



January 20, 2020

Steven Markowitz, MD. Dr.Ph
U.S. Department of Labor
Office of Workers' Compensation Programs
Advisory Board on Toxic Substances and Worker Health
Room S-3522, 200 Constitution Ave. NW
Washington, DC 20210

Subject: Advisory Board Meeting January 28, 2020

Dear Dr. Markowitz:

The Alliance of Nuclear Worker Advocacy Groups (ANWAG) respectfully offer the following comments to the Advisory Board on Toxic Substances and Worker Health (ABTSWH) for the Board's consideration.

ANWAG is pleased that the Board's responsibilities have been expanded through the enactment of the FY 2020 National Defense Authorization Act. ABTWH is tasked by this statute to advise the Secretary of Labor on every aspect of the claim adjudication process. This includes the review of procedure manual changes prior to incorporation into the manual and claims for medical benefits.

Providing guidance to the Secretary before the Division of Energy Employees Occupational Illness Compensation (DEEOIC) incorporates any policy changes to the Procedure Manual (PM) is very important. With the Board's ability to weigh in during the early stages of the changes will allow DEEOIC to avoid any pitfalls which may result in making the process more difficult for claimants and their medical providers.

Below are two examples of recent changes to the PM which could possibly delay the approval of oxygen equipment and places an unnecessary burden on the treating physician.

1. Chapter 29.4b now requires a Letter of Medical Necessity (LMN) when a physician orders oxygen therapy for a worker.

The LMN must clearly identify the type of ancillary medical service sought, explain why it is medically necessary for the accepted condition, and specify the duration of use. The requestor is to submit any supporting documentation substantiating the medical need for the requested service (i.e.; medical reports, prescriptions, therapy reports, diagnostic reports.

If the LMN is deficient, DEEOIC sends a letter identifying the deficiencies.

2. Further, DEEOIC has reduced the time for a physician to respond from 30 calendar days to only 15 calendar days from the date of the letter. Since this deadline does not allow for the time it takes for mail delivery or weekends and holidays, the actual time allowed for a physician to respond is ten days or less. This likely will affect requests for other therapies and durable medical equipment and lead to delays for claimants. This is especially troublesome for the renewal of previously approved therapies, services and DME.

Both of these changes place unnecessary burdens on the providers which could result in the frustration, and in the long term, refusal to accept the white card. DEEOIC could have benefited from the expertise of the medical experts on the Board if they had shared this with ABTSWH in the early stages of the process.

ANWAG is encouraged that DEEOIC will confer with ABTSWH on policy changes early on. The reason for this statement is that DEEOIC has included the following statement on the front page of the PM,

The contents of this document do not have the force and effect of law and are not meant to bind the public in any way.

This statement reflects the [recommendation](#) adopted by the Administrative Conference of the United States in June of 2019. The three recommendations by the Conference are,

- Policy Statements Should Not Bind the Public.
- Recommended that "A policy statement should prominently state that it is not binding on the public..." and provide the identity and contact information of agency officials for the public to contact to offer alternative solutions.
- Facilitate "opportunities for members of the public, including through intermediaries such as ombudspersons or associations, to propose or support approaches different from those in a policy statement and to **provide feedback to the agency on whether its officials are giving reasonable consideration to such proposals.**" (Emphasis added)

We are also happy to hear that the Department of Labor will consult with the Chair concerning ABTSWH's requirements that a support contractor will need to assist with your work. One task for the contractor the Board may want to consider is to check the PM for conflicting policies. For example, one advocate represented a claimant who met the criteria for asbestos-related COPD presumption. However, the claim was denied because the claims examiner relied on page 9 of Exhibit 18-1 which

states that a worker must be a non-smoker. This Exhibit is based upon the [Econometrica Report](#) provided to DEEOIC in 2005.

There are continuing problems with the use of ICD-10 codes. It is not only billing issues but also can affect the eligibility of Special Exposure Cohort (SEC) claims. It's possible that by using a specific ICD-10 on medical records as opposed to a broader category could result in a claim being rejected as an SEC cancer.

During the September 4, 2019 ABTSWH teleconference this issue was mentioned on page 40 of the transcript.

So, I think what happened was that someone who uses the text for the code took a very, very specific ICD code as opposed to a, more of a broader range. What should have happened, I think, is that the second column, in the table on the right, the ICD-10 category code, broader code, B-34, C-34, etc., probably is more appropriate than the code range which is shown in the fourth columns on the right.

ANWAG respectfully requests ABTSWH to discuss this issue, perhaps after a presentation from the DEEOIC Medical Director and formalize into a recommendation the idea that the broader ICD code is more appropriate.

ANWAG appreciates this opportunity to provide comments for the upcoming teleconference. We thank you for the Board members' service.

Sincerely,



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