Common Sense Initiative

Mike DeWine, *Governor*
Jon Husted, *Lt. Governor*
Joseph Baker, *Director*

MEMORANDUM

TO: Pete Mihaly, Ohio Bureau of Workers' Compensation

FROM: Caleb White, Business Advocate

DATE: November 17, 2023

RE: **CSI Review – Outpatient Medication Formulary and First Fill of Outpatient Medications (OAC 4123-6-21.3 and 4123-6-21.6)**

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 Bureau as provided for in ORC 107.54.

Analysis

This rule package consists of two amended rules proposed by the Ohio Bureau of Workers' Compensation (BWC). This rule package was submitted to the CSI Office on October 11, 2023, and the public comment period was held open through October 25, 2023. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on October 11, 2023.

Ohio Administrative Code (OAC) 1423-6-21.3 establishes the outpatient medication formulary used by the BWC. This formulary, which is contained in an appendix to the rule, contains a list of drugs that are approved for reimbursement if prescribed to treat a work-related injury or disease in an allowed claim. The appendix to this rule is amended to modify the coverage restrictions for four medications by changing the limitation on pregabalin from the lesser of three capsules per day or 600 milligrams (mg) per day to a limitation of 600 mg per day, limiting the reimbursement for tiagabine to claims in which the injured worker has an allowed condition of seizure disorder, and limiting reimbursement for phenytoin and carbamazepine chew tabs to claims with an allowed condition that results in an inability to swallow or absorb oral medications.

OAC 4123-6-21.6 establishes a formulary which contains a list of medications for which the BWC will reimburse the first fill immediately following an application for compensation or benefits. This rule limits the immediate payment to the initial filling of the prescription and limits the authorization to one drug per therapeutic class. This rule also contains an appendix which lists medications eligible for this program and the limitations placed on these drugs. This rule is amended to correct the rule title and to add the apixaban 5 mg tab starter pack as well as the rivaroxaban 15 and 20 mg tab starter therapy packs to the first fill formulary drug list.

During early stakeholder outreach, the BWC posted the proposed rules on its website for a two-week public comment period beginning on August 23, 2023. The BWC also sent a notice of this comment period to its lists of Managed Care Organizations medical providers, employer organizations, self-insured employers, and third-party administrators, as well as to the Ohio Association for Justice. No comments were received during the early stakeholder outreach period or during the CSI public comment period.

The business community impacted by the rules includes hospitals which provide inpatient care to injured workers and self-insured employers administering the program. The adverse impact created by the rules is the time spent implementing the fee schedule changes, which the BWC estimates will take hospitals and employers less than ten hours to implement. The BWC states that the adverse impact to business is justified to fulfill a statutory requirement to adopt annual rule changes to its schedule fees and to ensure Ohio's injured workers have access to quality health care.

Recommendations

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

Conclusion

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