ACTION: Withdraw Proposed

DATE: 06/17/2025 2:39 PM

Common Sense Initiative

Mike DeWine, *Governor*
Jim Tressel, *Lt. Governor*

Joseph Baker, *Director*

MEMORANDUM

TO: Eva Dixon, Ohio Bureau of Workers' Compensation

FROM: Michael Bender, Business Advocate

DATE: May 15, 2025

RE: **CSI Review – Outpatient Medication Formulary (OAC 4123-6-21.3)**

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 one amended rule proposed by the Ohio Bureau of Workers' Compensation (BWC). This rule package was submitted to the CSI Office on April 15, 2025, and the public comment period was held open through April 29, 2025. Unless otherwise noted below, this recommendation reflects the version of the proposed rule filed with the CSI Office on April 15, 2025.

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 formulary, remove medications from the formulary, and make changes in coverage to medications already on the formulary.

During early stakeholder outreach, BWC emailed the proposed rules to stakeholders on February 21, 2025, to solicit comments through March 7, 2025. Interested parties that 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 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. One comment was submitted from a doctor who urged BWC to remove the requirement for prior authorization for antibiotics and antifungals because she believed this process was difficult and slow. BWC responded that the agency would consider her comment at the Pharmacy and Therapeutics Committee meeting scheduled for August 2025. During the CSI public comment period, BWC received one comment asking whether the proposed effective date for the formulary was August 1, 2025, instead of May 1, 2025. BWC confirmed that it was.

The business community impacted by the rule 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 rule 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 rule. 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 rule with the Joint Committee on Agency Rule Review.