ACTION: Original

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Ohio | Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Carrie Kuruc, Director

MEMORANDUM

TO: Aniko Nagy, Ohio Bureau of Workers' Compensation

FROM: Ethan Wittkorn, Regulatory Policy Advocate

DATE: **May 22, 2020**

RE: **CSI Review – Pharmacy Rules (OAC 4123-6-21.3, 4123-6-21.6, 4123-6-21.7, and 4123-6-21.8)**

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 Agency as provided for in ORC 107.54.

Analysis

This Ohio Bureau of Workers' Compensation (BWC) rule package consists of two amended, two new, and one rescinded rule submitted as part of the statutory five-year rule review requirement. It was submitted to the CSI Office on April 14, 2020, and the public comment period was open through May 1, 2020. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on April 14, 2020.

The proposed rules implement the Health Partnership Program (HPP) for state fund employers, specifically regarding the HPP outpatient medication formulary, the first fill of outpatient medications, and new rules covering the reimbursement of opioids and services to assist in the discontinuation of medications. Amendments to the rules include changes for clarity and to update references, and the addition of language for reimbursement for antineoplastic drugs for cancer treatments.

During the period of early stakeholder outreach, the proposed rules were shared with BWC stakeholder lists, the Ohio Association for Justice, and employer organizations including the Council

of Smaller Enterprises, the National Federation of Independent Business, and the Ohio Chamber of Commerce. Comments submitted during the early stakeholder outreach period included requests for specific language regarding physical therapists, comments of support, and suggestions to clarify coverage requests past typical treatment ranges. The BWC responded with clarification of expectations of a Physician of Record, the amount of time for which the BWC will provide reimbursement, and the development process of treatment timeframes. No changes were made to the rules due to these comments. No comments were received during the CSI public comment period.

Impacted communities include BWC enrolled or certified providers that prescribe and dispense medications to injured workers. Potential adverse impacts include any costs associated with the adoption of the best practices guidelines for opioid prescribing as outlined in the rules. The BWC states that the proposed rules are necessary to address the effect of inappropriate opioid prescribing on the opioid epidemic in Ohio.

Recommendations

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

Conclusion

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