ACTION: Final

DATE: 12/22/2016 10:23 AM

MEMORANDUM

TO: Aniko Nagy, Ohio Bureau of Workers' Compensation

FROM: Emily Kaylor, Regulatory Policy Advocate

DATE: October 17, 2016

RE: **CSI Review – In- and Outpatient Medication and Fee Schedule (OAC 4123-6-21, 4123-6-21.1, 4123-6-21.3, and 4123-6-37.1)**

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 four amended rules proposed by the Ohio Bureau of Workers' Compensation (BWC). Although the rules were submitted with 2 BIAs, they were sent out for one comment period and generally relate to medication and reimbursements for workers' compensation claims in both inpatient and outpatient settings, so CSI is reviewing them in a single package. No comments were received regarding this rule package.

Ohio Administrative Code (OAC) 4123-6-21 governs when payments for outpatient medication are authorized and reimbursable, but also explains those situations when they are not. OAC 4123-6-21.1 describes outpatient medication payments for self-insuring employers, those who pay workers' compensation benefits directly to their employees. OAC 4123-6-21.3 and its attached appendix contain the outpatient medication formulary, or list of prescription drugs, approved for reimbursement in a workers' compensation claim. OAC 4123-6-37.1 provides the methodology for determining fees paid by BWC to providers of inpatient hospital services for injured workers with a discharge date of February 1, 2017 or after. BWC adjusts this rule annually, and the CSI Office has reviewed it each year since 2012.

There are several amendments to each rule and they are described in the BIAs. Additionally, the rules were provided for an early stakeholder comment period to many BWC stakeholders listed in the BIAs. From this early outreach, BWC received feedback from four stakeholders. To one, BWC explained that changes to the reimbursement methodologies were made based on current market reimbursement data provided by their prescription pricing consults and prescription benefits manager. Another feedback was supportive of the changes for self-insured employers. BWC responded to the third early stakeholder feedback explaining the methodology, stating that over 95% of BWC prescriptions are processed in Ohio by Ohio pharmacies, and disagreed that entering data for an injured worker is any more labor intensive than entering data for a commercial insurer or Medicaid recipient. The Ohio Hospital Association submitted a few recommendations to OAC 4123-6-37.1 to which BWC provided responses with their justifications for the current language in the rule. No comments were received during the CSI review.

According to the BIAs, the impacted community consists of hospitals providing care to injured workers, self-insured employers, BWC enrolled or certified providers, and network pharmacies. For OAC 4123-6-37.1, the costs are staff time and other associated costs of incorporating the changes into hospitals' billing systems and executing the fee schedule changes for self-insured employers, which the BIA estimates will require less than 10 hours to comply. For the other three rules, BWC estimates a $2.7 million reduction in pharmacy reimbursement that will be spread over the 3,000 pharmacies currently processing prescriptions for injured workers. The impacts will depend on the individual pharmacy's patient and prescription volumes in addition to their office processes.

After reviewing the proposed rules, the CSI Office has determined that the rules meet the standards espoused by the CSI Office, and the purpose of the rule package is justified.

Recommendation

For the reasons explained above, the CSI office does not have any recommendations for this rule package.

Conclusion

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

cc: Mark Hamlin, Lt. Governor's Office