



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Sean McCullough, Director

MEMORANDUM

TO: Aniko Nagy, Ohio Bureau of Workers' Compensation

FROM: Joseph Baker, Business Advocate

DATE: May 16, 2022

RE: **CSI Review – Payment for Spinal Cord Stimulator (OAC 4123-6-35)**

On behalf of Lt. Governor Jon Husted, 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 Bureau as provided for in ORC 107.54.

Analysis

This Ohio Bureau of Workers' Compensation (BWC) rule package consists of one new rule. The rule was submitted to the CSI Office on April 6, 2022, and the public comment period was held open through April 27, 2022. Unless otherwise noted below, this recommendation reflects the version of the proposed rule filed with the CSI Office on April 27, 2022.

Ohio Administrative Code (OAC) 4123-6-35 establishes reimbursement procedures and requirements for spinal cord stimulator treatment in accordance with a BWC-covered work-related injury or occupational disease. Under the rule, a spinal cord stimulator may be reimbursed if the treatment is in accordance with current medical best practices for certain specified conditions. Before proceeding with the spinal cord stimulator, the patient must also complete a routine of conservative care, have been personally and comprehensively evaluated by a surgeon, have been provided an educational document about spinal cord stimulators, and have completed and successfully documented progress following a seven-day spinal cord stimulator trial. The rule also states that spinal cord stimulators will not be covered for certain, specified conditions or if the patient meets various criteria associated with increased risk.

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During the early stakeholder outreach period, the BWC shared the proposed rules with managed care organizations, the Ohio Association for Justice, Ohio Manufacturers' Association, National Federation of Independent Business, and other entities registered to receive notice regarding proposed rules. Based on feedback from stakeholders in the medical community, the BWC determined to modify a reference to surgeons to encompass treating physicians and amended the section addressing potential comorbidities to provide more clarity. During the CSI public comment period, two comments were received suggesting that spinal cord stimulators might be used for additional medical conditions. Medtronic recommended BWC approve spinal cord stimulators for treatment of diabetic neuropathy and permitting spinal cord stimulator treatment for patients who have defibrillators or cardiac pacemakers. BWC responded that the approved conditions for treatment using a spinal cord stimulator were developed based on a review of the medical literature, that diabetic neuropathy is not a treatable allowed condition for workers' compensation claims, and that the possibility of an adverse reaction between certain medical devices and a spinal cord stimulator could result in a poor outcome for the patient. The second comment from an individual physician recommended BWC incorporate various cervical pathologies in the list of approved conditions for treatment. BWC responded stating that the medical literature does not support the use of spinal cord stimulators for such conditions and that the current list of conditions allowed for treatment is limited to protect the health and safety of Ohio's injured workers pending the completion of additional research.

The business community impacted by the rules includes employers, managed care organizations, and medical providers affected by or engaged in workers' compensation claims processes. The adverse impact to business includes the costs associated with complying with the rule's criteria and processes for spinal cord stimulator treatment, such as educating participants and reviewing claims for accuracy and completeness. The BWC notes that research indicates that improved guidance on the use of spinal cord stimulator treatment is likely to reduce systemic costs over the long-term. The BWC states that the adverse impact to business is justified to effectively address the needs of workers who suffer from workplace injuries, improving health outcomes for workers and minimizing healthcare expenditures.

Recommendations

Based on the information above, the CSI Office has no recommendations on this rule package.

Conclusion

The CSI Office concludes that the BWC should proceed in filing the proposed rule with the Joint Committee on Agency Rule Review.