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MEMORANDUM

TO: Tom Sico, Bureau of Workers' Compensation

FROM: Paula Steele, Regulatory Policy Advocate

DATE: April 24, 2013

RE: **CSI Review – Payment for Outpatient Medication (OAC 4123-6-21, 4123-6-21.1)**

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 (BIA). This memo represents the CSI Office's comments to the Agency as provided for in ORC 107.54.

Analysis

This rule package consists of two Bureau of Workers' Compensation (BWC) amended draft rules that address the Bureau's reimbursements for outpatient medications by the BWC in State Insurance Fund claims and by self-insuring employers. The rule package was filed with the CSI Office on February 25, 2013, and the comment period closed on March 22, 2013. One comment was received after the rule package was submitted to CSI for review.

The amendments to the rules are intended to provide appropriate medications to injured workers in a more safe and effective manner by:

1. Restricting BWC reimbursement for controlled substances to only those Ohio prescribers enrolled in the Ohio Automated Rx Reporting System (OARRS);
2. Restricting reimbursement for topical compounded medications to those meeting specific criteria such as requiring the compound to contain at least one but not more than three FDA approved medications;

3. Limit the BWC and self-insured employer reimbursements for the product cost component of topical compounded prescriptions; and
4. Permit the BWC and self-insured employers to lift timing restrictions of prescription refills.

Follow-up discussions focused on the issue related to prescribers who fail to register with OARRS. On its web site, OARRS is described as "a tool to assist healthcare professionals in providing better treatment for patients with medical needs while quickly identifying drug seeking behaviors." The Bureau noted that the state has a significant interest in combatting prescription drug abuse, and as a result, participation in OARRS has been determined to be a best medical practice. Furthermore, the State Medical Board of Ohio and the Ohio State Board of Pharmacy require prescribers of controlled substances to be registered with OARRS.

According to the Bureau, if a prescriber for an injured worker case is writing prescriptions for controlled substances and is not registered with OARRS, then the reimbursement for the prescription will be denied. Prior to denying reimbursements because of non-registration, the Bureau will notify the prescriber and the injured worker that future prescriptions will be denied for reimbursement unless the provider registers with OARRS. Notifications will be sent out at least two months prior to denials for reimbursement of the prescriptions, and at least one follow-up notification will occur. Pharmacists will know immediately when a patient receives a prescription for a denied claim, and both the patient and the prescriber will have been notified on multiple occasions.

For these rules, the Bureau described an adequate stakeholder outreach process and has documented the input and its response to the stakeholder feedback. Feedback included support of the rules and suggestions that were incorporated into the rule language. However, concerns were also expressed over withholding payment from the pharmacist rather than the prescriber who has not registered, and over keeping the injured worker from receiving needed medication. The CSI Office engaged in discussions with a number of interested parties, including the Bureau, the Pharmacy Board, the Ohio Pharmacists Association, and the Ohio Council of Retail Merchants to ensure a complete understanding of the Bureau's proposed rules and their potential impacts.

In its Business Impact Analysis, the Bureau identified a potential adverse impact from the rule to physicians who are not registered in OARRS, from the loss of reimbursement for controlled substance prescriptions. However, in follow-up discussions, it was clarified that the physician does not receive a reimbursement for prescriptions written. Instead, the business impact from the rule would be imposed upon the pharmacist who is presented with a written prescription for a controlled substance that is not going to be reimbursed by the Bureau. At that point, the pharmacist will have to inform the injured worker, who will have to identify an alternative way to pay for the prescription, or the prescription will not be filled. Any loss of payment would be incurred by the pharmacist. Consequently, discussions focused on both the effectiveness and

appropriateness of imposing an adverse impact on the pharmacist in an effort to force compliance by the physician with the state's registration requirements.

Ultimately, the Bureau argued that dispensing a controlled substance not subject to an OARRS history report presents a significant risk to the injured worker, and ensuring the health and safety of that injured worker justifies the adverse impact to pharmacists. The CSI Office accepts this justification, but does question whether a more effective way to combat this problem exists, given the lack of a direct line between prescription reimbursements and the physician who has failed to register in OARRS. As a result, the CSI Office does find this rule justified, but strongly encourages the Bureau to explore additional alternatives within its direct relationships with physicians. For example, OAC 4123-6-02.7 outlines a system of progressive discipline that the Bureau can impose on a physician who violates BWC statutes or rules, up to decertification.

Recommendations

For the reasons described above, the CSI Office finds the rule justified but does make the following recommendations regarding this rule package:

1. The Bureau should submit a revised BIA identifying the potential adverse impact of the rule package to pharmacies who may lose transactions due to a denial of reimbursement by the BWC.
2. Separately from this rule package, the Bureau should explore its options under OAC 4123-6-02.7, and possibly other legal authorities, to more directly address the issue of physicians failing to register in OARRS.

Conclusion

Based on the above comments, the CSI Office concludes that after complying with recommendation #1 above, the Bureau 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