CSI - Ohio
The Common Sense Initiative

Business Impact Analysis

Agency Name: Bureau of Workers' Compensation

Regulation/Package Title: HPP Provider Payment Rules

Rule Number(s): OAC 4123-6-21 to OAC 4123-6-46

Date: _____

Rule Type:

- ☐ New
- X Amended
- X 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- ☐ Rescinded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.

   Chapter 4123-6 of the Administrative Code contains BWC rules implementing the Health Partnership Program (HPP) for state fund employers, including rules governing payment to providers. BWC enacted the bulk of the Chapter 4123-6 HPP provider payment rules in January and February 1997.

   The rule review date for these rules are November 1, 2014 and February 1, 2015. BWC performed a five-year rule review of the rules in 2009, at which time BWC made numerous changes, mostly rescinding unnecessary and/or duplicative rules, or combining some rules into existing rules. As part of the current five-year rule review process, the Chapter 4123-6 HPP provider payment rules have been thoroughly reviewed and appropriate changes have

been proposed. As a result of the 2009 review, there are relatively few changes proposed in this current review. BWC is proposing the following:

Amend rules:

4123-6-21 Payment for outpatient medication.
4123-6-21.1 Payment for outpatient medication by self-insuring employer.
4123-6-22 Stakeholders' health care quality assurance advisory committee.
4123-6-25 Payment for medical supplies and services.
4123-6-26 Claimant reimbursement.
4123-6-30 Payment for physical medicine.
4123-6-31 Payment for miscellaneous medical services and supplies.
4123-6-38 Payment for home health nursing services.
4123-6-38.1 Payment for nursing and caregiver services provided by persons other than home health agency employees.
4123-6-39 Payment for prosthetic device or other artificial appliances.
4123-6-40 Payment of claimant travel expenses.
4123-6-41 No legal relationship between the industrial commission or bureau and a health care provider.
4123-6-43 Payment for transcutaneous electrical nerve stimulators and neuromuscular electrical stimulators.
4123-6-45 Audit of providers' patient and billing related records.
4123-6-46 Standardized or negotiated payment rates for services or supplies.

No Change rules:

4123-6-21.2 Pharmacy and therapeutics committee.
4123-6-21.3 Outpatient medication formulary.
4123-6-21.4 Coordinated services program.
4123-6-21.5 Standard dose tapering schedules.
4123-6-23 Jurisdictional principles applicable to payment of bills for medical services rendered by health care providers.
4123-6-27 Treatment by more than one physician.
4123-6-29 Request for information by the treating provider.
4123-6-37 Payment of hospital bills.
4123-6-37.2 Payment of hospital outpatient services.
4123-6-37.3 Payment of ambulatory surgical center services.
4123-6-38.2 Payment of nursing home and residential care/assisted living services.
4123-6-42 Interest on late payments for equipment, materials, goods, supplies or services in state insurance fund, public work relief employees' compensation fund, coal workers pneumoconiosis fund, and marine industry fund claims.
4123-6-44 Bureau fees for provider services rendered by in-state and out-of-state providers.
4123-6-45.1 Records to be retained by provider.

The major substantive changes proposed for the HPP provider payment rules pursuant to the five-year rule review are as follows:

- Clarify that not more than one prescription for a non-sterile compounded prescription will be approved for reimbursement in any thirty day period. OAC 4123-6-21
- To combat drug diversion, clarify that BWC and self-insuring employers will not pay for refills requested before seventy-five per cent of any published days supply limit has been utilized if the previous supply was lost, stolen or destroyed, or the hospital or police kept the medication. OAC 4123-6-21, OAC 4123-6-21.1
- Clarify that BWC may reimburse injured workers for their out-of-pocket expenses when the injured worker's medication is not payable under R.C. 4123.511(I) on the date of service, but later becomes payable. OAC 4123-21, OAC 4123-6-26
- Provide that BWC's Chief of Medical Services is a non-voting member of the HCQAAC, and may be self-designated as an ad hoc non-voting member of any subcommittee of the HCQAAC. OAC 4123-6-22
- Provide that payment for services rendered to a claimant shall be paid to a health care provider only when the provider has either delivered, rendered or supervised the services, and that supervision of services shall comply with the requirements of the provider's regulatory board and CMS for supervision of the service, as in effect on the billed date of service, unless otherwise specified in BWC's provider billing and reimbursement manual in effect on the billed date of service. OAC 4123-6-25
- Clarify that requests for injured worker reimbursement for out-of-pocket expenses for medical services are subject to the same timeframes as provider bill submission. OAC 4123-6-26
- Clarify that presumptive authorization of up to twelve treatments within sixty days of the date of injury applies to all physical medicine treatments as defined in the physical medicine rule, not just physical therapy. OAC 4123-6-30
- Delete language in the physical medicine rule that is duplicative of language in OAC 4123-6-20. OAC 4123-6-30
- Provide that once payment for an orthotic device, artificial teeth or denture, eyeglasses or contact lenses, or hearing aid has been made, replacement requests may be denied in instances of malicious damage, neglect, culpable irresponsibility or wrongful disposition. OAC 4123-6-31
- Clarify that household, personal or other duties related to maintaining a household, including but not limited to care or upkeep to the inside or outside of the residence, washing clothes, preparing meals, or running errands are not considered home health nursing services and will not be reimbursed by BWC, except to the extent such services are incidental to care of the injured worker. OAC 4123-6-38
- Add definitions of "amputee clinic," "artificial appliance," and "prosthetic device" to the prosthetic rule. OAC 4123-6-39

- Add language providing it is the prosthetist's responsibility to ensure that any prosthetic device fits properly for three months from the date of dispensing, and that any modifications, adjustments, or replacements within three months from the date of dispensing are the responsibility of the prosthetist who supplied the item and BWC will not reimburse for those service. OAC 4123-6-39
- Clarify that injured worker travel may be reimbursed when treatment necessary for the allowed industrial condition cannot be obtained within the city or community where the claimant resides, and the treatment has been pre-authorized and approved. OAC 4123-6-40
- Provide that a TENS unit must be prescribed by a physician and furnished by a provider holding a current, valid, license or certificate of registration from the Ohio Respiratory Care Board to sell or rent home medical equipment, and that BWC will not pay for the rental or sale of over-the-counter TENS units . OAC 4123-6-43
- Clarify that BWC or self-insuring employers may enter into volume-based or optional-use contracts with medical providers for services including, but not limited to, the purchase or rental of durable medical equipment and supplies and catastrophic claim services. OAC 4123-6-46

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

R.C. 4121.441, R.C. 4123.66.

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

No

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

Not applicable.

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)?

The public purpose is to provide appropriate and clear direction of program parameters and service actions which all parties engaging in the use or provision of medical services to Ohio injured workers pursuant to addressing an allowed medical condition resulting from a workplace injury must adhere. These rules will support the charge as set forth in R.C. 4123.66(A) which 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." Further, the proposed rule changes also support the charge pursuant to R.C. 4121.441(A) which 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.

6. **How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**

   Success will be measured by the providers' and employers' compliance with the modifications to the rule. Additionally, success will be measured by the timely provision of services to injured workers, and the maintenance of costs within the annual fee schedule projections for the relevant services impacted by the recommended changes.

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 rules covered within this document were distributed via e-mail to the following lists of stakeholders for review:

   - BWC's Managed Care Organizations (MCOs), the MCOs' Medical Directors
   - BWC's internal medical provider stakeholder list -- 67 persons representing 52 medical provider associations/groups
   - BWC's internal provider list serve (over 700 interested parties)
   - BWC's Healthcare Quality Assurance Advisory Committee
   - Ohio Attorney General's Office, Workers Compensation Section
   - 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

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

   BWC did receive input and responded as indicated below.

The Ohio Board of Nursing recommended that "certified registered nurse anesthetist" be removed from 4123-6-30 (B), which includes "certified registered nurse anesthetists" among the other health care providers authorized to "prescribe physical medicine", as this function is not consistent with a certified registered nurse anesthetist's scope of practice established in Section 4723.43 (B), Ohio Revised Code. BWC agreed with the recommendation and removed the reference.

The Ohio Council for Home Care & Hospice (OCHCH) recommended an addition to rules 4123-6-38 and 4123-6-38.1. The committee recommended BWC add the Accreditation Commission for Health Care (ACHC) as a third accreditation organization, which the Centers for Medicare & Medicaid Services (CMS) have approved to provide initial certifications and recertification of home health agencies. BWC agreed with the intent of the stakeholder's recommendation. However, rather than add the ACHC as a separate accreditation organization, the rules language was modified to expand the definition to include "…accreditation through an organization that has been granted deeming authority by the Centers for Medicare and Medicaid Services (CMS)." The language expansion allow for ACHC to be recognized as an acceptable accreditation organization, as well as any other organization granted "deeming" authority by Medicare.

The Ohio Physical Therapy Association (OPTA) recommended that OPTA be included in the list of associations under rule 4123-6-22 that may nominate providers for the Health Care Quality Assurance Advisory Committee (HCQAAC). BWC informed OPTA that it is not necessary to specifically add this language to the rule as the current language of the rule is flexible enough to allow for OPTA be added as a member of the current HCQAAC. Language in the rule states that "Providers may be nominated for inclusion to the committee by provider associations and organizations including but not limited to…", and then a list of associations are provided. OPTA was also informed that their request would be presented to the HCQAAC for its comment and approval. When their request is considered, OPTA will be invited to share their perspective directly to the HCQAAC. Therefore, no modification was needed or made.

OPTA, while expressing some agreement with the recommended change to rule 4123-6-25, also indicated the language should only state that "provider supervision of services shall comply with the requirements of the provider's regulatory board" and the reference to the supervision requirements of the centers for Medicare and Medicaid services should be eliminated. OPTA's rationale was that while all providers are licensed by their regulatory boards, not all providers are certified by Medicare or Medicaid to provide services. BWC agreed in part with OPTA, recognizing that all providers do have to comply with the supervision requirements of their regulatory board. However, where there are other

applicable CMS guidelines which further enhance service quality BWC does want the providers to also adhere to those guidelines. Therefore to address the point raised by OPTA, the rule's language was further modified to read: "provider supervision of services shall comply with the requirements of the regulatory board and CMS, if applicable, for supervision of the service…" Additionally, OPTA was reminded that additional language in the rule does allow BWC, via the BWC Provider Billing and Reimbursement Manual, to further define definitional exceptions for direct supervision as necessary. Thus, there is ample protection afforded to a provider relative to the definition of direct supervision.

Lastly, OPTA recommended the elimination of 4123-6-30 (B) because the language imposes an unnecessary prescription barrier on physical therapists or other treating professionals to access physical medicine services, and paragraph (C) of the rule already mandates providers to follow the section of Ohio Law that governs their practice. BWC informed OPTA that the workers' compensation system addresses issues resulting from a workplace accident, which requires a full medical assessment to diagnose and determine allowed conditions, which may or may not warrant certain medical treatment such as physical therapy interventions. At this time Physicians of Record are understood to have the responsibility to address the full medical assessment requirement, and physical therapists are not physicians of records under the workers compensation rules. As a result of the discussion, we agreed to bring this issue to the HCQAAC for discussion and a recommendation. At the time this issue will be considered, the OPTA will be allowed to present their perspective to the committee. Therefore, no modification to the language of the rule was required.

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?**

   None

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. No regulatory alternatives which could be considered have been identified.

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 regulations pursuant to the requirements of the O.R.C. 4123.66(A) and 4121.441(A) are designed to provide appropriate and clear direction of program parameters and service actions which all parties engaging in the use or provision of medical services to Ohio injured

workers pursuant to addressing an allowed medical condition resulting from a workplace injury must adhere.

What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

BWC is the only state agency responsible for regulating HPP related medical services for Ohio's workers' compensation programs.

12. **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.**

    Once the rules are approved and through the JCARR process, the BWC staff impacted by the rules will be informed of the effective date. The various units of the Medical Services Division of BWC will coordinate communication and training to internal BWC staff and the MCOs. BWC's Medical Services Division will also ensure that relevant sections of the MCO Policy Guide and the Provider Billing and Reimbursement manuals are updated to reflect appropriate rule modifications.

Adverse Impact to Business

13. **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;**

       All medical and pharmacy services providers, self-insured employers, and MCOs.

    b. **Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance);**

       Impact is in the nature of medical services providers', self-insured employers', and MCOs' time for reviewing or receiving educations on the changes, as well as applying any modifications to relevant systems.

    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 f*or your information/estimated impact.

       Estimated time which providers, employers, and MCOs may need to adjust to the minimum changes is at most 15 hours.

14. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

BWC is attempting to meet the legislative intentby setting forth appropriate and clear direction of program parameters and service actions which all parties engaging in the use or provision of medical services to Ohio injured workers pursuant to addressing an allowed medical condition resulting from a workplace injury must adhere. The rules have been reviewed and modified as appropriate to add additional clarity of program parameters and service actions which all parties engaging in the use or provision of medical services must take to ensure service access, quality and cost efficiencies.

Regulatory Flexibility

15. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

No. The rules are to provide guidance and clarity of program parameters and actions which all parties engaging in the use or provision of medical servicesmust take to ensure service access, quality and cost efficiencies, and timely provider reimbursements, which leads to quality medical care, as well as a successful and safe return to work for injured workers.

16. 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?

Not applicable.

17. What resources are available to assist small businesses with compliance of the regulation?

The MCOs have a responsibility in the contract they sign with BWC to provide training and support to all providers they utilize in managing the medical care of their injured workers. Additionally, by contract the MCOs are responsible for providing education and support to injured workers and employers on all workers' compensation services and programs including medical services. The various units of the Medical Services Division and the Chief Medical Officer Division of BWC will also provide support and direction to impacted businesses regardless of size with respect to meeting Bureau regulations.