

# 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: December 4, 2014

**Rule Type:**

<input type="checkbox"/> New	<input checked="" type="checkbox"/> 5-Year Review
<input checked="" type="checkbox"/> Amended	<input type="checkbox"/> Rescinded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. The BWC adopted recommendations for this fee schedule are:

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1. Adoption of the 2014 relative value units updates for all common procedure terminology (CPT) codes as published in Medicare's 2014 final rule;
  2. Adoption of updates the current Ohio provider service specialty conversion factors in order to maintain Ohio's current percent payment of Medicare's reimbursement rates for those relevant services specialties;
  3. Adoption of updates to 2014 healthcare common procedure coding system (HCPCS II) codes as published in Medicare's 2014 final rule;
  4. Adoption of Ohio updates to reimbursement rates for dental services codes.
5. **Please list the Ohio statute authorizing the Agency to adopt this regulation.**  
R.C. 4121.441(A)(1)(h), 4123.66(A)
6. **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
7. **If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**  
N/A
8. **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.
9. **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 worked access to quality medical care while assuring a competitive medical services and professional provider fee schedule.

### **Development of the Regulation**

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**10. 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 12, 2014 with a comment period open until August 27, 2014, and notice was e-mailed to the following lists of stakeholders:

- BWC's Managed Care Organizations
- BWC's internal medical provider stakeholder list - 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

**11. 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.

BWC received comments from 2 occupational therapy providers. Both comments were focused on an existing component of the current methodology which was not being modified in this year's recommendation. Specifically, both parties requested reconsideration of the multiple therapy reduction of Functional Capacity Evaluations (FCE) (CPT Code 97750). Both comments indicated that the providers continue to not understanding the rationale behind paying less than the full amount for subsequent units of services after the first unit of FCE services is rendered. The respondents pointed out that the entire time spent on the FCE is either gathering information or interpreting and reporting it; with no repeat "administrative" tasks involved. In responding to the comments, BWC pointed out that this code is one of 46 always therapy codes for which the reduction methodology was adopted and has been in place since 2011. Context was also provided regarding the steps BWC took to arrive at the appropriateness of adopting this methodology. It was pointed out this

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Medicare rationale for adopting this methodology change was vetted by an external consultant. As a result of that process, BWC determined the Medicare approach to be sound. BWC maintains the perspective that this is an appropriate reduction for the Ohio workers compensation system. Thus, no change was made as a result of the feedback.

**12. 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 RBRVS0 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).

**13. 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.

**14. 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.

**15. 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.

**16. 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.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**

**17. 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 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.

**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 medical service and professional providers and self insuring employers. The adverse impact will be providers and employers time in implementing the changes in order to comply with the rule.

**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.**

Given the Medicare methodology has been in use by BWC since 1997, the annual implementation of update is relatively routine for providers and self-insured employers. It is estimated that the time needed for implementation will be less than 20 hours.

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

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While keeping focused on our fee schedule goals and objectives, these changes are necessary to ensure Ohio's injured workers access to quality medical care.

### **Regulatory Flexibility**

**19. 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.

**20. 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.

**21. 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.com](http://Ohiobwc.com). 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.

## **4123-6-08 Bureau fee schedule.**

(A) Pursuant to division (A)(8) of section 4121.441 of the Revised Code, the administrator of workers' compensation, with the advice and consent of the bureau of workers' compensation board of directors, shall develop, maintain, and publish a provider fee schedule for the various types of billing codes. The administrator hereby adopts the fee schedule indicated in appendix A to this rule, developed with provider and employer input, effective ~~January 1, 2014~~ January 1, 2015.

(B) Whether the MCO has elected to retain a provider panel or not, an MCO may contract with providers. Every provider contract shall describe the method of payment to the providers. The MCO shall provide an MCO fee schedule to each provider that contracts with the MCO. The MCO fee schedule may be at different rates than the bureau fee schedule. The MCO shall make the MCO fee schedule available to the bureau as part of its application for certification. The bureau shall maintain the MCO fee schedule as proprietary information.

Effective: ~~5/1/14~~ 5/1/15

Prior Effective Dates: 2/16/96, 1/1/01, 2/19/09, 11/8/09, 10/25/10, 12/30/10 (Emer.), 3/21/11, 12/30/11 (Emer.), 3/24/12, 1/1/15 (Emer.)

# **BWC 2015 Proposed Emergency Rule Changes for BWC's Professional Provider and Medical Services Fee Reimbursement Schedule**

## **Preface**

Prompt, effective medical care makes a big difference for those injured on the job. It is often the key to a quicker recovery, timely return-to-work and quality of life for injured workers. Thus, maintaining a network of dependable medical and vocational rehabilitation service providers ensures injured workers get the prompt care they need. It also ensures access to quality, cost-effective service. Access for injured workers means the availability of appropriate treatment, which facilitates faster recovery and a prompt, safe return to work. For employers, it also means the availability of appropriate, cost-effective treatment provided on the basis of medical necessity.

The Medical Services Division has focused on improving its core medical services functions. Our goals are as follows: enhance our medical provider network, establish a better benefits plan, institute an updated and competitive provider fee schedule, improve our managed care processes, and establish excellent medical bill payment services.

## **Professional Provider Fee Schedule**

### **Introduction and Methodology**

As stated, implementing a sound and effective provider fee schedule is a critical component of the Medical Services Division's goals. The Ohio Bureau of Workers Compensation annually reimburses approximately 28,000 providers and facilities for medical services rendered to Ohio's injured workers. An equitable and competitive fee for the right medical service, as well as the effectiveness and efficiency of the reimbursement process is essential to maintain a quality provider network across the wide range of necessary provider disciplines.

Critical to having an effective and efficient reimbursement process is the procedural codes which providers use to bill for their services and on which BWC evaluates and computes reimbursements for services rendered by those providers. The medical services fee schedule is composed of the following codes which providers use for billing: over 10,000 Current Procedural Terminology (CPT®<sup>1</sup>) codes, over 3600 Healthcare Common Procedural Coding System (HCPCS<sup>2</sup>) codes and approximately 166 local codes. The local codes are developed and maintained by BWC.

Provider fees for each of the grouping of codes utilize a different calculation. Provider fees for the CPT code grouping utilize a Relative Value Unit, a Geographical Practice Cost Index and a BWC Conversion Factor (or dollar amount). Provider fees for the

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<sup>1</sup> Current Procedure Terminology - The manual published by the American Medical Association (AMA) which assigns numeric codes to describe procedures for professional services.

<sup>2</sup> Health Care Procedural Coding System as provided by Federal Center for Medicare and Medicaid Services (CMS)



HCPCS code grouping utilizes Medicare's published fee schedule which BWC increases by twenty percent (20%). Provider fees for the 170 Local codes groupings utilizes BWC's separately developed fee schedule.

### **Emergency Rule Recommendation Considerations**

Each year, codes are added, primarily to indicate a new service. Codes may also be discontinued or the narrative description may be revised. While BWC is able to develop and adopt local codes as needed within the timeframe necessary to ensure consistent implementation across providers, adoption and implementation of CPT and HCPCS codes are more challenging due to Chapter 119 rulemaking requirements.

Prior to 2007, BWC under the approach of adopting fee schedule changes by policy would as a part of that process adopt new codes released by the AMA and CMS. Thus, BWC and the various providers were in step with billing and reimbursement protocols reflecting new and/or expired billing codes.

In 2007 chapter 119 and BWC specific rulemaking protocols were put in place for fee schedule rule changes. These protocols includes 2 readings to the BWC Board and the standard JCARR process which could result in an estimated period in excess of 120 days for a proposed rule to become effective. The new CPT and HCPCS coding schemes are released in December, and are effective on January 1<sup>st</sup> of the next year. Under the current rulemaking process and fee schedule development methodology, it is virtually impossible to be in a position to timely adopt the new codes once they are released.

BWC annually undergoes a systematic revision of its professional provider fee schedule. This period of adoption is necessary to provide BWC staff sufficient time to evaluate the empirical data, get stakeholder feedback, and make recommendations for the overall update of BWC's reimbursement methodology. The changes proposed by BWC as a result of its most recent systematic revision were previously reviewed by the Medical Services and Safety Committee at its August and September 2014 meetings, and were approved by the Board at its September 2014 meeting.

The AMA and CMS update the CPT and HCPCS codes with a release of the same as indicated above not occurring until the month of November or December, and effective on January 1<sup>st</sup> of the following year. While BWC may have a challenge with timely adopting the new coding schemes, providers do adopt and began using those codes. Providers adoption and application of the new codes on January 1<sup>st</sup> of each year, has and will continue to result in unnecessary challenges to reimbursing providers. Thus, BWC's professional provider fee schedule must be updated to reflect the code changes.

In order to implement the changes to the CPT and HCPCS codes on January 1, 2015, BWC is seeking BWC Board approval to request the Governor's office to issue an Executive Order implementing OAC 4123-6-08 with the new CPT and HCPCS code changes as an emergency rule effective January 1, 2014. Pursuant to O.R.C. 119.03(F), an emergency rule is only effective for 90 days. Therefore, BWC is also seeking BWC Board approval to concurrently proceed with the normal Chapter 119 rulemaking process

to implement OAC 4123-6-08 with the new CPT and HCPCS code changes as a permanent rule effective April 1, 2014.

This is the process BWC followed last year in order to implement the January 1, 2014 CPT and HCPCS code changes as part of our fee schedule modifications effective January 1, 2014. The Ohio Department of Job and Family Services (ODJFS) follow a similar procedure every year to implement the January 1 changes to the CPT and HCPCS codes for its Medicaid fee schedule.

### **Emergency Rule Recommendations**

Medical Services is recommending adoption of selected new 2015 CPT codes changes as published by the 2015 AMA and adopted by CMS.

Medical Services is further recommending adoption of selected new 2015 HCPCS code changes as published by CMS.

Medical Services is further seeking BWC Board approval to submit to the Governor's office, an emergency rule allowing BWC's immediate adoption of the new CPT and HCPCS code changes.

Finally, Medical Services is requesting Board approval to adopt all change in one reading in order to facilitate a smooth transition from the emergency rule to the formally adopted rule changes pursuant to Chapter 119 rulemaking process. The emergency rule is good for 90 days. Therefore, in order to get through the complete Chapter 119 rulemaking process, including presentation to the Board, public hearing and the JCARR process, we will need to have one reading of the final recommendation of the new code updates.

### **Projected Impacts**

The changes being recommended reflect a very narrow update to new 2015 CPT and HCPCS codes. The total number of new CPT codes to be adopted is 224, with the number of new HCPCS codes totaling 66, for a total of 290 new reimbursement codes. The number of current 2014 codes to be deleted total 129. There are no projected measurable changes in provider reimbursements. The codes changes would not impact execution of BWC's standard methodology and project plan for the normal annual evaluation and recommendation for the Professional Providers and Medical Services fee schedule; which will occur simultaneously January 1, 2015.