ACTION: Final

DATE: 08/20/2012 12:55 PM

CSI - Ohio

The Common Sense Initiative

MEMORANDUM

TO: John Hanna, Ohio Bureau of Workers' Compensation

FROM: Paula Steele, Regulatory Policy Advocate

DATE: May 8, 2012

RE: **CSI Review – Outpatient Medication Formulary Rule (OAC 4123-6-21.3)**

On behalf of Lt. Governor Mary Taylor, 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. This memo represents the CSI Office's comments to the Agency as provided for in ORC 107.54.

Analysis

The draft rule outlines the administrative process for the adoption of and revisions to the Bureau's medication formulary listed in Appendix A of the draft rules. The outpatient medication formulary lists drugs permitted for reimbursement when prescribed to treat injuries allowed in a claim. Prescribers are limited to the medications and any restrictions described in the formulary. The amended rule first became effective September 2011, and the purpose of the amendment is to update the formulary. According to the Bureau, the formulary will be updated on a quarterly basis.

The rules and the associated Business Impact Analysis (BIA) were filed with the CSI Office on March 29, 2012, and the comment period for the rule closed on April 15, 2012. No comments were received during the public comment period.

For this rule and appendix listing of the formulary, a committee of health care professionals worked together with the Bureau to develop the formulary listing through research and review of medical literature, utilization rates, and industry best practices. The Bureau described a process for stakeholder outreach that involved emailing the information to a comprehensive list of stakeholders. In addition, the CSI Office contacted the Ohio Pharmacists Association to ensure the pharmacist group was aware of the formulary; they did not report any negative comments.

Because this rule and associated formulary consist of targeted changes to an existing rule and formulary, this method of stakeholder outreach seems appropriate.

According to the Bureau there is no adverse impact to business. Some prescribers will have to adjust an injured patient's treatment if the updated formulary eliminates the patient's existing prescribed medicine. The Bureau provides a 60-day notice to injured workers so that there is adequate time to make changes during regular routine visits. All visits are reimbursed by the Bureau. The CSI Office inquired why pharmacies were not included in the scope of impacted businesses. According to the Bureau, when patients present their coverage information to a pharmacist, the pharmacist is able to determine from industry software that the medication is reimbursable and at what rates. The formulary brings the Bureau's prescription coverage in line with everyday pharmaceutical practices.

Review and research on the rule and formulary showed that the BIA was lacking in the described manner for which the success of the rule would be measured. The BIA describes the purpose of the rule as one to "improve the efficiency of treatment for injured workers." However, the Bureau's web site describes the purpose as one to limit the inappropriate use of medications and lower the Bureau's prescription costs by an estimated $15 million per year. Therefore, the BIA's described method of measuring success should include a methodology for determining whether the changes are providing the Bureau with the expected savings and increased treatment efficiencies.

After reviewing the proposed rule, appendix, and the associated BIA, the CSI Office has determined that the rule satisfactorily meets the standards espoused by the CSI Office, and the purpose of the rule justifies the adverse impact identified in the BIA.

Recommendations

As described above, the CSI Office made the following recommendations to the Bureau's Business Impact Analysis dated February 23, 2012:

1. Devise and articulate how the Bureau will measure the success of the rule which is expected to save the Bureau $15 million per year in addition to specific outcomes of the increased efficiencies for treating injured workers.

Please Note: The recommendation above should be addressed in the BIA for the next quarterly formulary update.

Conclusion

Based on the above comments, the CSI Office concludes that the Agency should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.

cc: Stephen Buehrer, Administrator/CEO, Ohio Bureau of Workers' Compensation
Mark Hamlin, Lt. Governor's Office