

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 26, 2019

Rule Type:

New

5-Year Review

Amended

Rescinded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.

Rule OAC 4123-6-01.2 established a pilot program under which one or more MCOs could authorize medical treatment reimbursement requests, without disclaimer, 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

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 rule also specified 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.

BWC proposes that rule OAC 4123-6-01.2 be amended to extend the pilot program for an additional 18 months, beginning July 1, 2019 through December 31, 2020.

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)?

The extension of this rule facilitates 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 Health Partnership Program (HPP) "to provide medical, surgical, nursing, drug, hospital, and rehabilitation services and supplies" to injured workers.

The public purpose of the HPP is to effectively and efficiently address the needs of injured workers arising out of a workplace injury. The extension of this pilot program rule helps BWC's effort to develop innovative practices which will effectively address the needs or claimants who are at risk.

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 days;

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

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 revision to provisional treatment pilot program rule OAC 4123-6-01.2 was emailed to the following lists of stakeholders for review and comment:

- BWC's Managed Care Organizations (MCOs)
- BWC's internal medical provider stakeholder list -- 68 persons representing 56 medical provider associations/groups
- BWC's Healthcare Quality Assurance Advisory Committee
- 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
- Ohio Medical and Pharmacy Boards

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

As to the date of filing this package with the Common Sense Initiative Office, the Bureau has not received any comments from stakeholders.

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?

A critical action step involved in the current ECP Pilot is that of an external group assessing the Pilot and providing objective insights and strategies on the next step BWC should take with the Program. To execute this work BWC entered into a contract in October 2016 with The Ohio State University to provide that assessment.

The first assessment phase of OSU's work occurred between September 15, 2016 and December 15, 2016; which focused on reviewing the design of the pilot program and evaluating the integrity of how the pilot program has been implemented. Along with other

specific positives, OSU reported that in most respects the program was overall achieving its initial goals and reaching expected benchmarks.

As a result of those preliminary findings, Medical Services determined that our recommendation to the Administrator would be to now take the program forward as a full program rather than a pilot. However, during a review of the April 2017 update from the OSU team, it was determined at that time that additional information is needed prior to implementing a full conversion strategy to migrate the current Program from a pilot status. Thus, the decision was made to seek further extension of the existing pilot rather than lose current momentum and added learning experience by stopping the pilot program.

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.

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.

The Bureau will provide notifications to employers, injured worker representative, providers, and MCOs via letters and other written materials which will be supplied to impacted injured workers and employers.

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, and medical providers 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 increased 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. Providers will experience potential increased time in managing and coordination care on ECP Pilot 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 specialists. 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 providers undertaking this additional coordination of care task. Additionally, the pilot providers will need to complete an ECP Provider Addendum as a requirement which will be a one-time commitment of less than 2 hours.

Employer time commitment should be negligible given the actions supporting an injured worker’s return to work are 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 increased medical costs associated with pilot claims, 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 HPP is to effectively and efficiently address the needs of injured workers arising out of a workplace injury. The extension of this pilot program will facilitate BWC’s effort to develop innovative practices which will effectively address the needs or claimants who are at risk. Based on the success of the pilot program to date, BWC is proposing to extend the pilot program an additional two years, through December 31, 2020.

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?

Education and communication materials are available which explain the specifics of the program and any actions that any small business needs to take to comply with protocols. Additionally, participating BWC claims offices and MCOs received specific training on the pilot's operations and specific administrative protocols, and are the front line assistance to small businesses addressing pilot operational issues.