

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Bureau of Workers' Compensation

Regulation/Package Title: Vocational Rehabilitation Provider Fee Schedule

Rule Number(s): 4123-18-09 4123-18-09 Appendix A

Date: 05/23/14

Rule Type:

New

Amended

5-Year Review

Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

This regulation serves to provide notice to providers of vocational rehabilitation services as to reimbursement conditions and fee amounts.

The major substantive changes proposed for BWC's Vocational Rehabilitation Provider Fee Schedule rule OAC 4123-18-09 are:

- Increase all vocational rehabilitation base service fees by 2.36%.
- Increase provider mileage reimbursement rates to \$0.52 per mile.
- Modify two currently defined service codes from a “max” level to an “up to” level:
 - Work Adjustment: Employer Based - from a “maximum of 4 weeks” to “up to 4 weeks”
 - Long Term Training– “1 to 2 years duration” to “from 1 up to 2 years duration”
- Implementation of reimbursement codes and protocols which reflect a multi-tiered payment approach based on type of services provided:
 1. Standard Services
 - a. Include the assessment of an injured worker’s readiness and potential for vocational rehabilitation services focused on return to work, as well as physical restorative services and retraining.
 - b. Reimbursement will equal 100% of the standard fee for these services.
 - c. Billing protocols will remain the same.
 2. Employment Services
 - a. These are services to assist an injured worker to seek employment with a different employer. The focus of these services is return to work.
 - b. Reimbursement will be divided into 2 parts
 - i. A modified fee equal to 90% of the standard fee for these services will be paid as the services are rendered
 - ii. An enhanced outcome fee will be paid when an injured worker has been successfully returned to work.
 - c. Billing protocols
 - i. Modified fee billing will use new billing codes and bills will be submitted via normal billing protocols as services are rendered
 - ii. Outcome fee billing will use new billing codes and bills will be submitted per the timelines and procedures established within the rules.
 3. Plan Implementation
 - a. These are services provided when the vocational rehabilitation case manager’s comprehensive vocational rehabilitation plan has been authorized and implementation and monitoring of the injured worker’s progress begins. The focus again is on an actual return to work.
 - b. Reimbursement will be divided into 2 parts
 - i. A modified fee equal to 90% of the standard fee for these services will be paid as the services are rendered
 - ii. An enhanced outcome fee will be paid when an injured worker has been successfully returned to work.
 - c. Billing protocols
 - i. Modified fee billing will use new billing codes and bills will be submitted via normal billing protocols as services are rendered
 - ii. Outcome fee billing will use new billing codes and bills will be submitted per the timelines and procedures established within the rules.

4. For both Employment and Plan Implementation Services payment for services have a further add-on payment, depending on the complexity of the injured worker's case being handled
 - a. Reimbursement modifiers are recommended which will define a case as:
 - i. Level 1 Complexity
 - ii. Level 2 Complexity
 - iii. Level 3 Complexity
 - b. Add-on payments for the different levels will be made to each - the modified fee and outcome fee reimbursement components - as follows:
 - i. Level 1 Complexity = 0% add-on
 - ii. Level 2 Complexity = 3% add-on to each component
 - iii. Level 3 Complexity = 4.2% add-on to each component

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

R.C. 4121.61; R.C. 4121.441(A)

**3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program? .
If yes, please briefly explain the source and substance of the federal requirement.**

No.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

Not applicable.

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

BWC is required to adopt annual changes to its fee schedules via the O.R.C. Chapter 119 rulemaking process. BWC has undergone a systematic revision of its vocational rehabilitation services fee schedule, and now proposes to adopt the newly revised vocational rehabilitation services fee schedule as an Appendix to OAC 4123-18-09.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

By continuing to demonstrate that our fees will allow Ohio's injured worked access to quality vocational services via a competitive vocational service and provider fee schedule. Further, the success of the methodology change will be measured by the increase in number of injured

workers who after being placed in a vocational rehabilitation plan successfully return to work.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

If applicable, please include the date and medium by which the stakeholders were initially contacted.

The proposed **Vocational Rehabilitation Provider Fee Schedule** rule 4123-18-09 and appendix A were emailed to the following list of stakeholders for feedback on March 4, 2014 with a two week comment period closing on March 18, 2014:

- BWC's Managed Care Organizations and the MCO League representative
- BWC's internal medical provider stakeholder list representing 56 medical provider associations/groups
- BWC's Healthcare Quality Assurance Advisory Committee
- Ohio Association for Justice
- Council of Smaller Enterprises (COSE)
- Ohio Manufacturer's Association (OMA)
- National Federation of Independent Business (NFIB)
- Ohio Chamber of Commerce
- BWC's Labor Management Government Advisory Council

In addition, draft recommendations for the Vocational Rehabilitation Provider Fee Schedule were presented to BWC's Labor-Management-Government Advisory Council (LMG) on January 16, 2014. Those same recommendations were also presented to the Ohio Physical Therapy Association (OPTA) on January 24, 2014, the International Association of Rehabilitation Professionals (IARP) on January 28, 2014, and both the Ohio Rehabilitation Association and the RehabPro Association on January 30, 2014.

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

BWC received comments from approximately 50 stakeholders regarding the Vocational Rehabilitation Fee Schedule recommendations. Input generally fell into four topic areas as indicated below.

1. In general, do not agree that an outcome based payment methodology should be deployed.
2. The referrals for vocational rehabilitation come to providers so long after injury that a successful outcome (return to work) is very difficult to achieve.
3. Providers lack control of many factors that impact a successful return to work, such as decisions and service authorizations that are made by the MCOs, BWC, physicians, employers and attorneys.

4. Providers have concern about the ethical impact of this payment methodology.

Effect of Input/Feedback:

Per the feedback received, BWC modified the original proposed modified fee, outcome fee and complexity add-on distribution for Employment and Plan Implementation services. The modified fee was originally proposed as 70% of the standard fee for those services, with the calculation of the enhanced outcome fee being based on the remaining 30%. Per the feedback the distribution was changed to 90% of the standard fee for those services, with the calculation of the enhanced outcome fee being based on the remaining 10%. Additionally, the original complexity level add-on proposed was: Level 1=0%; Level 2=9%; Level 3=12.5%; which was changed to Level 1=0%; Level 2=3%; Level 3=4.2%. While BWC maintains the original modified fee for service amount is the appropriate basis for the underlying outcome calculation, we have negotiated a phased in approach.

Additionally, per the feedback, BWC in March, 2014 initiated a consortium of providers, MCOs, claimant bar representatives and labor to identify areas of concern in the implementation of the new fee schedule method. The work of this consortium is to assist BWC in defining barriers to providers achieving the most successful outcomes, identify solutions to mitigate those barriers, and alleviate possible problems around the consistent implementation of this rule.

9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

BWC researched various payment methodologies including Fee for Service, Pay for Performance and Outcome Based/Results Based. We reviewed several journal articles and spoke with representatives from other states that have utilized outcome payment strategies. After synthesizing the information, including what ‘worked’ or “didn’t work’ in other states, BWC developed this hybrid outcome payment method to incent vocational rehabilitation providers to achieve the goal of return to work for injured workers and employers. As part of this hybrid outcome payment method, BWC will assign a modifier to each case based upon the complexity of the case, which could add an additional payment for both the modified fee and the outcome payments. This complexity factor modifier was developed with the help of BWC’s Research and Data Analytics department using data collected from BWC vocational rehabilitation cases since 2006.

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn’t the Agency consider regulatory alternatives?

No alternative regulations were evaluated as BWC is required to development and promulgate a statewide workers’ compensation fee reimbursement scheduled for vocational services and providers.

BWC evaluated the following payment methodologies: 1. Fee for Services, 2. Pay for Performance, and 3. Outcome Based/Results Based. While there were varying degrees of success in the quality and outcomes of vocational services in states implementing an outcome based model, we also noted some of the related challenges that came with those models, and that none squarely met Ohio's needs. Therefore, the recommended reimbursement model was developed as it supports the following BWC objectives:

- Create a more direct relationship between reimbursement and service expectations
- Increase return to work outcomes
- Improve the quality of services and providers available to injured workers
- Reward providers who surpass established return to work goals
- Incentivize providers to take on all claims.

11. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.*

No. The fee schedule itself is considered a performance-based regulation as payment is made when services are delivered. Additionally, with the hybrid reimbursement approach, the fee schedule will more directly align provider payment with the primary focus of the services for which reimbursement is being made. The wide variety of services reimbursed allow for providers to determine the best course of action and group of services which will facilitate achieve successful outcomes for those injured workers placed in a vocational rehabilitation services plan.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

Per R.C. 4121.61, BWC is the only agency charged with adopting rules and making expenditures from the surplus fund to aid in the vocational rehabilitation of injured workers, so there is no possibility of conflicting regulation by another agency.

13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

BWC plans to implement the new fee schedule December 1, 2014.

In March, 2014 BWC initiated a consortium of providers, MCOs, claimant bar representatives and labor (see #8. above) to identify areas of concern in the implementation of the new fee schedule method. The information from this consortium will help BWC to alleviate possible problems around the consistent implementation of this rule and will help to inform training curricula on same.

In the summer of 2014 BWC will bring together the MCOs, BWC staff and all vocational rehabilitation providers to provide training on the new hybrid reimbursement protocols and administrative activities which will support the reimbursement methodology. Training will be provided on:

- The complexity factor modifier;
- The expectations for the Assessment Plans and Comprehensive Plans; and
- The expectation of telephonic staffing between the MCO, BWC and vocational case managers as the Comprehensive Plan is being evaluated.

The fee schedule is also made available via www.bwc.ohio.gov to all employers and third-party administrators for download for use in their system.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. Identify the scope of the impacted business community;

The impacted business community consists of the providers of vocational rehabilitation services to injured workers, both individual providers and facility providers. Additionally, there will be an impact to self-insured employers and/or their third-party administrators who adopt and implement the BWC fee schedule for reimbursing their vocational service providers.

b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

The potential adverse impact to vocational rehabilitation service providers and self-insured employers will be in the form of time and programming activities. Impacted parties in varying degrees of intensity will need to update their billing system with the new fee codes, as well as tracking to support timely billing for successful outcome payments. Impacted parties will need to add up to 28 additional service codes and 2 modifier codes to their billing and/or reimbursement systems. In addition, for employment services providers, they will need to monitor for successful return to work.

c. Quantify the expected adverse impact from the regulation.

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.

BWC usually makes periodic changes to the vocational rehabilitation fee schedule thus leading impacted parties to also generally make periodic updates and modifications to their billing and reimbursement systems. Normally BWC would estimate less than 50 hours of programming time, but we are increasing this to 100 hours of programming to account for implementing the new methodology.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

BWC's reimbursement guiding principle is to implement a competitive fee schedule which enhances the vocational services provider networks which provide high quality access to care for Ohio's injured workers. Additionally, the recommendations directly support the following BWC 2014 objectives:

- Create a more direct relationship between reimbursement and service expectations
- Increase return to work outcomes
- Improve the quality of services and providers available to injured workers
- Reward providers who surpass established return to work goals
- Incentivize providers to take on all claims.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

No. This fee schedule is applied equitably across all vocational rehabilitation service providers. There is also the ability for providers and/or related service vendors to negotiate reimbursement above our fee schedule when appropriate.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

Not applicable. There are no fines or penalties for paperwork violations under these rules.

18. What resources are available to assist small businesses with compliance of the regulation?

BWC posts information regarding the vocational rehabilitation services fee schedule on the BWC website at www.bwc.ohio.gov. Providers can also contact BWC's Provider Relations Department or the Medical Services Division for personal assistance with billing issues. Additionally, the Billing and Reimbursement Manual can be a source of fee schedule, coding, billing, and reimbursement information. Additionally, the Managed Care Organizations have a responsibility in the contract they sign with BWC to provide training to all providers which they utilize in managing the medical and vocational care of their injured workers. Finally, BWC will be providing extensive training for providers on all new changes

around the fee schedule as well best practices to be successful at returning injured workers in our system to work.