

**BLBA BULLETIN NO. 15-05**Issue Date: **MAR 11 2015**

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Subject: Procedures for Maintaining the Division of Coal Mine Workers' Compensation's (DCMWC) List of Providers Authorized to Perform Department of Labor (DOL)-Sponsored Complete Pulmonary Evaluations

Background: The Black Lung Benefits Act (BLBA) requires the DOL to provide each miner who files a claim for BLBA benefits with a complete pulmonary evaluation. *See* 30 U.S.C. § 923(b); 20 C.F.R. § 725.406(a), (e). The Office of Workers' Compensation Program's DCMWC maintains a list of physicians who are authorized to perform these evaluations. Miners select the provider of their choice from the doctors on the list. *See* 20 C.F.R. § 725.406(b). After a review of our common procedures, and after consultation with the Office of the Solicitor, we are now establishing procedures for maintaining DCMWC's list of providers who are authorized to perform DOL-sponsored complete pulmonary evaluations. The procedures below outline criteria for adding and removing physicians from the list of approved providers.

Purpose: To provide guidance for the District Office staff when requests are made to add or remove a provider from the DCMWC List of Providers.

References: 30 U.S.C. § 923(b); 20 C.F.R. § 725.406(a), (e), 20 C.F.R. § 725.406(b), and 20 C.F.R. Part 718.

Applicability: Appropriate DCMWC Personnel.

Action: DCMWC staff are to follow these guidelines before physicians can be added to or removed from the DCMWC List of Providers Authorized to Perform DOL-Sponsored Complete Pulmonary Evaluations.

I. Provider criteria

Physicians must meet the following criteria in order to be added to DCMWC's list of authorized providers:

1. The physician must be qualified, i.e., must have extensive knowledge of or experience diagnosing and treating pulmonary disease. Physicians may establish this knowledge or experience in a variety of ways, including through:

- a. Board certification or board eligibility in an appropriate medical specialty, such as pulmonary medicine;
 - b. Affiliation with a black lung or other pulmonary clinic;
 - c. Significant history of treating patients in coal mining communities.
2. The physician must be able to administer or oversee administration of all the required portions of a complete pulmonary evaluation (a physical examination of the miner, a pulmonary function study, a chest roentgenogram, and a blood gas study). *See* 20 C.F.R. § 725.406(a). Alternatively, the physician must be able to refer the miner to a facility where such tests are conducted. The physician must be able to ensure that all tests are conducted in compliance with the standards set forth in 20 C.F.R. Part 718.
 3. The physician must be able and willing to produce a complete, well-documented and well-reasoned report of physical examination, taking into account the miner's employment and other relevant histories, the results obtained from the chest x-ray and pulmonary testing.
 4. The physician must be able and willing to produce this report in a timely fashion.
 5. The physician must be available for follow up and additional proceedings, including the preparation of supplemental reports, and providing testimony at a deposition or hearing.
 6. The physician must hold all licenses required to practice medicine in his or her field of specialty in every state where he or she practices, including the state(s) where he or she will perform the pulmonary evaluation. Those licenses must be active.
 7. The physician must complete any DCMWC-required training.

II. Procedures for adding physicians to DCMWC's list of authorized providers

1. The physician completes DCMWC's Enrollment Information Questionnaire and sends it and his or her curriculum vitae (CV) to the District Director for the district where the physician will perform DOL-authorized pulmonary evaluations.
2. After receipt and review of the physician's materials, the District Director interviews the physician in-person or by telephone.
3. Based on consideration of the physician's enrollment questionnaire, CV, interview, and any other relevant information available to the District Director, the District Director will send a memo to DCMWC's Branch of Standards, Regulations, and Procedures (BSRP) recommending whether the physician should be added to the preferred provider list.

4. If the District Director recommends that the physician be added, BSRP will verify the physician's medical licenses and board certifications, and submit the District Director's recommendation to the DCMWC's Program Director for approval.
5. If approved by the Program Director (or his delegate, the Deputy Program Director), the physician will be added to the list of approved providers.

III. Procedures for reviewing DCMWC's list of authorized providers

DCMWC will take the following actions to ensure that the physicians on its authorized provider list continue to meet the criteria for inclusion:

1. DCMWC will immediately request an updated Enrollment Information Questionnaire and CV from all providers who are currently on the provider list.
2. All physicians on the provider list must complete DCMWC-required training when notified to do so.
3. Annually, DCMWC will verify that the physicians on the list continue to have active licenses and board certifications.
4. Every five years, DCMWC will request an updated CV from each physician on the list. By FY 2016, DCMWC will make the physician CVs available to claimants online. (DCMWC will obtain permission to post CVs prior to doing so.)
5. Each time a physician is selected to conduct a DOL-sponsored pulmonary evaluation, DCMWC will send the physician a letter alerting him or her to the selection and outlining the terms of the agreement leading to payment. These terms include scheduling and conducting the evaluation and submitting an invoice to DCMWC. Beginning in FY 2016, this agreement will also require each physician to reaffirm that he or she will (1) evaluate all of the elements of a complete pulmonary evaluation, (2) ensure that the required tests are done in compliance with the standards set forth in 20 C.F.R. Part 718, (3) prepare a complete, well-documented and well-reasoned report, (4) return his or her report in a timely fashion, (5) be available for follow up, including the preparation of supplemental reports and providing testimony at deposition or hearing, and that the provider (6) continues to hold the licenses and certifications reported in his or her Enrollment Information Questionnaire and/or CV.

IV. Criteria for removing physicians from DCMWC's list of authorized providers

DCMWC has broad discretion to decline to add or to remove a physician from the list of approved providers for any reason, including the following:

1. Failure to meet any of the criteria for inclusion. (This includes failure to submit well-reasoned reports and failure to submit timely reports.)

2. Demonstrated inability or unwillingness to provide opinions that are consistent with the premises underlying the BLBA.
3. History of professional or personal misconduct that diminishes the physician's credibility and impacts the factfinder's ability to rely on the physician's opinion to determine whether a miner is entitled to BLBA benefits. Examples of such misconduct might include findings of:
 - a. Fraudulent professional conduct, including billing fraud; or
 - b. Negligence or recklessness in performing pulmonary evaluations.

V. Procedures for removing physicians from DCMWC's list of authorized providers

1. DCMWC obtains information suggesting that a physician should be removed from the approved provider list. This information could come from DCMWC observation or investigation, physician self-reporting, or a complaint from an interested party. If appropriate, the physician may be temporarily suspended from the authorized provider list pending investigation of the information.
2. The District Director for the district where the physician performs DOL-authorized pulmonary evaluations will write to the physician regarding DCMWC's concerns, copying BSRP, and invite the physician to respond.
3. When appropriate, the District Director and the physician will work together to remedy DCMWC's concerns. For example, if a physician is being considered for removal due to a pattern of submitting late reports, the District Director and the physician might design a plan to help the physician meet his or her deadlines.
4. After completion of attempts to rehabilitate the physician, the District Director will write to BSRP recommending whether the physician be removed from the authorized provider list.
5. If the District Director recommends the physician's removal, the physician will be temporarily suspended from the list, if he or she has not been already, until a final determination is made.
6. BSRP will verify any factual allegations in the District Director's analysis as necessary and make a final recommendation regarding removal to DCMWC's Program Director.
7. If the Program Director (or his delegate, the Deputy Program Director) approves a physician's removal, DCMWC will notify the physician in writing of its decision and remove the physician's name from the authorized provider list.
8. If the circumstances that justified the physician's removal render the opinion he or she offered no longer credible and prevent the District Director from relying on it to make a

determination regarding a miner's entitlement to benefits, the District Director must evaluate whether to offer each miner with a pending claim whose complete pulmonary evaluation was performed by the removed physician, a new complete pulmonary evaluation.

Please contact the Chief of Branch of Standards, Regulations and Procedures, if you have any questions.

Disposition: Retain this Bulletin until further notice.



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Distribution: All DCMWC Staff and Regional Directors.