

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Bureau of Workers Compensation

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

Rule Number(s): 4123-6-08

Date: November 19, 2018

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☐ Rescinded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. The BWC adopted recommendations for this fee schedule are:

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- a. Adopt Medicare 2018 payment updates
- b. Adopt BWC Base Methodology changes:
 - 1) Implement Medicare reimbursement reduction for multiple radiology services
 - 2) Implement payment parity approach for services performed by certified registered nurse anesthetists (CRNAs) and anesthesia assistants (AAs)
- c. Modify Ohio conversion factor (CF) for anesthesia services
- d. Adoption of new 2019 CPT and HCPCS codes and deletion of those that have been discontinued for 2019.

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)?

BWC is required to adopt annual changes to its fee schedules via the O.R.C. Chapter 119 rulemaking process. The purpose of this rule is to establish the fees to be paid by BWC to providers of medical and professional services for injured workers.

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.

The fee schedule supports efficiency in provision of services that assists in the maintenance of employer rates.

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 medical services and professional provider fee schedule was posted on BWC's website for stakeholder feedback on August 17, 2018 with a comment period open until August 31, 2018, and notice was e-mailed to the following lists of stakeholders:

- BWC's Managed Care Organizations (MCOs)
- BWC's internal medical provider stakeholder list
- BWC's internal provider list serve
- BWC's Healthcare Quality Assurance Advisory Committee
- Ohio Attorney General, Workers' Compensation Section
- 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

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

No stakeholder feedback was received in relation to this fee schedule.

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 models the annual Professional Provider Fee Schedule from the Medicare Resource-Based Relative Value Scale (RBRVS) fee schedule methodology. BWC has utilized the

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RBRVS since 1997. During the annual fee schedule review, BWC 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. Claims and reimbursement data is also used to determine adjustments to reimbursement related policy.

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.

R.C. 4121.441(A)(1)(h) 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 but not limited to rules regarding "[d]iscounted pricing for . . . all professional 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 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.

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.

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 defines 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.

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."

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 www.bwc.ohio.gov to all employers and third-party administrators for download for use in their systems. 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 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 annual methodology updates for both medical service and professional providers and self-insuring

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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 updates is relatively routine for providers and self-insured employers. It is estimated that the time needed for implementation will be less than 20 hours.

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. It is essential that appropriate and timely review of the fee schedule with relevant modifications are implemented to create a competitive reimbursement level for these services, maintaining injured worker access to quality 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 www.bwc.ohio.gov, including the Billing and Reimbursement Manual that 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.