



**Medical Services Review Board
October 23, 2008
Minutes**

Members Present:

Beth Baker, M.D.
Barbara Baum, MS PT
Jeffrey Bonsell, D.C.
Sharon Ellis, R. N.
Barb Gibson, M.D.
Michael Goertz, M.D.
Gregory Hynan, D.C.
Robin Peterson, PT
Reed Pollack
Elizabeth Shogren, R.N.

Members Excused:

Philip Bachman, M.D.
Rose Hatmaker
Andrew Schmidt, M.D.
Jon Talsness, M.D.
Andrea Trimble Hart

Members Absent:

Kathi Hendrickson, R.N.
Charles Hipp, M.D.

Staff:

Kate Berger
Penny Grev
Julie Klejewski
William Lohman, M.D.
Patricia Todd
Lisa Wichterman
Jana Williams

Visitors:

Marge Bigelow, MAPS
Carolyn Blodgett, SFM
Natalie Haefner, WCRA
Becky Schierman, MMA
Erin Sexton, Medtronic
Mike Gonzales, Abbott Lab's

The meeting was called to order by Chairperson Beth Baker at 4:08 p.m. A quorum was present. Members and staff introduced themselves.

Approval of the April 17, 2008, Minutes

Barbara Baum made a motion to approve the April 17, 2008, minutes as presented. Sharon Ellis seconded the motion. All voted in favor of the motion and it passed.

Assistant Commissioner Announcements and Update

Patricia Todd, Assistant Commissioner, gave an update on the Worker's Compensation Unit working with external stakeholders in various work groups. They have been meeting over the spring, summer and fall on proposals for the upcoming legislative session. The work groups plan to have their recommendations to the WCAC at their next meeting sometime the end of November.

Summaries from the meetings of these work groups are available online at http://www.doli.state.mn.us/wcac_workgroups.html.

Final Review of Proposed Rules

Dr. Lohman began and led the discussion on the proposed rules for amendments to the treatment parameters and PPD schedule. All should have received the Notice regarding changes to both. Lohman reported they are in draft form and changes are still needed. Members will be continually updated on the rulemaking progress and procedures.

1. Treatment Parameters:

After the last MSRB meeting we had a recommendation from Robin Peterson to open up a dialog with the Physical Therapy Association about the use and characterization of Functional Capacity Evaluations. Current Treatment Parameters limit Functional Capacity Evaluations to one per claim for low back injuries and upper extremity disorders. Inadvertently that limitation was left out in the parameters for neck and thoracic pain. First recommendation is to add the same recommendations into the neck and thoracic parameters that already exist in the low back and upper extremity.

There is also a need to distinguish between “full scale FCE” and “comprehensive FCE” and the various other types of functional testing. The comprehensive functional capacity assessment or evaluation is an individualized examination and evaluation that objectively measures the patient’s current level of function and be able to perform functional work related tasks and predicts the potential to sustain these tasks over time. DLI recommends that the Board accept this recommendation as a clarification of what was intended by this rule.

Motion by Baum to accept recommendation, seconded by Goertz. All voted in favor. Motion passed.

Lohman explained the next comment on the proposed rules on FCEs. The proposed language clarifies that it is the Comprehensive FCE that is not indicated during initial non-surgical management and other kinds of FCEs are allowed in specific circumstances.

Motion by Baum to accept recommendation, seconded by Gibson. All voted in favor. Motion passed.

Lohman explained the only other comment received objected to limiting the number of comprehensive FCEs to one per claim, and included some examples in which perhaps more than one FCE might be needed. The department’s analysis of those examples indicated they would all be covered by available departures in the treatment parameters so there was no need to remove the restriction on comprehensive FCEs to one per claim. The department recommends no action.

A summary of the comments received and action taken related to FCEs is shown in the attached tables.

2. PPD Schedule:

Lohman stated a few drafting changes have occurred on page 15 and he pointed them out to the members. He then began to review the first comment received, which was on the definition of radicular pain. The current definition does not include a requirement that radicular pain be present at MMI and the department is recommending no action. After much discussion, it was agreed to defer this issue to a future date.

Lohman moved ahead to the first of several comments received on the proposed language for RSD. He explained why DLI is proposing amendments to the RSD rating, and stated the current proposed draft language was previously reviewed and approved by the board. The department recommends no action, therefore leaving the proposed language written as is. There was a lot of discussion held between the members on this issue.

A motion was made by Bonsell to approve the change as submitted by the department, which was previously approved by the board; seconded by Gibson. After more discussion a vote was called: 4 yes, no opposed, and 4 abstentions; the motion passed.

Lohman reviewed the rest of the comments received and actions taken regarding RSD as shown in the attached tables. There was no further discussion on this issue.

Lohman moved on to a comment received regarding malleolar fractures (see pages 22-23 of the proposed rule), as shown in the attached tables. The comment recommended reverting to the original language to resolve problems raised by the proposed changes. The department recommended reverting to the original language.

Motion by Shogren to accept the department's recommendation to revert back to the original rule, seconded by Baum. All voted in favor. Motion passed.

Lohman continued addressing the rest of the comments received, as shown in the attached tables, and suggested all of them be placed on future meeting agendas for discussion and possible recommendations by the Board for another round of changes to the ppd schedule. All members agreed with no formal vote.

Lohman pointed members to the "Statement of Need and Reasonableness" page in their packet. The legislature has determined that the Department, in its Statement of Need and Reasonableness for proposed rules, must evaluate the fiscal impacts of rule changes in the seven categories listed. As part of that process the department is asking all board members or anyone in the audience that has any information, comments or input on the fiscal impact of either the Treatment Parameters Rules or the PPD Schedule Rules changes to contact us with that information so we can incorporate it into our fiscal analysis. He noted DLI is also reaching out to the Insurer's Task Force and other stakeholders.

3. Final Report on Spinal Cord Stimulators:

Motion by Shogren to accept the report, seconded by Baum. All voted in favor. Motion passed.

Goertz complemented Lohman and stated this report is excellent work. Lohman continued the discussion with comments received on the proposed rules for spinal cord stimulators as shown in the attached tables. The first comment dealt with the psychiatric review required by the proposed rules. There was substantial discussion with no recommendation from the Board to change the proposed language.

Meeting Conclusion:

There was discussion on the topic issues for 2009 which include the ppd issues identified for future action and treatment parameter issues including injections, varieties of TENS units, varieties of traction devices, and laser therapy. It was then suggested that at the January meeting members talk about strategizing their priorities for the year. Come up with a top ten list of topics for the board to review. Lohman added he still has the literature review on Intrathecal Drug Delivery Systems and the final pieces of the Long Term Opiate rule to complete and present.

Todd recognized and thanked Sharon Ellis for all her work with the MSRB. This is her last meeting as she is retiring.

Motion to adjourn by Baum and Bonsell seconded. All voted in favor. Meeting adjourned at 5:56 p.m.

Respectfully submitted,

Julie Klejewski

Julie Klejewski
Executive Secretary

Attachment 1:

MSRB Meeting 10-23-08

Comments Received and Actions Taken Re: Proposed Rules for Amendments to Treatment Parameters

08-21-08 Draft	Comment	Action Taken
p. 11, 14, 17, 21	Distinguish between “full scale” FCE and various other types of testing that may be labeled FCE	<i>Accept 8-21-08 draft language; the original provisions were aimed at limiting “comprehensive FCE” not other types of testing.</i>
p. 11, 14, 17, 21	Do not limit more restricted functional testing that might be done as part of an active exercise program or a work hardening program.	<i>Accept 8-21-08 draft language; these other types of treatment are already governed by specific treatment parameters.</i>
p. 11, 14, 17, 21	Do not limit the number of comprehensive FCEs that may be done on the same injury	<i>No action; in the instances cited additional FCEs could be authorized as a departure.</i>

Attachment 2:

MSRB Meeting 10-23-08

Comments Received and Actions Taken Re: Proposed Rules for Amendments to PPD Schedule

10-15-08 Draft	Comment	Actions Taken
p. 1	Include a requirement in the definition that radicular pain be present at MMI	<i>No action; this is a medical definition. The change would be inconsistent with current case law. Discuss as part of a future round of amendments to the schedule.</i>
p. 1	Continue to include in the definition that radicular pain is characterized by consistent findings on provocation testing.	<i>No action; consistent findings on provocation testing is not considered a necessary component of the definition.</i>
p. 9	Clarify that radicular pain means symptoms “below the knee”	<i>No action; this is not true of all lumbar radiculopathies (e.g. L1 or L2).</i>
pp. 15	Do not eliminate the diagnostic criteria for RSD; removing the criteria will generate confusion and litigation and thus increase costs.	<i>Approved the 10-15-08 draft language; the WCCA has ruled repeatedly that application of this category cannot be limited by the diagnostic criteria.</i>
pp. 15	Substitute the IASP definition for RSD for the current definition	<i>No action.</i>
pp. 15	Distinguish between CRPS type I and type II; keep diagnostic criteria for type 1	<i>No action.</i>
pp. 15	Removing diagnostic criteria means that ppd will be based solely on examination findings	<i>No action; this is how ppd is determined for all other injuries.</i>
pp. 15	Since the “injury” in RSD is not to the anatomic structures or physiological systems covered in the cross references, any limitations due to RSD would be unratable.	<i>No action; the ppd schedule does not require that the injury be to the rated member but that the injury result in impairment to the rated member. While most often both the injury and the impairment are to the same member this is not always necessarily the case. E.G. a variety of injuries and conditions besides damage to the joint can lead to ratable impairment for loss of range of motion.</i>
pp. 15	Many of the cross references require that there be “organic disease or anatomical loss”; RSD is not an organic disease of these structures or systems and so could not be rated under these categories.	<i>No action; the schedule requires that there be organic disease and RSD is an organic disease that affects these structures or systems even if it is not solely or directly a disease of the system.</i>
p. 22-23	All medial malleolar fractures are intra-articular, so the distinction is irrelevant. The only true intra-articular fractures of the lateral malleolus are the type A fractures of the very tip, which are minor injuries that are ignored. Lateral malleolar fractures which cause disability are not intra-articular.	<i>Approved reverting to original rule language.</i>

p. 22-23	The schedule does not recognize fractures of the posterior malleolus, which can be a significant source of disability.	<i>Discuss as part of a future round of amendments to the schedule.</i>
Not in draft rules	Change 5223.0370 subpart 3 to eliminate the use of range of motion as a criteria for ppd	<i>Discuss as part of a future round of amendments to the schedule.</i>
Not in draft rules	Change 5223.0370 subpart 3 B to require abnormality in active range of motion instead of passive range of motion	<i>Discuss as part of a future round of amendments to the schedule.</i>
Not in draft rules	Change 5223.0370 to require that radiographic abnormalities used in rating ppd “be reasonably related to the injury or the patient’s symptoms”.	<i>Discuss as part of a future round of amendments to the schedule.</i>
Not in draft rules	Reduce the rating provided under 5223.0470 subpart 2 A (4) for arthroplasty of the 1 st CMC joint.	<i>Discuss as part of a future round of amendments to the schedule</i>

Attachment 3:

MSRB Meeting 10/23/08
Comments Received and Actions Taken Re: Proposed Rules for Spinal Cord Stimulators

	Comment	Actions Taken
p. 1 l. 31	What are the psychological contraindications?	<i>No change. While guidelines state that “evident unresolved major psychiatric comorbidity” is a contraindication, specific disorders are not identified in the guidelines. This is a clinical judgment made on an individualized basis given all of the clinical facts of the case.</i>
p. 1 l. 31	The proposed rule does not require psychological testing but leaves it to the discretion of the provider. The provider may not have had sufficient time with the patient to detect adverse psychological factors.	<i>No action.</i>