



# Common Sense Initiative

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

Joseph Baker, *Director*

## MEMORANDUM

**TO:** Pete Mihaly, Ohio Bureau of Workers' Compensation

**FROM:** Caleb White, Business Advocate

**DATE:** February 8, 2024

**RE:** **CSI Review – Bureau Fee Schedule (OAC 4123-6-08)**

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 Bureau 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). This rule package was submitted to the CSI Office on December 27, 2023, and the public comment period was held open through January 12, 2024. Unless otherwise noted below, this recommendation reflects the version of the proposed rule filed with the CSI Office on December 27, 2023.

Ohio Administrative Code (OAC) 4123-6-08 adopts the fees the BWC pays to medical and professional providers for services provided to injured workers, which are found in its appendix. The rule also establishes the ability of managed care organizations (MCO) to contract with providers, and requires the MCO to provide a fee schedule and contract to the BWC and each provider. This rule is amended to update general preamble language by clarifying the payment reduction for radiology and updating the descriptions for anesthesia modifiers, add nine additional telemedicine services for both speech therapy services and cognitive and comprehension testing services, add indicators which identify the service codes that are eligible for date span billing, implement relative value unit updates to various codes and update various fee updates for Healthcare Common Procedure Coding System (HCPCS) codes to align with Medicare's Professional Provider and Medical services payment

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updates. The rule has also been amended to maintain the current payment percentage the BWC pays above Medicare rates for Current Procedural Terminology (CPT) and HCPCS codes as well as to maintain the current dental code reimbursement rates. The BWC also amended the appendix to adopt pricing updates for hospice and mileage travel services and adopts new changes to the 2024 CPT, HCPCS, and dental codes.

During early stakeholder outreach, the BWC posted the proposed rules on their website on July 31, 2023, for a two-week comment period. Additionally, the BWC emailed a notice of this comment period to their stakeholder lists for Managed Care Organizations, medical providers, self-insured employer distribution list, Third-Party Administrator distribution list, the BWC's Healthcare Quality Assurance Advisory committee, as well as the Council of Smaller Enterprises, the Ohio Manufacturer's Association, the National Federation of Independent Businesses, the Ohio Chamber of Commerce, and the Ohio Association of Justice. In addition to this outreach, the proposed rule was presented to representatives of the Ohio Association of Ambulatory Surgery Centers. During this period, the BWC received a comment from Mercy Health stating their concerns that the continuing reduction in reimbursement rates for Evaluation and Management (E and M) services as this will lead to an adverse reduction in access to care and quality metrics due to the additional challenges and expenses that come from a reduction in reimbursement rates. The BWC responded that since 2021 the reimbursement rates surrounding E and M services has seen an overall net increase of 16%, which also includes the 0.2% decrease in the proposed version of the rule and that the agency therefore does not anticipate that the current proposal will lead to a decrease in access to care for injured workers. As a result, the BWC elected not to make changes to the rules. During the CSI public comment period the BWC received one comment from Maxim Healthcare asking for the reimbursement rates for home health and home health aide (HHA) services be increased and for the care quantity limit for these services of eight hours a day to be removed. BWC responded that while BWC reimbursement rates appear to be lower than Medicaid for HHA services, this is because the BWC reimbursement rate for the service is reduced for the first hour of service, but not for additional hours. BWC notes that they rarely authorize only one hour of service and points out that due to the difference in rates, BWC reimbursement rates are higher if more than one hour is authorized. The BWC also stated that they did not intend to limit the care quantity for this service to be limited and implemented a change in a different rule to clarify that they will authorize more than eight hours of care when necessary.

The business community impacted by this rule includes MCOs healthcare providers, facilities, and other self-insuring employers. The adverse impact created by this rule includes the time spent implementing the changes to the fee schedule, as well as the requirement for MCOs to provide their fee schedule to the BWC and each provider it contracts with. The BWC states that the adverse impact to business is justified to ensure that Ohio's injured workers have access to quality health care.

### **Recommendations**

Based on the information above, the CSI Office has no recommendations on this rule package.

### **Conclusion**

The CSI Office concludes that the BWC should proceed in filing the proposed rule with the Joint Committee on Agency Rule Review.