

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

Agency Name: Ohio Bureau of Workers' Compensation

Regulation/Package Title: Inpatient hospital fee schedule

Rule Number(s): 4123-6.37.1

Date: August 15, 2013

**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☐ Rescinded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 of inpatient hospital services for injured workers.

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

R.C. 4121.441(A)(8), 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. The rule establishes the fees to be paid by BWC to providers of inpatient hospital services for injured workers.

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

BWC will measure success by continuing to demonstrate that our fees will allow Ohio's injured worker access to quality medical care while assuring a competitive inpatient hospital fee schedule.

**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 hospital inpatient services payment rule was posted on BWC's website for stakeholder feedback on July 31, 2013 with a comment period open from July 31, 2013 through August 14, 2013, and notice was e-mailed to the following lists of stakeholders:

- BWC's Managed Care Organizations and the MCO League representative

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- BWC’s internal medical provider stakeholder list - 68 persons representing 56 medical provider associations/groups
- BWC’s Healthcare Quality Assurance Advisory Committee
- Ohio Association for Justice
- Employer Organizations
  - o Council of Smaller Enterprises (COSE)
  - o Ohio Manufacturer’s Association (OMA)
  - o National Federation of Independent Business (NFIB)
  - o 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.

An overview of the fee schedule proposal was presented to representatives of the Ohio Hospital Association at June 13, July 19 and August 9, 2013 meetings/conference calls.

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

STAKEHOLDER FEEDBACK	BWC RESPONSE
Ohio Hospital Association - Recommendation for BWC reconsider its use of a reimbursement model based on the Medicare IPPS for future years; suggests research of another approach, as appropriate.	BWC maintains an openness to considering appropriate methodologies which support the goal of ensuring access to quality care and efficiency in the execution of fee schedule. While the current Medicare methodology is not perfect, it does provide a fundamental, sound and flexible approach to developing fees. We look forward to continuing to work with OHA and its members to evaluate appropriate alternatives.
Ohio Hospital Association - The Medicare IPPS, on which the bureau bases its inpatient hospital payment methodology, does not cover the cost of care that Ohio’s injured workers receive.  Studies show that in FFY 2011, the last year for which complete data is available, Medicare paid only 90.1 percent of the cost of inpatient hospital care in Ohio. In other words, for every dollar of	Appreciating OHA’s assertion and reference of a study indicating Medicare does not cover actual cost, when considering BWC’s payment level above the Medicare rate, this issue is mitigated if not eliminated. BWC’s current percent of payment above Medicare rates for most procedures is 120% and 180%. Assuming the percent of cost covered by Medicare is 90.1% of actual costs, the payment above Medicare indicates Ohio workers’

<p>inpatient operating cost Medicare reimbursed Ohio hospitals only about 90 cents. Recommendation for BWC to recognize the actual cost of care in its inpatient hospital payment formula, especially as BWC considers other payment options for the future.</p>	<p>compensation reimbursement is still 104.1% of hospital cost.</p> <p>BWC continues to closely monitor the service levels of facilities and any negative impact on injured workers' access to care.</p> <p>As BWC explores alternative methodologies, we will further analyze the calculation of cost of providing care to Ohio's injured workers.</p>
<p>Ohio Hospital Association - Commend BWC for ensuring no federal sequestration of Medicare payments, taken as a result of the Budget Control Act of 2011, is allowed to be incorporated into the 2014 BWC IPPS.</p>	<p>Commenter is in agreement with rule</p>
<p>Ohio Hospital Association - Concern that Medicare's revised calculation of disproportionate share payments will not be programmed into the software used by BWC to price inpatient bills, potentially resulting in inappropriate payments. Recommendation for BWC to ensure payments are calculated properly. If this kind of update to the DSH data can be accommodated by considering it a "technical correction" exception, then OHA will not object to the proposed changes.</p>	<p>BWC would consider a software update due to lack of programming of this provision to be a technical correction. We will work closely with our vendor to ensure we install a version of the software that includes this provision. Alternatively, we will customize BWC's inpatient pricing to ensure payment at 95.7% of the amount of operating DSH payments that would otherwise have been made as detailed in the final Medicare rule.</p>
<p>Arkansas Best Corporation - self insuring employer comment regarding 3 options for reimbursement by self insuring employer:</p> <p>A person has to be a Medicare specialist to figure out how to reimburse hospital inpatient services according to this rule.</p> <p>Any rule based on billed charges (or allowable billed charges) is an invitation to the provider to systematically inflate charges. It doesn't matter to group health payors how high the charges are since they have alternate fee schedules in place with set allowances for different services anyway. But work comp payors remain stuck with paying a</p>	<p>Acknowledging the commenter's point regarding complexity of the BWC methodology—any fee schedule methodology would be complex without the appropriate technical knowledge and or technical support. The current BWC methodology is no different and does require a certain level of knowledge and/or a vendor to execute the methodology's provisions. This is why the rule provides self insured employers with two additional reimbursement options.</p> <p>We agree that the percent of charges methodology allows for payment to increase as charges increase. However, a third option for self insuring employers allows for the use of any other reimbursement</p>

percentage of whatever the hospital bills.  Appreciate your serious attempts to control costs, however, and also appreciate the opportunity to give feedback.	method or rate negotiated between the employer and hospital. We are hopeful that these three options allow self insured employers the flexibility to fairly reimburse hospitals in a way that suits the business needs of both parties. As BWC considers alternative reimbursement methodologies in the coming year, we will keep these comments and concerns in mind.
Marriott Claims Services - Agree with the specific per diem rates for the various hospital units proposed under OAC 4123-6-37.1, Payment of Hospital Inpatient Services. Agree that the MS-DRH outlier reimbursement rate X 1.80 should be higher than the MS-DRG reimbursement rate as outliers incur significantly higher hospital charges, therefore the hospital should be reimbursed at a higher payment amount.	Commenter is in agreement with rule

**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's hospital inpatient fee schedule is based largely on Medicare's inpatient prospective payment system (IPPS). The Medicare IPPS is fully evaluated and updated yearly to ensure appropriate reimbursement levels to hospitals. In addition, BWC researched similar payers of these services and other states' workers' compensation programs and data for analysis and comparison. Finally, we use our own historical data to determine financial and operational impacts and injured worker access to care.

**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 reimbursement methodology for providers of medical services to injured workers including hospital inpatient facilities.

**11. Did the Agency specifically consider a performance-based regulation? Please explain.**

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***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?**

These rules are specific to BWC, and reimbursement for hospital inpatient services in that program. Since BWC is the only state agency that administers workers' compensation in Ohio, there is no duplication between these rules 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 documentation of fee schedule changes, files and other necessary information to billing vendor to ensure the fee schedule is implemented efficiently, accurately and in a timely fashion. The fee schedule is made available via [Ohiobwc.com](http://Ohiobwc.com) to all employers and third-party administrators for download for use in their system. BWC's system contains edits and reports to ensure consistent and accurate application of the rule.

**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;**

The impacted business community consists of the hospitals that provide inpatient care to injured workers and also self insured employers that also administer this rule.

**b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**

Implementation of fee schedule changes is a necessary part of yearly methodology updates for both hospitals and self insuring employers. Because this methodology is largely based on Medicare, both hospitals and self insuring employers will realize minimal adverse impacts. The adverse impact to the self insured employers will be

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employer time and/or reimbursement business expense for programming and executing the fee schedule changes. The adverse impact to hospitals will be the cost of hospitals to incorporate relevant changes into the hospitals' billing system.

**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.**

It is estimated that self insuring employers and hospitals would require less than 10 hours of programming time in order to comply with this rule.

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

The intent of this rule is to ensure Ohio’s injured workers have access to quality health care and adequate reimbursement is essential to achieving that goal. Alternative methodologies detailed in the rule provide flexibility in hospital reimbursement for self insured employers.

**Regulatory Flexibility**

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

This fee schedule is applied equitably across all hospitals. However, there is also the ability for hospitals to negotiate alternative reimbursement with BWC’s managed care organizations and self insuring employers 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 on the inpatient hospital fee schedule on the BWC website at [Ohiobwc.com](http://Ohiobwc.com). Also, providers that provide inpatient care can contact BWC’s Provider Relations Department or Medical Services Unit for assistance with billing issues.