

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Bureau of Workers Compensation

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

Rule Number(s): 4123-6-08

Date: November 9, 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☐ Rescinded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 for medical and professional provider 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), 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. The rule establishes the fees to be paid by BWC to providers of medical and professional 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 workers access to quality medical care while assuring a competitive medical services and professional provider 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 medical services and professional provider fee schedule was posted on BWC's website for stakeholder feedback on August 16, 2013 with a comment period open until August 30, 2013, and notice was e-mailed to the following lists of stakeholders:

- BWC's Managed Care Organizations and the MCO League representative
- BWC's internal medical provider stakeholder list - 68 persons representing 56 medical provider associations/groups
- BWC's Healthcare Quality Assurance Advisory Committee

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- 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

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

Throughout the year, providers may contact Ohio BWC with concerns and comments regarding the fee schedule. They may meet with Ohio BWC staff to discuss those matters. Once the proposed fee schedule is posted, provider feedback is collected for two weeks. That information is reviewed and each stakeholder receives a response. Changes to the proposed fee schedule can be made if deemed appropriate.

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?

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 by Congress 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 from the American Medical Association/Specialty Society Relative Value Scale Update Committee (RUC).

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 professional providers.

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 medical service and professional providers 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 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. The fee schedule is made available via Ohiobwc.gov 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;**
- 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, as well as self-insured employers administering the program.

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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.

c. There can be a measureable impact to certain professional providers due to the reevaluation and reduced reimbursement of medical services within the RBRVS methodology. The adverse impact can be offset by the revision of RVUs that are increased.

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

With the adoption of the RBRVS methodology, Ohio BWC agrees that Medicare has done the necessary research to value or revalue a service. The annual outcome is that reimbursement may vary somewhat from year to year for any given practitioner. Some professional providers may realize a gain in reimbursement while others may see a reduction within their service offering. While keeping focused on our fee schedule goals and objectives, we are making the changes that will continue to ensure Ohio's injured workers access to quality medical care.

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 medical and professional providers. However, there is also the ability for providers 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 regarding the medical services and professional provider fee schedule on the BWC website at OhioBWC.gov. Providers rendering services contained within that fee schedule can also contact BWC's Provider Unit 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.

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