

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Bureau of Workers Compensation

Regulation/Package Title: Professional Provider and Medical Services Fee Schedule

Rule Number(s): 4123-6-08

Date: October 26, 2012

Rule Type:

☐ New

☒ Amended

☐ 5-Year Review

☐ Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

This rule establishes the fees to be paid by BWC to providers for medical and professional provider services for injured workers. Information pertaining to fee schedule variances can be found in the preamble as well as Appendix A of the rule. We are proposing a change to

the conversion factor for anesthesia providers to maintain a reimbursement level of 199% of Medicare reimbursement. We are also adding a Local code (W9075) for reimbursement of home infusion therapy, nursing service and supplies. BWC will maintain the current conversion factor for all other services. We will continue to reimburse 120% of the Medicare fee schedule for Healthcare Common Procedure Coding System (HCPCS) codes and will maintain current pricing for the BWC Local codes.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

R.C. 4121.441(A)(8); R.C. 4123.66(A)

3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?

No

If yes, please briefly explain the source and substance of the federal requirement.

N/A

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

N/A

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

BWC is required to adopt annual changes to its fee schedules via the O.R.C. Chapter 119 rulemaking process. BWC has undergone a systematic revision of its professional provider fee schedule, and now proposes to adopt the newly revised professional provider fee schedule as an Appendix to OAC 4123-6-08.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

By continuing to demonstrate that our fees will allow Ohio's injured workers access to quality medical care while ensuring a competitive medical services and professional provider fee schedule. BWC will evaluate its 2013 fee schedule on an ongoing basis by:

- A. Evaluating the Professional Provider and Medical Services fee schedule as adopted against the 2013 coding publication for the Federal Center for Medicare and Medicaid Services' 2013 providers and services fee reimbursements, when available.
- B. Reviewing the 2013 Professional Provider and Medical Services fee schedule as adopted to identify benefit coverage and/or policy changes,
- C. Evaluating impacts of Medicare changes to determine if recommendations for modification of Ohio's conversion factors are warranted, and

- D. Researching and evaluating the benefit plans and reimbursement levels of other states.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

If applicable, please include the date and medium by which the stakeholders were initially contacted.

The proposed Professional Provider and Medical Services fee schedule payment rule was posted on BWC's website for stakeholder feedback on August 16, 2012 with a comment period open from August 16, 2012 through August 31, 2012, and notice was e-mailed to the following lists of stakeholders:

- BWC's internal medical provider stakeholder list - 68 persons representing 56 medical provider associations/groups
- BWC Managed Care Organizations and the MCO League representative
- BWC's Healthcare Quality Assurance Advisory Committee
- Ohio Association for Justice
- Employer Organizations
 - Council of Smaller Enterprises (COSE)
 - Ohio Manufacturer's Association (OMA)
 - National Federation of Independent Business (NFIB)
 - Ohio Chamber of Commerce
- BWC's Self-Insured Division's employer distribution list
- BWC's Employer Services Division's Third Party Administrator (TPA) distribution list

Subsequent to the publishing of the 2013 recommendations, a teleconference with the Ohio Society of Anesthesiologists (OSA) was conducted to discuss the recommendations and receive suggestion from the Association.

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

The Ohio Society of Anesthesiologists (OSA) suggested that BWC reimburse an anesthesia teaching physician 100% of the fee schedule for the supervision of up to two residents since Medicare has modified its method of reimbursement for the same. BWC is already reimbursing teaching physicians at 100% for the first resident being supervised and 50% for each subsequent resident. The Medicare reimbursement change did not justify such change for the Bureau, since it does not support BWC's objectives, and BWC already reimburses anesthesiologists at a level which is 199% of the Medicare rate. Therefore, BWC declines to

adopt the OSA's suggestion to change in the fee schedule reimbursement for anesthesia teaching physicians.

9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

BWC currently utilizes the Resource-Based Relative Value Scale (RBRVS) developed in 1992 by the Federal Center for Medicare and Medicaid Services (CMS) for professional reimbursements associated with the American Medical Association's Common Procedural Terminology (CPT®) codes. Each year Medicare updates its CPT fees under the RBRVS approach. The fee schedule includes services such as office visits, hospital care, procedures, etc. Medicare fees are composed of two component parts: the relative value unit (RVU) and a conversion factor (CF).

The foundation of RBRVS is a strong, empirical research methodology. BWC has utilized the RBRVS since 1997. The original foundation for Relative Value Units (RVU) resulted from a late 1980s Harvard University study. Medicare maintains the schedule and is required to update the RVUs no less than every five years, as well as develop RVUs for new services. As part of this updating process, Medicare relies on the advice and recommendations of the American Medical Association/Specialty Society Relative Value Scale Update Committee (RUC).

Further, BWC evaluates historical service utilization levels to determine if changes in the fee schedule for specific service codes are warranted. Additionally, comparative data from other workers' compensation states are evaluated to determine if BWC is outside of the norm, and where such is the case to determine if the deviation is warranted.

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

None. BWC is required to develop and promulgate a statewide workers' compensation fee reimbursement schedule for professional providers and medical services.

11. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.*

No. The fee schedule itself is considered a performance-based regulation as payment is made when services are delivered. The wide variety of services reimbursed allow for providers to determine the best course of action and group of services which will allow effective treatment and outcomes for injured workers experiencing a workplace injury.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

This rule is specific to BWC, and reimbursement for professional provider services in that program. Since BWC is the only state agency that administers workers' compensation in Ohio, there is no duplication between this rule and other rules in the Ohio Administrative Code.

13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

BWC has established a repeatable procedure by which all of our medical provider fee schedules are implemented. These procedures include adequate notification to stakeholders, self-insuring employers, managed care organizations and our billing vendor to ensure the fee schedule can be implemented accurately and in a timely fashion. BWC's system contains edits and reports to ensure consistent and accurate application of the rule. The fee schedule is also made available via Ohiobwc.com to all employers and third-party administrators for download for use in their system.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

- a. Identify the scope of the impacted business community;**
- b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**
- c. Quantify the expected adverse impact from the regulation.**
The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a "representative business." Please include the source for your information/estimated impact.

a. The impacted business community consists of the providers of medical and professional services to injured workers, rendered both in the facility and non-facility setting, and self-insuring employers who implement the professional provider fee schedule.

b. Implementation of fee schedule changes is a necessary part of yearly methodology updates for both medical service and professional providers and self-insuring employers. Because this methodology is largely based on Medicare RBRVS methodology, providers may experience adverse impacts when services are reevaluated and RVUs are decreased. Self-insuring employers who implement this fee schedule will experience normal administrative maintenance expenses.

c. The projected impact of the recommended changes to providers for 2013 is a slight decrease of .7% or \$2.3 million dollars from the projected 2012 reimbursement levels. It is estimated that self-insuring employers would require less than 10 hours of programming time in order to comply with the changes to the rule.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

While keeping focused on our fee schedule goals and objectives, we are making minimal changes which are critical to ensuring providers are adequately reimbursed for services and treatment rendered to Ohio's injured workers. Below is a restatement of the changes, with a reflection of the objectives to be achieved through the adoption of the recommendations.

- Adopt published rates in Medicare's final rule
 - Which allows us to keep current with the base Medicare methodology and corresponding changes in service values
 - It also facilitates Ohio's effort to keep current and consistent with the billing approach of Ohio providers of medical care and related services
- Maintain current service categories percent payments compared to Medicare levels
 - This will keep 2013 reimbursement rates stable to those in 2012
 - As well as continues to facilitate BWC's objective of maintaining injured workers' access to high-quality medical care
- Adopt a new local code - (W9075) for Home Infusion Therapy
 - This objective will properly align the current benefit plan to address an evolving medical service need.
 - Due to compound medication now being handled by the Pharmacy Benefits Manager, there has been an increase in individuals relying on home health services to infuse the compound medication into the various intrathecal pumps.
 - Our current local code was not designated or priced to pay for this limited service; therefore, we are creating a local code to provide the proper reimbursement level for the simple infusion of the compound medication into an injured worker's pain pump.
 - Thus, this will ensure appropriate level of reimbursement for the service being provided.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

No. This fee schedule is applied equitably across all providers and related service vendors. There is also the ability for providers and/or related service vendors to negotiate reimbursement above our fee schedule when appropriate.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

There are no fines or penalties for paperwork violations under these rules.

18. What resources are available to assist small businesses with compliance of the regulation?

BWC posts information regarding the medical services and professional provider fee schedule on the BWC website at www.ohiobwc.com. Providers can also contact BWC's Provider Relations Department or Medical Services Unit for personal assistance with billing issues. Additionally, the Billing and Reimbursement Manual can be a source of fee schedule, coding, billing, and reimbursement information.