



## Common Sense Initiative

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

**Carrie Kuruc**, Director

### Business Impact Analysis

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

Rule Contact Name and Contact Information:

Aniko Nagy (614) 466-3293

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: January 12, 2021

Public Comment Period End Date: February 2, 2021

Rule Type/Number of Rules:

- |   |  |
|---|--|
| <input type="checkbox"/> New/___ rules  | <input type="checkbox"/> No Change/___ rules (FYR? __) |
| <input checked="" type="checkbox"/> Amended/ <u>1</u> rules (FYR? <u>No</u> ) | <input type="checkbox"/> Rescinded/___ rules (FYR?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:

- Adopt the following Benefit Changes
  - Adopt ten (10) new local service codes including 5 long term skilled nursing facility service codes, 2 adult day care service codes, 1 hospice service code, 1 prosthetic device code and 1 medication therapy management service code.
  - Modify and update language for other service coverage statuses.
  - Adopt new methodology for functional capacity evaluation (FCE) services reimbursement.
- Adoption of Medicare 2020 Professional Provider and Medical Services payment updates.
  - Adopt Medicare's updates to +15,000 service codes.
  - Adopt Medicare's requirement for skilled nursing facilities to report quality measures.

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- Adopt multiple procedure payment reduction for applicable endoscopic, diagnostic cardiovascular and diagnostic ophthalmologic procedures
- Maintain 120% payment adjustment factor for HCPCS service codes.
- Maintain current conversion factors for anesthesia, medical and surgical services.

**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?**

No.

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

Not Applicable.

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

Not Applicable.

**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.

**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? No. Not applicable.**

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

### **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 medical services and professional provider fee schedule was posted on BWC's website for stakeholder feedback on July 20, 2020 with a comment period open until August 05, 2020, and notice was e-mailed to the following lists of stakeholders:

- BWC's Managed Care Organizations (MCOs)
- BWC's provider stakeholder list
- BWC's internal provider list serve
- BWC's Healthcare Quality Assurance Advisory Committee
- Ohio Attorney General, Workers' Compensation Section
- 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

In addition, an overview of the new skilled nursing facility local codes and reimbursement proposal was presented to the Ohio Health Care Association (OHCA) on July 16, 2020. BWC had several meetings and correspondence with the Ohio Physical Therapy Association (OPTA), the Ohio Occupational Therapy Association (OOTA), and the International Association of Rehabilitation Professionals to discuss the changes Functional Capacity Evaluation (FCE) services and reimbursement. BWC also had several discussions with the Ohio Orthotic and Prosthetic Association (OOPA) to review the new local service code for Genium X3 prosthetic device.

**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?**

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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 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?**

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. 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 fee schedule itself is considered a performance-based regulation as payment is made when services are delivered.

**14. 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'

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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.”

**15. 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**

**16. 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; and**

The impacted business community consists of the providers that render professional services to injured workers as well as self-insured employers administering the program.

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

Implementation of fee schedule changes is a necessary part of annual methodology updates for both medical service and professional providers and self-insuring employers. The adverse impact will be providers’ time in implementing the changes in order to comply with the rule. Where self-insuring employers choose to adopt the BWC medical service reimbursement methodology, those employers will have similar impacts to providers.

**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.*

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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.

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





**Bureau of Workers'  
Compensation**

30 W. Spring St.  
Columbus, OH 43215-2256

Governor **Mike DeWine**  
Administrator/CEO **Stephanie B. McCloud**

www.bwc.ohio.gov  
1-800-644-6292

**Stakeholder Feedback Recommendations for Changes to the 2021 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 – Benefit plan change	Dianne Farabi, Executive Director, Ohio Orthotic and Prosthetic Association (OOPA)	Provided a comment on the recommendation to create a local level code for Genium X3 prosthetic device.	The Ohio Orthotic and Prosthetic Association's representative expressed support of BWC's action in creating the Genium X3 knee prosthetic device. The representative indicated appreciation for BWC's continued collaboration on the prosthetic reimbursement methodology.	BWC thanks the Association and Director for the collaborative working relationship, and the assistance in developing this solution. BWC looks forward to continuing the collaboration with the goal of implementing actions which reduce delays in care for Ohio's injured workers.	No modification needed.
2.	Rule 4123-6-08 – Benefit plan change	Diane Dietz, Ohio Health Care Association	Provided a comment on the recommendation to create 5 local codes for reimbursing skilled nursing facility services.	The Ohio Health Care Association's (OHCA) representative expressed support of BWC's action to create five Ohio local codes for reimbursing skilled nursing facility services for long-term residential nursing home care.	BWC thanks the Association and the representative for their comments and continued support.	No modification needed.
3.	Rule 4123-6-08 CPT/HCPSCS COVID 19 Testing	Judy Barrie, Vice President, Operations Support-CareWorks	Commenter asked why the codes created during the COVID pandemic for lab testing aren't included in the proposed fee schedule?	MCOs currently crosswalk these codes. Inclusion of the codes in the fee schedule would eliminate the need for the MCOs to manually crosswalk the codes.	BWC is currently evaluating the new COVID pandemic lab testing codes. At this time the staff is not certain that the new codes will be the final permanent national codes. Therefore, final codes will be added as part of the BWC emergency rules process which will occur in December 2020.	No modifications needed at this time.



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4.	Rule 4123-6-08 CPT 97750	Judy Barrie, Vice President, Operations Support-CareWorks	Suggest BWC further expand the definition explanation of application of billing modifiers "GP" and "GO".	The commenter felt that the current language found within the fee schedule rule may be confusing to providers on how and when to use the modifiers when billing for related services. MCOs have a responsibility to educate providers, and if providers are confused such would increase the MCOs' potential challenge.	BWC action of adding these modifiers to the fee schedule is not to explain how to use them, but to rather to confirm that the modifiers are required for billing physical medicine services. Modifier definitions are included as part of nationally published billing manuals. Providers rely on those manuals to understand when and how to use modifiers in their billing. BWC only provides clarifying language on modifiers, when BWC is deviating from national standards. BWC is not deviating from national standards relative to these modifiers. However, if further provider education is needed, such education will be given through the provider billing and reimbursement manual.	No modification needed.
5.	Code 4123-06-08,	Antonio Ciaccia, Director of Government and Public Affairs, Ohio Pharmacists Association	The commenter asked if BWC is considering an update to the pharmacist provider status and allowing pharmacist to be reimbursed for services?	Pharmacists can render medication therapy management services, and this could be beneficial to injured workers.	BWC does not set or restrict licensure or scope of practice of any medical services provider. BWC does follow correct coding guidelines which may restrict how services can be billed by a medical provider or provider group. BWC works to ensure that all relevant services codes are added to the reimbursement schedule. BWC is adding three service codes for medication therapy management (MTM) consultations to the 2021 proposed fee schedule. Additionally, although a specific bundled service program has not been developed, BWC is adding an undefined local code to the professional provider fee	No modification needed.

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					schedule for a MTM program. The codes will be added to the fee schedule as not routinely covered services.	
6.	Rule 4123-6-08 Chiropractic Manipulation Code (CMT) Reimbursement	Dr. Brandy Spaulding, Executive Director, and Dr. Rebecca Ault, Vice President Ohio State Chiropractic Association	The commenters request that BWC increase the reimbursement for CPT codes 98940-98942 consistent with the general increase applicable to other conservative care options and bring the reimbursement of these codes in line with the reimbursement for osteopathic providers.	Chiropractic physicians render conservative treatment options that continue to play a role in providing effective treatment to Ohio's injured workers with lower risks. Services specific to chiropractic providers (CMT codes) are reimbursed at a lower amount.	BWC's methodology places the identified CPT codes with the osteopathic codes under the physical medicine specialty. This specialty grouping services' rates are inflated the same - 141% of the base Medicare rate. The difference that is reflected in the final rate is based on the starting Medicare base rate for each service. This is normal given that BWC relies on Medicare's empirical research which sets the relative value and base reimbursement levels for all services. Any difference in the final Ohio rate is based on the fact that the beginning fee for any service is different, and BWC does not modify the beginning base rates.	No modification needed.
7.	Rule 4123-6-08 CPT code 97750	Stephen Phillips, CRC, CDMS  President of Ohio Chapter of the International Association of Rehabilitation Professionals (IARP)	The Association expressed primary concerns that the proposed approach: 1) Using the 97750 code with a modifier fails to provide a clear description that promotes consistency and quality of functional capacity evaluation. 2) There is no mechanism stipulated	The Association indicated overall support of the BWC proposed FCE changes.  On the first concern, the Association feels that a special code for a stand-alone FCE is warranted to clearly distinguish this as a specialized service, identify quality expectations, and value its reimbursement in a similar manner to W0644	BWC thanks the President and the Association for their comments and support. The resulting proposal reflects an effective collaboration of BWC, the Association, and other provider stakeholders to address injured worker's service needs.  To address the first concern, BWC will develop provider training to support the quality expectations of the different FCE services.	No modifications needed.

Line #	Rule #/Subject Matter	Stakeholder	Draft Rule Suggestions	Stakeholder Rationale	BWC Response	Resolution
			to reimburse FCE examiners for travel time and mileage when FCE services are done at the worksite or home.	<p>Ergonomic Study.</p> <p>Pertaining to the second concern, the Association indicated that FCE services should have opportunities for mileage and travel as vocational rehabilitation plan services. By reimbursing for mileage and travel, the examiner can determine the best location to perform the service and possibly impact the success of the intended outcome.</p>	To the second concern, services provided under this fee schedule are not eligible for travel reimbursement. Under this fee schedule, a choice to move where the service is rendered would be at the discretion of the provider. Additionally, the modifications made to the reimbursement methodology for FCE service will result in a projected 23% increase in the payment rates for these services. BWC will continue to monitor to determine if a further change is warranted.	
8.	Rule 4123-6-08 CPT code 97750	Dr. Rick Wickstrom, President, WorkAbility systems and WorkerFIT.	This commenter's concerns mirrored the IARP comments in line 7.	This commenter's concerns mirrored the IARP comments in line 7.	BWC's response is the same as the response in line 7.	No modification needed.