



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):

Payment of hospital outpatient services.

Rule Number(s): 4123-6-37.2

Date of Submission for CSI Review: December 23, 2022

Public Comment Period End Date: January 13, 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Rescinded/___ rules (FYR?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 the Bureau of Workers Compensation (BWC) to providers of outpatient hospital services for injured workers. BWC adopted recommendations for this fee schedule are:

- Maintain the Current Benefit Plan
- Adopt the Medicare 2023 hospital outpatient services rule payment updates
 - Market basket (inflation) adjustment
 - Final phase of Medicare's site differential methodology
- Adopt the following for Ohio rates:
 - 2.984 BWC payment adjustment factor to Medicare base rates for children's hospitals
 - 1.441 BWC payment adjustment factor to Medicare base rates for all other hospitals
 - Update fees for joint replacement procedures

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.**

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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 hospital outpatient 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 maintain stability in the environment, 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.

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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 hospital outpatient services payment rule was posted on BWC's website for stakeholder feedback on October 17, 2022 with a two-week open comment period from October 18 through October 28, 2022, and a notice was e-mailed to the following lists of stakeholders:

- BWC's Managed Care Organizations
- BWC's internal 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.

On October 3, 2022, the proposed rule was presented to representatives designated through the Ohio Hospital Association.

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's hospital outpatient fee schedule is based on Medicare's outpatient prospective payment system (OPPS). The Medicare OPPS is fully evaluated and updated annually to ensure appropriate reimbursement to hospitals. During the annual fee schedule review, BWC historical claims data is modeled against Medicare annual reimbursement updates to determine the proposed impact to the BWC environment, as well as evaluate if adjustments are necessary

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to the BWC payment adjustment factors. If BWC determines that a CMS provision update or change may 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 factors.

In addition, BWC researches similar payers of these services and other states' workers' compensation programs and data for analysis and comparison. We use our own historical data to determine financial and operational impacts and injured worker access to care.

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 hospital outpatient facilities.

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 in-patient and out-patient medical 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 outpatient services via the O.R.C. Chapter 119 rulemaking process.

BWC's hospital outpatient reimbursement methodology is based on Medicare's Outpatient Prospective Payment System, which is updated annually. Therefore, BWC must also annually update OAC 4123-6-37.2, to keep in sync with Medicare.

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

This regulation is specific to BWC, and reimbursement for hospital outpatient services in the BWC environment. Since BWC is the only state agency that administers workers'

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compensation in Ohio, there is no duplication between this rule 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 therefore.”

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 of our medical provider fee schedules are implemented. These procedures include adequate notification to stakeholders, self-insuring employers, managed care organizations and billing vendor of fee schedule changes, of files and other necessary information 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 to all employers and third-party administrators for download and implementation to their system. 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

The impacted business community consists of the hospitals and facilities that provide outpatient care to injured workers, and self-insured employers that administer this rule.

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 that the Medicare methodology has been in use by BWC since 2011, the annual implementation of updates is relatively routine for providers and self-insured employers.

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It is estimated that self-insuring employers and hospitals would require less than 10 hours of programming time in order to comply with this rule.

- 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*).**

Yes, BWC has made technical changes to OAC 4123-6-37.2 to remove and reword verbiage pursuant to R.C. 121.95 and R.C. 121.951.

- 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, and adequate reimbursement is essential to achieving that goal. It is essential that appropriate and timely reviews of the fee schedule with relevant modifications are implemented to create a competitive reimbursement level for services provided to injured workers. Alternative methodologies detailed in the rule provide flexibility in hospital reimbursement for self-insured employers.

Regulatory Flexibility

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

This fee schedule is applied equitably across all hospitals. However, there is also the ability for hospitals to negotiate alternative reimbursement with BWC's managed care organizations (MCO) 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 outpatient fee schedule on the BWC website at www.bwc.ohio.gov. The Provider Billing and Reimbursement Manual also serves as a source of fee schedule protocols, coding, billing and reimbursement information. Providers rendering services within the fee schedule can also contact MCO staff, BWC Provider

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Relations Business Area, or the Medical Services Reimbursement and Policy unit staff for assistance with billing issues.

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2023 Stakeholder Feedback Recommendations for Changes to the Payment of hospital outpatient services – O.A.C. 4123-6-37.2

Line #	Rule #/Subject Matter	Stakeholder	Draft Rule Suggestions	Stakeholder Rationale	BWC Response	Resolution
1	Hospital Outpatient Payment Rule OAC 4123-6-37.2	Quyen Weaver, Director of Health Economics and Policy from the Ohio Hospital Association (OHA)	No suggestions were provided.	<p>The OHA is supportive of BWC's recommendation and update to the hospital outpatient fee schedule.</p> <p>OHA is hopeful that Medicare's final rule will increase the proposed market basket to account for unprecedented inflation.</p>	BWC acknowledges OHA's support of BWC's recommendation.	No modification necessary.