

LAW CHANGES DUE TO COVID-19

On March 9, 2020 Governor DeWine issued Executive Order 2020-01D which declared a state of emergency due to the Covid-19 pandemic. The Ohio Legislature passed a new law (House Bill 197) that represents a response to that Executive Order. The two provisions of the law that have a direct impact on BWC are:

Section 12. Public meetings via electronic means

This section grants permissive authority to government agencies to hold public meetings via video conference until December 1, 2020, or until the end of the COVID-19 emergency, whichever occurs first.

Section 22. Tolling of statutes of limitations and time limitations

The time period between March 9, 2020 and July 30, 2020, or the end of the emergency, whichever occurs earlier, is “the emergency period”. Any time limit that would expire during the emergency period will be **TOLLED**.

TOLLING means to “freeze” or “stop the clock” during a time period. Any time limit set to expire during the emergency period will be frozen at the beginning of the emergency period (March 9, 2020). We will not resume counting the number of days to expiration until the end of the emergency period. (July 30, 2020, unless the emergency ends earlier).

What time limits are tolled?

- The time limits to file a claim. (One year for injury or death, two years for occupational disease) ORC 4123.84 and 4123.85.
- The time limits for statutory closure of a claim. (Five years since last comp or medical payment) ORC 4123.52.
- The time limit in which to submit a bill for payment (One year) ORC 4123.52 and OAC 4123-3-23.
- The time limits for appealing an order of the BWC or IC. (if a party does not appeal an order within 14 days, we will assume they do not intend to appeal, however if they appeal after 14 days, but within the extended “tolled” period, we will grant them a hearing) ORC 4123.511.
- The time limits for filing a judicial appeal of an IC order. ORC 4123.512.

Some Claim tolling examples:

A person was injured at work on March 20, 2019. The person has until March 19, 2020 in which to file a claim. The expiration date falls within the emergency period. (March 19, 2020 is between March 9, 2020 and July 30, 2020) The expiration would be tolled on March 9, even though there were 10 days remaining until the time limit expired. The clock would stay frozen until the end of the emergency period, at which point it would start up again. If the emergency period ended on July 30, the person would still have until August 9, 2020 in which to file a claim. (July 30 + the ten days still remaining). The claimant could file a claim any time until August 9 and be considered timely.

A claim statutorily expired on March 3, 2020. The tolling would have no effect. The expiration date was before March 9, 2020.

A claim will statutorily expire on April 8, 2020. The expiration date is during the emergency period. The tolling would take effect on March 9, 2020 and freeze the time limit. On March 9, 2020 the claim has 30 days until expiration (The number of days from March 9, 2020 to April 8, 2020.) When the emergency

period is over on July 30, 2020, the clock will resume, and the claim will still have 30 days until expiration which is August 29, 2020.

A person was injured at work on August 15, 2019. The person has until August 14, 2020 to file a claim. (one year) The expiration date does not fall within the emergency period. The tolling has no effect on the expiration date.

Bill timeliness tolling examples:

An injured worker had an office visit with their physician of record March 20, 2019. The provider has until March 20, 2020 in which to submit the bill to the MCO. The expiration date falls within the emergency period. (March 20, 2020 is between March 9, 2020 and July 30, 2020) The expiration would be tolled on March 9. The count of days begins March 10th, through March 20th, which is 11 days until the time limit expired. The clock would stay frozen until the end of the emergency period, at which point it would start up again. If the emergency period ended on July 30, the provider would still have until August 11, 2020 in which to submit the bill. (July 30 + the eleven days still remaining). The provider could submit the bill any time until August 11 and be considered timely.

A hospital is requesting an adjustment to a bill received by the MCO on April 1, 2019 for a February 19, 2019 date of service. The hospital has 1 year plus 7 days to submit the adjustment request to the MCO, which would have been due April 8, 2020. The expiration date falls within the emergency period (April 8, 2020 is between March 9 and July 30, 2020). The expiration would be tolled on March 9. The count of days begins March 10th through April 8th, which is 30 days until the time limit expired. The clock would stay frozen until the end of the emergency period, at which point it would start up again. If the emergency period ended on July 30, the provider would have until August 29, 2020 to submit the adjustment (July 30 plus the 30 days still remaining). The provider could submit the adjustment any time until August 29 and be considered timely.

MCOs must ensure familiarity with the bill timeliness rule OAC 4123-3-23, and if other situations outside of the examples above occur during the bill tolling timeframe (such as a third party paying the initial bill), the MCO should contact Medical Policy before requesting an adjustment. MCOs would submit the relevant bill or adjustment details, requesting BWC's review of the MCO's recommended action and application of the tolling. After staffing, BWC would communicate the next steps to ensure appropriate execution.

How are claims appeals to be handled?

- If a party files an appeal to a BWC order granting compensation within the normal appeal times permitted by a statute (despite the tolling provisions of H.B. 197, a party is still permitted to file within time), BWC will not pay on an order. This is no different than what we would do without the tolling statute.
- If a party has not appealed a BWC order granting compensation within the normal time permitted by the statute, BWC will pay in accordance with the decision. Our assumption would be that the party did not intend to appeal.
- If the party does later file an appeal within the time permitted by the tolling statute, the party would be entitled to a hearing. BWC will continue to pay under the original order.

- If the result of the hearing is that we should have not paid, we will remove the cost from the employer's experience and the claimant would be overpaid, consistent with existing law addressing reversals on appeal at appellate hearings.