

Business Impact Analysis

Agency Name: Ohio Bureau of Workers' Compensation

Regulation/Package Title: Outpatient hospital fee schedule

Rule Number(s): 4123-6.37.2

Date: December 31, 2018

Rule Type:

- | | |
|---|--|
| <input type="checkbox"/> New | <input type="checkbox"/> 5-Year Review |
| <input checked="" type="checkbox"/> Amended | <input type="checkbox"/> Rescinded |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.

This rule establishes the fees to be paid by the Bureau of Workers Compensation (BWC) to providers of outpatient hospital services for injured workers. BWC adopted recommendations for this fee schedule are:

- Adoption of the hospital outpatient rates as published in the Medicare Outpatient Prospective Payment System (OPPS) 2019 final rule.
- Adoption of the following modifications to BWC payment adjustment factors:
 - Payment adjustment factor to OPPS rates for children’s hospitals: 288.4%
 - Payment adjustment factor to OPPS rates for all other hospitals: 143.7%
- Adoption of a ‘lesser of’ provision for selected services priced via a fee schedule.

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

R.C. 4121.441(A)(1)(h), 4123.66(A)

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.

N/A

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

N/A

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)?

BWC is required to adopt annual changes to its fee schedules via the O.R.C. Chapter 119 rulemaking process. The rule establishes the fees to be paid by BWC to providers of outpatient hospital services for injured workers.

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

BWC will measure success by continuing to demonstrate that our fee schedules and payment strategies maintain stability in the environment, ensure injured workers access to quality care, promote efficiency in the provision of quality services, and maintain a competitive environment where providers can render safe, effective care.

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.

The proposed hospital outpatient services payment rule was posted on BWC's website for stakeholder feedback on November 5, 2018 for a two-week comment period through November 16, 2018. Notice was e-mailed to the following lists of stakeholders:

- BWC's Managed Care Organizations
- BWC's internal medical provider stakeholder list
- 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 list.

On October 29, 2018, the proposed rule was presented to the Ohio Hospital Association Director of Health Economics and Policy

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

BWC received feedback from the Director of Health Economics and Policy at the Ohio Hospital Association (OHA). OHA agrees with BWC in keeping the Centers for Medicare & Medicaid Services' (CMS) Medicare OPPS methodology as the basis for BWC's HPP outpatient hospital payment system. OHA appreciates BWC's ongoing efforts to work in partnership on its maintenance and appreciates the opportunity to comment.

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?

BWC's hospital outpatient fee schedule is based on Medicare's outpatient prospective payment system (OPPS). The Medicare OPSS is fully evaluated and updated annually to ensure appropriate reimbursement to hospitals. During the annual fee schedule review, BWC historical claims data is modeled against Medicare annual reimbursement updates to determine the proposed impact to the BWC environment, as well as evaluate if adjustments are necessary

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to the BWC payment adjustment factors. If BWC determines that a CMS provision update or change may undermine BWC goals of maintaining stability in the environment, ensuring injured worker access to quality care, promoting efficiency in the provision of quality services and maintaining a competitive provider network, then BWC will adjust the payment adjustment factors.

In addition, BWC researches similar payers of these services and other states' workers' compensation programs and data for analysis and comparison. We use our own historical data to determine financial and operational impacts and injured worker access to care.

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. BWC is required to develop and promulgate a statewide workers' compensation reimbursement methodology for providers of medical services to injured workers, including hospital outpatient facilities.

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 fee schedule is considered a performance-based regulation, as payment is made when services are delivered. The wide variety of services reimbursed allow for providers to make sound clinical decisions for the best course of action, which will allow effective treatment and outcomes for injured workers experiencing a workplace injury.

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

This regulation is specific to BWC, and reimbursement for hospital outpatient services in the BWC environment. Since BWC is the only state agency that administers workers' compensation in Ohio, there is no duplication between this rule and other rules in the Ohio Administrative Code.

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 has established a repeatable procedure by which all of our medical provider fee schedules are implemented. These procedures include adequate notification to stakeholders, self-insuring employers, managed care organizations and billing vendor of fee schedule changes, of files and other necessary information to ensure the fee schedule is implemented efficiently,

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accurately and in a timely fashion. The fee schedule is made available via www.bwc.ohio.gov to all employers and third-party administrators for download and implementation to their system. BWC's system contains edits and reports to ensure consistent and accurate 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;

The impacted business community consists of the hospitals and facilities that provide outpatient care to injured workers, and also self-insured employers that administer this rule.

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

Implementation of fee schedule changes is a necessary part of annual methodology updates for both hospitals and self-insuring employers. Because this methodology is based on Medicare, both hospitals and self-insuring employers will realize minimal adverse impacts. The adverse impact to the self-insured employers will be employer time and/or reimbursement business expense for programming and executing the fee schedule changes. The adverse impact to hospitals will be the cost of hospitals to incorporate relevant changes into the hospitals' billing system.

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.

Given that the Medicare methodology has been in use by BWC since 2011, the annual implementation of updates is relatively routine for providers and self-insured employers. It is estimated that self-insuring employers and hospitals would require less than 10 hours of programming time in order to comply with this rule.

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

The intent of this rule is to ensure Ohio's injured workers have access to quality health care, and adequate reimbursement is essential to achieving that goal. It is essential that appropriate and timely reviews of the fee schedule with relevant modifications are implemented to create

a competitive reimbursement level for services provided to injured workers. Alternative methodologies detailed in the rule provide flexibility in hospital reimbursement for self-insured employers.

Regulatory Flexibility

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

This fee schedule is applied equitably across all hospitals. However, there is also the ability for hospitals to negotiate alternative reimbursement with BWC's managed care organizations (MCO) and self-insuring employers when appropriate.

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?

There are no fines or penalties for paperwork violations under this rules.

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

BWC posts information regarding the outpatient fee schedule on the BWC website at www.bwc.ohio.gov. The Billing and Reimbursement Manual, which can be a source of fee schedule, coding, billing and reimbursement information is also available on the BWC website. Providers rendering services within the fee schedule can also contact MCO staff, BWC Provider Relations Business Area, or the Medical Services Reimbursement and Policy unit staff for assistance with billing issues.