

**Common Sense
Initiative****Mike DeWine**, Governor
Jon Husted, Lt. Governor**Carrie Kuruc**, Director**MEMORANDUM**

TO: Aniko Nagy, Ohio Bureau of Workers' Compensation

FROM: Joseph Baker, Regulatory Policy Advocate

DATE: April 23, 2021

RE: **CSI Review – Payment for Outpatient Medication (OAC 4123-6-21)**

On behalf of Lt. Governor Jon Husted, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Bureau as provided for in ORC 107.54.

Analysis

This rule package consists of one amended rule proposed by the Ohio Bureau of Workers' Compensation (BWC). This rule package was submitted to the CSI Office on March 10, 2021, and the public comment period was held open through March 31, 2021. Unless otherwise noted below, this recommendation reflects the version of the proposed rule filed with the CSI Office on March 10, 2021.

The rule in this package provides requirements for the payment of outpatient medication used to treat an occupational disease or injury. OAC 4123-6-21 states that medication reimbursed by the BWC must be for the treatment of a work-related injury or occupational disease in a claim either allowed by the BWC or recognized by a self-insuring employer. The rule further specifies that payments shall not be made to providers who are not enrolled with the BWC except under certain circumstances, permits the BWC to require prior authorization for certain drugs, and limits covered drugs to those approved by the Food and Drug Administration (FDA) for human use and dispensed by a registered pharmacist who is an enrolled pharmacy provider. The rule has been amended to require that the reimbursement of non-sterile compounded prescriptions be denied, except when a commercially available formulary becomes unavailable. Additionally, the duration of an approval

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for reimbursement of non-sterile compounded prescriptions has been reduced from 90 to 30 days, and the maximum reimbursement amount was lowered from \$400 to \$100.

During early stakeholder outreach, the BWC sent the proposed rules to its managed care organizations, Medical Services Division provider stakeholders, and Healthcare Quality Assurance Advisory Committee, as well as the Ohio Association for Justice, the Council of Smaller Enterprises, the Ohio Manufacturers' Association, the Ohio Chamber of Commerce, self-insured employers, third-party administrators, the State of Ohio Medical Board, and the State of Ohio Board of Pharmacy. The BWC did not receive any early stakeholder comments and no comments were received during the CSI public comment period.

The business community impacted by the rules includes prescribers and pharmacy businesses that are enrolled or certified by the BWC to prescribe and dispense medication to injured workers. The adverse impact to business includes potential revenue loss associated with reduced reimbursement amounts for non-sterile compounded prescriptions as well as BWC denial of reimbursement for such prescriptions when a formulary drug is commercially available. The BWC estimates in the BIA that during calendar year 2020, total reimbursement for non-sterile compounded prescriptions was approximately \$52,732. Under the revised rule, such reimbursements will be prohibited in the future unless a formulary drug becomes unavailable, in which case the BWC will reimburse the compounding of a drug up to \$100 until the commercial product becomes available. The BWC states in the BIA that non-sterile compounds are not FDA-approved and have not undergone an FDA assessment of safety, effectiveness, and quality, and that the changes to the rule addressing these drugs are a result of the BWC Pharmacy and Therapeutics Committee's responsibility to make recommendations to improve the overall efficiency and effectiveness of drug utilization.

Recommendations

Based on the information above, the CSI Office has no recommendations on this rule package.

Conclusion

The CSI Office concludes that the Ohio Bureau of Workers' Compensation proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.