Common Sense Initiative

Mike DeWine, *Governor*
Jon Husted, *Lt. Governor*

Joseph Baker, *Director*

MEMORANDUM

TO: Eva Dixon, Ohio Bureau of Workers' Compensation

FROM: Caleb White, Business Advocate

DATE: October 15, 2024

RE: **CSI Review – Payment for Outpatient Medication; Payment of Outpatient Medication by Self-Insuring Employer (OAC 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 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 September 3, 2024, and the public comment period was held open through September 17, 2024. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on September 3, 2024.

Ohio Administrative Code (OAC) 4123-6-21 establishes the criteria, requirements, process, limitations, and reimbursement rates related to outpatient medication claims under the State Insurance Fund. This rule is amended to update and streamline language and references and change the average wholesale price facet of the product cost component to a percentage determined by the BWC, change the dispensing fee components to a flat rate determined by the BWC, as well as to subject these rates and fees to an annual review. OAC 4123-6-21.1 establishes the criteria, requirements, process, limitations, and reimbursement rates related to outpatient medication claims for self-insuring employers. This rule is amended to update and streamline language and references and change the average wholesale price facet of the product cost component to a percentage

determined by the BWC, change the dispensing fee components to a flat rate determined by the BWC, as well as to subject these rates and fees to an annual review.

During early stakeholder outreach, the BWC sent the proposed rules via email to stakeholders for comment on August 7, 2024, and held the comment period open through August 21, 2024. The group of stakeholders included the BWC's managed care organizations, Medical Services Division's medical provider stakeholder list, Healthcare Quality Assurance Advisory Committee, Self-Insured Division's employer distribution list, and Employer Services Division's Third-Party Administrator distribution list, as well as the Council of Smaller Enterprises, the National Federation of Independent Business, the Ohio Manufacturers' Association, the Ohio Chamber of Commerce, and the Ohio Association of Justice. During this period the BWC received one comment in support of the rules. No comments were received during the CSI public comment period.

The business community impacted by the rules includes prescribers and pharmacy businesses that are enrolled or certified as BWC providers that dispense medication to injured workers. The adverse impacts created by the rules includes potential revenue losses due to the maximum allowable cost which can result in reduced payment amounts for non-sterile compounded prescriptions, the potential denial of reimbursement if a formulary drug is commercially available, and reporting requirements. The BWC states that the adverse impacts to business are justified to establish the context, criteria, limitations, and processes by which outpatient medications are covered by BWC and self-insuring employers and ensure the reimbursement methodology used is consistent with the current market standards.

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.