

From: Joe Pappalardo
Sent: Wed 8/31/2016 4:22 PM

Gallagher Sharp Newsflash: Trucking - Costly Testing to Diagnose Sleep Apnea May Be Coming

The Federal Motor Carrier Safety Administration's ("FMCSA") medical review board recently recommended that drivers meeting certain criteria pertaining to symptoms of sleep apnea may have to undergo expensive diagnostic sleep studies before medical examiners will certify them for interstate driving. The FMCSA's recommendation may lead to a formal proposed rule that would likely result in motor carriers and/or drivers paying for these costly sleep studies.

The FMCSA recommended that drivers with a body mass index ("BMI") of between 33 and 40 should undergo a sleep study if they possess just three or more of the following factors:

- 1) Hypertension
- 2) Type 2 diabetes
- 3) Male neck size exceeding 17 inches; female neck size exceeding 15.5 inches
- 4) A history of stroke, coronary artery disease or abnormal heart rhythm
- 5) Loud snoring
- 6) A small or recessed jaw
- 7) Witnessed apnea symptoms
- 8) Underactive thyroid
- 9) Age 42 or older
- 10) Male or post-menopausal female
- 11) Mellampati Score of 3 or 4, which is indicative of a small airway

Though the FMCSA would require drivers who have a BMI of 33 to 40 and meet three or more of the above-factors to undergo sleep studies, it would allow the truck drivers to obtain a 90 day conditional medical certification pending the results from the study (assuming sleep apnea is diagnosed) and initiation of a treatment plan.

Motor carriers and truck drivers should be aware that the above-recommendation, or something very similar, could turn into a rule enforced by the FMCSA. While motor carriers should never permit a truck driver to operate a commercial motor vehicle ("CMV") if he/she has sleep apnea that would affect his/her ability to safely operate the CMV, this recommendation, if enforced, would result in motor carriers/drivers being financially responsible for the costs associated with the recommended and required sleep studies.

We will continue to monitor this very important issue especially should it reach the rulemaking stage. If you have any questions, contact:

Joe Pappalardo
Gallagher Sharp | LLP

1501 Euclid Avenue, 6th Floor | Cleveland, OH 44115 | direct: 216.522.1320 | cell: 216.347.1745 | fax: 216.241.1608
jpappalardo@gallaghersharp.com

Robert D. Boroff
Gallagher Sharp | LLP

1501 Euclid Avenue, 6th Floor | Cleveland, OH 44115 | direct: 216.522.1169 | cell: 773.343.5641 | fax: 216.241.1608
rboroff@gallaghersharp.com
www.gallaghersharp.com