



## MEMORANDUM

**TO:** Aniko Nagy, Contracts/Administrative Rules, Bureau of Workers Compensation  
**FROM:** Todd Colquitt, Business Advocate  
**DATE:** July 30, 2015  
**RE:** CSI Review – HPP Operational Rules (OAC 4123-6-01 thru 20.1)

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On behalf of Lt. Governor Mary Taylor, and pursuant to the authority granted to the Common Sense Initiative (“CSI”) Office under Ohio Revised Code (“ORC”) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (“BIA”). This memo represents the CSI Office’s comments to the Agency as provided for in ORC §107.54.

### Analysis

This rule package, submitted by the Ohio Bureau of Workers’ Compensation pursuant to the five-year review requirement in statute, covers the operational rules of the Health Partnership Program (“HPP”) as encompassed within Ohio Administrative Code (“OAC”) 4123-6-01 through 4123-6-20.1. HPP is the Bureau’s system for managing workers’ compensation health care in Ohio. The rule package contains forty-three rules in total, with one rule proposed to be rescinded, nine proposed with no changes, and thirty-three containing proposed amendments.

The proposed changes contained in this rule package consist largely of general procedural clarifications and amplification of the BWC’s process surrounding progressive compliance and decertification of participating HPP providers from the program.

### Stakeholder Comments

The BWC received comments from six different parties during early stakeholder outreach. One comment was received while CSI was reviewing the rules. In response to the early stakeholder comments, the Bureau modified its proposed changes in whole or in part on six of the points raised. Some of the suggested changes agreed to by the Bureau were minor, while others were

more substantive -- such as language that allows participating durable medical equipment vendors to be approved by the Centers for Medicare and Medicaid Services (“CMS”) or by the relevant national accreditation organization, but with the condition that the entity have a surety bond like that required under CMS approval.

The Ohio Physical Therapy Association (“OPTA”) submitted the greatest number of suggested changes. OPTA opposes the existing requirement that HPP provider participants offering occupational rehabilitation comprehensive programs be accredited by the independent accrediting organization CARF International (Commission on Accreditation of Rehabilitation Facilities). OPTA argues that CARF accreditation is a lengthy and costly process, stating that it takes between 9-12 months and associated costs of approximately \$15,000. It also asserts that because aspects of it are not perceived to be directly relevant to occupational rehabilitation, CARF accreditation has been dropped by most occupational therapists. Consequently, OPTA states that requiring CARF accreditation creates an artificial barrier to access to cost-effective therapy providers, and that Ohio is the lone state to require CARF accreditation. It notes that the American Physical Therapy Association has developed quality of care guidelines as an alternative to CARF. OPTA suggests dropping the CARF accreditation requirement in favor of expanding the definition of Occupational Rehabilitation to include a mandate that providers “track program outcomes and demonstrate program integration with other return-to-work services performed by professionals with specialist training and certification in functional capacity evaluation, job analysis, and ergonomic study.”

The Bureau contends that it has found no evidence that mandating CARF accreditation impedes injured worker access to quality care. BWC favors CARF accreditation for occupational rehabilitation because it requires that an interdisciplinary approach is taken in the return to work program for injured workers. Additionally, BWC notes that in other instances where the Bureau expanded the list of accrediting organizations in response to suggestions by commenting parties, the organizations were nationally recognized bodies having CMS “deeming” authority, maintaining program quality control through on-site audits. In contrast, no alternative accrediting organization to CARF was suggested by any of the commenting parties, and, indeed, CSI staff was unable to find such an organization despite actively searching for one. Absent such an organization, the Bureau’s decision to require CARF accreditation for occupational rehabilitation as a measure of ensuring quality of care for injured workers seems reasonable to this Office.

The greatest weight of the suggested changes OPTA offered to the Bureau in this rulemaking relate to physical therapists’ current exclusion from the list of licensed medical professionals qualifying as “physicians” under the Bureau’s rules. Exclusion prevents physical therapists from being reimbursed for services rendered under the HPP program unless the injured worker first obtains a referral or prescription from their physician for the physical therapy. It also means that if

a physical therapist is involved in the alternative dispute resolution process, the independent professional review by peers is conducted by physicians rather than fellow physical therapists.

In declining to adopt the suggested changes offered by OPTA, the Bureau notes that the ORC chapter addressing physical therapists explicitly provides that nothing requires a health insurer, the Medicaid program, or BWC to reimburse “for any physical therapy service rendered without the prescription of, or referral of the patient...” The Bureau also notes that while physicians are able to write prescriptions and diagnose disability or impairment, such diagnostic and prescriptive authorization is not within the current statutory scope of practice for physical therapy.

To help guide Bureau policy on medical quality issues, the HPP rules provide for the health care quality assurance advisory committee (“HCQAAC”). It is comprised of the Bureau’s chief medical officer and a diverse group of members representing the providers of medical care to injured workers. A change in Bureau policy regarding persons deemed qualified to be considered a “physician” for workers’ compensation purposes would be reviewed and approved by the HCQAAC, at which point the Bureau would undertake a rulemaking to amend the relevant rules to include physical therapists in that definition. This process for shaping and guiding Bureau policy on medical treatment matters – including whether a physical therapist should be categorized as a “physician” to better ensure accurate diagnosis of work-related injuries – seems reasonable to this Office.

After reviewing the various documents associated with the rule package, including the proposed rules, BIA, and various stakeholder comments; the CSI Office has determined that the rule package as a whole satisfactorily meets the standards espoused by the CSI Office and the purpose of the rule package justifies the adverse impacts identified in the BIA.

### **Recommendations**

For the reasons described above, and having reviewed the BIA revised as previously described, the CSI Office has no recommendations regarding this rule package.

### **Conclusion**

Based on the above comments, the CSI Office concludes that the Bureau of Workers’ Compensation should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.

cc: Mark Hamlin, Lt. Governor’s Office