UNITED STATES DEPARTMENT OF LABOR

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ADVISORY BOARD ON TOXIC SUBSTANCES AND WORKER HEALTH

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SUBCOMMITTEE ON MEDICAL ADVICE FOR CEs REGARDING WEIGHING MEDICAL EVIDENCE (AREA #2)

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MEETING MINUTES

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TUESDAY
JULY 12, 2016

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The Subcommittee met telephonically at 1:00 p.m. Eastern Time, Victoria A. Cassano, Subcommittee Chair, presiding.

MEMBERS

SCIENTIFIC COMMUNITY:

KENNETH Z. SILVER
LESLIE I. BODEN

MEDICAL COMMUNITY:

STEVEN MARKOWITZ, Board Chair
VICTORIA A. CASSANO, Subcommittee Chair

CLAIMANT COMMUNITY:

DURONDA M. POPE
KIRK D. DOMINA
FAYE VLIEGER

DESIGNATED FEDERAL OFFICIAL:

CARRIE RHOADS

Introduction and scope

Ms. Rhoads called the meeting to order at 1:07 p.m. Chair Cassano said that the purpose of the day's meeting was to lay a roadmap for the subcommittee and determine how to proceed. The subcommittee focused on four documents during the meeting: 1) the Procedural Manual, Chapter 2, Section 0800; 2) contracted medical professional statement of work; 3) claims examiner (CE) job description; 4) final adjudication board claims examiner job description. DOL is asking the subcommittee for clarification and recommendations regarding the assessment of medical opinions, methodologies for improving physician responsiveness, training resources for improving the quality of medical review of medical evidence, and application and guidance relating to assessing contribution or aggravation of office questions.

Procedure Manual

Member Silver took issue with the wording of 2(b) Medical Monitoring Programs such as the Former Worker Program. Former Worker Programs are not administered by DOE facilities; many are run by universities. A claims examiner might give privileged consideration to a company doctor and not appreciate the independence of the Former Worker Program. Chair Cassano said that the language on the Contract Medical Consultants (CMCs) – in order to form a truly reasoned decision the CMCs should be looking at all of the medical evidence that is presented whether or not the CE thinks it's reasonable or not. Member Vlieger wanted the CEs to go into the medical records from the sites. Member Boden said that published studies are also a potential source of information. However, it's not the place of the CE to be able to figure out what learned bodies or what peer reviewed papers should be used in the claim evaluation process.

Medical Evidence

On the issue of medical evidence, Member Vlieger wanted to see something about the valid diagnostic tests that are

used for various portions of claim evaluations. Chair Cassano had an issue with using death certificates because death certificates are inaccurate when it comes to the secondary cause of death. In terms of a hierarchy of data, healthcare providers have acquired that hierarchy through a lot of experience and claims examiners may not be sophisticated enough to understand a hierarchy of medical evidence and apply it to the claims process.

Member Markowitz wanted the subcommittee to formally look at the issue of affirmative assistance in the claims process. In many cases, the CE may not be aware of what evidence he needs. This issue can be examining along with the notion of creating a training document for the CEs. The subcommittee wanted clarification on wage loss and how it relates to the diagnosing physician's medical evaluation of a claimant. Member Vlieger said that it is out of scope of the job of the CE to assign weight to medical evidence. The CE is in a tough spot and the question from the subcommittee is, how does a CE apply the guidance for weighing medical evidence? How does someone without the proper training evaluate who is telling the truth and how convincing is the rationale that is used? If the CE determines that the evidence they are provided does not rise to the level of a rationalized opinion, then that information is provided to a CMC within the guidelines of some very restrictive questions. The CMC then opines on those particular questions. Whether or not a CE sends information to a CMC hinges on the CE determining that a physician's statement does not meet what the CE considers the level of evidence.

There do not seem to be audits on CMC reports to check for validity and medical accuracy. The CE does not have any guidelines on how to evaluate the report coming from the CMC.

It might be good to put together a focus group of CEs and ask them how they deal with particular situations. It would be helpful to have a couple of members of the subcommittee sit down with a CE and go through a claim. The subcommittee also wanted to work through a small percentage of claims to get a sense of the process that is used when a CE decides to use a CMC. Member Boden thought that paying physicians

for their time might be a good way of improving physician responsiveness to data requests. Member Silver wanted to get the quarterly management reports from DOL that track the CMC process. Getting the four most recent reports would be a good start.

Work Plan and Time Table

Chair Cassano said that the other documents that need to be reviewed, like the job descriptions, the statement of work, and other sections of the Procedure Manual – those can be discussed in another subcommittee telephone meeting prior to the October full board meeting.

Member Markowitz wanted to get data from DOL that would give the subcommittee a closer look into the process of decisions that the CEs are making. The list of reasons to send things to a CMC includes: clarification of diagnosis, causation and care, onset date, consequential injury treatment, clarification of conflict. Including the weighing of exposure information as part of the evaluation of medical evidence needs to be on the mind of the subcommittee. Another subcommittee is looking at the exposure matrices. DOL does not always differentiate between diagnosis and causation. Looking at how the DOL includes exposure is part of looking at how DOL weighs medical evidence. The subcommittee will also look at whether the CMC actually weights the industrial hygienist report. Finding out how much discernment the CE has in ignoring some evidence and moving other evidence forward to the industrial hygienist or CMC in order to get a valid opinion is a critical issue before the subcommittee.

As far as a formal recommendation to the DOL, the subcommittee thought it best to take its time to develop an approach that is useful instead of just trying to rewrite the Procedure Manual. The subcommittee will ask the DOL to provide them with the materials that they specifically requested the advisory board to review. These items include department letters, outreach efforts, development letters, etc. There is no standardized letter written by CEs requesting information. Each one is done on a case-by-case basis.

The subcommittee will look at the issue of aggravation. Aggravation is not just a causation issue, but it's a pre-existing condition that's been aggravated by exposure, the new disease, or the treatment of the new disease. One significant problem is how one differentiates between aggravation of a disease by exposure versus a natural progression of a disease. Member Vlieger asked if the DOL could assign a well-qualified claims examiner supervisor to the subcommittee calls. Member Silver said that a way out of the aggravation problem might be to list diseases like asthma and the things that can aggravate it and develop "slam dunk" presumptions. Getting the sentinel health event/occupational lists developed by Hawthorne and Melius in the 1980s and updated by Mullan in the 1990s would be a very useful tool for the subcommittee to have at its fingertips.

Member Boden wanted to know what are the exposures and/or diseases that people are submitting their requests to. If the subcommittee or full board is going to think about presumptions, it would be good to know which substances/diseases combination were high on the list. The frequency of diagnoses in claims has been requested by another subcommittee, there has not been a request to look at the frequency of exposures.

The occupational history questionnaire is something that the subcommittee is going to look at carefully during the course of its deliberations and whether it can be improved to help the claims examiner. If the occupational history questionnaire is going to be changed, the subcommittee wants to first look at the reports that come from the interviews of the workers to the Former Worker Medical Screening Program.

The subcommittee will be having another telephone call meeting in September. The meeting was adjourned at 4:02 p.m.

I hereby certify that, to the best of my knowledge, the foregoing minutes are on accurate summary of the meeting.

Submitted by:

Victoria A. Cassano, MD, MPHIL, MPH
FACPM, FACOEM
Chair, Subcommittee on Medical Advice for CEs re: Weighing Medical Evidence
Advisory Board on Toxic Substances and Worker Health
Date: 09/23/16