

PATTY MURRAY, WASHINGTON
ROBERT F. CASEY, JR., PENNSYLVANIA
TAMMY BALDWIN, WISCONSIN
CHRISTOPHER MURPHY, CONNECTICUT
TIM KAINE, VIRGINIA
MARGARET WOOD HASSAN, NEW HAMPSHIRE
TINA SMITH, MINNESOTA
BEN RAY LUJÁN, NEW MEXICO
JOHN W. HICKENLOOPER, COLORADO
EDWARD J. MARKEY, MASSACHUSETTS

BILL CASSIDY, LOUISIANA
RAND PAUL, KENTUCKY
SUSAN M. COLLINS, MAINE
LISA MURKOWSKI, ALASKA
MIKE BRAUN, INDIANA
ROGER MARSHALL, KANSAS
MITT ROMNEY, UTAH
TOMMY TUBERVILLE, ALABAMA
MARKWAYNE MULLIN, OKLAHOMA
TED BUDD, NORTH CAROLINA

United States Senate

COMMITTEE ON HEALTH, EDUCATION,
LABOR, AND PENSIONS

WASHINGTON, DC 20510-6300

WARREN GUNNELS, MAJORITY STAFF DIRECTOR
AMANDA LINCOLN, REPUBLICAN STAFF DIRECTOR

www.help.senate.gov

November 29, 2023

VIA ELECTRONIC TRANSMISSION

The Honorable Julie A. Su
Acting Secretary
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, D.C. 20001

Dear Acting Secretary Su:

I write regarding alarming reports that the Department of Labor's (DOL) Office of Workers' Compensation Programs' (OWCP) poor management of the Energy Employee Occupational Injury Compensation Program Act (EEOICPA or "the Act") is negatively affecting Americans' medical care. The EEOICPA program serves energy workers exposed to radiation and other toxic substances, and reimburses qualified employees for medical care associated with chronic illnesses incurred due to exposures while serving our country. Constituents alerted me that beneficiaries are currently waiting over 90 days for DOL approval of treatment regarding chronic complex respiratory conditions. By comparison, the Centers for Medicare and Medicaid Services (CMS) has a 24-hour approval time.¹ DOL's slow response is preventing some workers from receiving timely medical attention. This is unacceptable and needs immediate remedy.

Providers report DOL often notifies the department received their request without any follow-up, explanation of how long it will take to provide approval for medical treatment, or justification for any delay. OWCP's opaque processes leave beneficiaries in the dark as they wait for treatment approval. Claims filed with the agency often are met with no answer for at least four to six months.² While OWCP has an Emergency Authorization Request Process, this process does not appear to be widely used by providers.³ The agency's response protocols do not offer any direction to patients.

¹ *Coverage Determinations*, Centers for Medicare and Medicaid Services (Last Accessed: November 14, 2023), <https://www.cms.gov/medicare/appeals-grievances/prescription-drug/coverage-determinations>.

² Amanda M. Fallon, *2022 Annual Report to Congress*, U.S. Department of Labor (August 30, 2023), <https://www.dol.gov/sites/dolgov/files/OMBUDSMAN/annualreport/2022AnnualReport.pdf>.

³ *Emergency Authorization Request Process*, U.S. Department of Labor (Last Accessed: November 14, 2023), https://www.dol.gov/sites/dolgov/files/OWCP/energy/regs/compliance/Emergency_Authorization_Request_Process.pdf.

Further, DOL's response lag has resulted in qualified beneficiaries waiting as long as 90 days to receive approval for care. In other words, beneficiaries can wait longer to receive authorization for a medication than the actual time they would need to use that medication as part of their treatment regimen.

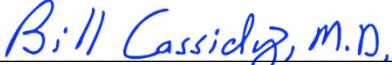
DOL must eliminate this backlog in a timely manner to ensure that medical care is available to American energy workers as Congress intended. Please provide answers *on a question-by-question basis*, by **December 13, 2023**.

1. What steps is OWCP taking to address the backlog of approvals within the EEOICPA program?
2. What metrics is OWCP using to measure if its efforts are successful?
3. What is the timeline for elimination of the backlog?
4. What instruction does OWCP provide providers on how to apply for coverage of affected workers?
5. How does OWCP inform providers of what to do in cases of urgent medical necessity?

What, if any, changes will OWCP institute to assist qualified workers and their providers experiencing critical health conditions while the backlog continues?

Thank you for your prompt attention to this important matter.

Sincerely,



Bill Cassidy, M.D.
Ranking Member
U.S. Senate Committee on Health,
Education, Labor, and Pensions