

**OBWC Board of Directors  
Medical Services and Safety Committee Charter**

**Purpose**

The Ohio Bureau of Workers' Compensation Board of Directors has created the Medical Services and Safety Committee under authority granted by RC 4121.12(G)(2). The Medical Services and Safety Committee is a standing committee of the Board of Directors. The Committee shall assist the Board of Directors in the development of strategic policy for the provision of quality, cost-effective prevention, treatment, and rehabilitation services necessitated as the result of workplace injuries for the mutual benefit of injured workers and employers.

**Membership**

The Committee shall be composed of a minimum of three (3) members. The Board, by majority vote, shall appoint at least three members of the Board to serve on the Medical Services and Safety Committee and may appoint additional members, who are not Board members, as the Board determines necessary. Bureau management personnel cannot serve as a Committee member.

The Chair and Vice Chair are designated by the Board, based on the recommendation of the Board Chair. If the Board Chair is not a member of the Committee, he/she shall be an ex-officio member. As an ex-officio member, he/she shall not vote if his/her vote will create a tie vote.

The Committee Chair will be responsible for scheduling all meetings of the Committee and providing the Committee with a written agenda for each meeting. The Committee will have a staff liaison designated to assist it in carrying out its duties.

Members of the Medical Services and Safety Committee serve at the pleasure of the Board, and the Board, by majority vote, may remove any member.

**Meetings**

The Committee shall meet at least six (6) times annually. The Committee Chair will provide a report of the meeting at the next subsequent Board meeting.

Additional meetings may be requested by the Committee Chair, 2 or more members of the Committee, or the Chair of the Board.

A quorum shall consist of a majority of Committee members. Committee meetings will be conducted according to Robert's Rules of Order. All Directors are encouraged to attend the Committee meetings.

The Committee will invite members of management, and/or others to attend meetings and provide pertinent information, as necessary.

Minutes for all meetings of the Committee will be prepared to document the actions of the Committee in the discharge of its responsibilities.

### **Duties and responsibilities**

The Committee shall have the responsibility for ensuring the appropriateness and oversight of policy regarding BWC medical and managed care services and safety programs:

1. The Committee shall assist the Board in meeting the following statutory requirements, including but not limited to:
  - Consult with the Administrator and recommend to the Board the appointment of the Superintendent of Safety and Hygiene (RC 4121.37);
  - Review and make recommendations to the Board regarding administrative code rules related to BWC's Division of Safety and Hygiene, including specific safety rules (RC 4121.12 (F)(13)(b), and 4121.12(F)(13)(d)).
  - Review and make recommendations to the Board regarding administrative code rules related to BWC's health partnership program (RC 4121.12 (F)(13)(c)).
  - Review the Division of Safety and Hygiene annual report (RC 4121.37)
2. The Committee shall provide strategic oversight for BWC in the following areas:
  - Composition of, modification of, and/or delivery of occupational safety and health programs;
  - Composition of or modification to medical, occupational safety and health research programs;
  - Initiation and development of collaborative partnerships between BWC and other agencies in and outside Ohio for the purpose of improving medical services, managed care services and workplace safety;

- Composition of or improvement to BWC's medical provider network and practice guidelines;
- managed care and claims policies including an appropriate disability prevention delivery model;
- research for injury prevention, treatment guidelines, the benefit plan, formularies, and corresponding fee schedules;
- Improvements to the provider bill payment services, and
- Development of metrics for all of the above showing comparative effectiveness.
- Coordinate with the other Board Committees on items of common interest.
- At least annually, review the Medical Services and Safety Committee charter and submit any proposed changes to the Governance Committee and to the Board for approval.
- The Committee by majority vote may create a subcommittee consisting of one or more Directors on the Committee. In consultation with the chair, other board members may be appointed to the subcommittee as appropriate. The subcommittee shall have a specific purpose. Each subcommittee shall keep minutes of its meetings. The subcommittee shall report to the Committee. The Committee by majority vote may dissolve the subcommittee at any time.
- Perform such other duties required by law or otherwise as are necessary or appropriate to further the Committee's purposes, or as the Board may from time to time assign to the Committee.

Draft 102909

Reviewed and approved 112009, Jim Harris, Chair

## **Common Sense Business Regulation (BWC Rules)**

(Note: The below criteria apply to existing and newly developed rules)

### **Rule 4123-6-37.3**

#### **Rule Review**

1.  The rule is needed to implement an underlying statute.

Citation: O.R.C. 4121.441(A)(8); O.R.C. 4123.66

2.  The rule achieves an Ohio specific public policy goal.

What goal(s): The rule adopts a discounted pricing fee schedule for workers' compensation ambulatory surgical center services in accordance with O.R.C. 4121.441(A)(8) and *Ohio Hosp. Assn. v. Ohio Bur. of Workers' Comp.*, Franklin App. No. 06AP-471, 2007-Ohio-1499.

3.  Existing federal regulation alone does not adequately regulate the subject matter.

4.  The rule is effective, consistent and efficient.

5.  The rule is not duplicative of rules already in existence.

6.  The rule is consistent with other state regulations, flexible, and reasonably balances the regulatory objectives and burden.

7.  The rule has been reviewed for unintended negative consequences.

8.  Stakeholders, and those affected by the rule were provided opportunity for input as appropriate.

Explain: BWC held a stakeholder meeting on November 3, 2009, during which the proposed fee schedule rule was presented to the Ohio Association of Ambulatory Surgical Center. The proposed fee schedule rule was posted on BWC website on November 12<sup>th</sup> for additional feedback.

9.  The rule was reviewed for clarity and for easy comprehension.

10.  The rule promotes transparency and predictability of regulatory activity.

11.  The rule is based on the best scientific and technical information, and is designed so it can be applied consistently.

12.  The rule is not unnecessarily burdensome or costly to those affected by rule.

If so, how does the need for the rule outweigh burden and cost? \_\_\_\_\_

13.  The Chief Legal Officer, or his designee, has reviewed the rule for clarity and compliance with the Governor's Executive Order.

**BWC Board of Directors**  
**Executive Summary**  
**BWC Ambulatory Surgical Center**  
**Fee Schedule Rule**

**Introduction**

Chapter 4123-6 of the Administrative Code contains BWC rules implementing the Health Partnership Program (HPP) for state fund employers, including rules relating to the adoption of provider fee schedules and payment for medical services and supplies to injured workers. BWC initially enacted the bulk of the Chapter 4123-6 HPP medical service rules (Ohio Administrative Code 4123-6-20 to 4123-6-46) in February 1997.

BWC first adopted a Chapter 4123-6 rule regarding fees for ambulatory surgical center services effective April 1, 2009.

**Background Law**

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.”

R.C. 4121.441(A)(8) 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 . . . 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 4123-6-37.1, to keep in sync with Medicare.

**Rule Changes**

**4123-6-37.3 Payment of ambulatory surgical center services.**

BWC is proposing to amend OAC 4123-6-37.3 to update reimbursement rates for ambulatory surgical center services.

Under the proposed rule, unless an MCO has negotiated a different payment rate with an ambulatory surgical center, reimbursement for ambulatory surgical center services with a date of service of April 1, 2010 or after shall be equal to the lesser of the ambulatory surgical center’s allowable billed charges or the BWC fee schedule for such services.

The BWC fee schedule for ambulatory surgical services shall be an appendix to the rule. As the preamble to the appendix indicates, fees for covered ambulatory surgical services other than pain management shall be set at 100% of the 2010 Medicare Ambulatory Surgical Center Prospective Payment System rates. Fees for covered ambulatory surgical pain management services shall be set at 110% of the 2010 Medicare Ambulatory Surgical Center Prospective Payment System rates.

### **4123-6-37.3 Payment of ambulatory surgical center services.**

Unless an MCO has negotiated a different payment rate with an ambulatory surgical center pursuant to rule 4123-6-08 of the Administrative Code, reimbursement for ambulatory surgical center services with a date of service of ~~April 1, 2009~~ April 1, 2010 or after shall be equal to the lesser of the ambulatory surgical center's allowable billed charges or the fee schedule amount indicated in the attached appendix A, developed with provider and employer input and effective ~~April 1, 2009~~ April 1, 2010.

#### **Appendix A**

BUREAU OF WORKERS' COMPENSATION

AMBULATORY SURGICAL CENTER FEE SCHEDULE

EFFECTIVE ~~APRIL 1, 2009~~ APRIL 1, 2010

Effective: 4/1/2010

R.C. 119.032 review dates: \_\_\_\_\_

Promulgated Under: 119.03

Statutory Authority: 4121.12, 4121.30, 4121.31, 4123.05

Rule Amplifies: 4121.121, 4121.44, 4121.441, 4123.66

Prior Effective Dates: 4/1/09

# **BWC 2010 Proposed Ambulatory Surgical Center Fees**

## **Medical Service Enhancements**

For those injured on the job, prompt, effective medical care is often the key to a quicker recovery and timely return-to-work and quality of life. The maintenance of a network of quality providers, which include medical facilities such as ambulatory surgical centers, is an important element to ensure the best possible recoveries from workplace injury. Such also ensures access to quality, cost-effective service. Access for injured workers, and employers, means the availability of quality, cost-effective treatment provided on the basis of medical necessity.

The Medical Services Division has focused on improving its core medical services functions. Our goals are as follows: enhance our medical provider network, establish a better benefits plan, institute an updated and competitive provider fee schedule, improve our managed care processes, and establish excellent medical bill payment services.

## **Ambulatory Surgical Center Fee Schedule**

As stated, implementing a sound and effective provider fee schedule is a critical component of the Medical Services Division's goals. Ambulatory Surgical Centers (ASCs) billing represents a small number of bills BWC processes annually. However, this provider segment is a critical component of BWC's provider network. ASCs provide services in connection with surgical procedures that do not require inpatient hospitalization. Services provided by ASCs are the same as those provided in a hospital outpatient setting, but with lower cost and generally increased ease of access. In financial terms, these bills represent less than one percent (.97%) of BWC's overall medical expenses. The total ASC expenditures in calendar year 2008 totaled \$7,034,562

### ***BWC Current Rates***

Beginning with services on April 1, 2009, BWC adopted the Centers for Medicare and Medicaid Services (CMS) Ambulatory Surgical Center (ASC) rates published in the 2009 Ambulatory Surgical Center Prospective Payment System (ASC PPS). The adoption of the 2009 Medicare and Medicaid Services rates also was the first update to ASC rates since 2005. Thus, the April 2009 fee schedule update also reflected BWC's adoption of the new Medicare and Medicaid reimbursement methodology.

Prior to April 2009 and since June 1996, the BWC's ASC fee schedule had been based on Medicare's Ambulatory Surgical Center List (aka ASC Groups). Medicare's ASC Groups had been Medicare's prospective payment system from 1982 through 2007. The ASC Groups' payment scheme placed approved reimbursements into one of nine groups based on average cost. The reimbursement rate for each group was then based on the average overhead cost for the group. Cost data used for rate setting was last collected by Medicare in 1986. Federal legislation froze the Medicare ambulatory surgical center rates from 2002-2007.

BWCs old fee schedule reflected Medicare’s old ASC Group methodology. When Medicare moved to the new methodology in 2008 the reimbursement rates for several specialties increased; and thus, BWC’s reimbursement rate under the old methodology fell below Medicare’s rate for many services, which precipitated BWC’s change from the old methodology.

BWC in adopting the new Medicare methodology, set its reimbursed level for covered services and supplies at 100% of the ASC PPS rate.

CMS is in the third year of their transition period for the ASC PPS. Beginning January 2011, CMS will have fully implemented the ASC PPS. The transition schedule is provided in the table below.

Type of Service	2008	2009	2010	2011
Surgical service on the 2007 ASC List	75% ASC List rate 25% APC rate	50% ASC List rate 50% APC rate	25% ASC List rate 75% APC rate	100% APC rate
Surgical service not on the 2007 ASC List	100% APC rate	100% APC rate	100% APC rate	100% APC rate
Office based procedure not on the 2007 ASC List	75% MPFS rate 25% APC rate	50% MPFS rate 50% APC rate	25% MPFS rate 75% APC rate	100% APC rate

***BWC Proposed Changes***

BWC evaluated the proposed 2010 changes to the Medicare ASC rule. There were only minor changes in benefit coverage and or service shifts. The primary changes were in the reimbursement rates for covered procedures.

The service lines most utilized by BWC in the ASC setting are orthopedics and pain management. A review of the rates changes published for 2010 showed that orthopedic rates have increased and pain management rates have decreased. Based on the rate structure adopted in the ASC PPS we were fully aware that some rates would be changing significantly throughout the transition period.

BWC performed an analysis on the impacts of the identified changes on Ohio’s ASC facilities. BWC performed this analysis using a sample of cost data provided to BWC from the Ohio Association of ASCs (OAASC) for several orthopedic and pain management procedures. The analysis indicated that reimbursing orthopedics at 100% of the CMS 2010 ASC PPS rate would result in reimbursements covering 113% of the facility cost; which was up from 91% in 2009. The analysis further showed that reimbursing pain management procedures at 100% of the CMS 2010 ASC PPS rate would result in reimbursements covering 64% of cost; which was down from an estimated 70% in 2009.

Therefore, Medical Services is recommending the following:

1. BWC adopt the rates published under the 2010 ASC PPS Ambulatory Payment Classification;
2. That 110% of ASC PPS 2010 transitional rate be adopted for designated pain management services; and
3. That 100% of the ASC PPS 2010 transitional rate be adopted.

### Projected Impacts and Outcomes

This recommendation will result in an estimated increase payment of \$860,000 dollars or 16% from the 2009 ASC reimbursements. The recommendation will also ensure that BWC maintain a competitive fee schedule with appropriate benefits and quality services being provided Ohio injured workers in a lower cost setting.

# OHIO BWC 2010 AMBULATORY SURGICAL CENTER FEE SCHEDULE PROPOSAL

Medical Services Division  
Freddie Johnson, Director, Managed Care Services  
Anne Casto, Casto Consulting  
November 19, 2009

# Introduction and Guiding Principles

- Legal Requirements For Fee Schedule Rule
- Proposed Time-line for Implementation
  - Stakeholder Feedback - November 3rd
  - Board Presentation - November/December
  - Proposed to JCARR - January
  - Effective Date – April 1, 2010
- Guiding Principle:

Ensure access to high-quality medical care and vocational rehabilitation services by establishing an appropriate Benefit plan and Terms of service with competitive fee schedule which, in turn, enhances medical/vocational provider network

# Fee Schedule Methodology

- Evaluation of current ASC services and experiences, considering the need for annual payment updates and/or other policy changes
- Evaluation of the Medicare ASC Prospective Payment System Updates
- Evaluation of bill and cost data provided by the Ohio Association of ASCs (OAASC)
- Setting payment adjustment factor (payment rate) at the right level
  - Develop payment adjustments that accurately reflect market, service, and patient cost differences

# CMS' Ambulatory Surgical Center Prospective Payment System (ASC PPS) Update

ASC PPS Medicare Final rule released on CMS web site; to be published 11/20/2009 in Federal Register

- This is the third year of the CMS transition period
  - Blended rate
    - 75% OPPS rate and 25% ASC Level rate
      - Result is increase in orthopedic rates
      - Result is decrease in pain management rates
- Minor changes to coverage and/or status proposed in the ASC PPS rule
  - Changes to office-based versus surgical
  - Changes to covered services list
- No major proposals for the ASC PPS for Medicare

## OAASC Submitted Data

- ASCs do not participate in the CMS Cost Report program; therefore we are not able to calculate estimated costs for the ASC setting
- Ohio Association of ASCs (OAASC) provided BWC with patient billing data for orthopedic and pain management procedures

# Impact Under 2010 ASC PPS

Service Area	Reimbursement Rate Impact		
	MCR Percent Change 2009 -2010	BWC 2010 Proposed Payment Adjustment Factors	BWC Percent Change 2009-2010
Orthopedics	20%	100% of MCR	20%
Pain Management	-2%	110% of MCR	8%
Other Services	10%	100% of MCR	10%
All Services	14%		16%

# Recommendation

- Adopt the CY 2010 ASC PPS rates as published in CMS final rule
  - Rates are published in Addendum AA and BB
- Modification to payment adjustment factors
  - 110% Designated pain management procedures
  - 100% All other allowed procedures

# Estimated Impact of Recommendations

- Model under 2010 ASC PPS
  - Estimated overall reimbursement increase estimated at 16%
  - Estimated Dollar Impact is \$860,000
    - Orthotics and other services - \$ 740,000
    - Pain Management services - \$120,000
  
- Maintain competitive fee schedule which ensures injured workers' access to quality care

Thank You

# Appendix

# Calculating ASC Fees

ASC rate is a listed fee; it is derived based on the formula below:

$$\text{ASC PPS Rate} \times \text{Adjustment Factor} = \text{BWC Rate}$$

## April-July 2009 Experience\*

Allowed Charges of separately paid items	Allowed Charges of separately paid + packaged items	Reimbursement	% of Allowed Billed Charges (total)
\$8,604,633	\$9,418,963**	\$1,528,282	16%

\*3.5 months of data

\*\*\$602,444 in bundled services + \$211,886 in supplied reported with Z-code = \$814,330

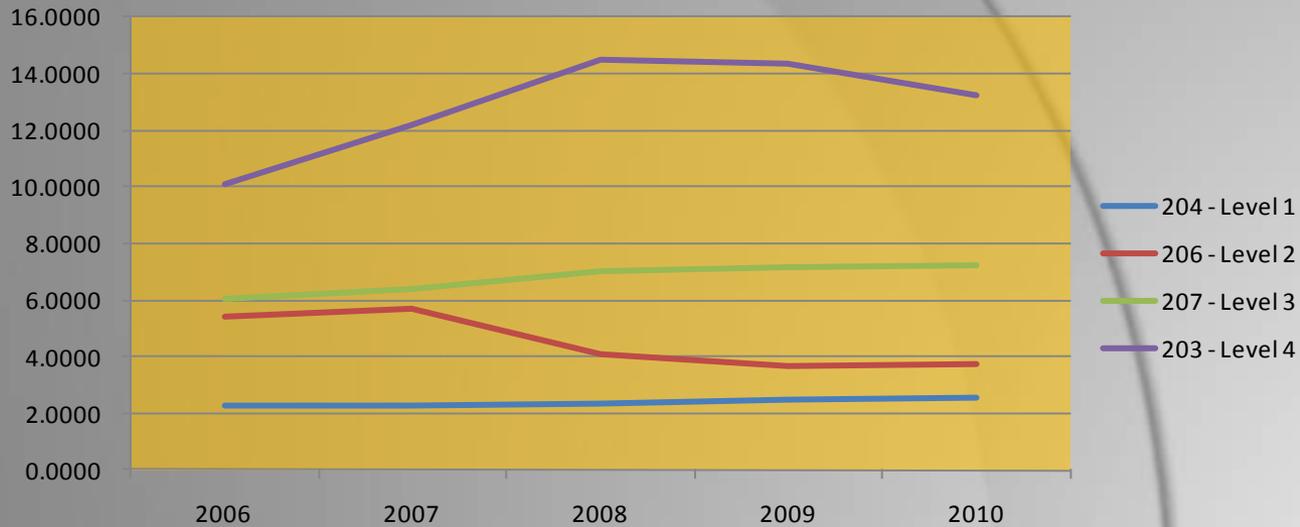
# Summary of ASC Recommendation Impacts

## Transition Schedule

<b>Type of Service</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
<b>Surgical service on the 2007 ASC List</b>	<b>75% ASC List rate 25% APC rate</b>	<b>50% ASC List rate 50% APC rate</b>	<b>25% ASC List rate 75% APC rate</b>	<b>100% APC rate</b>
<b>Surgical service not on the 2007 ASC List</b>	<b>100% APC rate</b>	<b>100% APC rate</b>	<b>100% APC rate</b>	<b>100% APC rate</b>
<b>Office based procedure not on the 2007 ASC List</b>	<b>75% MPFS rate 25% APC rate</b>	<b>50% MPFS rate 50% APC rate</b>	<b>25% MPFS rate 75% APC rate</b>	<b>100% APC rate</b>

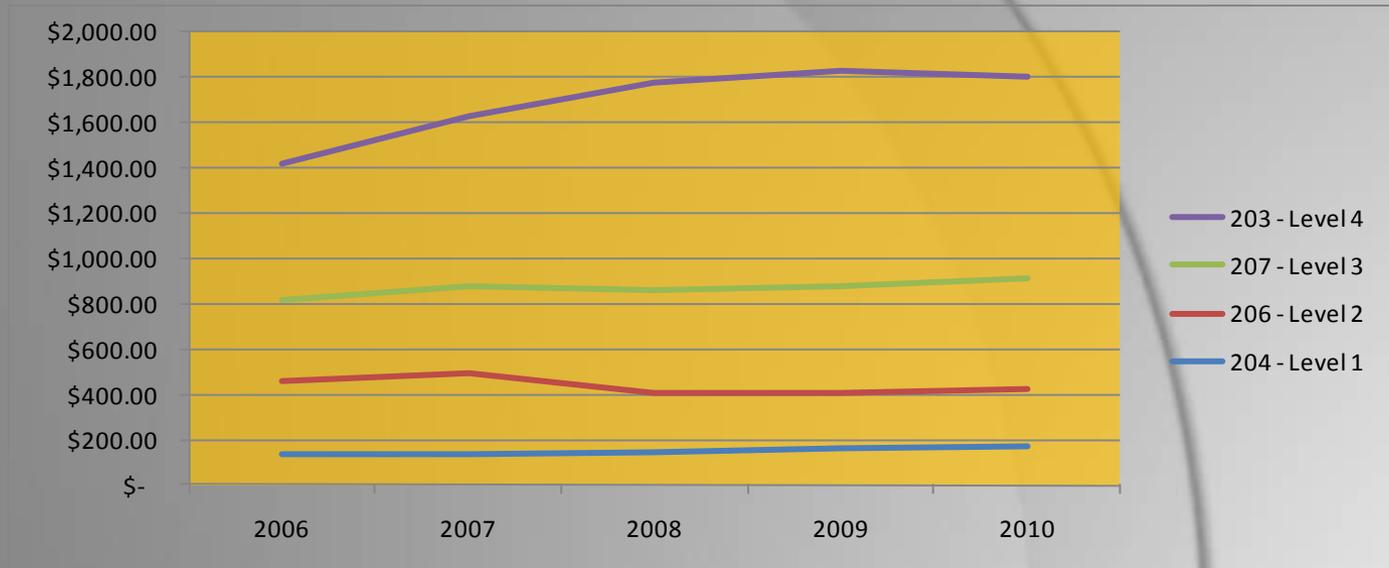
# Pain Management Trend Data – Relative Weights

Medicare RW for Pain Management APCs					
APC Group	2006	2007	2008	2009	2010
204 - Level 1	2.2667	2.2614	2.3213	2.4871	2.5558
206 - Level 2	5.4011	5.7253	4.0964	3.6499	3.7221
207 - Level 3	6.0140	6.3603	7.0546	7.1721	7.2002
203 - Level 4	10.0965	12.1702	14.4879	14.3718	13.2439



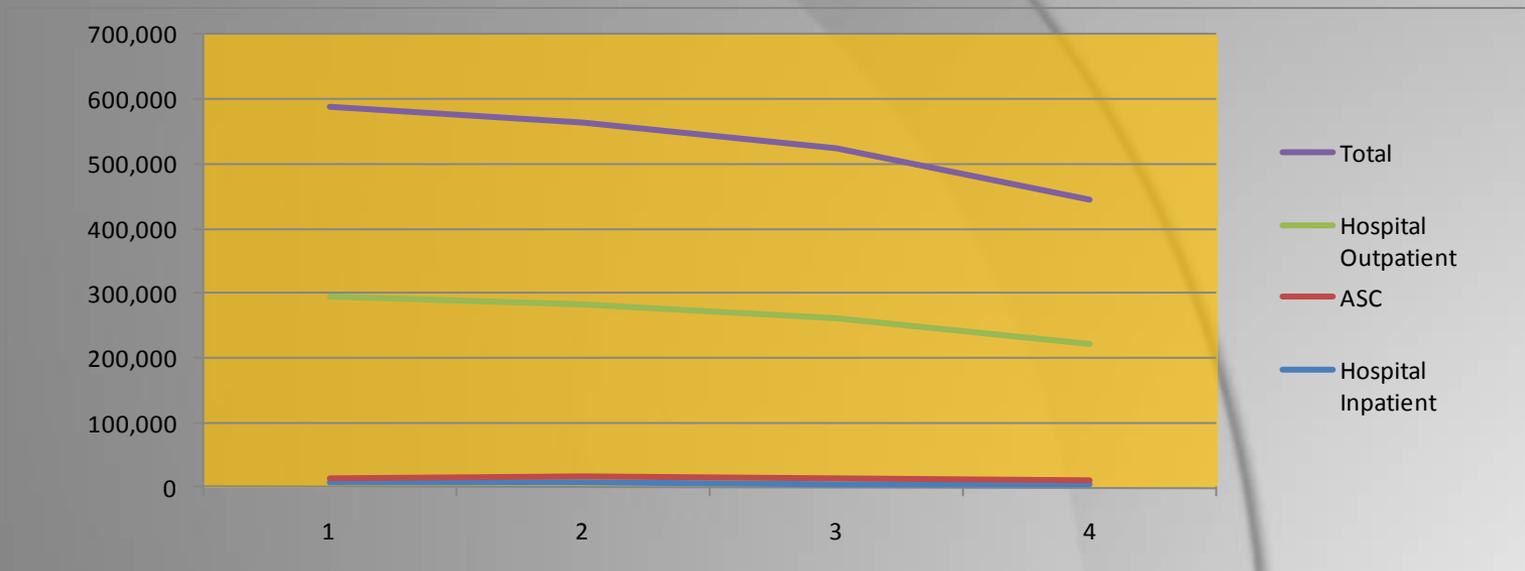
# Pain Management Trend Data – Average Dollars

Medicare Reimbursement Rate for Pain Management APCs					
APC Group	2006	2007	2008	2009	2010
204 - Level 1	\$ 134.89	\$ 139.00	\$ 147.85	\$ 164.30	\$ 172.28
206 - Level 2	\$ 321.42	\$ 351.92	\$ 260.92	\$ 241.11	\$ 250.89
207 - Level 3	\$ 357.90	\$ 390.95	\$ 449.34	\$ 473.78	\$ 485.34
203 - Level 4	\$ 600.85	\$ 748.08	\$ 922.79	\$ 949.39	\$ 892.22



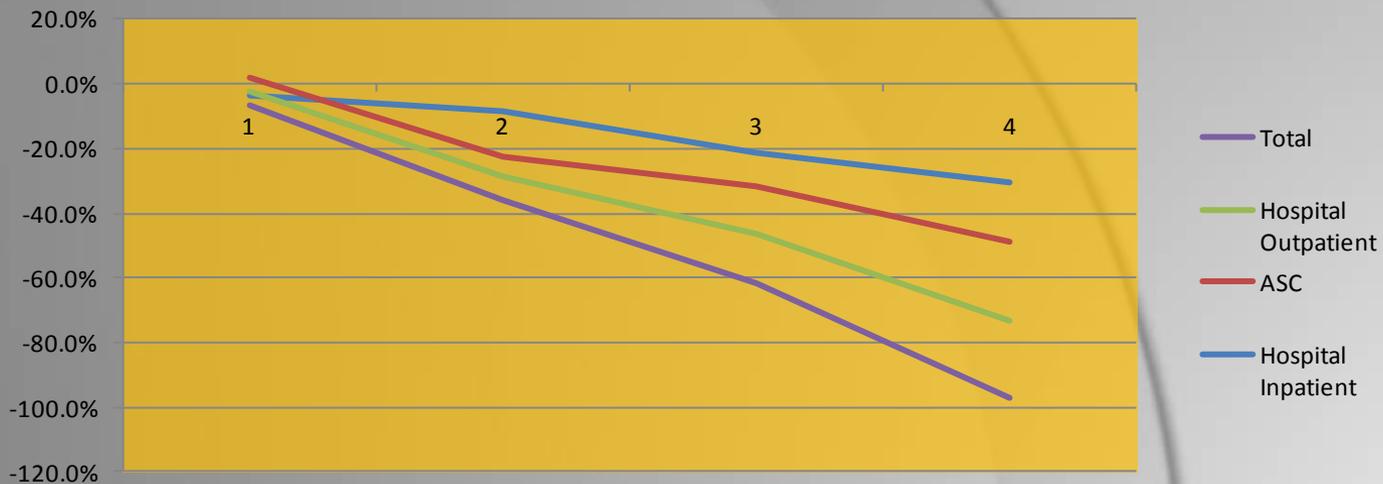
# Hospital Services Trend Data – Volume Numbers

BWC Volume Trend 2006 to 2009				
Setting	2006	2007	2008	2009
Hospital Inpatient	6,423	6,209	5,688	4,476
ASC	8,814	9,292	8,008	7,178
Hospital Outpatient	278,813	266,487	248,403	211,275
Total	294,050	281,988	262,099	222,929



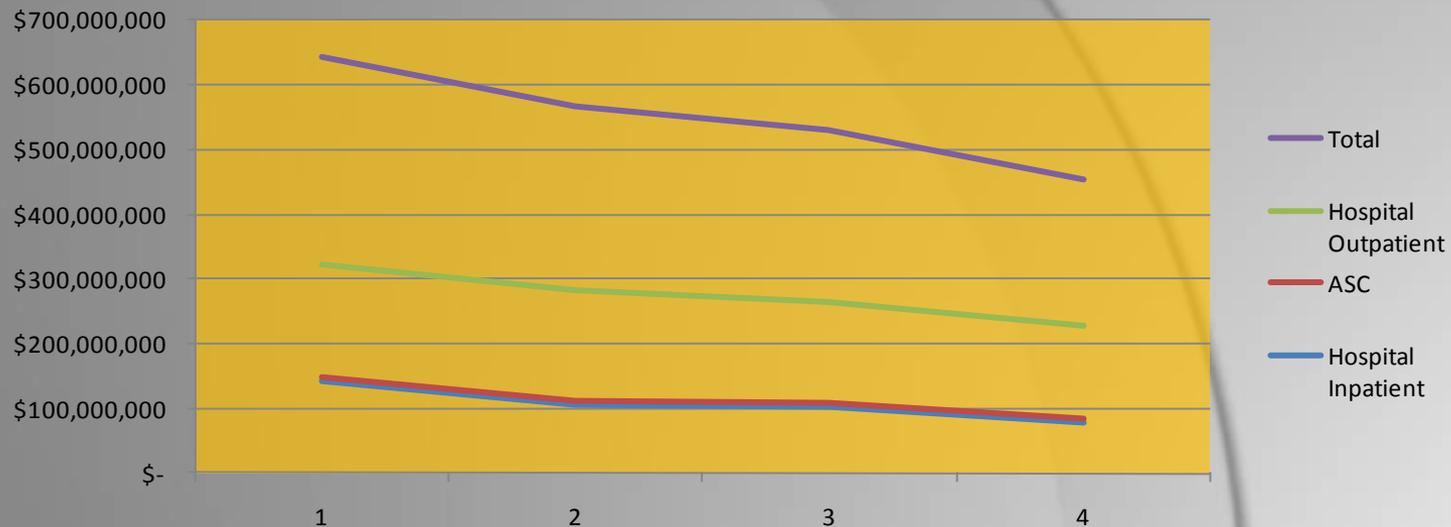
# Hospital Services Trend Data – Volume Percentage

BWC Volume Trend - Change Percent - 2006 to 2009				
Setting	2006 to 2007	2007 to 2008	2008 to 2009	2006 to 2009
Hospital Inpatient	-3.3%	-8.4%	-21.3%	-30.3%
ASC	5.4%	-13.8%	-10.4%	-18.5%
Hospital Outpatient	-4.4%	-6.7%	-14.9%	-24.2%
Total	-4.1%	-7.0%	-14.9%	-24.2%



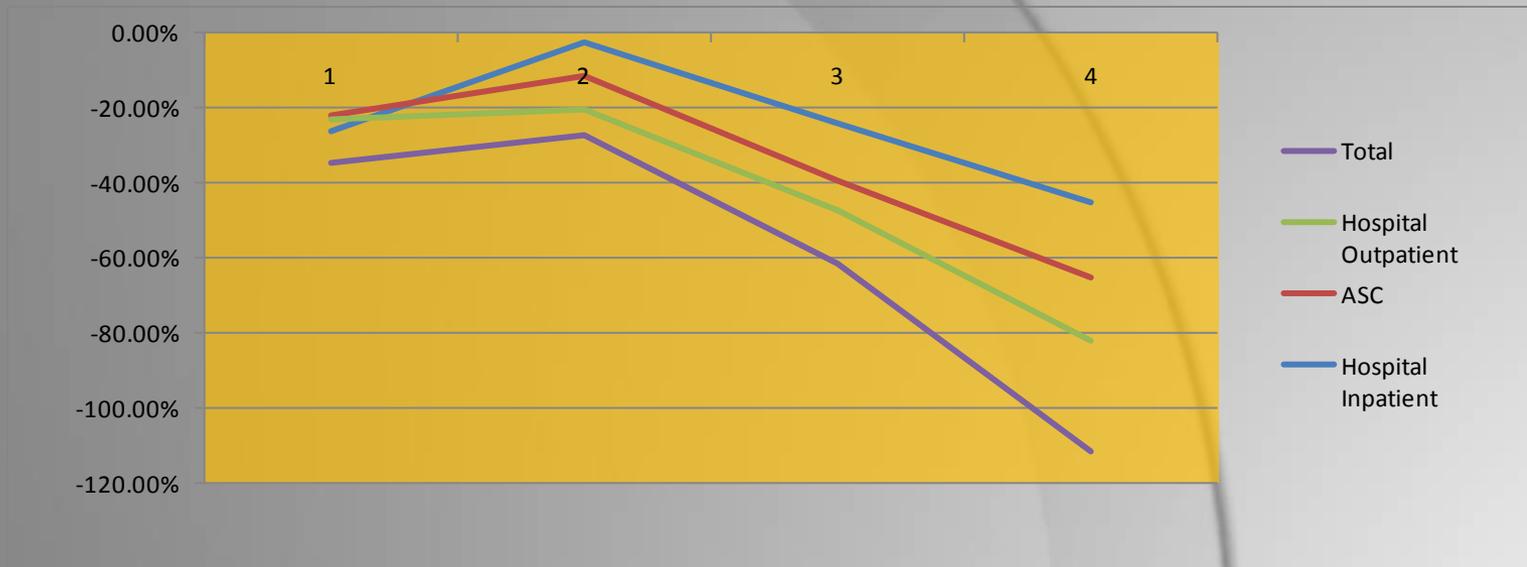
# Hospital Services Trend Data – Dollars Numbers

BWC Reimbursement Trend 2006 to 2009				
Setting	2006	2007	2008	2009
Hospital Inpatient	\$ 141,252,871	\$ 104,542,729	\$ 101,849,952	\$ 77,341,372
ASC	\$ 7,442,506	\$ 7,734,149	\$ 7,040,797	\$ 5,961,873
Hospital Outpatient	\$ 172,914,879	\$ 171,354,704	\$ 156,119,097	\$ 143,629,371
Total	\$ 321,610,256	\$ 283,631,582	\$ 265,009,846	\$ 226,932,616



# Hospital Services Trend Data – Dollars Percentage

BWC Reimbursement Trend 2006 to 2009				
Setting	2006 to 2007	2007 to 2008	2008 to 2009	2006 to 2009
Hospital Inpatient	-25.99%	-2.58%	-24.06%	-45.25%
ASC	3.92%	-8.96%	-15.32%	-19.89%
Hospital Outpatient	-0.90%	-8.89%	-8.00%	-16.94%
Total	-11.81%	-6.57%	-14.37%	-29.44%



# 12 - Month Medical Services & Safety Calendar

Date	November 2009	Notes
11/19/09	1. Charter review (2 <sup>nd</sup> Read)	
	2. Ambulatory Surgical Center Fee Schedule ( 1st read)	
	3. October Public Forum update	
	4. Division of Safety and Hygiene Annual report	
Date	December 2009	
12/15/09	1. Medical & Service Provider Fee Schedule (1 <sup>st</sup> read)	
	2. Ambulatory Surgical Center Fee Schedule (2nd read)	
	3. Outpatient Hospital Fee Schedule (1st read)	
	4. BWC/MCO Vocational Rehabilitation program - Including MCO Provider referral	
Date	January 2010	
1/21/10	1. Medical & Service Provider Fee Schedule (2nd read)	
	2. Outpatient Hospital Fee Schedule (2nd read)	
Date	February 2010	
2/25/10		
Date	March 2010	
3/25/10		
Date	April 2010	
4/29/10		
Date	May 2010	
5/27/10		
Date	June 2010	
6/17/10		
Date	July 2010	
7/29/10	1. Vocational Rehab fee schedule (1 <sup>st</sup> read)	
Date	August 2010	
8/26/10	1. Vocational Rehab fee schedule (2nd read)	
Date	September 2010	
9/23/10	1. Inpatient Hospital Fee Schedule (1st read)	
Date	October 2010	
10/21/10	1. Inpatient Hospital Fee Schedule (2nd read)	

## **BWC's Division of Safety and Hygiene Annual Report**

### **Summary for the Medical Services and Safety Committee**

Chairman Harris, Members of the Committee, Directors:

The BWC's Division of Safety and Hygiene (DSH) would like to preview to the BOD the DSH's Fiscal Year 2009 Annual Report. The report is in the final stages of review. Don will provide you a copy of the report in the next few days. The report will consist of three major sections:

1. The first section "Financials" provides a summary table of DSH's disbursements by service type for Fiscal Year 2009.
  - a. In Fiscal Year 2009, DSH's total disbursements on services were close to \$18.3 million.
  - b. Also, DSH disbursed approximately \$5.0 million in Safety Intervention Grants, DFWP Training Grants, Long-Term Loan Program, and the Administration of the OSHA On-Site program.
  - c. DSH's premium assessments were about \$22.4 million.
  - d. Based on various industry estimates, the market value of DSH's various services is estimated to be close to \$25.6 million.
2. The second Section "BWC's Occupational Safety and Health Services" provides a broad description of DSH's services and programs along with statistics about the employers who benefited from these services during Fiscal Year 2009. The highlights of this section include:
  - a. Safety training and education services included 70 course offerings held through 367 classes throughout Ohio. 9,791 students representing 4,282 employers benefited from these services. Fifty-two percent of these students have not used our training services before and 30% of these employers have not benefited from our training services before.
  - b. In Fiscal Year 2009, 9,093 Ohio employers benefited from our Safety Council Program. BWC provided \$1,064,044 in subsidies toward the direct costs of the 80 Safety Councils spread throughout Ohio. Also, SC members received \$15.4 million in premium reimbursements for their active participation in the program. Additional reimbursements are yet to be calculated based on injury frequency and severity reductions. Those reimbursements are expected to exceed the \$10.8 million that were distributed last year.

- c. The Ohio Safety Congress hosted 5,000 employees representing 2,373 employers in Fiscal Year 2009. While continuing to maintain a high level of customer service to the participants, expenditures were decreased by 30 percent, and for the first time in over a decade, revenue exceeded out of pocket costs by \$11,980.
  - d. The Safety Intervention Grants program awarded 94 grants to Ohio employers. The total amount of awards reached \$2.5 million. This amount doesn't reflect the amount of the employers' contributions to the safety improvements at the workplace generated by the grants. Employers' contribution is 20%.
  - e. BWC On-Site and Consulting Services, including BWC's specialized field consulting, OSHA On-Site, and PERRP reached over 6,000 Ohio employers employing an estimated 1.2 million employees.
  - f. Close to 1,800 employers benefited from the BWC Library in Fiscal Year 2009. Also, the library circulated 11,291 training aids to employers throughout Ohio.
  - g. Our industrial hygiene laboratory performed in-house calibrations of close to 1,000 measurement devices used by BWC field safety consultants and facilitated air quality sampling testing of 13,000 samples. In-house calibration of this equipment has resulted in close to \$150k in savings; should the calibration been completed by outside vendors.
3. The third Section "Research Activities and Initiatives" provides a broad description of the research activities and initiatives undertaken by DSH during FY2009. In FY2009, DSH continued on with two FY2008 data research and safety intervention initiatives, one concerning Ohio's occupational fatalities report and the second is the Preferred Customer Market project.
- a. Sadly, up to August 2009 data reports, Ohio experienced 156 occupational fatalities in Calendar Year 2008, compared to 181 in Calendar Year 2009. Fifty-three of the 2008 fatalities were transportation related, 40 were caused by occupational diseases, and 11 by workplace violence. The rest of the fatalities had various causations. In terms of industry sectors, construction had the highest number of fatalities with 23 fatalities in Calendar Year 2008.
  - b. For the Preferred Customer Market (PCM) project, 1,661 employers from four industry groups with a high frequency and severity of claims were selected to improve safety at their workplaces and consequently reduce injuries and workers' compensation costs. The selected employers included public employers, construction companies, temporary staffing agencies, and Nursing Homes. In Fiscal year 2009, we managed to reach out to 55% of those employers. Overall,

for those employers in the PCM who benefited from our services services, the number of claims filed decreased by 11.7 percent and the number of days away decreased by 6.8 percent after adjusting the data for payroll changes when compared to Fiscal Year 2008 data.

- c. Another data research project dealt with the nature and extent of workplace injuries in Ohio's restaurants. Our consultants through collaboration with the Ohio Restaurant Association thoroughly analyzed 4,381 claims reported between 2003 and 2006 for 712 restaurants throughout Ohio. The analysis revealed that open wounds (44%), sprains (18%), and burns (13%) injuries compromise 75% of these claims. Accordingly, the project team prepared certain training aids and safety intervention measures to be shared with Ohio's restaurants to reduce the frequency and severity of such injuries.
- d. Finally, DSH staff worked with OSHA and temporary staffing companies through an OSHA Alliance effort to design a video training aid as well as four training classes for staffing companies. The work is completed and, recently, the project team started working on producing the video training aid in Spanish.

As we move forward, we will continue to improve our operations and services to achieve a wider reach to Ohio's employers, and better and more efficient services and operations. We hope that you will find the information provided in the report helpful and we look forward to working with you.

As I mentioned, Don will send you the complete report in the next few days. Next month, I will answer any additional questions, and ask you to recommend approval to the Board.

## **BWC Public Forum on Safety Services, October 30, 2009**

### **Summary for the Medical Services and Safety Committee**

Chairman Harris, Members of the Committee, and Directors:

On behalf of all of the BWC's Division of Safety and Hygiene team, I would like to thank you for initiating and taking the time to conduct a public forum on BWC's safety services. Your oversight and direction has been an ongoing motivation to us to improve our services, value, and the effectiveness of our operations. Your emphasis on maintaining a healthy workforce in Ohio has been a driving force for us in BWC to improve our programs and services and better serve Ohio's employers and employees. Recent developments undertaken by the BOD and the BWC leadership relative to safety services including the update to the Ohio Administrative Code Specific Safety Requirements, the Board's Public Forum on Safety Services, and establishing the Medical Services and Safety Committee are prominent examples of this emphasis. To that, we are grateful.

The participants in the BWC's BOD Public Forum represented a variety of occupations and backgrounds. Several individuals spoke on behalf of public employers including state agencies and counties. Also participating were members of local area chambers of commerce and safety council representatives. Also several participants represented the construction and manufacturing industries.

Many of the presenters praised our current services and programs and some implied some concerns about certain programs. We thank all those who participated in the Forum and we value their input. To that extent, I would like to address the following points:

1. BWC's commitment to safety in Ohio's workplaces is at all time high. Any concerns in that regard are only "misguided" perceptions and we will work hard to correct them;
2. Some participants raised concerns about the continuation of Safety Congress. We appreciate these concerns as we fully understand the value and importance of Safety Congress. We think that this perception may have been guided by budget cuts throughout the various state agencies. Contrary to that perception, Safety Congress is going to be held on March 30 through April 1 of 2010 and is already budgeted for in 2011. The tradition of Safety Congress started in 1927 and will continue on;
3. In terms of our Safety Training and Education, we strive to reach to more employers and employees. The majority of our training courses are offered throughout the year in eleven different locations throughout Ohio. We are working on improving our online course offerings and we continue to introduce new in accordance with the needs of Ohio's employers. Also, we are currently working with the State of Washington to use some of their class materials to design it into online courses, brand it, and offer it in Ohio;

4. We recognize the value of our safety services and programs and we are working very hard to align our services and operations to reach a wider number of employers. To that extent, we are trying to align our safety services with other state and national agencies to either market our services or capitalize on those agencies experience in the areas of research and development. Four months ago we started forging a collaboration effort for research projects with NIOSH. NIOSH is the leading Occupational Safety and Health research agency in the US, if not in the whole world. We also reached to the Ohio Department of Development, Federal OSHA, Employers' Associations and Employee representative organizations to assist us in marketing our services to Ohio's employers;
5. Also we started targeting large construction projects in Ohio to work with developer construction managers at the inception phases of these projects;
6. Internally, we are working on branding our safety services to better market them;
7. As we go forward, we will continue to measure and evaluate our services and programs to improve our effectiveness and reach to Ohio's employers and employees. Also we will continue to solicit input from Ohio's employees and employers and employees representative organizations to improve our services; and
8. We expect that the Rate Reform efforts will result in a positive effect on safety in Ohio's workplaces. We believe that this effort will, eventually, prompt Ohio's employer to capitalize more on our safety services to reduce their claims experience and their WC costs.

Finally, I would like to thank you again for your emphasis on our Occupational Safety and Health services and the DSH staff and I are looking forward to working with you.

**Common Sense Business Regulation (BWC Rules)**  
(Note: The below criteria apply to existing and newly developed rules)  
**Vocational Rehabilitation Provider Fee Schedule**  
**Rule 4123-18-09**

**Rule Review**

1.  The rule is needed to implement an underlying statute.

Citation:     R.C. 4121.61, R.C. 4121.441(A), R.C. 4121.44(C)(1)    

2.  The rule achieves an Ohio specific public policy goal.

What goal(s):     The rule adopts a fee schedule for workers' compensation vocational rehabilitation services in accordance with R.C. 4121.61, R.C. 4121.441(A), R.C. 4121.44(C)(1), and Ohio Hosp. Assn. v. Ohio Bur. of Workers' Comp., Franklin App. No. 06AP-471, 2007-Ohio-1499.    

3.  Existing federal regulation alone does not adequately regulate the subject matter.
4.  The rule is effective, consistent and efficient.
5.  The rule is not duplicative of rules already in existence.
6.  The rule is consistent with other state regulations, flexible, and reasonably balances the regulatory objectives and burden.
7.  The rule has been reviewed for unintended negative consequences.
8.  Stakeholders, and those affected by the rule were provided opportunity for input as appropriate.

Explain:     The proposed fee schedule was provided for review to BWC's Labor-Management-Government Advisory Council (LMG), which is responsible for providing advice and recommendations to BWC on rehabilitation matters (see R.C. 4121.70 and OAC 4123-18-18).    

BWC also provided the proposed fee schedule to the following stakeholder groups: the International Association of Rehabilitation Professionals (IARP), the Ohio Physical Therapy Association (OPTA) and the Ohio Association of Rehabilitation Facilities (OARF) and the Ohio Association for Justice (OAJ). Meetings were held on June 23<sup>rd</sup> and June 25<sup>th</sup> with stakeholders to discuss the fee schedule. IARP attended both of the meetings and OPTA and OARF attended one meeting.

Stakeholders' questions, concerns and feedback resulted in productive revisions to the proposed rule.

Based on additional feedback received after the Board initially considered and approved the rule, BWC now proposes to revise the language in paragraph (B) of the rule to more closely "mirror" the language in Ohio Revised Code 4121.44(C)(1), which provides the statutory authority for the paragraph.

9.  The rule was reviewed for clarity and for easy comprehension.
10.  The rule promotes transparency and predictability of regulatory activity.
11.  The rule is based on the best scientific and technical information, and is designed so it can be applied consistently.
12.  The rule is not unnecessarily burdensome or costly to those affected by rule.  
If so, how does the need for the rule outweigh burden and cost? \_\_\_\_\_
13.  The Chief Legal Officer, or his designee, has reviewed the rule for clarity and compliance with the Governor's Executive Order.

**BWC Board of Directors**  
**Executive Summary**  
**BWC Vocational Rehabilitation Provider Fee Schedule Rule**  
**OAC 4123-18-09**

## **Introduction**

Chapter 4123-18 of the Ohio Administrative Code contains BWC rules providing for the vocational rehabilitation of injured workers in the Ohio workers' compensation system. The rules were first published as Industrial Commission (IC) rules in the early 1980's, and were converted to BWC rules in the early 1990's when H.B. 222 transferred authority over vocational rehabilitation services from the IC to BWC.

BWC reviewed revised the vocational rehabilitation rules in 2001, following the implementation of the Health Partnership Program (HPP), and again in 2004 and 2009, pursuant to five-year rule review.

## **Background Law**

Ohio Revised Code (O.R.C.) 4121.61 provides that the Administrator, with the advice and consent of the BWC Board of Directors, shall "adopt rules, take measures, and make expenditures as it deems necessary to aid claimants who have sustained compensable injuries or incurred compensable occupational diseases . . . to return to work or to assist in lessening or removing any resulting handicap."

O.R.C. 4121.441(A) provides that the 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 an employee for an injury or occupational disease . . . ."

Prior 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 adopted the vocational rehabilitation provider fee schedule in the manner provided for in O.R.C. 4121.32(D), which grants BWC authority to "establish, adopt, and implement policy guidelines and bases for decisions involving reimbursement issues including, but not limited to . . . reimbursement fees . . . set forth in a reimbursement manual and provider bulletins."

However, pursuant to the Court of Appeals' decision in the *OHA* case, BWC is now required to adopt changes to its provider fee schedules, including the vocational rehabilitation provider fee schedule, via the O.R.C. Chapter 119 rulemaking process. BWC has undergone a systematic revision of its vocational rehabilitation provider fee schedule and, now proposes to adopt the newly revised vocational rehabilitation provider fee schedule as an Appendix to newly enacted OAC 4123-18-09.

## **Proposed Changes**

The major substantive changes proposed for the vocational rehabilitation fee schedule include:

- There are currently a total of 76 vocational rehabilitation fee codes with a recommendation to add code W0513 for Ergonomic Implementation for a total of 77.
- Fee increases are proposed in 50 of the 77 codes representing the following 5 services:

1. Vocational Rehabilitation Case Management (39 codes)
  2. Travel and Wait Time for case managers (4 codes)
  3. Mileage for case managers and other providers (4 codes)
  4. Occupational Rehabilitation – Comprehensive (2 codes)
  5. Work Conditioning (1 code)
- There are a total of 9 codes with proposed changes to the Unit of Service (UOS). These changes may impact the overall price paid for 7 of the codes:
    1. Ergonomics (2 codes)
    2. Work Adjustment (2 codes)
    3. Job Analysis (1 code)
    4. Job Seeking Skills Training (1 code)
    5. Job Placement/Development (1 code)
  - The change in UOS for 2 codes will have no fee impact:
    1. Vocational Evaluation (1 code)
    2. Vocational Screening (1 code)
  - There are proposed changes to the definitions for Other Provider Travel and Other Provider Mileage (4 codes) to allow for reimbursement of Travel and Mileage to providers of Transitional Work, Ergonomic Study, Ergonomic Implementation and Job Analysis.
  - There are a total of 18 codes with no changes recommended.

## Stakeholder Involvement

The proposed fee schedule was provided for review to BWC's Labor-Management-Government Advisory Council (LMG), which is responsible for providing advice and recommendations to BWC on rehabilitation matters (see R.C. 4121.70 and OAC 4123-18-18).

BWC also provided the proposed fee schedule to the following stakeholder groups: the International Association of Rehabilitation Professionals (IARP), the Ohio Physical Therapy Association (OPTA) and the Ohio Association of Rehabilitation Facilities (OARF) and the Ohio Association for Justice (OAJ). Meetings were held on June 23<sup>rd</sup> and June 25<sup>th</sup> with stakeholders to discuss the fee schedule. IARP attended both of the meetings and OPTA and OARF attended one meeting.

Stakeholders' questions, concerns and feedback resulted in productive revisions to the proposed rule.

Based on additional feedback received after the Board initially considered and approved the rule, BWC now proposes to revise the language in paragraph (B) of the rule to more closely "mirror" the language in Ohio Revised Code 4121.44(C)(1), which provides the statutory authority for the paragraph and which reads as follows:

(C) Any [MCO] selected [by BWC to provide HPP services] shall demonstrate . . .

(1) Arrangements and reimbursement agreements with a substantial number of the medical, professional and pharmacy providers currently being utilized by claimants.

## **4123-18-09 Vocational rehabilitation provider fee schedule. (New)**

(A) Pursuant to sections 4121.441 and 4121.61 of the Revised Code, the bureau shall adopt rules for the provision of vocational rehabilitation services to injured workers. The administrator hereby adopts the vocational rehabilitation provider fee schedule indicated in the attached appendix A, developed with stakeholder input, effective January 1, 2010.

(B) Notwithstanding the provisions of paragraph (A) of this rule, consistent with the provisions of division (C)(1) of section 4121.44 of the Revised Code, managed care organizations may enter into other arrangements and reimbursement agreements with medical, professional and pharmacy providers.

### **Appendix A**

BUREAU OF WORKERS' COMPENSATION

VOCATIONAL REHABILITATION PROVIDER FEE SCHEDULE

EFFECTIVE JANUARY 1, 2010

Effective: 1/1/2010

Promulgated Under: 119.03

Statutory Authority: 4121.12, 4121.30, 4121.31, 4123.05

Rule Amplifies: 4121.44, 4121.441, 4121.61, 4121.62, 4123.53, 4123.66

Prior Effective Dates: