

# 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: 09/25/2017

**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☐ Rescinded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. The proposed changes are:

- Adopt Medicare final rule including but not limited to:

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- Update to the national standardized amount
- MS-DRG changes, ICD-10 updates, and relative weight updates
- Quality and value related programs
- Modify current Payment Adjustment Factor (PAF) to reflect the statewide reimbursement to cost benchmark of 114%
  - 109.5% for MS-DRG and direct graduate medical education (DGME) services
  - 171.5% for outlier services
- Adopt an option per diem methodology for hospital inpatient opioid detoxification services.

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

R.C. 4121.441(A)(1)(h) , 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)?**

The purpose of the regulation is BWC's responsibility for implementing rules to effectively execute the Agency's charge to establish fees to be paid by BWC to providers of inpatient hospital services for injured workers.

R.C. 4123.66(A) provides that the BWC Administrator "shall disburse and pay from the state insurance fund the amounts for medical, nurse, and hospital services and medicine as the administrator deems proper," and that the Administrator "may adopt rules, with the advice and consent of the [BWC] board of directors, with respect to furnishing medical, nurse, and

hospital service and medicine to injured or disabled employees entitled thereto, and for the payment therefor.”

R.C. 4121.441(A) provides that the BWC Administrator, with the advice and consent of the BWC Board of Directors, shall adopt rules for implementation of the HPP “to provide medical, surgical, nursing, drug, hospital, and rehabilitation services and supplies” to injured workers, including in paragraph (A)(1)(h), “[d]iscounted pricing for all . . . out-patient medical services.”

Pursuant to the 10th District Court of Appeals decision in *Ohio Hosp. Assn. v. Ohio Bur. Of Workers' Comp.*, Franklin App. No. 06AP-471, 2007-Ohio-1499, BWC is required to adopt changes to its methodology for the payment of hospital inpatient services via the O.R.C. Chapter 119 rulemaking process.

BWC’s hospital inpatient services reimbursement methodology is based on Medicare’s Inpatient Prospective Payment System (IPPS), which is updated annually. Therefore, BWC must also annually update OAC 4123-6-37.1 to keep in sync with Medicare.

**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 fee schedules and payment strategies will maintain stability in the environment and reimbursement methodologies; ensure injured workers access to quality care; promote efficiency in the provision of quality services; and maintain a competitive environment where providers can render safe effective care.

**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 August 11, 2017 through August 25, 2017. Notice was e-mailed to the following lists of stakeholders:

- BWC’s Managed Care Organizations
- BWC’s Medical Services Division’s medical provider stakeholder list
- BWC’s Healthcare Quality Assurance Advisory Committee
- Ohio Association for Justice

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- 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.

BWC discussed the proposal with the Ohio Hospital Association's (OHA) Director of Health Economics and Policy on July 17, 2017. BWC also presented proposal to the OHA Finance Subcommittee on August 10, 2017.

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

See attached stakeholder feedback grid.

**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. During the annual fee schedule review, BWC historical claims data is modeled against Medicare annual reimbursement changes to determine the proposed impact to BWC and to determine if adjustments need to be made to BWC payment adjustment factors. If BWC determines that a CMS change will undermine BWC goals of maintaining stability in the environment, ensuring injured worker access to quality care, promoting efficiency in the provision of quality services and maintaining a competitive provider network, then BWC will adjust the payment adjustment factor. In addition, BWC researches similar payers of these services and other states' workers' compensation programs and data for analysis and comparison. 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 our billing vendor to ensure the fee schedule is implemented efficiently, 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 publically via [www.bwc.ohio.gov](http://www.bwc.ohio.gov) to all employers and third-party administrators for download for use in their system. Finally, affected BWC employees and managed care organization staff is educated on rule changes and process/policy impacts to ensure the regulation is applied consistently.

**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 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**

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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 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.*

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. 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 access to quality health care for all Ohio employers' workers who experience a workplace injury. It is essential that appropriate and timely review of the fee schedule with relevant modifications is implemented to create a competitive reimbursement level for these services. 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 regarding the inpatient fee schedule on the BWC website at [www.bwc.ohio.gov](http://www.bwc.ohio.gov), including the Billing and Reimbursement Manual which can be a source of fee schedule, coding, billing and reimbursement information. Providers rendering services contained within the fee schedule can also contact Managed Care Organization staff, BWC's Provider Relations Business Area or Medical Services Fee Schedule Policy Unit staff for personal assistance with billing issues.

Line #	Rule #/Subject Matter	Stakeholder	Draft Rule Suggestions	Stakeholder Rationale	BWC Response	Resolution
1	General comments	Ohio Hospital Association (OHA)	Supports BWC's continued application of the Medicare inpatient and outpatient methodologies.	OHA appreciated what BWC has done to keep the 2018 inpatient methodology as simple as possible.	BWC accepts and appreciates OHA's support, and will continue to look for ways to simplify our hospital reimbursement methodologies to assist providers, self insured employers and other customers in efficient implementation of the adopted fee schedules.	No action necessary.
2	General comments	Ohio Hospital Association (OHA)	OHA expressed concerns about the adequacy of the 114% Medicare-allowed cost benchmark.	OHA indicated that Medicare-allowed cost does include all costs required for the delivery of inpatient hospital-level care. OHA estimates that in FFY 2015 Medicare decreased its percent of allowed cost coverage to hospitals. Thus, as Medicare continues to decrease the percent of allowed cost it covers, BWC's adoption of CMS' payment factors forces the HPP into a similar downward spiral, potentially shifting some of the cost for caring for	Analysis of the impact of the payment adjustment factor indicates that BWC's goal of reimbursing hospitals at 114% of Medicare-allowed cost does provide a statewide reimbursement rate which covers the provision of care to Ohio's injured workers. BWC bases its inpatient payments on hospitals' cost of providing the inpatient services, not Medicare reimbursement rates. BWC utilizes Ohio hospitals' cost to charge	Maintain current recommendation.

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				Ohio's injured workers to other payers and employers, even with the 14 percent HPP premium.	ratios which are derived from the hospitals own cost reports annually filed with Medicare. While Medicare may change its base number downward, BWC has annually modified the Ohio fee schedule adjustment factors to appropriately offset those Medicare reductions which do not align with Ohio's goals.	
3	General Comments	Ohio Hospital Association (OHA)	OHA questioned the appropriateness of adopting Medicare's pay for performance adjustments that reduce Ohio hospital's projected total payments.	OHA indicated that they do not understand how BWC came to the total impact amount, and that their consultant, Healthcare Association of NY State (HANYs), had varying results. OHA recommended that BWC reconsider the proposed reduction for pay or performance programs or apply the pay for performance adjustments prior to the application of the payment adjustment factor.	BWC has requested details from OHA regarding its consultant's estimated quality program impacts. Once received, we will review information to consider how and why the BWC-specific analysis may differ from the OHA analysis. It should be noted that six facilities account for approximately 30% of all BWC inpatient discharges. Given the small subset of Ohio	Maintain current recommendation.

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					<p>hospitals paid by BWC; we would expect to see differences between the two analyses.</p> <p>Furthermore, the healthcare market has been moving towards value based reimbursement and incentivizing providers on quality outcomes. Since 2012, BWC has been evaluating the appropriateness of adopting the various paying-for-performance or paying-for-value programs that Medicare has implemented over time. After evaluation, BWC supports the value based philosophy. Adopting Medicare's methodology reduces poor outcomes and incentivizes quality care for Ohio's injured workers.</p>	

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					<p>If BWC was to adopt OHA's recommendation, we would be actively undermining the value of adopting the incentive and penalty programs. BWC is not through any changes in our methodology recalculating any pay for performance metrics; rather, we are simply applying the various performance indicator results as reflected in the Medicare methodology without actively offsetting those results.</p>	