Advisory Board on Toxic Substances and Worker Health

July 3, 2023

Ms. Julie A. Su
Acting Secretary of Labor
Department of Labor
200 Constitution Ave.
Washington, DC NW 20210

Honorable Secretary Su:

On behalf of the Department of Labor Advisory Board on Toxic Substances and Worker Health, I submit the attached Advisory Board Recommendation that was adopted unanimously at the Board's meeting on May 17-18, 2023.

We sincerely hope that our advice is useful to the Department. We thank you for the opportunity to serve as Board members and wish the Program continued success in meeting the needs of the United States energy employees. Please let us know if there are questions.

Sincerely,

Steven Markowitz MD, DrPH
Chair
Advisory Board on Toxic Substances
and Worker Health

Assessment of Validity of Contract Medical Consultant Reports in the Evaluation for Claims in EEOICP

Advisory Board on Toxic Substances and Worker Health Recommendation

(Adopted by the Advisory Board on Toxic Substances and Worker Health, May 17-18, 2022)

Recommendation

The ABTSWH recommends that the EEOICP implement a mechanism to evaluate the validity and accuracy of the opinions and rationales that are expressed in the reports of the Contract Medical Consultants (CMC) in the claims evaluation process, with particular attention paid to the issue of causation of disease. This process may most usefully be applied to denied claims but may also be applied prospectively to a number of claims under evaluation. This mechanism should have sufficient independence of the current method of developing and obtaining CMC opinions in order to avoid actual or perception of conflict of interest.

Rationale

The Board recognizes that the EEOICP has in the past assessed aspects of the quality of the Contract Medical Consultant (CMC) reports that are obtained in the evaluation of claims in EEOICP. These aspects include timeliness of report, selection of appropriate medical specialties, responsiveness to questions posed by claims examiners, inclusion of well-developed rationales in the reports, and others. These are important attributes of the contract medical consulting process and can be assessed by non-medical personnel.

However, the Board notes that the current evaluation process of the CMC reports does not directly assess whether the opinions expressed by physicians in these reports and the medical knowledge upon which they rely conform with generally accepted medical opinion. That is, the validity or accuracy of these reports is not assessed, either in the routine claims evaluation process or by way of a special audit of a sample of CMC reports on a periodic basis. As a general matter, physicians may face the same set of medical facts and may vary in their interpretation of those facts in making decisions, especially about disease causation. Such variation within a reasonable range of opinion is normal, expected, and tolerable. However, in its review of claims, the Board has noted that a minority of CMC reports are in gross error, even as they appear to meet quality criteria of timeliness, selection of appropriate medical specialty, responsiveness to questions posed by claims examiners, and inclusion of well-developed rationales in the

reports. This is not surprising given the volume of claims and the challenges inherent in decision-making about complex diseases and their causes. In addition, occupational medicine is a very broad medical discipline with many niches. Not all such physicians have the combined clinical and epidemiological skill sets required to weigh in accurately about disease causation

The EEOICP program needs to develop an enhanced capability, strategy and protocol to ensure that CMC reports are valid and accurate and that the current CMC contractor receives needed feedback and takes corrective actions to obtain a very high level of quality of CMC reports. The Board stands ready to provide additional advice to the program in this process.

Advisory Board on Toxic Substances and Worker Health

July 7, 2023

Ms. Julie A. Su
Acting Secretary, U.S. Department of Labor
Frances Perkins Building
200 Constitution Ave.
Washington, DC

Dear Ms. Su:

I am pleased to transmit a recommendation of the Department of Labor Advisory Board on Toxic Substances and Worker Health in relation to the Board's advisory capacity to the Energy Employees' Occupational Illness Compensation Program (EEOICP). It was adopted unanimously at our meeting on May 17-18, 2023 meeting. It is:

Improvements in Industrial Hygiene Assessment of Exposures in EEOICPA Claims

The Board hopes that our input is useful to EEOICP. It remains an honor for the Board to be consulted on important issues that face the Program. I would be pleased to answer any questions.

Sincerely,

Steven Markowitz MD, DrPH
Chair
Advisory Board on Toxic Substances
and Worker Health

Improvements in Industrial Hygiene Assessment of Exposures in EEOICPA Claims

Advisory Board on Toxic Substances and Worker Health Recommendation
(Adopted by the Advisory Board on Toxic Substances and Worker Health,
May 17-18, 2022)

Recommendation

The ABTSWH recommends that exposure assessments made by Industrial Hygienists (IH) be enhanced to specifically refer to the basic metrics of exposure science: (1) exposure intensity, (2) exposure route, (3) exposure frequency, and (4) exposure duration. These elements can have distinct value in determining causation. These metrics may further be divided by the facility and job under which they occurred for a claimant as relevant. We recommend that DOL adopt an IH exposure assessment form that puts the work of the IH in the context of these four basic metrics of exposure. The toxicants to be included on the form would be those determined relevant to the claimed medical conditions. An example form is provided with this recommendation.

Rationale

Referral of a case for industrial hygiene review and evaluation of potential exposure is a critically important part of the claim adjudication process, with numerous stakeholders relying on this evaluation for their next decisions. These include the claims examiner, the treating physician, the contract medical consultant and the claimant. The importance of this report in subsequent decision-making, especially causation analysis, is fundamental.

The basic metrics of an exposure assessment influence in distinct ways the different health effects associated with that exposure. These basic metrics are:

1. Type of exposure (direct, bystander, or area)
2. Route of exposure (inhalation, ingestion, skin absorption)
3. Intensity of exposure (concentration)
4. Frequency of exposure
5. Duration of exposure
6. Calendar timing of exposure (appropriate latency)
7. Use of personal protective equipment (PPE), engineering controls or other mitigating factors

Information about each of these elements of an exposure can contribute to the determination of causation for one condition differently from how that same exposure may contribute to another condition. Their value to this process may range from very relevant, to vague, to unknown. The accuracy of causation determinations by medical professionals can be harmed when all the aspects are fused together as a single metric as an exposure that may be of low relevance for one condition, could be of high relevance for another. For this reason, a singular assessment of relevance can obscure rather than aid the causation decision-making process.

Therefore, the Board recommends that the IH report explicitly state the sources of information used to make the determinations. In many cases, there is no documentation available, and this would be important information for the end user of the industrial hygiene report to have. Our recommendation is to implement a substantive change in the reporting of exposure assessments to better inform the determination of causation. Specifically, the exposure assessment and referenced summary report should include the key metrics describing the exposure as distinct categories for each relevant exposure. The Board proposes a new IH exposure assessment form (attached) including these metrics to help inform and guide this recommended change in process.

Proposed IH Exposure Assessment Form

Claimed condition:	Facility	Dates	Expos #1	Expos #2	Expos #3	Expos #4	Expos #5	Expos #6	Expos #7
Job #1:									
Type of exposure*									
Route of exposure**									
Intensity***									
Frequency^									
Duration (# years)									
Calendar years									
Use of PPE^^									
Source(s) of data			☐ SEM ☐ OHQ ☐ Interview ☐ IH data	☐ SEM ☐ OHQ ☐ Interview ☐ IH	☐ SEM ☐ OHQ ☐ Interview ☐ IH data	☐ SEM ☐ OHQ ☐ Interview ☐ IH data	☐ SEM ☐ OHQ ☐ Interview ☐ IH data	☐ SEM ☐ OHQ ☐ Interview ☐ IH data	☐ SEM ☐ OHQ ☐ Interview ☐ IH data
File page number(s) for IH monitoring data (or N/A)									
Comments re data sources									

Medical condition(s) for which compensation is being considered should be identified by the diagnostic term used in the claim.
Exposures #1, #2, etc. should be identified by name as listed in the SEM (if applicable).
*Direct, bystander, or area
** Inhalation, ingestion, skin absorption
*** High, medium, low
^ Daily, 2 or 3 X/week, a few times a month, 1/month or less
^^ Often, occasionally, never
^^^ Examples may include the SEM, on-site monitoring data (quality may be noted), OHQ, interviews, etc. Interview as source of data refers to interview conducted by the consulting industrial hygienist.

Proposed IH Exposure Assessment Form - Example

Claimed condition = COPD	Facility	Dates	Expos #1	Expos #2	Expos #3	Expos #4	Expos #5	Expos #6	Expos #7
Job #1: Pipefitter	Hanford	1/1987-9/1997	Asbestos	Cement	Silicon dioxide, crystalline	Welding fumes			
Type of exposure*			Direct	Direct	Direct	Direct and bystander			
Route of exposure**			Inhalation	Inhalation	Inhalation	Inhalation			
Intensity***			Low	Medium	Low	Medium			
Frequency^			A few times/mo	Daily	≤ Monthly	2-3 X/week			
Duration (# years)			10	10	10	10			
Calendar years			1987-1997	1987-1997	1987-1997	1987-1997			
Use of PPE^^			Often	Never	Occasionally	Occasionally			
Source(s) of data			☑ SEM ☐ OHQ ☐ Interview ☑ IH data	☐ SEM ☑ OHQ ☐ Interview ☐ IH data	☑ SEM ☐ OHQ ☐ Interview ☐ IH data	☑SEM ☑ OHQ ☐ Interview ☐ IH data			
File page number(s) for monitoring data (or N/A)			180, 203, 216	N/A	N/A	N/A			
Comments re data sources			IH monitoring 1995-1997						