

Summary of Proposed Rule

Post-Traumatic Fibromyalgia

This proposed new rule defines "post-traumatic fibromyalgia" and its relationship to a physical injury.

This proposed new rule implements the development of guidelines by the Health Care Advisory Panel relating to health care services when a claimant has a diagnosis of post-traumatic fibromyalgia.

This proposed new rule outlines the diagnostic criteria and impairment criteria for post-traumatic fibromyalgia, for the purpose of improving the likelihood that an injured worker can be returned to optimum function, and to gainful employment, following an injury.

FISCAL NOTE FOR PROPOSED LEGISLATIVE RULES

Rule Title: Title 85 Series 30: Post-Traumatic Fibromyalgia

Type of Rule: ☒ Legislative Exempt ☐ Interpretive ☐ Procedural

Agency: Bureau of Employment Programs
Workers' Compensation Division

Address: 112 California Avenue
Charleston, WV 25305

1. Effect of Proposed Rule

	Annual		Fiscal Year		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	Unknown	Unknown	Unknown	Unknown	Unknown
PERSONAL SERVICES	0	0	0	0	0
CURRENT EXPENSE	0	0	0	0	0
REPAIRS & ALTERNATIONS	0	0	0	0	0
EQUIPMENT	0	0	0	0	0
OTHER:					
Benefit payments	Unknown	Unknown	Unknown	Unknown	Unknown

2. Explanation of above estimates:

Implementation of this rule will not require any change in general and administrative expenses. Because this rule establishes the compensability and non-compensability of a medical condition, it is unknown what the costs and savings will be in benefit payments in light of what may have been paid without the defining guidance of this rule.

3. Objectives of this rule:

This rule establishes the policy and procedure of the Workers' Compensation Division related to claims alleging work-related post-traumatic fibromyalgia.

Rule Title: Title 85 Series 30: Post-Traumatic Fibromyalgia

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

It is expected that this rule will contribute toward more efficient, thorough, and informed health care management by the Workers' Compensation Division, and will result in savings in medical and rehabilitation costs.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

It is expected that with lower claims costs, employers will receive lower premium rates.

C. Economic Impact on Citizens/Public at Large.

It is expected that better health care management will contribute toward better health care of injured workers.

Date: _____

10/10/87

Signature of Agency Head or Authorized Representative

William F. Vieweg

William F. Vieweg
Commissioner, Bureau of Employment Programs

TITLE 85
LEGISLATIVE RULE
WORKERS' COMPENSATION DIVISION

SERIES 30
POST-TRAUMATIC FIBROMYALGIA

FILED
Oct 10 4 08 PM '97
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§85-30-1. General.

1.1 Scope. -- This rule establishes the policy and procedure of the Workers' Compensation Division related to claims alleging work-related post-traumatic fibromyalgia.

1.2. Authority. -- W.Va. Code §§21A-2-6(1), -6(2) & -6(14); 21A-2-19; 21A-3-7(b) & -7(c) and 23-1-1. Pursuant to W.Va. Code, §21A-3-7(c), rules adopted by the compensation programs performance council and the commissioner are not subject to legislative approval as would otherwise be required under W.Va. Code, §29A-3-1 et seq. Public notice requirements of that chapter and article, however, must be followed. Pursuant to Enrolled Committee Substitute for House Bill 4030, Regular Session, 1994, the Department of Commerce, Labor and Environmental Resources was abolished. Pursuant to that same bill and to Executive Order No. 5-94 by the Governor, the Commissioner of the Bureau of Employment Programs is empowered to promulgate rules and regulations without the consent or approval of a departmental secretary.

1.3. Filing Date. -- _____

1.4. Effective Date. -- _____

§85-30-2. Purpose of Rule.

The purpose of this rule is to implement the provisions of W.Va. Code, §23-4-3(a)(1), §23-4-3a, §23-4-3b, §23-4-3c which relate to the development of guidelines for the provision of health care services. West Virginia Code § 23-4-3b(a) provides that the Health Care Advisory Panel shall "establish guidelines for the health care which is reasonably required for the treatment of the various types of injuries and occupational diseases within the

meaning of section three [§23-4-3] of this article." This rule is intended to insure that the care which is provided to claimants is medically indicated and consistent with the best health care information available. Pursuant to W.Va. Code § 23-4-9, "it is a goal of the workers' compensation program to assist workers to return to suitable gainful employment after an injury." This rule, therefore, is further intended to promote health care services which will are likely to improve an injured worker's likelihood of returning to gainful employment, rather than services which are likely to promote more prolonged disability and diminish the worker's opportunities in the workplace.

§85-30-3. Definitions.

As used in this legislative rule, the following terms have the stated meanings unless the context of a specific use clearly indicates another meaning is intended.

3.1. "Commissioner" means the Commissioner of the Bureau of Employment Programs.

3.2. "Division" shall refer to the Workers Compensation Division of the Bureau of Employment. Programs.

3.3. "HCAP" means the Health Care Advisory Panel.

3.4. "Post-traumatic fibromyalgia", also known as myofascial pain syndrome, reactive fibromyalgia, or secondary fibromyalgia means fibromyalgia arising within six months of a physical injury and bearing a substantial relationship to the physical injury. It is a variant of a chronic pain syndrome. It is a chronic, diffuse musculoskeletal pain lasting at least three months, affecting a minimum 11 (of 18, nine

bilateral) characteristic trigger points and/or tender points in the absence of synovitis; pain must be present in the axial skeleton as well as all quadrants of the body. It has no documented causal relationship to the workplace, and is a symptom syndrome without known physiologic explanation or pathophysiologic correlation of the symptoms. There are no diagnostic tests found so far to have value. Epidemiologic studies to date fail to confirm external risk factors.

§85-30-4. Compensability.

4.1. A primary diagnosis of fibromyalgia is not a compensable condition, due to the absence of both physiologic basis for assessment and widely accepted etiologic cause in the workplace established by objective means.

4.2. Fibromyalgia can be compensated as a secondary diagnosis with an additional, maximum 5% impairment, if the following conditions are met:

4.2.1. The primary diagnosis is accepted as a work related condition, and

4.2.2. The secondary fibromyalgia diagnosis is supported by the traditional diagnostic criteria, impairment classification criteria outlined by the ACR, and accompanied by medical record justification, and

4.2.3. The fibromyalgia condition is convincingly demonstrated to have arisen from the primary work related condition.

4.3. Compensation for a secondary diagnosis of fibromyalgia is available only from the date of injury until one year from the date that the compensable primary condition is resolved.

§85-30-5. Lack of compensability for fibromyalgia not dispositive of other issues.

The presence of a diagnosis of fibromyalgia does not disqualify the injured worker from compensation for illness and suffering which may have been identified in arriving at the diagnosis; the fact of a fibromyalgia diagnosis is neutral, and reflects a lack of information content.

§85-30-6. Other conditions compensable.

6.1. Workers who carry a fibromyalgia diagnosis may be compensated for other conditions which can be established objectively, such as underlying musculoskeletal disorders.

6.2. In each case, the usual standards of diagnostic proof and etiologic workplace causation apply.

§85-30-7. Consultation.

Claims managers handling fibromyalgia claims will have consultation available with outside medical experts in claims in which the diagnosis suggests controversy.

Cecil H. Underwood
Governor

William F. Vieweg
Commissioner



West Virginia Bureau of Employment Programs

- Job Service/Job Training Programs • Labor Market Information
- Unemployment Compensation • Workers' Compensation

an equal opportunity/affirmative action employer

October 10, 1997

The Honorable Ken Hechler
Secretary of State
Office of the Secretary of State
Main Capitol Building
Charleston, WV 25305

Dear Secretary Hechler:

RE: Approval of Final Filing of Exempt Legislative Rule
"Post-Traumatic Fibromyalgia"
85 CSR 30

Pursuant to West Virginia Code § 5F-2-1(b)(2), the Bureau of Employment Programs is not part of an executive department of state government and is not subject to the control of a departmental secretary.

Pursuant to West Virginia Code §§ 21A-2-6 and 23-1-1, the Commissioner of the Bureau of Employment Programs has the authority to promulgate rules that have been approved by the Compensation Programs Performance Council pursuant to West Virginia Code §21A-3-7.

Accordingly, please accept this letter as my formal approval for the initial filing of the above designated exempt legislative rule.

Sincerely,

William F. Vieweg
Commissioner

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

OCT 10 4 08 PM '97

FILED

Legal Services Division

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