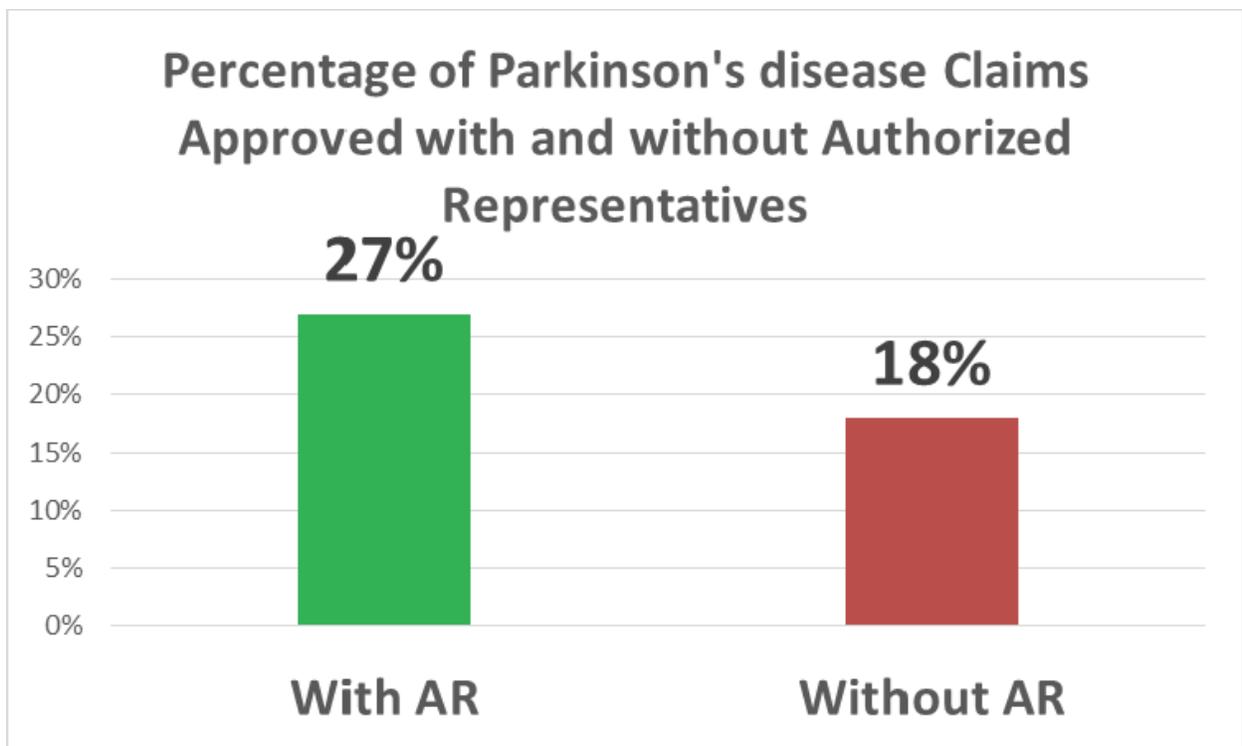




DOL's Conflict of Interest Policy and Why Authorized Representatives are Important to Claimants





Final Bulletin 14-04: DOL's Conflict of Interest Policy and Why Authorized Representatives are Important to Claimants

I greatly appreciate the Board advising DOL on *Final Bulletin 14-04, Authorized Representative Conflicts of Interest*. This bulletin has caused problems for sick workers since it took effect. DOL told the advocates that the reason for this bulletin is to prevent fraud by home health care companies. Preventing fraud is good and no one wants fraud perpetrated on sick workers or DOL. My concern, however, must lie with the sick workers as DOL has the ability to prevent fraud without making sick workers suffer. The home health care industry is very cut throat which causes problems for sick workers as well as DOL. There are things DEEOIC could do to improve the situation such as assuring all home health care companies are properly licensed and hold appropriate certification for the jurisdiction in which they are operating rather than allowing any company calling itself a home health care agency to operate without first verifying they meet the laws of the state in which they are practicing.

The current regulations state “A claimant may authorize any individual to represent him or her in regard to a claim under EEOICPA, unless that individual’s service as a representative would violate any applicable provision of law...” DOL has been acting in violation of this rule since 2014 and now is pushing to codify this violation in the new proposed rules changes.

In March I met two dedicated advocates from the Navajo Nation who have been hired by a home health care company to act as authorized representatives for sick Navajo workers. The Navajo Nation is huge—covering 27,413 square miles, roughly the size of West Virginia, and spans 3 states, Arizona, Utah, and New Mexico. Three quarters of all covered uranium mines are on the Navajo Nation so the need for assistance there is great.

If I remember correctly, each advocate drives about 2,000 miles a week. They need to be able to communicate in Navajo and know Navajo customs in order to work with this population. Both advocates know the pain caused by nuclear weapons work because of their own family histories.

Why is it so important that sick workers be allowed to have the authorized representative of their choice? Simply because sick workers with authorized representatives are more likely to have their claims approved. A review of all Parkinson Disease Final Decisions from June 27, 2006 to February 5, 2014 showed that 27% of PD claims with an authorized representative were approved while only 18% without were approved.

Authorized representatives are allowed payment of 2% of compensation awarded, or 10% if the claim goes through the hearing process. It can take years to get a claim

approved and some claims provide medical benefits but no compensation. This means the authorized representative receives no payment. Now I don't know about you, but I couldn't afford gas for 2,000 miles every week on my own. The only way these women can afford act as advocates is if someone hires them to do so. DOL's policy excludes them from working as authorized representatives.

Many sick workers cannot manage the difficult and cumbersome claims process alone. Those without authorized representatives often give up and never receive the compensation and medical care they are entitled to. Some family members act as authorized representatives, but if these family members also provide paid home health services DOL states they cannot act as authorized representatives for their loved ones. The result is the sick worker suffers because of DOL's policy.

Some sick workers have no one other than their nurse to act as an authorized representative. These sick workers may not receive the medical benefits to which they are entitled because they have no one to help them with the difficult and burdensome recertification process. Recertification is made even more difficult because DOL will often argue with the sick worker's physician and try to get them to reduce the amount of home health care the worker needs. DOL says they do this because they believe that home health care agencies try to influence the treating physician to provide more care than is necessary.

DOL has been very outspoken about their dislike of home health care agencies. At a recent annual meeting a DOL official described them as "diabolical", which struck me as way over the top. I understand that administering EEOICPA is difficult but this program was set up to provide necessary medical care to sick workers as a remedial program, which means it must be liberally interpreted in favor of the sick workers.

While I understand DOL's concerns about the possibility of someone from a home health care company committing fraud this must be managed in a way that does not harm the sick workers. To date, one person from one home health care company has been convicted of fraud. Managing the threat of fraud by assuming everyone within an industry is guilty without proof seems crazy to me, especially at such a cost to sick workers.

DEEOIC's Conflict of Interest policy is more restrictive than any other agencies I reviewed, including other OWCP programs, which are NOT remedial programs.

- FECA uses the same standard as is in the current DEEOIC rules.
- Longshore and Harbor Workers Compensation has restrictions on individuals acting as authorized representatives if they have been convicted of fraud, for professional misconduct, or for accepting non-approved or excessive fees. It removes those who have committed fraud or behaved inappropriately rather than assuming fraud will be committed.

DEEOIC needs to find a way manage their fear of home health care fraud without damaging the sick workers' right to medical benefits and assuming all connected with the industry are tainted.