

Business Impact Analysis

Agency Name: Ohio Bureau of Workers' Compensation

Regulation/Package: Lumbar Fusion Surgery, HBAI, and Medical Treatment Reimbursement Requests.

Rule Number(s): 4123-6-16.2, 4123-6-32, 4123-6-33

Date: November 26, 2018

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Rescinded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.

Chapter 4123-6 of the Administrative Code contains BWC rules implementing the Health Partnership Program (HPP), including reimbursement for various medical services by BWC in State Insurance Fund claims.

BWC is proposing minor changes to the rules to better facilitate the provision of necessary and appropriate lumbar fusion surgery and HBAI services to injured workers as follow:

The substantive changes proposed for 4123-6-32 Payment for Lumbar Fusion Surgery:

- Add language to prohibit dismissal of a medical treatment reimbursement request for lumbar fusion surgery when supporting medical documentation has been requested and not provided.
- Add language to clarify that the prerequisites consideration for reimbursement of lumbar fusion surgery may be waived in cases of progressive functional neurological deficit, spinal fracture, tumor, infection, trauma care, emergency, or other catastrophic spinal pathology.
- Add language to clarify that the health behavioral assessment and any identified interventions may be ordered by the injured worker’s physician of record, the treating physician, or the operating surgeon.
- Revise the language to require that the injured worker and the physician of record, the treating physician or the operating surgeon must review and sign the “What BWC Wants You to Know About Lumbar Fusion Surgery”.
- Revise language to clarify that the operating surgeon must follow the injured worker until they have reached a plateau relative to the lumbar fusion and no further surgical related treatment is medically necessary.

The substantive changes proposed for 4123-6-33 Payment for Health and Behavior Assessment and Intervention Services:

- Revise and add language to provide that an injured worker is eligible for HBAI services if the injured worker is being evaluated for lumbar fusion surgery by the injured worker’s physician of record, the treating physician, or the operating surgeon.
- Add language clarifying that references in the rule to the injured worker’s physician of record include the treating physician and the operating surgeon with regard to HBAI services requested or performed in connection with lumbar fusion surgery.

The substantive changes proposed for OAC 4123-6-16.2 Medical Treatment Reimbursement Requests:

- Add language to clarify that an MCO may dismiss a medical treatment reimbursement request if supporting medical documentation has been requested and not provided, unless otherwise provided in OAC Chapter 4123.
- Add language to provide that an MCO may dismiss a medical treatment reimbursement request if the fee bill for the service was not submitted within the applicable time frame provided in OAC rule 4123-3-23.

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

4121.12, 4121.121, 4121.30, 4123.31, 4121.44, 4121.441, 4123.05, and 4123.66 of the Ohio Revised Code.

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.

The rules do not implement a federal requirement.

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)?

The rule set forth guidelines for medical providers, employers and injured workers, understanding of activities necessary for payment of Lumbar Fusion and HBAI services. The changes also provided clarification to the Managed Care Organization how dismissal of treatment authorization request related to rules base treatment guidelines must be handled.

This rule supports the Agency's responsibility under R.C. 4123.66, which provides that the BWC Administrator "shall disburse and pay from the state insurance fund the amounts for medical, nurse, and hospital services and medicine as the administrator deems proper," further the Administrator "may adopt rules, with the advice and consent of the BWC board of directors, with respect to furnishing medical, nurse, and hospital serve and medicine to injured or disabled employees entitled thereto, and for the payment therefor."

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

BWC will evaluate providers managed care organizations involved in lumbar fusion and HBAI services in terms of their effectiveness with:

- Ensuring the incorporation of best current clinical practices in the utilization of the relevant benefits and services in the treatment of injured workers;
- Reduction in the inappropriate dismissal of lumbar fusion surgery requests; and
- The appropriate approval of HBAI services when requested by a treating physician or surgeon actively a part of treating an injured worker for which a lumbar fusion surgery reimbursement request has been submitted.

Additionally, BWC will evaluate the rule's overall impact on the reduction in the number of lumbar fusion surgeries, increase in positive outcomes of lumbar fusion surgeries performed, as well as reduction of overall medical and indemnity costs associated with claims with allowed lumbar injuries.

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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 changes to lumbar fusion surgery rule OAC 4123-6-32, health and behavior assessment and intervention services rule OAC 4123-6-33, and medical treatment reimbursement requests rule OAC 4123-6-16.2 were e-mailed to the following lists of stakeholders on October 15, 2018 with comments due back by October 29, 2018:

- BWC's Managed Care Organizations
- BWC's internal medical provider stakeholder list - representing 56 medical provider associations/groups
- BWC's Healthcare Quality Assurance Advisory Committee
- Ohio Association for Justice
- Employer Organizations
 - Council of Smaller Enterprises (COSE)
 - Ohio Manufacturer's Association (OMA)
 - National Federation of Independent Business (NFIB)
 - Ohio Chamber of Commerce
- BWC's Self-Insured Division's employer distribution list
- BWC's Employer Services Division's Third-Party Administrator (TPA) distribution
- The Bureau's rules distribution lists, and
- The general public via the E-Notification System.

Stakeholder responses received and BWC's response to those are included on the attached Stakeholder Feedback Summary Spreadsheet.

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

Please see attached Stakeholders' Feedback grid attached to this BIA.

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?

N/A. The changes being made to the rules resulted from feedback received from stakeholders during the administration of services governed by the language of the rules as they currently exist.

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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?

There were no alternative regulations considered as the recommended changes to be implemented are to support improvement in the effective implementation of the current rules and their objectives.

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 other performance based regulations were identified as appropriate for the content of these rules. While there are some elements of dictating the process, such as the provider needing to show there was where appropriate at least 60 days of a conservative care approach taken with lumbar fusion surgery, the rule is does not totally dictate how a provider's decision regarding the necessity of a lumbar fusion for their injured worker client. Current best medical practices standards are expected to be adhered to, which are memorialized within the language of the respective rules.

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

The Bureau is the only state agency regulating workers' compensation claims, which includes the approval and reimbursing of medical benefits and service. Thus, there is not another agency promulgating rules governing the subject reflected in the rules of concern.

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.

The Bureau will post the rules on its website, www.ohio.bwc.gov, and will distribute the rules to affected parties. Internal training will occur with Medical and Health Services staff, including provider relations, regarding the administration of the modified rule language. The MCOs will receive explicit training on the rule and the expectation of the MCOs in administering those rules. Injured workers and/or providers will be able to receive personal assistance from the BWC Medical Policy staff and MCOs members in interpreting or addressing unintended impacts of the rules' modifications.

Adverse Impact to Business

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

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The impacted community includes providers involved with managing an Ohio injury claim leading to a possible lumbar fusion surgery.

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

Providers' additional administrative actions and time to ensure compliance with the documentation requirement reflected in the rule.

b. 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.

It is expected that providers will incur less than 10 annual hours to meet the additional documentation across all potential lumbar spine surgery claims handled by a practice. It should be noted that all additional hours will be compensation pursuant to the BWC fee schedule rates for the services rendered.

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

As reflected in the language of the above statutory citations, BWC's is responsible for ensuring injured workers receive quality services to facilitate a successful outcome to a workplace injury. The Bureau has a fiduciary duty to adopt regulation that increases the efficiency and effectiveness of the Ohio worker compensation system to the benefit of both injured workers and employers. Feedback from stakeholders indicated there were unintended challenges with executing the requirements of the lumbar fusion surgery rule (4123-6-32) due to the interaction of requirements of rules 4123-6-33 and 4123-6-16.2. It was determined that those unintended challenges would be eliminated with the recommended changes to those respective rules.

Regulatory Flexibility

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

No. The regulations govern reimbursement for related services performed by any service provider regardless of size.

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. This new rule does not expose employers to fines or penalties.

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

Bureau rules and policies are available on www.ohio.bwc.gov. Also, BWC personnel, specifically the Claims Customer Care Team, Provider Relations business area, and the Managed Care Organization staff are available to assist injured workers, providers, and employers in addressing relevant compliance issues.