



JUN 12 2019

The Honorable Scott Tipton
U.S. House of Representatives
Washington, DC 20515

Dear Representative Tipton:

This is in reply to your May 2, 2019, letter concerning the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) Final Rule and a Request for Information (RFI) published by the Office of Workers' Compensation Programs (OWCP). The final rule, which was published on February 8, 2019, and became effective on April 9, 2019, updated the 2006 regulations regarding OWCP's administration of EEOICPA. The final rule updated the 2006 regulations by removing obsolete terms, making associated changes to regulatory cross-references within the updated regulations, and incorporating policy and procedural changes. OWCP issued the RFI, which is now closed, to conduct market research related to the likely capabilities of contracting with a single entity that would provide nationwide home health care services to EEOICPA beneficiaries, in order to assist beneficiaries who have difficulty finding well-qualified providers and attaining timely care.

With regard to the final rule, OWCP received 493 timely comments from 474 unique commenters in response to its November 18, 2015, Notice of Proposed Rulemaking (NPRM). Of the 493 comments, 348 did not address any of the proposed regulatory changes in the NPRM and thus were not discussed when the final rule was published. The remaining 145 comments referenced one or more changes to the 2006 regulations that were suggested in the NPRM, and we set out our section-by-section analysis of those comments in the preamble to the final rule. This analysis provided a summary of the comments received and our rationale for either making changes from the NPRM as a result of a comment, or declining to make changes suggested by commenters.

New Section 30.403 of the regulations addresses the processes for requesting and approving home health care services. The requirement for pre-authorization for initial home health care claims is not new and has been in place for over a decade. The only new step in the pre-authorization procedures is the requirement that the claimant initiate his or her request for home health care services by submitting a form, which is only required at the time of this first request, advising the claims examiner of the name and contact information of his or her treating physician. This will ensure the involvement of the claimant in the process of obtaining the medical benefits to which he or she is entitled, to enable communication with the treating physician, and to facilitate the provider getting paid for its services as quickly as possible.

None of the changes in the final rule make it more difficult for beneficiaries to receive home health care benefits. Rather, we have clarified existing procedures and developed mechanisms that will bring uniformity to and expedite the processes. OWCP does not expect the changes in the final rule to cause providers to leave the health care sector or to stop providing services.

OWCP provides regular outreach sessions around the country for medical providers, authorized representatives, eligible beneficiaries, and potential claimants, and the new regulations will be featured in our future outreach efforts. Please visit the following link to see OWCP's upcoming events: <https://www.dol.gov/owcp/energy/regs/compliance/Outreach/UpcomingEventsWeb.htm>. Since the final rule went into effect, OWCP has held two medical provider conference calls, on April 24 and 25, 2019, to briefly explain the regulatory changes in the February 8, 2019, final rule.

OWCP adjudicates claims and provides monetary payments and medical benefits in accordance with the provisions provided in EEOICPA, its regulations, and programmatic guidance. OWCP works to approve claims for all eligible claimants and to approve all medically necessary medical benefits specifically related to approved condition(s). Medical benefits are covered when OWCP receives well-rationalized and supported requests for medical services from qualified physicians that demonstrate that the services requested are medically necessary for the covered condition(s).

OWCP continues to cover physical therapy services, but has clarified in programmatic guidance that home-based physical therapy, as distinguished from physical therapy provided in an office setting, should only be provided when the medical evidence supports the necessity of the care being delivered in the home.

With respect to the RFI that it recently issued, it is not OWCP's intent to have one home health care provider for EEOICPA beneficiaries, or to contract with one organization to oversee and interface with all providers. If a contract is pursued, OWCP has no plans to require all beneficiaries to utilize the contracted provider, nor does OWCP plan to require that all providers work under such an umbrella. The RFI was intended to gather market research information on whether Medicare or Medicaid certification was a reasonable expectation and would provide value to its claimant population if in the future OWCP decided to pursue a contract with a vendor to improve claimant access to care.

Finally, you asked about the timeline for any changes to EEOICPA. There is nothing on the Department's regulatory agenda regarding implementation of the EEOICPA program. OWCP is continually updating its programmatic guidance, and the public may view those revisions by accessing OWCP's website at <https://www.dol.gov/owcp/energy/index.htm>.

If you have any questions, please contact the Office of Congressional and Intergovernmental Affairs at 202-693-4600.

Sincerely,



Joe Wheeler
Acting Assistant Secretary