

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Bureau of Workers' Compensation

Regulation/Package Title: Reimbursement of retroactive medical treatment reimbursement requests

Rule Number(s): 4123-6-16.3

Date: 3/16/12

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Rescinded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.

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BWC is proposing a new rule OAC 4123-6-16.3, which would provide that medical treatment reimbursement requests submitted retroactively (after treatment has been rendered) by the POR or eligible treating provider, without just cause, for non-emergency treatment delivered, rendered, or personally supervised by the POR or eligible treating provider shall, if approved, be reimbursed at 50% of the applicable fee schedule amount, and the POR or eligible treating provider may not balance bill the injured worker for the difference.

The proposed rule defines “just cause” to include the following:

- The treatment requested was emergency treatment;
- The provider was not aware that services were for a workers' compensation claim;
- The provider was non-bureau certified and had no established relationship with the injured worker;
- The provider was initially bureau certified within six months prior to the treatment request;
- The treatment requested was for a pending claim allowance or additional allowance with the bureau or industrial commission;
- The treatment provided was within the bureau's presumptive authorization guidelines, or does not require prior authorization per the bureau's provider billing and reimbursement manual;
- The treatment request was submitted retroactively due to bureau or MCO error;
- Other documented justification as deemed sufficient by the bureau.

Providers would have the right to object to any 50% payment reductions under this proposed rule through the grievance hearing procedure for disputed bill payments provided by OAC 4123-6-04.4.

In addition, the proposed rule provides that retroactive medical treatment reimbursement requests submitted within 7 calendar days of the initiation of treatment or prior to the date of the POR or eligible treating provider’s next encounter with the injured worker, whichever is earlier, shall not be subject to the 50% payment reduction under the rule.

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

R.C. 4123.66(A); R.C. 4121.441(A)(4) and (A)(12)

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? No. If yes, please briefly explain the source and substance of the 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 proposed rule sets forth a “progressive discipline” path for violations of a workers' compensation statute or rule, or a term of the provider application and agreement or recertification application and agreement by individual providers, providing for written notice and submission of a correction plan prior to decertification. This will establish a transparent process to allow providers an appropriate opportunity to adjust to communicated provider performance expectations and BWC to effectively reinforce those expectations, thus ensuring injured workers access to providers of effective quality medical services.
6. **How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?** BWC will keep monitoring records and be able to report and trend actions taken.

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.

Proposed rule 4123-6-16.3 was emailed to the following list of stakeholders for feedback on March 19, 2012 with a comment period open from March 19, 2012 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
- 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?**

BWC will receive stakeholder input from March 19 – April 2 and this form will be updated.

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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 has three years of historical data of provider non compliance with prior authorization processes and other miscellaneous requirements. A total of 123 providers committed five or more violations in a calendar quarter during calendar years 2009, 2010, and 2011. Those providers involved were contacted by BWC via letter and educational conference calls as per internal protocol. Thus, data was used to establish necessity of regulation, but was not informative to the actual methodology.

- 9. 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 has proposed a "progressive discipline" rule, OAC 4123-6-02.7 (previously submitted to the CSI office), which may lead to decertification from the HPP for "repeat offenders" with established patterns of non-compliance for whom educational efforts have been ineffective.

This rule proposes a lesser sanction for each individual instance of non-compliance, and will provide a financial incentive for occasional offenders to be more compliant. "Repeat offenders" will receive this lesser sanction in each individual instance as well as "progressive discipline" under rule OAC 4123-6-02.7.

- 10. Did the Agency specifically consider a performance-based regulation? Not Applicable Please explain.**

Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance. Existing rule OAC 4123-6-16.2(A) already defines the required outcome: The injured worker's POR or eligible treating provider must submit a medical treatment reimbursement request prior to the initiation of non-emergency treatment. The proposed rule provides for a financial sanction or penalty for an unexcused failure to comply.

- 11. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?** Per R.C. 4121.441(A)(4) and (A)(12), BWC is the only agency charged with adopting rules to implement the HPP, including the adoption of appropriate financial incentives to ensure proper system utilization, and standards and criteria for penalizing providers from participating in the HPP, so there is no possibility of conflicting regulation by another agency.

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's managed care organization (MCO) staff will process provider bills in accordance with the proposed rule. Providers would have the right to object to any 50%

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payment reductions under this proposed rule through the grievance hearing procedure for disputed bill payments provided by OAC 4123-6-04.4, which includes an appeal to BWC.

Adverse Impact to Business

12. 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;** All individuals who are certified in BWC's Health Partnership Program

b. **Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance);** The proposed rule will only affect providers who have submitted retroactive treatment requests, without just cause, for services they personally provided, rendered, or directly supervised, which is a small percentage of BWC's provider community.

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.

BWC estimates the impact based on historical quarterly data from 2009 to third qtr 2011 data available will impact an average of 184 providers monthly-- one or more bills per provider.

13. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community? This (and proposed rule OAC 4123-6-02.7, previously submitted to the CSI office) is the logical next step after educational attempts have proven ineffective for some of the participating providers who have committed repeated violations over the past three years.

Regulatory Flexibility

14. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain. The proposed rule does not provide any exemptions specifically for small businesses. However, the rule does include a number of "just cause" exceptions, and also provides a "grace period" of 7 days or until the provider's next scheduled encounter with the injured worker for the provider to submit a treatment request after initiating treatment. If the provider satisfies a "just cause" exception or submits their request within the grace period, the services requested will not be subject to the 50% payment reduction, even though the request is retroactive.

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- 15. 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?** BWC does not believe that R.C. 119.14 applies to this proposed rule, as the rule deals with the submission by providers to BWC's managed care organizations of requests for prior authorization of medical services in workers' compensation claims, and not the collection of information by BWC.
- 16. What resources are available to assist small businesses with compliance of the regulation?** Employers may contact BWC's Medical Services Division if they are experiencing provider non compliance for assistance.