

Business Impact Analysis

Agency Name: Bureau of Workers' Compensation

Regulation/Package Title: Provisional Treatment Pilot Program

Rule Number(s): 4123-6-01.2

Date: February 2, 2015

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Rescinded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.

The proposed rule would permit BWC to implement a pilot program under which allow one or more MCOs could authorize medical treatment reimbursement requests for the first 60 days from the initial allowance of an identified at-risk claim for any conditions within the same body part or parts as the conditions initially allowed in the claim, and presumed to be causally related to the same industrial injury or occupational disease, without disclaimer, during such time as the conditions for which treatment reimbursement is authorized but which are not yet allowed are being considered for allowance or being adjudicated.

The proposed rule specifies that the pilot program shall not impair in any manner the right of an employer to appeal a claim, additional allowance, or medical treatment

reimbursement determination. The rule further specifies that BWC may conduct the pilot program authorized under this rule for a period of one year from the effective date of this rule, but the pilot could be terminated early or extended for up to one additional year.

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

R.C. 4123.66, 4121.441

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)?

This new rule will continue to facilitate the Administrator's charge as set forth in R.C. 4121.441(A) which provides that the BWC Administrator, with the advice and consent of the BWC Board of Directors, shall adopt rules for implementation of the HPP "to provide medical, surgical, nursing, drug, hospital, and rehabilitation services and supplies" to injured workers. The public purpose of the Health Partnership Program is to effectively and efficiently address the needs of injured workers arising out of a workplace injury. This pilot program will facilitate BWC's effort to develop innovative practices which will effectively address the needs of claimants who are at risk. The hypothesis is that the pilot approach will benefit employers' workers compensation policies by ensuring their injured employees receive high-quality care, thus facilitating a faster return to work while minimizing premium costs. Potential direct benefits include:

- Minimizing lost productivity: more than 2 million days were lost during the July 1, 2013, policy year;
- Shortening the average duration of a lost-time claim: which was approximately 45 days for the July 1, 2013, policy year;
- Lessening costs for employers: since this model should allow lost-time claimants to move more quickly through treatment and return to work faster;
- Reducing opiate addictions: which today afflict nearly one in six lost-time claimants.

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

Success will be measured based on comparison of pilot claims outcomes to non-pilot claims outcomes. Some of the selected data metrics to be evaluated will be:

- Reduction in lost day;
- Reduction in average duration of lost-time claims;
- Reduction in average employer costs;
- Reduction in opiate and other narcotic medications.

Additional data measures will be developed as the pilot development is completed.

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.

BWC's proposed provisional treatment pilot program rule was emailed to the following lists of stakeholders for review and comment:

- BWC's Managed Care Organizations (MCOs) and the MCOs' Medical Directors,
- BWC's internal medical provider stakeholder list -- 67 persons representing 52 medical provider associations/groups
- BWC's internal provider list serve (over 700 interested parties)
- BWC's Healthcare Quality Assurance Advisory Committee
- Ohio Attorney General's Office, Workers Compensation Section
- Ohio Association for Justice
 - Employer Organizations o Council of Smaller Enterprises (COSE)
 - o Ohio Manufacturer's Association (OMA)
 - o National Federation of Independent Business (NFIB)
 - o Ohio Chamber of Commerce
- BWC's Self-Insured Division's employer distribution list
- BWC's Employer Services Division's Third Party Administrator (TPA) distribution list

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

There were 3 comments received which were all supportive of the rule. One comment located on line 3 did however reflect a recommendation that the phrase or term "at risk claim" be defined. Specifically, the commentator expressed a little bit of confusion of whether the phrase was referring to an injury being assigned to the employer's risk, or to some increased risk of poor outcome. We responded that the term or phrase is relative to the claim being at an increased risk of a poor outcome. Additionally, we indicated that the particular at risk claims to be covered by the pilot would be more fully defined and

communicated as the development of the pilot further unfolds. There were no changes and/or modifications made to the rule per any of the comments received.

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?

None

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?

None. No regulatory alternatives which could be considered have been identified.

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 lifespan of the pilot is set per the language within the rule. Also, given this is to pilot test an approach to medical management, if the performance of the program is not effective, then the pilot can be terminated early, and no further actions will be initiated.

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

This pilot program is exclusive to workers compensation, and BWC is the only state entity with the authority to initiate such regulation pertaining to workers compensation.

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.

Employers, injured workers representative, providers and MCOs are all participating in developing the specifics of the pilot. As part of that development process, a communication strategy is being developed including letters and other written materials which will be supplied to impacted injured workers and employers. Participating BWC claims offices and MCOs will receive specific training on the pilot's operations and specific administrative protocols. Providers will receive direct pilot operations and administrative protocol training, and support from the MCOs and BWC claims office staff.

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;**

Employers with pilot claims, MCOs which have pilot claims employers, medical provider participating in and managing pilot claims.

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

Employers may experience increase administrative time associated with the more robust management of pilot claims and increase in return to modified work. MCOs will see marginal increase in coordination and support activities relative to pilot claims and the medical providers rendering services on those claims.

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.

For providers wishing to participate in the pilot the adverse impact will be the additional time required for coordinating care of the injured workers with other health care providers and specialist. The amount of additional time is unknown, as such is dependent on a number of independent factors for each potential injured worker that cannot be quantified at this time. However, it should be noted that additional compensation will be paid to provider undertaking this additional coordination of care task. Additionally, the pilot providers will need to comply with the requirement to become certified as PORs which will be less than a one-time commitment of 5 hours.

Employer time commitment should be negligible given the actions supporting an injured worker’s return to work is generally what is expected now. However, success of the program may increase the number of claims for which the employer may need to support accommodations. Also, there may be increase medical costs associated with pilot claim, and although a successful return to work would reduce total claim cost, an incentive program for employers having claims in the pilot is being developed as part of the pilot program implementation.

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

The public purpose of the Health Partnership Program is to effectively and efficiently address the needs of injured workers arising out of a workplace injury. This pilot program will facilitate BWC’s effort to develop innovative practices which will effectively address the needs or claimants who are at risk. The hypothesis is that the pilot approach will benefit employers’ workers compensation policies by ensuring their injured employees receive high-

quality care, thus facilitating a faster return to work while minimizing premium costs. The regulation provides the Administrator the opportunity to setup a narrow opportunity to test the veracity of that hypothesis. If proven true the potential benefit to the entire system would be significant. The risk of executing this narrow opportunity is minimized by this regulation.

Regulatory Flexibility

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

No. However, in establishing the parameters of the pilot issues impacting small businesses will be taken into account, with appropriate incentives included in the pilot program to mitigate any negative impacts.

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.

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

As part of that development process, education and communication materials are being developed which will explain the specifics of the pilot and any actions that any small business will need to take to comply with pilot protocols. Additionally, participating BWC claims offices and MCOs will received specific training on the pilot's operations and specific administrative protocols, and will be the front line assistance to small businesses addressing pilot operational issues.