



Oregon

Theodore R. Kulongoski, Governor

Department of Consumer and Business Services
Workers' Compensation Division
350 Winter St. NE
PO Box 14480
Salem, OR 97309-0405
1-800-452-0288, (503) 947-7810
TTY (503) 947-7993
www.wcd.oregon.gov

July 1, 2005

Judy Johnson, Attorney at Law
Johnson, Nyburg & Andersen
PO Box 4400
Portland OR 97208-4400

Notice of Denial of Rulemaking Petition

Subject petition: Request for rulemaking to declare all forms of interferential stimulation non-compensable or to limit reimbursement

Dear Ms. Johnson:

This is to notify you that the Workers' Compensation Division denies your petition, dated April 25, 2005, to declare all forms of interferential stimulation non-compensable. You proposed the exclusion under ORS 656.245(3) and OAR 436-010-0300 on the grounds that this treatment is unscientific, has not been proven to be effective, and is experimental. As an alternative, you requested that reimbursement for this treatment be limited to that allowed for transcutaneous electrical nerve stimulation (TENS).

In compliance with ORS 656.245(3), the division consulted with the Medical Advisory Committee and sought the advice of professional licensing boards of practitioners affected by the proposed change. In accordance with ORS 183.390 and OAR 137-001-0070, the division requested public comment on the petition. Most of the respondents opposed the petitioner's recommendations. Based on professional advice, a review of public comment, and the evidence presented, the division finds that interferential stimulation has not been shown to be unscientific, unproven as to its effectiveness, or experimental.

The division considered the second part of the petition, the alternative that reimbursement for this treatment be limited to that allowed for TENS. ORS chapter 656 does not provide the director authority to limit prices based on efficacy. ORS 656.248 requires the director to adopt medical fee schedules and lists the resources that may be used to establish the fee schedules. These resources do not provide any basis for setting fees based on relative efficacy of treatments.

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If you disagree with this denial you may request a contested case hearing before the Office of Administrative Hearings. Your request must be in writing, specify the reasons you disagree with this denial, and mailed or delivered to the Workers' Compensation Division within 30 calendar days from the date of this denial. Send your request to the Technical Coordinator, Policy Section, Workers' Compensation Division, 350 Winter Street NE, PO Box 14480, Salem OR 97309-0405.

/s/ John L. Shilts

John L. Shilts, Administrator
Workers' Compensation Division

CC: File



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July 1, 2005

Judy Johnson, Attorney at Law
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PO Box 4400
Portland OR 97208-4400

Subject: Request for rulemaking to declare the RS-4i® non-compensable

Dear Ms. Johnson:

This is to notify you that the Workers' Compensation Division will not take further rulemaking action on your petition, dated October 29, 2004, to declare interferential stimulation, marketed as the RS-4i®, non-compensable. You proposed the exclusion under ORS 656.245(3) and OAR 436-010-0300 on the grounds that this treatment is unscientific, has not been proven to be effective, and is experimental. As an alternative, you requested that reimbursement for this treatment be limited to that allowed for transcutaneous electrical nerve stimulation (TENS).

In accordance with ORS 183.390 and OAR 137-001-0070, the division entered into rulemaking and also requested public comment on the petition. At the May 20, 2005 meeting of the Medical Advisory Committee, the manufacturer of the RS-4i®, RS Medical, testified that their device has two unrelated modalities, interferential stimulation and neuromuscular stimulation. Your petition did not contend that neuromuscular stimulation, as a modality, should be excluded from compensability.

The division considered the second part of the petition, the alternative that reimbursement for the RS-4i® be limited to that allowed for TENS. ORS chapter 656 does not provide the director authority to limit prices based on efficacy. ORS 656.248 requires the director to adopt medical fee schedules and lists the resources that may be used to establish the fee schedules. These resources do not provide any basis for setting fees based on relative efficacy of treatments.

By separate notice, the Workers' Compensation Division has denied your petition to declare all forms of interferential stimulation non-compensable. Therefore, there is no longer any basis to move forward with rulemaking on the RS-4i®.

If you disagree with this decision you may request a contested case hearing before the Office of Administrative Hearings. Your request must be in writing, specify the reasons you disagree with this decision, and mailed or delivered to the Workers' Compensation Division within 30 calendar days from the date of this letter. Send your request to the Technical Coordinator, Policy Section, Workers' Compensation Division, 350 Winter Street NE, PO Box 14480, Salem OR 97309-0405.

/s/ John L. Shilts

John L. Shilts, Administrator
Workers' Compensation Division

CC: RS Medical
File



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July 1, 2005

TO: All interested parties

SUBJECT: Denial of petition to declare all forms of interferential stimulation* non-compensable
**Interferential stimulation is also known as "interferential electrotherapy."*

The Workers' Compensation Division recently asked for public comment on a petition for rulemaking. That petition requested adoption of a rule to declare all forms of interferential stimulation non-compensable for the treatment of injured workers. The petitioner maintained that interferential stimulation is unscientific, has not been proven to be effective, and is experimental. As an alternative, the petitioner asked that reimbursement be limited to that allowed for transcutaneous electrical nerve stimulation (TENS).

Although evidence was presented in both support and opposition, most of the comments submitted opposed the petitioner's recommendations. Based on those comments, professional advice, and the evidence presented, the division finds that interferential stimulation has not been shown to be unscientific, unproven as to its effectiveness, or experimental. The division considered the second part of the petition, the alternative that reimbursement for this treatment be limited to that allowed for TENS. We do not have a basis in law to limit reimbursement based on the relative effectiveness of treatment options.

To all of you who submitted comments and medical evidence, we sincerely appreciate your input. We will continue to work closely with the Medical Advisory Committee on development of public policy regarding evidence-based medicine.

If you have questions, please contact Fred Bruyns, Rules Coordinator, (503) 947-7717.

/s/ John L. Shilts

John L. Shilts, Administrator
Workers' Compensation Division

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CC: Petitioner
RS Medical
File



January 27, 2005

To: John Shilts

From: Nancy Bieber, WCD staff support for MAC

Re: Interferential Stimulation (IFS)

Last fall, Liberty Northwest requested that WCD adopt a rule to declare the IFS non-compensable treatment pursuant to OAR 436-010-0300. This issue was presented to the Medical Advisory Committee at their meeting on November 19, 2004. Following a preliminary review of the topic, the consensus of the MAC members was that basically the IFS is essentially a TNS unit. MAC recognized, however, that the cost of an IFS unit was much higher than the cost of a standard TNS unit. Therefore, MAC made the following recommendation:

An IFS unit should be reimbursed at the same rate as a typical TNS unit.

MAC has not made a determination as to whether the IFS fits the criteria for exclusion, that it is experimental, unproven, unscientific or outmoded.

Cc Kevin Willingham
Debra Buchanan
Fred Bruyns