

**MEMORANDUM**

TO: Aniko Nagy, Ohio Bureau of Workers' Compensation

FROM: Ethan Wittkorn, Regulatory Policy Advocate

DATE: February 12, 2019

RE: **CSI Review – Ambulatory Surgical Center Fee Schedule (OAC 4123-6-37.3)**

On behalf of Lt. Governor Jon Husted, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Agency as provided for in ORC 107.54.

Analysis

This rule package consists of one amended rule proposed by the Ohio Bureau of Workers' Compensation (BWC). The rule package was submitted to the CSI Office on January 7, 2019 and the comment period remained open until January 30, 2019. No comments were received during this time.

Ohio Administrative Code (OAC) 4123-6-37.2 and its appendices set forth the fees paid by BWC for ambulatory surgical center (ASC) services on behalf of injured workers. The amended rule adopts 2019 Medicare ASC rates and sets payment adjustment factors for procedures. In addition, the amended rule adopts the Medicare ASC performance-based quality reporting program and updates reimbursement rates for ten arthroplasty procedures.

Prior to filing with the CSI office, BWC shared the proposed rule with the Ohio Association of Ambulatory Surgery Centers (OAASC). BWC then sought feedback by posting the rule online for public comment and contacting additional stakeholders via email, including Managed Care Organizations, multiple BWC internal stakeholder lists, employer organizations, and the Ohio Association for Justice. The sole comment came from the OAASC, raising concerns that the reimbursement rate for implants is insufficient and is impacting ASC utilization of the arthroplasty program. BWC responded, citing their pricing methodology and acknowledged that data on Ohio ASC implant cost is limited. They said they are considering the possibilities to evaluate costs,

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including reimbursement by invoice. OAASC also asserted that similar surgical settings should be reimbursed in an equitable manner and indicated that Medicare ASC rates have fallen behind inflation increases in other medical sectors. BWC responded that they model the ASC fee schedule on Medicare rule, and cited the changes to this year's methodology that benefit participating ASCs. BWC ultimately did not make any changes to the draft rule as a result of the comment. No comments were received during the CSI public comment period.

The proposed rule affects ASCs that provide care to injured workers, as well as self-insuring employers. The BIA cites the only adverse impact as the time for affected businesses to incorporate the changes into their billing systems, estimated at less than ten hours of programming time. The BIA justifies the rule as a necessary framework to ensure injured workers have access to healthcare by establishing adequate reimbursement rates for ASCs. The BIA notes that the Medicare methodology is already in use by BWC; these updates are necessary and routine for healthcare providers and self-insured employers

Recommendations

Based on the information above, the CSI Office does not have any recommendations for this rule package.

Conclusion

The CSI Office concludes that the Ohio Bureau of Workers' Compensation should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.