



BLBA BULLETIN NO. 10-01

Issue Date: November 6, 2009

Expiration Date: Indefinite

Subject: Reporting Problems with Diagnostic Providers

Background: Although DCMWC has kept files on individual physicians and clinics in order to maintain the list of approved providers required by the December 2000 revision of the regulations, the program has not had a systematic method of reporting problems with diagnostic providers. The Government Accountability Office (GAO), in its recent study of the black lung benefits program ([GAO 10-7 2009](#)), pointed out that DCMWC had no way to formally track, control, and address provider problems. The Division agreed to establish such a reporting system in its response to GAO, and the procedures set forth in this Bulletin are aimed at fulfilling that agreement.

The GAO's concern, shared by the Division, is that DCMWC must ensure that every miner be offered the opportunity to substantiate his claim by the complete pulmonary evaluation required by the regulations, and that the evaluation be in substantial compliance with the regulations and the Act.

References: 20 CFR 718 Subparts B and C; 20 CFR 725.406.

Purpose: To provide guidance concerning a new DCMWC procedure establishing a database for tracking reports from claimants, DOL personnel, and third-parties, of problems that potentially impact a diagnostic physician's ability to provide timely and complete pulmonary evaluations.

Applicability: Appropriate DCMWC Personnel.

Action: District Offices and National Office components must report the following problems to the Branch of Standards, Regulations, and Procedures using the attached form. Instructions are also found on the form. District Directors must use their own judgment in reporting some of the issues, such as when to report a delay in receiving test results, but complaints from miners or their representatives about testing procedures must always be reported.

Miners' nonspecific complaints about the physician's findings need not be reported unless they are accompanied by other allegations. For example, a miner's complaint such as "the doctor said I did not have black lung even after I told him I worked for twenty years at the face" does not warrant a report. A miner's report that "the doctor said that I did not have black lung because I never smoked and only smokers get it" may warrant a report after careful review of the medical evidence submitted by the physician, since this includes the miner's implicit allegation that the physician is hostile to the Act.

Every incident should be reported. In order for the data to be reliable, it must contain the date of the test and claim information in addition to the substance of the report. Multiple problems with the same miner's testing may be reported on one report form, but incidents regarding multiple miners should be reported separately. In general, copies of the medical evidence in question need not be submitted.

District Directors should exercise judgment when deciding whether to submit a report for delayed test results, and experience with providers should be a key determining factor. For example, if a claims examiner routinely calls providers three weeks after the examination dates to remind them to send in test results, those calls would not reflect inordinate delays in submitting the reports. However, a phone call ten days after the time normally allotted for submission might warrant a report.

ABG, PFS, and X-ray reports that are deficient for non-technical reasons, such as miner's lack of cooperation in a PFS or breath-holding during an ABG, need not be reported. However, claims examiners should be particularly vigilant for claimant complaints about ABG testing procedures.

Problems with providers in cases where the office of the Solicitor of Labor (or the DD) has requested testing in addition to the complete pulmonary evaluation should also be reported. Even though such examinations are not required by Sec. 413b of the Act, the physicians performing these evaluations are included on the approved list and the same standards of compliance apply. To register these, please check the SOL/DD box as well as the problem that prompted the report.

We are also asking you to report claimant-initiated complaints about physicians performing examinations at the request of the responsible operator or insurer. GAO reported that it had received several comments about such testing. Although DCMWC cannot validate RO medical evidence, we can document complaints about test procedures when they are reported to the District Director by the claimant or claimant's counsel.

All telephone contacts and meetings between physicians and a District Director and/or the Deputy Director, DCMWC, for the purpose of improving the physician's compliance should be reported.

Although the report is prospective, there is no reason not to backfill information. If a District Office has had past problems with a provider, getting that information into the database may help DCMWC to determine if action is needed or if past action has led to improved compliance by the provider.

Reports must be signed by a District Director or supervisor and faxed, e-mailed, or mailed to BSRP. All information received will be input into the database by BSRP staff. The information will be used to keep track of current and potential problems, to anticipate those areas where additional support needs to be given to providers, and to consider a physician's removal from the authorized list.

Please contact Michael McClaran in BSRP (mcclaran.michael@dol.gov) if you have any questions.

Disposition: Retain this Bulletin until its expiration date or its incorporation into the Black Lung Benefits Procedure Manual.



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Distribution: List No. 3

(All supervisors, claims examiners, and workers' compensation specialists)