

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: October 16, 2012

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☐ Rescinded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.

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

R.C. 4121.441(A)(8), 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 rule establishes the fees to be paid by BWC to providers of inpatient hospital services for injured workers.

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 fees will allow Ohio's injured workers access to quality medical care while assuring a competitive inpatient hospital fee schedule.

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 17, 2012 with a comment period open from August 17, 2012 through August 31, 2012, and notice was e-mailed to the following lists of stakeholders:

- BWC's Managed Care Organizations and the MCO League representative

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- BWC’s internal medical provider stakeholder list - 68 persons representing 56 medical provider associations/groups
- BWC’s Healthcare Quality Assurance Advisory Committee
- Ohio Association for Justice
- Employer Organizations
 - o Council of Smaller Enterprises (COSE)
 - o Ohio Manufacturer’s Association (OMA)
 - o National Federation of Independent Business (NFIB)
 - o 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.

An overview of the fee schedule proposal was provided to representatives of the Ohio Hospital Association (OHA) on August 20, 2012 via conference call.

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

STAKEHOLDER FEEDBACK	BWC RESPONSE
Request for BWC to annually publish the Direct Graduate Medical Education per diem rates for hospitals and the cost-to-charge ratios (CCRs) for critical access hospitals.	BWC will publish the inpatient Direct Graduate Medical Education and Critical Access Hospital CCRs for each fee schedule year. This data will be found on the BWC website under the “fee schedule” section.
Request that BWC recognize the real cost of medical inflation in the FY 2013 IPPS methodology and return all Medicare negative adjustments to its established base rates.	BWC analysis did consider all of the reductions made by Medicare to its established based rate. Additionally, the BWC analysis of cost projections for Ohio hospitals reflected a projected 5% medical inflation increase versus the 2.5% Medicare indicated increase. The result of our analysis indicated that overall payments for MS-DRG and Outlier bills would increase by \$2 million dollars. Although payments for exempt hospitals would decrease by \$2 million dollars, which reflects a change in the BWC’s reimbursement methodology for those hospitals, overall we

	<p>calculate that the reimbursement levels would result in payment reflecting 116% of Ohio hospital costs. This data resulted in a determination that no BWC adjustment factors were needed to offset any of CMS' adjustments to the Medicare base rate. Further, we performed an additional analysis using OHA's data that indicates Ohio hospitals are paid at 91.5% of cost under the Medicare reimbursement level. The result of that analysis indicates that given BWC's current percent of payment above Medicare rates for most procedures is 120% and 180%, the projected BWC rates reflects a projected 106.14% reimbursement of Ohio hospital costs.</p>
<p>Request that BWC review the proposal to change the calculations which resulted in a projected reduction in payments to exempt hospitals.</p>	<p>BWC in determining the new reimbursement methodology fully evaluated the 166 facilities which would be impacted by the methodology change. BWC did estimate that payments to these facilities could decrease by approximately \$2 million in total across all of the facilities based on services performed in 2011. It is possible that changes in the nature of the services provided by these hospitals could impact that projection either up or down. The benefit of this methodology change is there will be greater consistency in the calculation of payments for services performed in these facilities with similar services performed in other facilities, while there is still recognition of the unique nature of exempt facilities. Additionally, based on BWC analysis we will be reimbursing these facilities at 114% of their projected costs. Again, using OHA's data that indicates Ohio hospitals are paid at 91.5% of cost by Medicare, we would still be reimbursing these facilities at 104.31% of their cost. Given this is a methodology change, BWC will closely monitor the service levels of these facilities and any negative impact on injured workers' access-to-care.</p>

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	Additionally, if it is appropriate, any of these facilities can request and BWC can grant payment above fee schedule where warranted.
Request that BWC ensure no federal sequestration of Medicare payments, taken as a result of the Budget Control Act of 2011, is allowed to be incorporated into the 2013 BWC IPPS.	BWC is not adopting this sequestration.

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. In addition, BWC researched similar payers of these services and other states' workers' compensation programs and data for analysis and comparison.

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?

BWC compares each of Medicare's provision changes to our established fee schedule goals and objectives to determine whether or not to adopt, not adopt or make modifications. BWC-specific provisions are detailed in our rule.

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.*

This is not applicable to this fee schedule rule. The goal of this rule is to establish fair market value for hospital inpatient services to Ohio's injured workers.

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.

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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, hospitals, self insuring employers, managed care organizations and our billing vendor to ensure the fee schedule can be implemented accurately and in a timely fashion. 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;**
- b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**
- 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.

- a. The impacted business community consists of the hospitals that provide inpatient care to injured workers and self insuring employers that also administer this rule.
- b. 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.
- c. The projected impact of the recommended changes to the hospital inpatient rule for 2013 is a decrease in total reimbursement to all hospitals of 0.2% or \$140,000 dollars under estimated 2012 reimbursements. We are not overly changing the overall methodology, and the change to the exempt methodology will make it easier for hospitals to implement. While BWC does recognize that payments will decrease by approximately \$2 million across 166 exempt hospitals for current service usage, this methodology change is needed to bring reimbursement to all hospitals to an appropriate and equitable payment over cost. Based on our analysis we are reimbursing at 114% of cost. It is estimated that self insuring employers 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?

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While keeping focused on our fee schedule goals and objectives, we are making minimal changes which are critical to ensuring hospitals are adequately reimbursed for treatment of Ohio's injured workers. These changes will create more simplicity for hospitals with regard to implementation and monitoring of the payment formulas. The exempt formula change allows BWC to bring all hospital reimbursements in line to a percentage over cost while keeping the exempt payments equitable at 114% over cost.

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 hospitals. There is also the ability for hospitals to negotiate reimbursement with BWC's managed care organizations and self insuring employers above our fee schedule 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 on the inpatient hospital fee schedule on the BWC website at Ohiobwc.com. Also, providers that provide inpatient care can contact BWC's Provider Relations Department or Medical Services Unit for assistance with billing issues.