



## Common Sense Initiative

**Mike DeWine**, Governor  
**Jon Husted**, Lt. Governor

**Joseph Baker**, Director

### Business Impact Analysis

Agency, Board, or Commission Name: Ohio Bureau of Workers Compensation

Rule Contact Name and Contact Information:

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Regulation/Package Title (a general description of the rules' substantive content):

Medical Services and Professional Provider Fee Schedule

Rule Number(s): 4123-6-08

Date of Submission for CSI Review: December 15, 2022

Public Comment Period End Date: January 5, 2023

Rule Type/Number of Rules:

New/\_\_\_ rules

No Change/\_\_\_ rules (FYR? \_\_\_)

Amended/ 1 rules (FYR? No)

Rescinded/\_\_\_ rules (FYR? \_\_\_)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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### **Reason for Submission**

1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.

**Which adverse impact(s) to businesses has the agency determined the rule(s) create?**

**The rule(s):**

- a. ☐ Requires a license, permit, or any other prior authorization to engage in or operate a line of business.
- b. ☐ Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.
- c. ☒ Requires specific expenditures or the report of information as a condition of compliance.
- d. ☐ Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.

### **Regulatory Intent**

2. 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 to:

1. Recommend the following benefit plan changes.
  - a. Update general preamble language for selected billing protocols.
    - i. Clarify application of telemedicine audio-only modifier -93.
    - ii. Update place of service limitations for telemedicine modifier -95.
    - iii. Adopt definitions for “non-reimbursable services” and “non-reimbursable services furnished by a non-covered provider”.
  - b. Add the following additional telemedicine services:
    - i. Three psychotherapy services; and
    - ii. Five telerehabilitation services.
  - c. Update Ohio specific service codes and descriptions.
    - i. Modify the current code structure for home modification repair and vehicle modification repair to better differentiate between services.
    - ii. Update service description language for home modification, mileage, and travel services to reduce confusion.
2. Adopt the Medicare 2022 Professional Provider and Medical services payment updates.

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- a. Adopt Medicare's relative value unit (RVU) updates to 10,000+ service codes.
- b. Adopt Medicare fee updates for 5,000+ Healthcare Common Procedure Coding System (HCPCS) codes.
- 3. Adopt the following recommendations for the BWC 2023 reimbursement rates:
  - a. Maintain the current percent payment above Medicare rates for CPT® codes.
  - b. Maintain current 20% payment above Medicare rates for HCPCS codes.
  - c. Adopt other pricing updates for:
    - i. Dental;
    - ii. Hospice; and
    - iii. Home modification.

BWC also proposes emergency adoption of new 2023 CPT® and HCPCS code changes which will be effective January 1, 2023.

BWC finally proposes making several minor, technical changes to the body of the rule to remove unnecessary verbiage pursuant to R.C. 121.95, and also to remove outdated language.

- 3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

R.C. 4121.441(A)(1)(h), 4123.66(A)

- 4. 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?**

*If yes, please briefly explain the source and substance of the federal requirement.*

No.

- 5. If the regulation implements a federal requirement, but includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

N/A

- 6. 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.

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**7. 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.

**8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

*If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.*

No.

**Development of the Regulation**

**9. 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 professional provider fee schedule rule was posted on BWC's website for stakeholder feedback on July 25, 2022, with a comment period open from July 25, 2022, through August 5, 2022, and 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
- 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.

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

Please see the stakeholder feedback grid.

**11. 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 RBRVS since 1997. During the annual fee schedule review, BWC claims data is modeled

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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.

**12. 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?**  
*Alternative regulations may include performance-based regulations, which define the required outcome, but do not dictate the process the regulated stakeholders must use to comply.*

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.

**13. 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."

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**14. 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 medical provider fee schedules are implemented. These procedures include documentation of fee schedule changes, files and other necessary information to the billing vendor to ensure the fee schedule is implemented efficiently, accurately and in a timely fashion. The fee schedule is made available via [www.bwc.ohio.gov](http://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**

**15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:**

**a. Identify the scope of the impacted business community, and**

Implementation of fee schedule changes is a necessary part of annual methodology updates for healthcare providers, facilities and self-insuring employers. The adverse impact will be the healthcare providers' time in implementing the changes in order to comply with the rule. Where self-insuring employers chose to adopt the BWC inpatient reimbursement methodology, those employers will have similar impacts as providers.

**b. Quantify and identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance, etc.).**

*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 10 hours.

**16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify. (*Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors*).**

BWC proposes making several minor, technical changes to the body of the rule to remove unnecessary verbiage pursuant to R.C. 121.95, and also to remove outdated language.

**17. 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

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are implemented to create a competitive reimbursement level for these services, maintaining injured worker access to care.

### **Regulatory Flexibility**

**18. 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.

**19. 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.

**20. 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](http://www.bwc.ohio.gov). The Provider Billing and Reimbursement Manual also serves as 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.



**Stakeholder Feedback Recommendations for Changes to the 2023 Professional Provider Fee Schedule – O.A.C. 4123-6-08**

Line #	Rule #/Subject Matter	Stakeholder	Draft Rule Suggestions	Stakeholder Rationale	BWC Response	Resolution
1.	Rule 4123-6-08 Functional Capacity Evaluation (FCE) service code 97750	Mr. Stephen Phillips, President, Ohio Chapter of International Association of Rehabilitation Professionals (IARP)	The stakeholder requested consideration of a separate billing code to differentiate between occupational and treatment-based FCE services.	The creation of a separate code may help facilitate correct billing and reimbursement of services and reduce improper denials. There have been instances where occupationally-focused FCE services were incorrectly denied due to the submitted bills missing therapy modifiers GO, GP, and GN. However, occupationally-focused FCEs are not subject to the therapy reductions and are not required to use these modifiers per BWC Billing and Reimbursement Manual.	Based upon the feedback, BWC performed an in- depth review of FCE service billing. The result of the review determined that the challenges were educational as opposed to a code-based issue. As a result, BWC undertook action educating specific MCOs that seemed to have been having an issue with FCE bill processing. BWC also executed within the 2 <sup>nd</sup> Quarter a training for all MCOs on FCE services and billing.  The team continues to evaluate the MCOs' execution of the reimbursement methodology to determine if additional training or changes will be needed.	No modification needed.