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: **December 23, 2020**

RE: **CSI Review – Chapter 4123-6 Second Batch Rules (ORC 4123-6-01, 4123-6-01.1, 4123-6-02, 4123-6-02.21, 4123-6-02.3, 4123-6-02.4, 4123-6-02.6, 4123-6-02.51, 4123-6-02.6, 4123-6-02.7, 4123-6-02.8, 4123-6-02.9, 4123-6-03.4, 4123-6-03.7, 4123-6-03.9, 4123-6-10, 4123-6-04.3, 4123-6-04.3, 4123-6-04.4, 4123-6-04.5, 4123-6-04.6, 4123-6-05.3, 4123-6-05.4, 4123-6-06.1, 4123-6-07, 4123-6-10, 4123-6-14, 4123-6-14.1, 4123-6-15, 4123-6-16, 4123-6-16.1, 4123-6-16.2, 4123-6-16.3, 4123-6-17, 4123-6-18, 4123-6-19, 4123-6-20, 4123-6-20.1, 4123-6-21, and 4123-6-21.1)**

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 Department as provided for in ORC 107.54.

Analysis

This Ohio Bureau of Workers Compensation (BWC) rule package consists of 31 amended, one new, three rescinded, and five no change rules submitted as part of a statutory five-year review process. The rules were submitted to the CSI Office on October 16, 2020, and the public comment period was open through December 4, 2020. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on October 16, 2020.

The proposed rules cover the BWC implementation of the Health Partnership Program (HPP) for state fund employers and propose a significant number of a updates. The rules cover provider and employer access to the HPP, managed care organization (MCO) participation and scope of service, payments, and records and reporting policies. Proposed amendments to the rules include organizational and reference updates, updated terms, and the addition of a new requirement that

providers notify the BWC of ownership changes within 30 days. BWC also proposes clarifications ensuring that professionalism and civility be maintained in the provision of services of the HPP, additional language outlining the circumstances for the administrator to take action against a provider, assurance that MCO guidelines from a non-panel provider not be more restrictive than that of a panel provider, clarification of return to work assessments, new guidance on drug refills and prior authorization of drugs under certain parameters, and the removal of requirements that a pharmacy provider maintain a signature log verifying the receipt of applicable covered medications. Changes to the rules would now require providers to report overpayments, permit them to schedule an independent medical examination to assist alternative dispute resolutions processes and access records electronically.

During the period of early stakeholder outreach, the rules were shared with MCOs, medical providers, the BWC Healthcare Quality Assurance Advisory Committee, the Ohio Association for Justice, self-insured employers, third party administrators, and employer organizations such as the Council of Smaller Enterprise, The National Federation of Independent Business, and the Ohio Chamber of Commerce. The BWC received comments during this period concerning information on provider qualifications, the classification of physical therapists, and requirements of provider submissions. The BWC responded to these questions with clarification but did not make any changes. No comments were received during the CSI public comment period.

Impacted communities include all HPP service providers, self-insured employers, and MCOs. Potential adverse impacts include the time necessary to review updates to the program and to apply those changes to worker's compensation compliance systems. Further impacts include records maintenance, reporting requirements, and confidentiality and data maintenance requirements. The BWC estimates the time to implement updates at 15 hours. The BWC states that the proposed rules are necessary to set forth an appropriate and clear direction of program parameters and service actions to which program participants must adhere.

Recommendations

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

Conclusion

The CSI Office concludes that the Department should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.