

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Bureau of Workers' Compensation

Regulation/Package Title: Services and supplies never covered

Rule Number(s): 4123-6-07

Date: July 16, 2012

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Rescinded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.

The rule would provide that certain enumerated services and supplies that are inappropriate and/or are not medically necessary for treatment of workers' compensation injuries are never covered, or reimbursed, by BWC for workers' compensation claims.

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

R.C. 4123.66

- 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)?**

Currently, BWC policy provides that BWC does not pay for the services or supplies listed in the proposed rule, because these services and supplies are not medically necessary for the treatment of workers' compensation injuries. In lieu of some of these listed items, BWC does pay for equivalent medical services or supplies according to the BWC rules and fee schedules. BWC proposes to list these items specifically in a rule to inform injured workers and providers of its reimbursement policy so that these parties are fully informed on BWC's reimbursement policies. Also, the rule will provide specific guidance to the Industrial Commission in adjudicating hearings on reimbursements for these services and supplies.

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

The success of the rule will be measured in monitoring requests for reimbursement for these services and supplies, how often BWC denies the requests for reimbursement, the frequency of appeals of denial to the Industrial Commission, and the Industrial Commission hearing Officer compliance with the rule.

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.

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BWC emailed the proposed rule 4123-6-07, “Services and supplies never covered,” to the following list of stakeholders for feedback on March 19, 2012 with a comment period open through April 2, 2012:

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 internal provider list-serve (over 700 interested parties);

BWC’s Healthcare Quality Assurance Advisory Committee;

The Ohio Association for Justice;

Employer Organizations, including the Council of Smaller Enterprises (COSE), the Ohio Manufacturer’s Association (OMA), the National Federation of Independent Business (NFIB), and the Ohio Chamber of Commerce;

BWC’s Self-Insured Division’s employer distribution list; and,

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?

BWC received 12 comments on the rule from stakeholders. Ten of the stakeholder comments fully supported the proposed rule. BWC did not change the rule based on the comments of the other two stakeholders. A stakeholder from AultComp MCO suggested that BWC add language to the rule to provide that the never covered services would be covered if ordered by the Industrial Commission or the ADR process. BWC rejected this suggestion because the rule will list services that are never considered necessary for a BWC claim, so there will be no need for ADR or IC hearings on these issues. A second stakeholder, an injured worker attorney, stated that the rule should indicate that reimbursement is only appropriate in limited circumstances as defined in the rule. BWC’s response is that the rule will clarify non-covered services with a narrow band of exceptions.

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?

The services and supplies listed in the rule are not covered by CPT codes or HCPCS codes. They are known as comfort items, rather than medical services or supplies.

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?

BWC policy currently states that these items are not covered. BWC policy, however, is insufficient to address this issue, so an Administrative Code rule will provide more formal notice of the BWC policy to not pay for these services and supplies.

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.*

Not applicable.

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

BWC rules for reimbursement of providers in the Health Partnership Program are unique to BWC, and do not duplicate rules for other Ohio agencies.

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 will provide education to Managed Care Organizations (MCOs) and providers to ensure consistent and predictable application of the rule.

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

- a. The impacted business community consists of providers of supplies and services in the workers' compensations system.

b. The adverse impact is that BWC will not honor requests for reimbursement of the listed services and supplies. However, BWC will pay for alternative, equivalent services and supplies that are covered.

c. It is difficult to quantify the dollar impact of the rule. Should a provider ask for reimbursement of a non-covered service or supply, BWC will deny the request. However, the injured worker and the provider could reapply and ask for an alternative, equivalent service or supply that is covered.

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

Currently, BWC does not pay for the services or supplies listed in the proposed rule, because these services and supplies are not necessary for the treatment of workers' compensation injuries. Therefore, by listing these services and supplies specifically in a rule as not covered, BWC is not changing the impact of reimbursement for providers for these services and supplies. The regulatory intent of providing a specific list of not covered services and supplies helps providers and injured workers to avoid asking for services and supplies that will not be reimbursed. The providers and injured workers can focus their attention on treatments that are covered by BWC's reimbursement policies.

Regulatory Flexibility

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

No. There are no exceptions to the rule. However, there are alternative, equivalent services or supplies that are covered by BWC and that are reimbursed.

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?

BWC will work with MCOs and providers to implement the rule. MCOs, providers, and injured workers can contact the BWC Provider Relations Department for assistance on the rule.