



Oregon

Theodore R. Kulongoski, Governor

Department of Consumer and Business Services
Workers' Compensation Division
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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