

## Business Impact Analysis

Agency Name: Ohio Bureau of Workers' Compensation

Regulation/Package Title: Ambulatory surgical center fee schedule

Rule Number(s): 4123-6-37.3

Date: January 2, 2019

**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 Rescinded     |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 BWC to providers of ambulatory surgical center (ASC) services for injured workers. Below is a restatement of the proposed changes to the

rule, with a reflection of the objectives to be achieved through the adoption of the recommendations.

- Adopt the 2019 Medicare ASC rates published in Addendum AA and BB of the Medicare rule
- Maintain the following payment adjustment factors:
  - 114% for designated device-intensive procedures
  - 112% for designated orthopedic procedures
  - 110% for designated pain management procedures
  - 100% for all other procedures
- Adopt Medicare ASC performance based quality reporting program.
- Update reimbursement rates for ten previously adopted arthroplasty procedures.

**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 purpose of this rule is to establish the fees to be paid by BWC to providers of ambulatory surgical center services for injured workers.

While keeping focused on our fee schedule goals and objectives, these changes are necessary to ensure Ohio's injured workers access to quality medical care.

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The fee schedule supports efficiency in provision of services that assists in the maintenance of employer rates.

**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 will maintain stability in the environment and reimbursement methodologies; 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 ambulatory surgical center services payment rule was posted on BWC's website for stakeholder feedback on November 5, 2018 with a two week open comment period from November 5, 2018, through November 16, 2018, and a 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 Association of Ambulatory Surgery Centers executive director.

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

Please see the stakeholder feedback grid.

**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 ambulatory surgical center fee schedule is based largely on Medicare's outpatient prospective payment system (OPPS) which includes ambulatory surgical center reimbursements. The Medicare OPPS is fully evaluated and updated yearly to ensure appropriate reimbursement levels to ambulatory surgical centers. During the annual fee schedule review, BWC claims data is modeled against Medicare annual reimbursement changes to determine the proposed impact to BWC and to determine if adjustments need to be made to BWC payment adjustment factors. If BWC determines that a Medicare change will 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 factor. In addition, BWC researches similar payers of these services and other states' workers' compensation programs and data for analysis and comparison. BWC also researched the safety and efficacy of covering joint arthroplasties in the ASC setting. This issue was also reviewed and approved by BWC's Health Care Quality Assurance Advisory Committee of physicians and other health care clinicians.

**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 fee reimbursement scheduled for providers of medical services to injured workers including ambulatory surgical centers.

R.C. 4121.441(A)(1)(h) provides that the BWC Administrator, with the advice and consent of the BWC Board of Directors, shall adopt rules for implementation of the HPP "to provide medical, surgical, nursing, drug, hospital, and rehabilitation services and supplies" to injured workers, including but not limited to rules regarding "[d]iscounted pricing for all in-patient and out-patient medical services."

Pursuant to the 10<sup>th</sup> District Court of Appeals decision in *Ohio Hosp. Assn. v. Ohio Bur. of Workers' Comp.*, Franklin App. No. 06AP-471, 2007-Ohio-1499, BWC is required to adopt

changes to its methodology for the payment of ambulatory surgical center services via the O.R.C. Chapter 119 rulemaking process.

BWC's ambulatory surgical center reimbursement methodology is based on Medicare's Ambulatory Surgical Center Prospective Payment System, which is updated annually. Therefore, BWC must also annually update OAC 4123-6-37.3, to keep in sync with Medicare.

**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 itself is considered a performance-based regulation as payment is made when services are delivered.

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

These rules are specific to BWC, and reimbursement for ambulatory surgical center services in that program. Since BWC is the only state agency that administers workers' compensation in Ohio, there is no duplication between these rules and other rules in the Ohio Administrative Code.

R.C. 4123.66(A) 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," and that the Administrator "may adopt rules, with the advice and consent of the [BWC] board of directors, with respect to furnishing medical, nurse, and hospital service and medicine to injured or disabled employees entitled thereto, and for the payment therefor."

**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 documentation of fee schedule changes, files and other necessary information to billing vendor to ensure the fee schedule is implemented efficiently, accurately and in a timely fashion. The fee schedule is made available via [bwc.ohio.gov](http://bwc.ohio.gov) to all employers and third-party administrators for download for

use in 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 ambulatory surgical centers that provide services to injured workers, and self-insuring employers that also 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 ambulatory surgical centers and self-insuring employers. Because this methodology is largely based on Medicare, both ambulatory surgical centers 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 ambulatory surgical centers will be the cost of ambulatory surgical centers' and employers' time to incorporate relevant changes into their billing systems.

**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.*

It is estimated that self-insuring employers and ambulatory surgery centers would require less than 10 hours of programming time to comply with this rule. The annual implementation of updates is relatively routine for providers and self-insured employers.

**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 access to quality health care for all Ohio employers' workers who experience a workplace injury. It is essential that appropriate and timely review of the fee schedule with relevant modifications are implemented to create a

competitive reimbursement level for these services, maintaining injured worker access to care.

### **Regulatory Flexibility**

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

No. This fee schedule is applied equitably across all ambulatory surgical centers. However, there is also the ability for ambulatory surgical centers to negotiate alternative reimbursement with BWC's managed care organizations 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 these rules.

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

BWC posts information regarding the ASC fee schedule on the BWC website at [www.bwc.ohio.gov](http://www.bwc.ohio.gov), including the Billing and Reimbursement Manual that can be a source of fee schedule, coding, billing and reimbursement information. Providers rendering services contained within the fee schedule can also contact Managed Care Organization staff, BWC's Provider Relations Business Area or Medical Services Fee Schedule Policy Unit staff for personal assistance with billing issues.