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

SEPTEMBER 13, 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

FAYE VLIEGER

DEPARTMENT STAFF:

CARRIE RHOADS, Designated Federal Official

JOHN VANCE, Policy Branch Chief, DEEOIC

Introduction

Ms. Rhoads called the meeting to order at 1:00 p.m. Chair Cassano recapped the first meeting of the subcommittee and restated the specific questions asked by the DOL program to the Advisory Board: 1) Clarify and make recommendations regarding the assessment of medical opinions; 2) Develop methodologies for physician responsiveness; 3) Develop training resources for improving the quality of medical review of the medical evidence and guidance regarding assessing contribution or aggravation to a preexisting disease.

Review questions from last subcommittee meeting and DOL's responses

The first question that the subcommittee asked was, "Who has the responsibility for gathering information that would support a medical opinion?" The department responded by saying that it is the claimant's responsibility. The underlying issue is housing the expertise that's needed on the causation and diagnosis side. How does this underlying issue impact the process of claims, review, and determinations?

Something that the subcommittee should think about is developing procedures that would make the claims examiners' job easier and more transparent. For specific covered illnesses there should be some kind of manual that describes the content contained in the consensus documents from expert bodies. Examiners could pull together consensus documents on the relationships between occupational exposure and disease outcomes. This resource should be publicly releasable.

The department said that only medical evidence goes to the CMCs. The department also said that there is no regulatory duty to assist the claimant, but they do assist anyway. It is routine for the claims examiners to assist claimants. The procedure manual has directions for the claims examiners about assisting claimants. But the department does help with phone calls and talking to treating physicians. In regards to sufficient evidence and historical wages, it is difficult to see how a doctor would address those issues by himself.

On unavailable records, the question from the subcommittee to the department was whether they receive a blanket of medical records so that the claims examiners can go and talk to whatever physician is on the list. Mr. Vance from DOL said that the cases can identify sources of information that might not necessarily be medical from the onset. If the department has no information then there are no avenues of development and the claim is not going to have a positive outcome. Cases are extremely disparate and have all kinds of assemblies of information and data that can lead a CE in different directions. If the claimant is living, he could go to a doctor and get a diagnosis. Some of the toughest cases are the individuals who worked at facilities in the forties and fifties and passed away in the seventies.

Weighing medical evidence is the trickiest issue that the subcommittee will encounter. The department said that CEs are trained to evaluate all the evidence that is submitted in the case file. The subcommittee still does not have a good grasp of how the CEs are trained. There are some training documents available but the basic process is that the senior CEs train newer CEs. There is no standardized training manual.

Member Vlieger said that the 2015 audit found that there was more than a 10 percent error going around in the way claims were developed and processed by CEs. Member Silver said that a long-term solution requires a curriculum with advancement and recognition for people who have acquired real expertise within the Office of Workers Compensation.

The department said that the treating physician isn't compensated unless the claim is accepted, as nothing can be paid without an acceptance. A claimant could go out and spend $2,000 for a nexus opinion and lose that $2,000 if the claim is not accepted. Mr. Vance said that the department would pay based on a coding structure in the billing services being provided by a physician, if there is an ICD-10 classification for a reporting of that nature that can be billed to the government. Member Boden wanted to get more information on exactly how physicians can bill for their work with the DOL program. Member Silver asked if there are physicians working on a contingency basis writing fully rationalized causation reports. Member Markowitz

said that subcommittee should look at individual claims to see how medical evidence is interpreted and moved.

Member Vlieger said that it's very stultifying to not be able to discuss anything with people in-between meetings. Ms. Rhoads said that the subcommittee can use email to communicate with each other as long as they copy her on the email. The subcommittee can also break into working groups if they wish.

Discussion of how to proceed

Ms. Rhoads said that it might take the program a couple of weeks to gather the training materials and training letters. Ms. Rhoads said that she would need to speak to someone about a timeframe for speaking with CEs. Chair Cassano said that the subcommittee needs to see cases from Part E cases because there are so many different types of information. Member Vlieger said that the subcommittee needs to look at Part E patients not just beryllium patients.

The subcommittee wanted to look at some actual cases prior to the full board meeting. Chair Cassano suggested that the subcommittee look at 28 cases. Before the October 16 subcommittee meeting it would be nice to have a discussion about the cases. The goal is for the subcommittee to have the cases by October 1. After the full meeting the subcommittee can discuss the training materials and the development of letters. There isn't time to do a deep dive before the October full board meeting.

Chair Cassano said that the subcommittee is going to look at the preliminary cases and then set up some standardized template to look at the cases. PII will be scrubbed from the summaries of the case reviews. The subcommittee also needs to put out some synthesized document on what they found out about the procedure manual.

In the future the subcommittee can have a discussion on whether the board is going to develop training materials or try to develop disease presumptions.

Member Markowitz wanted to make sure that the issue of operationalizing the legal requirements under the statute

regarding aggravation, contributions, and disease be incorporated into the claims process.

Member Vlieger said that the subcommittee needs to review the DOL's responses to the subcommittee's questions in light of what the subcommittee concludes about the evidence in the files.

Chair Cassano said that she will take an initial look at the cases, pull ten or fifteen that are relevant to Part E - some with referrals and some without referrals. She will also develop a template for what the subcommittee members should look for in those cases. Ms. Rhoads will assemble a to-do list from the meeting.

The meeting was adjourned at 2:44 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: 07/12/16