Advisory Board on Toxic Substances and Worker Health

January 16, 2024

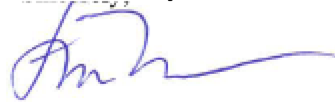
Ms. Julie A. Su
Acting Secretary of Labor
Department of Labor
200 Constitution Ave.
Washington, DC NW 20210

Honorable Secretary Su:

On behalf of the Department of Labor Advisory Board on Toxic Substances and Worker Health, I submit the two attached Advisory Board Recommendations that was adopted unanimously at the Board's meeting on November 15-16, 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

Assessing the Quality and Consistency of Consulting Physicians in Claims Evaluation in the EEOICP

Advisory Board on Toxic Substances and Worker Health Recommendation

(Adopted by the Advisory Board on Toxic Substances and Worker Health, November 15-16, 2023)

Recommendation

The ABTSWH recommends that the Department of Labor expand its quality assessment of CMC performance by implementing independent peer review of the validity of the content and analysis reflected in a quarterly sample of an appreciable number of CMC reports. Such peer review would be conducted by a small panel (2 to 3 physicians) of medical experts in causation analysis of occupational diseases. The goals are multiple: 1) to estimate the frequency of impactful correctable errors in causation determination contained in CMC reports; 2) to identify if there are systemic problems in CMC causation analyses; and 3) if so, to recommend effective and feasible solutions to reduce the frequency and impact of systemic errors in causation determination. The Board offers our assistance in planning for the implementation of this recommendation if accepted.

Rationale

The ABTSWH recognizes that the EEOICP conducts a robust quality assurance program of multiple aspects of its claim evaluation process and that this process underwent a major enhancement in 2022.

The quality of the CMC reports is currently evaluated according to a number of factors, including timeliness, appropriateness of medical specialty, presence of "well-rationalized" discussion, responsiveness to questions posed by the claims examiners (CEs), and others.

In a letter to the Board (August 31, 2023), the Department of Labor stated that current EEOICP procedures and guidance safeguard against erroneous opinions expressed in CMC reports. This is achieved by giving claims examiners proper guidance. CEs determine whether well-rationalized opinions are offered by CMCs. To do so, per the EEOICP Procedure Manual (Version 8.0), CEs must determine that CMC opinions have a "proper foundation;" represent a "reasonable justification;" not contain "contradictory information;" and have "a compelling discussion supporting a particular conclusion." The Procedure Manual further defines for the CE that a well-rationalized opinion from a physician "applies reasonable medical judgement informed by relevant, creditable medical health science information, as to how the exposure(s) at least as likely as not significantly contributed to, caused, or aggravated the employee's claimed condition." (all quoted text is from the EEOICP Procedure Manual, Version 8.0).

The Department of Labor letter to the Board further states that quality assurance reviews are performed by dedicated staff and that CEs may demand further opinion evidence from physicians. These are positive features, but it is the opinion of the ABTSWH that there remain insufficient processes in place to identify erroneous CMC opinions.

Despite the aforementioned safeguards, we are left with the following questions. Was the CMC opinion, even when sufficiently well-rationalized, right or wrong? How are CEs, who are not required to have broad training in occupational medicine, medical diagnosis, clinical exposure assessment, epidemiology, toxicology, biostatistics or causation analysis equivalent to that required in training of occupational medicine and other physicians, supposed to recognize when a well-rationalized opinion by a physician is incorrect? Are the current procedures or quality review process sufficient to detect incorrect CMC opinions? The Procedure Manual points out that this is not a question that the CE is charged to address: "It is not the role of the assessor to agree or disagree with the conclusion; just to determine that the physician has offered a reasonable justification for how he or she responds to the referral question." But the Procedure Manual does not give guidance on how a CE should go about determining whether an apparently "reasonable" opinion is informed by relevant, creditable medical health science information, i.e. whether the opinion aligns with accepted medical knowledge. We reviewed the claims evaluation process to identify where this gap in quality assurance is addressed and could find no one who is assigned to identify CMC opinions and conclusions that do not reflect a generally held consensus within occupation medicine.

The essential problem is that neither the CEs nor the quality assessment personnel have the fund of knowledge of "relevant, creditable medical health science information" and an appropriate skill set to determine whether a CMC causation opinion is likely to reflect current consensus of medical opinion. This is not the fault of the CEs or quality assessors: their strengths lie elsewhere - in administration, communication, coordination, analysis, etc. And, in response to the Department's request of the Board, this essential problem cannot be addressed by pointing to "specific guidance or references to medical health science data." Such guidance or knowledge regarding occupational disease causation determination in individual patients is spread across textbooks, journal articles, and other forms of scientific communication, and is integral to the clinical experience of occupational medicine physicians and some other occupational health professionals (for example, individual exposure determinations by industrial hygienists).

A full and proper assessment of the validity of CMC opinions and the arguments they depend upon ultimately requires a review of these opinions by peers - occupational medicine and other physicians who focus on causation, medical diagnosis, etc. It is only through such a knowledge-based review that it can be determined whether the evidence cited and used by CMCs is correct and relevant and whether the synthesis of that evidence by the CMC and the conclusions they draw reflect generally accepted medical analysis and opinions.

It is hardly surprising that peers are required to weigh in on key aspects of performance of a peer reference group. Specialized areas of knowledge and their

application – whether it be law, architecture, engineering, or medicine – require substantial periods of training, study and practice. The result is knowledge-based value added that improves decision-making. The Board's recommendation is intended to ensure that the claims evaluation process properly reflects high quality CE and CMC decision-making and will improve an already carefully considered quality assessment process that covers much, but still leaves an important gap.

Facilitating EEOICP Claims of Terminally Ill Claimants

Advisory Board on Toxic Substances and Worker Health Recommendation

(Adopted by the Advisory Board on Toxic Substances and Worker Health, November 15-16, 2023)

Recommendation

The ABTSWH recommends that the Energy Employees Occupational Illness and Compensation Program (EEOICP) designate a single program staff person at each district office within 30 days of the date of this recommendation to serve as an initial point of contact for claims that involve people who report that they are terminally ill.

Rationale

The issue of timely and appropriate claims evaluations and decision-making with regard to claimants who are very ill has arisen several times before the ABTSWH and pertains to the Board's 5th assigned task: "the claims adjudication process generally, including review of procedure manual changes prior to incorporation into the manual and claims for medical benefits."

The Board notes that the EEOICP Procedure Manual (Version 8.0) has specific provisions in Chapter 11 and Chapter 30 to address claimants who may be terminally ill, including identification of such claimants, priority handling of claims from such claimants, describing a method to resolve uncertainties regarding status as terminally ill, and addressing the need for hospice care. It is clear that this issue has received considerable attention from the EEOICP.

Addressing the many needs of a very ill person facing death in a matter of months is a difficult challenge for all concerned – the ill person, family, other caregivers, advocates such as lawyers or authorized representatives, and physicians. Under such circumstances, enlisting help for needed medical care or compensation from a government agency, especially undertaking an effort that involves navigating a multi-step, complex administrative process, can feel daunting, at best, or insuperable, at worst.

Streamlining the entry, re-entry, or monitoring of the claims process by assigning a single person within each EEOICP District Office to identify, monitor, and facilitate the claims of terminally ill people would be a very useful and compassionate addition to the efforts that the program already makes to accommodate such claimants. It would give the families and advocates a point of contact, which, in and of itself, would help forestall frustration and anxiety that may accompany the claims evaluation process. This person would have the experience and authority to monitor these claims to facilitate their resolution and overcome any "sticking points" that claims sometimes encounter in their

flow. In addition, this person would assess whether the current provisions of Chapters 11 and 30 in the EEOICP Procedure Manual are being followed or require modification.

If this recommendation is accepted, the Board would appreciate a report on how it is implemented and whether it has resulted in improvements in facilitating claims of terminally ill claimants.