MEMORANDUM

TO: Aniko Nagy, Bureau of Workers' Compensation

FROM: Todd Colquitt, Business Advocate

DATE: July 30, 2015

RE: **CSI Review – HPP Provider Payment Rules (OAC 4123-6-21 thru 46)**

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 submitted by the Ohio Bureau of Workers' Compensation (Bureau) contains twenty-nine rules in total, with fourteen proposed with no changes and fifteen containing proposed amendments. The proposed rules govern payment to providers participating in the Health Partnership Program ("HPP"), and encompass OAC 4123-6-21 through 4123-6-46. The proposed changes contained in this rule package consist largely of clarifications regarding whether and when reimbursement will apply to specific situations such as refills of lost or confiscated prescription medication, out-of-pocket expenses, the replacement of dentures or orthotic devices damaged through neglect or culpable irresponsibility, etc.

Stakeholder Comments

The BWC received comments from three different parties during early stakeholder outreach. No comments were made by any party during the subsequent formal CSI public comment period. In response to early stakeholder comments, the Bureau modified some of its proposed changes. The Bureau agreed with the Ohio Board of Nursing suggestion that "certified registered nurse anesthetist" be removed from the list of health care providers authorized to "prescribe physical medicine," as this function is not consistent with a certified registered nurse anesthetist's

statutory scope of practice. Another change made as a result of early stakeholder input pertained to accreditation for home health services. The Bureau modified the proposed rules to allow for "…accreditation through an organization that has been granted deeming authority by the Centers for Medicare and Medicaid Services (CMS)."

A third change made by the BWC came in response to comments from the Ohio Physical Therapy Association ("OPTA"). OPTA expressed concern about the proposed addition of new language requiring that the supervision of services comply with both the requirements of the relevant professional regulatory board and CMS. Specifically, OPTA noted that while all providers are licensed by their regulatory boards, not all providers are certified by Medicare or Medicaid to provide services, and suggested deleting the reference to CMS. BWC agreed in part with OPTA, recognizing that all providers are required to comply with the supervision requirements of their regulatory board. However, the Bureau noted that there are circumstances in which other applicable CMS guidelines help ensure service quality. Therefore to address the point raised by OPTA, the Bureau modified the proposed change further by circumscribing the previously proposed blanket applicability of CMS supervision guidelines to the more limited circumstances where the CMS supervisory guidelines are directly applicable. Additionally, the Bureau explained that additional language in the rule does allow BWC, via the BWC Provider Billing and Reimbursement Manual, to further define exceptions for direct supervision as necessary.

The other suggestion offered by the OPTA, which the Bureau declined to adopt, relates to the issue of physical therapists not qualifying as a "physician" and consequently requiring a prescription or referral from a physician. Specifically, OPTA recommended eliminating requiring a physician's prescription for physical therapy because the language imposes an unnecessary barrier-to-access against physical therapists. OPTA also points out the rule mandates providers follow the statutory requirements governing their practice. Those requirements are contained in ORC § 4755.481(A) and state essentially that if a physical therapist treats a patient without prescription or referral from a physician, the physical therapist shall (with the patient's consent) inform the patient's physician within five business days. Also, if the patient hasn't shown substantial progress within thirty days the physical therapist shall either refer the patient to a physician or consult with the patient. OPTA also states that Medicaid does not impose a prescription requirement and that Medicare only requires certification of a physical therapy plan of care by the injured worker's physician within thirty (30) days of initiating service.

CSI asked the Ohio Department of Medicaid ("ODM") whether a prescription was required for physical therapy services provided under Medicaid and it is in fact required. However, upon additional review the CSI Office and ODM discovered a conflict between state and federal rules. While OAC 5160-8-32(B) allows up to thirty physical therapy visits per benefit year without

prior authorization, federal rule 42 CFR § 440.110 states that physical therapy means physical therapy services prescribed by a physician. ODM staff indicated to CSI that it intends to amend the Ohio rule to conform to the federal rule and ODM practice.

Under the workers' compensation rules, physicians are understood to have the responsibility and skills to perform the full medical assessment required for an injured worker. BWC did agree, however, to bring this issue to its Health Care Quality Assurance Advisory Committee ("HCQAAC") for discussion and a recommendation and that OPTA would have the opportunity to share its perspective directly with the HCQAAC. This process for shaping and guiding Bureau policy on medical treatment matters – including whether a physical therapist should be categorized as a "physician" – seems reasonable to this Office.

After reviewing the various documents associated with the rule package, including the proposed rules, BIA, and various stakeholder comments; the CSI Office has determined that the rule package as a whole satisfactorily meets the standards espoused by the CSI Office and the purpose of the rule package justifies the adverse impacts identified in the BIA.

Recommendations

For the reasons described above, the CSI Office has no recommendations regarding this rule package.

Conclusion

Based on the above comments, the CSI Office concludes that the Bureau should proceed with the formal filing of this rule package with JCARR.

cc: Mark Hamlin, Lt. Governor's Office