



Common Sense Initiative

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Business Impact Analysis

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

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Regulation/Package Title (a general description of the rules' substantive content):

Payment of ambulatory surgical center services.

Rule Number(s): 4123-6-37.3

Date of Submission for CSI Review: December 27, 2023

Public Comment Period End Date: January 12, 2024

Rule Type/Number of Rules:

New/___ rules

No Change/___ rules (FYR? ___)

Amended/ 1 rules (FYR? N)

Rescinded/___ rules (FYR?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 of ambulatory surgical center (ASC) services for injured workers. Below is a restatement of the proposed changes to the rule, with a reflection of the objectives to be achieved through the adoption of the recommendations.

- Updates to current benefit plan
 - Update to add 104 dental codes
 - Adopt the Medicare 2024 update to the ambulatory surgical center rule
 - Adopt expanded dental service protocol
 - Align with new allowed joint replacement codes
 - Adopt market basket increase of 3.1%
 - Adopt the following for Ohio rates:
 - Maintain the Ohio inflation of Medicare base rates for specified service categories
 - Update fees for relevant 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.**

Authorize: 4121.12, 4121.121, 4121.30, 4121.31, 4121.44, 4121.441, 4123.05, 4123.66

Amplify: 4121.12, 4121.121, 4121.44, 4121.441, 4123.66

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.

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 ambulatory surgical center 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?

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

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 ambulatory surgical center services payment rule was posted on BWC's website for stakeholder feedback on October 10, 2023 with a two-week open comment period from

October 11, 2023 through October 25, 2023, and 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 6, 2023, the proposed rule was presented to representatives designated through the Ohio Association of Ambulatory Surgery Centers.

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

The Ohio Association of Ambulatory Surgery Centers (OAASC) submitted a letter indicating OAASC is supportive of BWC's 2024 proposed rule. See attached 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 ambulatory surgical center fee schedule is based largely on Medicare's outpatient prospective payment system (OPPS) which includes ambulatory surgical center reimbursements. The Medicare OPPS is fully evaluated and updated yearly to ensure appropriate reimbursement levels to ambulatory surgical centers. 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 Medicare change will undermine BWC's 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. In addition, BWC researches similar payers of these services and other states' workers' compensation programs and data for analysis and comparison. BWC also researched the safety and efficacy of covering joint replacement procedures in the ASC setting. This issue was also reviewed and approved by BWC's Health Care Quality Assurance Advisory Committee of physicians and other health care clinicians.

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 fee reimbursement scheduled for providers of medical services to injured workers including ambulatory surgical centers.

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 ambulatory surgical center services via the O.R.C. Chapter 119 rulemaking process.

BWC's ambulatory surgical center reimbursement methodology is based on Medicare's Ambulatory Surgical Center Prospective Payment System, which is updated annually. Therefore, BWC must also annually update OAC 4123-6-37.3, 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 rule is specific to BWC and defines reimbursement for ambulatory surgical center services in that program. Since BWC is the only state agency that administers workers' 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 therefor."

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 medical provider fee schedules are implemented. These procedures include documentation of fee schedule changes, files and other necessary information and adequate notification to stakeholders, self-insuring employers, managed care organizations and our billing vendor to ensure the fee schedule can be implemented 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 for use in 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 ambulatory surgical centers that provide services to injured workers, and self-insuring employers that also 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.

It is estimated that self-insuring employers and ambulatory surgery centers would require less than 10 hours of programming time to comply with this rule. The annual implementation of updates is relatively routine for providers and self-insured employers.

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*).

No.

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 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 ambulatory surgical centers. However, there is also the ability for ambulatory surgical centers 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 this rule.

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

BWC posts information regarding the Ambulatory Surgery Center 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 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.