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Labor and Employment Alert: New Rule Designed To Improve Outcomes Following Low Back Injuries Effective on January 1, 2018

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CLIENT ALERT | 1.11.2018

The Bureau of Workers' Compensation will no longer reimburse spinal fusion surgery unless the injured worker first satisfies a protocol, which among other things requires at least 60 days of conservative care for low back pain. The new rule, which became effective on January 1, 2018, is designed to discourage the use of opioid medication and surgery for low back injuries in favor of conservative treatment such as physical conditioning, anti-inflammatories and pain management. The surgeon must personally evaluate the injured worker on at least two occasions prior to requesting authorization for surgery and is required to document the results of pain evaluation, a comprehensive orthopedic/ neurologic examination, diagnostic testing and a behavioral assessment. Co-morbidities such as smoking, obesity, diabetes and coronary artery disease are considered "modifiable conditions" that also must be addressed before surgery to improve surgical outcomes.

The focus of the rule is to implement the best medical practices for treatment of low back injuries and facilitate an injured worker's return to work as quickly as possible. From a study of lumbar fusion outcomes in Ohio, the bureau concluded that patients treated with fusion were able to return to work only 26% of the time, while workers treated non-surgically were able to return to work 67% of the time. These statistics are included in an appendix to the new rule entitled, "What BWC Wants You to Know About Lumbar Fusion Surgery," which both the injured worker and the injured worker's doctor must review and sign before fusion surgery is authorized. Failure to follow the requirements of the rule is to result in the surgery not being reimbursed and the surgeon's practices being scrutinized. Consult your Vorys lawyer for further details.