Common Sense Initiative

Mike DeWine, *Governor* Joseph Baker, *Director*

MEMORANDUM

TO: Eva Dixon, Ohio Bureau of Workers' Compensation

FROM: Michael Bender, Business Advocate

DATE: February 14, 2025

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

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) as part of the statutory five-year review process. This rule package was submitted to the CSI Office on December 30, 2024, and the public comment period was held open through January 13, 2025. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on December 30, 2024.

Ohio Administrative Code (OAC) 4123-6-21.3 adopts an outpatient formulary which constitutes the complete list of medications that are approved for reimbursement by BWC for the treatment of a work-related injury or disease in an allowed claim when dispensed to an injured worker by a registered pharmacist from an enrolled outpatient pharmacy provider. An appendix to the rule is provided and contains the formulary. The appendix is amended to add medications to the list, remove other medications from the list, and make changes in coverage to certain medications already on the list. OAC 4123-6-21.6 adopts a first fill formulary which constitutes the complete list of medications

and the maximum quantity of such medications that are approved for reimbursement by BWC for first fill prior to the issuance of an initial determination order. An appendix to the rule is provided and contains the formulary. The appendix is amended to update the name of a drug and revise the quantity limits for a couple other drugs.

During early stakeholder outreach, BWC emailed the proposed rules to stakeholders on October 15, 2024, to solicit comments through October 29, 2024. Stakeholders who were contacted included BWC's managed care organizations, BWC's Health Care Quality Assurance Advisory Committee, BWC's internal medical provider stakeholder list, BWC's Self-Insured Division's employer distribution list, BWC's Employer Services Division's Third-Party Administrator distribution list, the State Medical Board of Ohio, the State of Ohio Board of Pharmacy, the Ohio Association for Justice, the Council of Smaller Enterprises, the Ohio Manufacturers' Association, the National Federation of Independent Business, and the Ohio Chamber of Commerce. Three stakeholders told the BWC that they considered the changes to be reasonable. A fourth stakeholder advocated for adding permethrin to the first fill program. BWC responded that this suggestion would be considered at the next Pharmacy and Therapeutics Committee meeting. No comments were received during the CSI public comment period, although BWC made a technical correction to one of the appendices.

The business community impacted by the rules includes prescribers and pharmacy businesses, specifically BWC-enrolled or certified providers who prescribe and dispense medication to injured workers. The adverse impacts created by the rules include restrictions on which medications may be prescribed to injured workers and limits on the use of approved medications. There is also a cost with providing clinical documentation and evidence of medical necessity to BWC for short term reimbursement of new drugs or new dosage forms or strengths of existing drugs approved for use in the United States by the federal Food and Drug Administration on or after the effective date of the rules. Furthermore, prescribers must indicate that a first fill prescription is for a work-related injury to receive reimbursement for first fill medications. BWC states that the adverse impacts to business are justified to implement statutory requirements, incorporate changes in federal drug regulations, and improve overall efficiency and effectiveness of drug utilization.

Recommendations

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

Conclusion

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