard of review of Industrial Commission decisions is abuse of discretion, which affords great deference to the

Commission's decision as long as it is supported by some evidence. This deference also applies to the Commission's interpretation of administrative safety rules.

***Stolz v. J & B Steel Erectors, Inc.***

A concrete finisher worked for a subcontractor on the Horseshoe Casino in Cincinnati, Ohio, a job where the general contractor was self-insured. He was injured on the job and filed negligence claims in federal court against the general contractor and 5 other subcontractors. The contractors moved for summary judgment on the basis that their enrollment in Ohio's workers' compensation system gave them immunity from tort liability. The district court granted summary judgment as to some but not all the subcontractors, noting that an enrolled subcontractor is only entitled to immunity vis-à-vis its own employees under Ohio law. The subcontractors then moved for the district court to certify the question of state law to the Supreme Court of Ohio, which was granted.

The certified question to the state court was whether Ohio Rev. Code §§ 4123.35 and 4123.74 provide immunity to subcontractors enrolled in a self-insurance plan from tort claims made by employees of other enrolled subcontractors injured while working on the self-insured project. Self-insured employers are entitled to tort liability immunity.

The Supreme Court ultimately found that the two statutes, when read in unison, create a legal fiction for workers' compensation only where the general contractor acts as the employer of all its own employees and the employees of all subcontractors. This legal fiction leaves no employees under the subcontractors, therefore eliminating tort liability for both the general contractor and subcontractors. Therefore, the Supreme Court of Ohio found that subcontractors under the protection of a self-insured general contractor may not be sued for torts by the employees of other subcontractors.

***Schaefer v. Lake Hospital System, Inc., et al.***

The plaintiff-appellant was a nursing assistant at Lake Hospital when she was kicked by a patient. She initially applied for various conditions and sought additional allowances for substantial aggravation of preexisting conditions. On appeal to court, the hospital moved for summary judgment on the additional claims for substantial aggravation of preexisting conditions, arguing that the plaintiff could not meet the objective evidence burden of proof for such a claim. The trial court granted summary judgment and the plaintiff appealed to the Eleventh District Court of Appeals of Ohio.

The appellate court decision required interpretation and application of the "injury" statute, which states that a claimant can only establish a substantial aggravation of a previous condition with documentation of "objective diagnostic findings, objective clinical findings, or objective test results." The plaintiff-appellant had no pre-injury diagnostic tests because her conditions were non-symptomatic and the hospital argued that this prevented her from establishing a baseline of a preexisting condition. However, her doctor and expert witness relied on her testimony that she

was not symptomatic before the workplace injury, that she was now having pain, and that she got risky injections to seek relief from her symptoms to assert that a preexisting condition was substantially aggravated.

The court found that the expert witness created a genuine issue of material fact and reversed the summary judgment based on his testimony.

***State ex rel. Mignella v. Industrial Commission of Ohio, Slip Opinion No. 2019-Ohio-463***

A former school teacher applied for permanent total disability (PTD) claiming to have been injured from a fall at school. As part of her application, she filed a report from her chiropractor stating that she was incapable of working. She was directed to undergo an evaluation as to the extent of her ability to work, but the doctor failed to follow AMA Guidelines in the report. As a result, she was directed to submit to a second evaluation, which she refused to do. The hearing officer then suspended her application pending her cooperation.

She filed for a writ of mandamus to require adjudication by the Commission without undergoing a second exam. The magistrate recommended that the court deny the writ. The court adopted the magistrate's findings, and the teacher appealed to the Supreme Court of Ohio seeking a writ of procedendo, ordering the Commission to proceed to judgment. Writs of procedendo are rare remedies. To secure one, the claimant must establish that the lower tribunal has a legal duty to proceed, the claimant has a legal right requiring the tribunal to proceed, and there is a lack of adequate remedy in the ordinary course of law.

The Supreme Court found that the commission has the statutory authority to require claimants to submit to medical examination at any time, and may suspend an application if the applicant fails to do so. The Court cited to precedent allowing the Commission to order multiple medical examinations as long as there is good reason to do so. The Court declined to issue the writ of procedendo and affirmed the court of appeals' denial of the writ of mandamus.

**Tenth District Court of Appeals:**

***State ex rel. Daffner v. Industrial Commission (Tenth District, Franklin County, October 09, 2018 Slip Copy 2018 WL 4896379)***

A worker applied for temporary total disability compensation (TTD), which was denied by the Industrial Commission of Ohio. The worker sought mandamus in the 10<sup>th</sup> District Court of Appeals, asking the Commission to vacate its denial. The matter was heard by a magistrate, who concluded that the Commission abused its discretion in denying TTD.

The magistrate cited three flaws in the decision (i) the hearing officer improperly relied on a note from a doctor that predated the Commission's allowance of the "failed back syndrome, lumbar" condition at issue in this case; (ii) the hearing officer mistakenly found that the worker did not

present evidence to support the newly allowed condition; and (iii) the hearing officer mistakenly found that the worker did not submit medical evidence to support a causal connection between the “failed back syndrome, lumbar” and TTD. The magistrate recommended a writ of mandamus vacating the Commission’s orders denying compensation.

The Commission objected to the magistrate’s recommendation. The Court ultimately upheld the magistrate’s decision, and granted a writ of mandamus to vacate the orders denying disability compensation.

***State ex rel. Sun Chemical Corp. v. Industrial Commission (Tenth District, Franklin County, January 24, 2019 Slip Copy 2019 WL 328433)***

Claimant filed for compensation based on permanent and total disability (PTD). The worker was injured three times between 1990 and 2004 while working at Sun Chemical Corporation. A district hearing officer denied the application for PTD. The worker sought reconsideration, and the Industrial Commission of Ohio found jurisdiction based on the hearing officer failing to consider the worker’s extensive, failed attempts at vocational rehabilitation.

On the merits, the Commission granted PTD. Sun Chemical Corporation sought a writ of mandamus in the 10<sup>th</sup> District Court of Appeals. The magistrate found that the hearing officer properly weighed the evidence and that the failure to mention vocational rehabilitation was not an abuse of discretion; therefore, the Commission should not have accepted jurisdiction to hear the appeal. The worker and the Commission objected to the magistrate’s decision and the case came before a panel of 10<sup>th</sup> District judges.

The court noted that hearing officers have a duty to use a certain amount of fundamental fairness in reviewing evidence. The Ohio Administrative Code requires consideration of all factors relating to “whether the injured worker may return to the job market by using past employment skills or those skills which may be reasonably developed.” Ultimately, the Court’s opinion held that an employee deserves to know why a disability application was denied, and an employer deserves to know why an application was granted. The court concluded that the hearing officer’s failure to reference the failed extensive vocational rehabilitation was a clear mistake of law, that the Commission had jurisdiction to overrule such a mistaken decision, and that the magistrate’s conclusion was improper. Therefore, the Court denied the writ of mandamus, upholding the Commission’s decision to grant PTD. The takeaway: hearing officers must explicitly address relevant evidence relied upon in their decisions.

## Safety & Workers' Compensation

### DeWine Submits BWC Budget Proposal – Includes Premium Reduction and Investments in Safety February 22, 2019

Governor Mike DeWine last week submitted to the General Assembly **his recommendations** for funding the Ohio Bureau of Workers' Compensation (BWC) and the Ohio Industrial Commission (OIC) for the upcoming 2020-2021 budget biennium.

The appropriated budgets for BWC and OIC cover the agencies' administrative operations and are supported by workers' compensation premiums paid by Ohio employers. Benefits, including lost wages and medical benefits for injured workers, are paid separately from the State Insurance Fund.

The BWC's recommended operating budget reflects the previously announced proposal to reduce the average premium rate BWC charges private employers by 20%, effective July 1, 2019.

Governor DeWine is also recommending these priority investments:

- A multi-million dollar increase to BWC's Substance Use Recovery and Workplace Safety Program, which helps employers hire and retain workers recovering from substance use disorders.
- \$2 million to create a new Safety and Health Center of Excellence to test and deploy advances in science and technology to prevent occupational accidents, injuries, and illnesses.
- \$40 million over the biennium for safety grants. 2/16/2019

### BWC Safety Innovation Award Finalists Announced February 22, 2019

BWC created the **Safety Innovation Award** program to recognize innovations that result in risk reduction, cost savings, and potential application to other workplaces, industries or operations. Innovations can range from a newly-created piece of equipment, tool, process or method to an existing one that an employer has improved or uses in a new or creative way.

This year's finalists are:

- Francis Manufacturing Company (Russia)  
– Hapman Sand Conveyance System
- J&R Farms (Mount Vernon) – Grain Engulfment Prevention/Retrieval System
- TERYDON Inc. (Navarre) – Touch-Screen Tablet Wireless Control (a.k.a. "Lunch Box")
- Yoder Drilling & Geothermal Inc. (Sugarcreek) – Geothermal Grouter Pipe/Loop Reel

Read **summaries of the award-winning projects here**. The finalists will be on hand at the Safety Innovation Awards booth at the **Ohio Safety Congress & Expo 2019** (OSC19) March 6-8 in Columbus. Stop by to learn more about the innovations when you're at OSC19. (And visit the OMA team at booth #304!) 2/20/2019

### BWC Board Voting 20% Rate Reduction Today February 22, 2019

At its meeting today, the board of the Ohio Bureau of Workers' Compensation (BWC) is voting a proposed 20% reduction in the average premium rate charged to private employers. It would be the largest rate cut in nearly 60 years.

Fewer workplace injuries and falling estimates of future medical costs are credited with the proposed rate reduction.

If approved, the rate reduction would be effective July 1 and is projected to save private employers \$244 million over premiums for fiscal year 2019. 2/21/2019

**BWC Employer Webinar is Feb. 28**  
**February 22, 2019**

BWC's next employer webinar will be Thursday, Feb. 28 at 11:30 a.m.

The webinar will cover policy reminders and important dates, the *Better You, Better Ohio!* health and wellness program, the Policy Activity Rebate program, buying and/or selling a business, an Ohio Industrial Commission overview and the monthly safety tip. Register to attend [here](#). 2/16/2019

**Two OSHA Recordkeeping Reminders**  
**February 15, 2019**

First, employers are reminded of their obligation to post a copy of OSHA Form 300A, which summarizes job-related injuries and illnesses logged during 2018. Each year, from February 1 through April 30, the summary must be displayed in a common area where notices to employees are usually posted.

Second, covered establishments are required to electronically submit to OSHA information from OSHA Form 300A. The deadline for submission is March 2, 2019. More info [here](#). 2/11/2019

**Less Than 3 Weeks to Safety Congress**  
**February 15, 2019**



Register now for the FREE Ohio Safety Congress, the largest and longest-running regional occupational safety, health and workers' compensation conference in the U.S. 2/14/2019

**New BWC Administrator Headlines**  
**Upcoming OMA Meeting**  
**February 1, 2019**

Stephanie McCloud, Gov. DeWine's recent appointment to lead the Ohio Bureau of Workers' Compensation, is scheduled to be a guest presenter at the OMA's upcoming Safety & Workers' Compensation committee meeting.

The meeting will be on Wednesday, February 27 and starts at 10:00 a.m. The meeting includes lunch, and there is a call-in option.

You can find and [register for the meeting here](#). 1/31/2019

**Supreme Court of Ohio Rules on VSSR Case**  
**in Favor of Employer**  
**February 1, 2019**

From OMA Connections Partner Calfee: "In a 4-3 decision, the Ohio Supreme Court recently decided a case with potentially far-reaching implications for Ohio Workers' Compensation Violation of a Specific Safety Requirement (VSSR) Law. *State ex rel. Jackson Tube Serv., Inc. v. Indus. Comm.*, ... held that the "impossibility defense" to violation of an OSHA standard could be imported into Ohio Workers' Compensation Law as an affirmative defense to an alleged VSSR where an employer shows: (1) it would have been impossible to comply with the specific safety requirement or that compliance would have precluded performance of the work; and (2) that no alternate means of employee protection existed or were available. ..."

Read [more](#) about this case from Calfee. 1/28/2019

**BWC Recommends Largest Private Employer**  
**Rate Decrease in 60 Years**  
**January 25, 2019**

This week the Ohio Bureau of Workers' Compensation (BWC) proposed a 20% reduction in the average premium rate it charges private employers, which would be the largest rate cut in nearly 60 years if approved by the agency's board of directors.

Fewer workplace injuries and falling estimates of future medical costs are driving the recommendation.



The board will vote the measure at its February 22 meeting.

If approved, the rate reduction would be effective July 1 and is projected to save private employers \$244 million over premiums for fiscal year 2019.

Premiums paid to BWC not only cover health care and wages for injured workers, they support BWC's Safety & Hygiene Division, which offers grants, training, consultations and other services to help employers improve workplace safety.

The proposed 20% rate cut represents an average statewide change. The actual premium paid by individual private employers depends on a number of factors, including the expected future claims costs in their industry, their company's recent claims history and their participation in various BWC rebate programs. 1/24/2019

### **OSHA Relieves Some Reporting for Employers with 250+ Employees** January 25, 2019

The U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) has **issued a final rule** that eliminates the requirement for establishments with 250 or more employees to electronically submit information from OSHA Form 300 (Log of Work-Related Injuries and Illnesses) and OSHA Form 301 (Injury and Illness Incident Report) to OSHA each year. OSHA indicates it made this ruling to protect worker privacy.

The final rule does not alter an employer's duty to maintain OSHA Forms 300 and 301 on-site, and OSHA will continue to obtain these forms as needed through inspections and enforcement actions.

Covered **establishments** are still required to electronically submit information from OSHA Form 300A (Summary of Work-Related Injuries and Illnesses). The deadline for submission is March 2, 2019. 1/24/2019

### **OSHA Penalties Increase in 2019** January 25, 2019

OSHA's civil penalties amounts for violations of workplace safety and health standards will increase in 2019 to adjust for inflation. The adjusted maximum penalty amounts will take effect upon publication in the **Federal Register**. The cost-of-living adjustment multiplier for 2019, based on the Consumer Price Index (CPI-U) for the month of October 2018, not seasonally adjusted, is 1.02522. In order to compute the 2019 annual adjustment, the Department of Labor multiplied the most recent penalty amount for each applicable penalty by the multiplier, 1.02522, and rounded to the nearest dollar.

New penalties for willful and repeat violations will be \$132,598 per violation; serious, other-than-serious, and posting requirements are \$13,260 per violation; and failure to abate violations are \$13,260 per day beyond the abatement date. 1/18/2019

### **OSHA Releases Silica FAQs for General Industry** January 25, 2019

Occupational Safety and Health Administration (OSHA) recently published a set of Frequently Asked Questions (FAQs) to provide guidance to general industry employers on application of OSHA's final rule regulating occupational exposure to respirable crystalline silica in general industry (the "silica rule").

OSHA developed the FAQs in consultation with the National Association of Manufacturers (NAM) and the American Foundry Society. Since OSHA published its final silica rule in 2016, the NAM has continued to make the case to OSHA about the rule's heavy burden on manufacturers and the need for reliable guidance to make the rule more workable. These long-awaited FAQs are a good step forward for the industry.

To read the FAQs, **click here**.  
To read NAM's brief summary of the FAQs, **click here**. 1/22/2019

### **Online Database Provides Information on Workplace Injury Trends** January 25, 2019

The National Safety Council posted an **online version of the Injury Facts reference book** for safety statistics. The free resource features a section on workplace safety that includes work-related injury and fatality trends, and how to

benchmark an organization's injury and illness incidence rates with national averages. The information is organized into safety topics, such as falls, work-related fatigue, and forklifts. 1/24/2019

**BWC Welcomes New Administrator/CEO**  
**Stephanie B. McCloud**  
**January 18, 2019**



Governor Mike DeWine nominated **Stephanie B. McCloud** administrator/CEO of the Ohio Bureau of Workers' Compensation (BWC) last week.

According to the BWC, "Administrator McCloud is a seasoned workers' comp professional who cares passionately about BWC and its mission. She is a former BWC staff attorney and has a strong legal resumé, including as principal of a small business in Reynoldsburg.

"After beginning her career at BWC, she served as legal counsel to both former Governor George Voinovich and the Ohio Department of Transportation. She later joined the office of former Attorney General Jim Petro, first as senior deputy attorney general before advancing to chief counsel.

"McCloud is also a former Truro Township Trustee and active community leader. She is a graduate of Capital University Law School and Ohio University, where she earned a journalism degree and studied political science in graduate school." 1/15/2019

**Get Ready to Post Your OSHA 300A by Feb. 1**  
**January 18, 2019**

Each February through April, employers with 11 or more employees must post a summary (OSHA 300A) of the injuries and illnesses recorded the previous year.

A company executive must certify that he or she has examined the OSHA 300 Log and that he or she reasonably believes, based on his or her knowledge of the process by which the information was recorded, that the annual summary is correct and complete.

The company executive who certifies the log must be one of the following persons: an owner of the company (only if the company is a sole proprietorship or partnership); an officer of the corporation; the highest ranking company official working at the establishment; or the immediate supervisor of the highest ranking company official working at the establishment.

OSHA records must be maintained at the worksite for at least five years.

Also, if requested, copies of the records must be provided to current and former employees, or their representatives.

OMA's safety consultant, **Safex**, presented a webinar on January 10, 2019, *New to OSHA Recordkeeping? Access the recorded webinar here.* 1/14/2019

**Deadline to Electronically File Your 300A is March 2**  
**January 18, 2019**

March 2, 2019, is the deadline for electronically **reporting your OSHA form 300A data** for calendar year 2018. Collection began January 2, 2019.

*Special note for establishments with 250 or more employees:* Under the current recordkeeping rule, the initial deadline for electronic submission of information from OSHA Forms 300 and 301 by covered establishments with 250 or more employees was July 1, 2018. However, OSHA has published a Notice of Proposed Rulemaking (NPRM) to amend its recordkeeping regulation to remove the

requirement to electronically submit to OSHA information from the OSHA Form 300 (Log of Work-Related Injuries and Illnesses) and OSHA Form 301 (Injury and Illness Incident Report) for establishments with 250 or more employees which are required to routinely keep injury and illness records. OSHA will not enforce this deadline for these two forms without further notice while this rulemaking is underway. More [here](#). 1/14/2019

**BWC's Next Employer Webinar is Jan. 24 January 18, 2019**

BWC's next monthly employer webinar is Thursday, Jan. 24 at 11:30 a.m. Topics will include the July 1, 2019 premium adjustment factors, My Policy page improvements, enrolling in required electronic notifications for your policy, important account deadlines and program reminders and the monthly safety tip.

Register [here to attend online](#), or you can **opt to to visit your local office** and view the webinar with BWC staff. 1/15/2019

**Small Employers Can Save up to \$2K with BWC PAR Program January 18, 2019**

BWC has developed the Policy Activity Rebate (PAR) to raise employers' awareness and increase understanding of some of the most important aspects of workers' compensation, including safety, claims and policy management.

PAR provides employers a chance to earn a 50% premium rebate up to \$2,000.

PAR allows employers to choose from 33 activities to earn a rebate. Employers must complete 11 credits during the enrolled policy year. The PAR program is not for employers participating in group-experience rating, group-retrospective rating, individual-retrospective rating, claim cost deductible, 100-percent EM capping or One Claim Program.

The enrollment deadline is January 31, 2019 and employers have until May 31, 2019, to complete their activities. You can [learn more here](#). 1/16/2019

**McCloud Appointed to Lead the BWC January 11, 2019**

This week Governor-elect Mike DeWine appointed attorney Stephanie McCloud as the next administrator of the Ohio Bureau of Workers' Compensation (BWC).

McCloud has served in a variety of legal roles under former Attorney General Jim Petro and Governor George Voinovich. She has also worked for CompManagement and been in private legal practice.

She will be replacing current BWC Administrator/CEO Sarah Morrison who is awaiting confirmation from the U.S. Senate for the position of U.S. Federal District Court Judge for the Southern District of Ohio. 1/10/2018

## Workers' Compensation Legislation

Prepared by: The Ohio Manufacturers' Association

Report created on February 25, 2019

- HB79**      **INDUSTRIAL COMMISSION BUDGET** (OELSLAGER S) To make appropriations for the Industrial Commission for the biennium beginning July 1, 2019, and ending June 30, 2021, and to provide authorization and conditions for the operation of Commission programs.  
*Current Status:* 2/27/2019 - House Commerce and Labor, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-79>
- HB80**      **BWC BUDGET** (OELSLAGER S) To make appropriations for the Bureau of Workers' Compensation for the biennium beginning July 1, 2019, and ending June 30, 2021, and to provide authorization and conditions for the operation of the Bureau's programs.  
*Current Status:* 2/26/2019 - House Insurance, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-80>