

# PUBLIC SUBMISSION

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**Docket:** WCPO-2015-0003

Claims for Compensation Under the Energy Employees Occupational Illness Compensation Program Act

**Comment On:** WCPO-2015-0003-0177

Claims for Compensation under the Energy Employees Occupational Illness Compensation Program Act

**Document:** WCPO-2015-0003-0196

Comment from Leslie Olkowski, Nuclear Care Partners

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## Submitter Information

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Grand Junction, CO, 81505

**Organization:** Nuclear Care Partners

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## General Comment

RE: RIN 1240-AA08

Nuclear Care Partner's respectfully requests the Advisory Board on Toxic Substances and Worker Health be allowed to review these proposed changes and provide guidance before they are passed. Please see attached letter.

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## Attachments

RIN 1240-AA08

February 8, 2016

Ms. Rachel P. Leiton  
Director, Division of Energy Employees Occupational Illness Compensation  
Office of Workers' Compensation Programs  
U.S. Department of Labor, Room C-3321  
200 Constitution Avenue, NW  
Washington, D.C. 20210

Re: *Regulatory Information Number (RIN) 1240-AA08*

Dear Director Leiton:

The purpose of this correspondence is to provide you with Nuclear Care Partners, LLC's (NCP) comments and concerns to the proposed changes to 20 CFR Part 30, which is entitled "Claims for Compensation Under the Energy Employees Occupational Illness Compensation Program Act of 2000." In this regard, NCP believes that many of the proposed changes will have a large negative impact on the individuals that the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) was designed to help. While NCP believes that this federal program requires regulation and oversight to prevent fraud and abuse, those changes should not delay or deprive the benefits that individuals are qualified to receive under the EEOICPA.

With that being said, NCP believes that prior to any changes being made to 20 CFR Part 30, the Advisory Board on Toxic Substances and Worker Health (ABTSWH) must be allowed to review the proposed changes and provide guidance with respect to them. Therefore, NCP would respectfully request that additional time be provided prior to any changes being made to 20 CFR Part 30 so that the ABTSWH may be empaneled to review the proposed changes and provide its comments on them.

Additionally, NCP feels that the proposed changes to 20 CFR Part 30, § 30.100, which would remove the language that allows someone other than the qualified individual to sign a written claim on that person's behalf, is detrimental to individuals filing claims. By not allowing Authorized Representatives to execute paperwork on behalf of the individuals they are helping to acquire benefits for, a significant amount of time will be added to the claim filing process. As you may be aware, many Authorized Representatives do not reside or work in the area where the individuals they are helping reside. Thus, by precluding Authorized Representatives from executing documents, additional time is added to the process of executing paperwork and getting

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it filed, particularly if the individual being helped is incapacitated due to his or her particular illness or is unable to understand the forms they are being asked to execute. This additional time would likely have serious effects on the individual filing the claim since many of them are terminally ill and are in immediate need of the types of services and benefits that the EEOICPA was intended to provide. Thus, NCP believes that Authorized Representatives, or those with Powers of Attorney over the individual filing the claim, must be allowed to continue to execute documents on an individual's behalf.

NCP also believes that the proposed amendment to 20 CFR Part 30, § 30.206(a), which would remove the language in regard to the proof of employment or physical presence at "a facility owned, operated, or occupied by a beryllium vendor" by simply referencing the definition of a beryllium vendor facility under 20 CFR Part 30, § 30.5(j), should not be done. This is because the definition of a beryllium vendor facility under 20 CFR Part 30, § 30.5(j), excludes those facilities that were "occupied" by a beryllium vendor. The exclusion of facilities that were only occupied by a beryllium vendor would mean that individuals that were exposed to beryllium dust, particles, or vapor at these sites would no longer qualify for benefits under the EEOICPA. Therefore, the language of 20 CFR Part 30, § 30.206(a), should remain as it is currently written, ensuring that all individuals the EEOICPA was intended to help are qualified to receive benefits.

NCP would also recommend that 20 CFR Part 30, § 30.400(c), not be amended to add language in regard to when appropriate services, drugs, supplies, and appliances may be furnished to an individual receiving benefits under the EEOICPA. The proposed change to this regulatory language would likely decrease the level of care qualified individuals are receiving since they would likely have to obtain substandard equipment or appliances for the treatment of their conditions in order to stay within permitted costs. Additionally, qualified individuals may seek out refurbished equipment or appliances in order to stay within permitted costs, and this equipment may need to be repaired from time to time, but since it is refurbished, it will likely come without a warranty, and any necessary repairs may not be made due to cost concerns. Furthermore, NCP would also recommend that this foregoing section not be amended to permit Office of Workers Compensation Programs to contract with specific providers to provide non-physician services and appliances as this change would take away an individual's right to choose who is providing their services, equipment, and appliances. In this regard, NCP believes that the selection of providers by the individual qualified to receive benefits under the EEOICPA, and that individual only, is of paramount importance and it is that individual's fundamental right.

NCP also believes that the proposed additional language to 20 CFR Part 30, § 30.403(c), which will require additional forms to be completed by qualified individuals, should not be

made. By requiring individuals to complete additional forms, like forms EE-17A and EE-17B, the Office of Workers Compensation Programs is placing additional burdens on qualified individuals and their time constrained physicians. Furthermore, not all individuals will be able to locate the required forms, and they may not be able to complete them in an appropriate manner to request the care they need as a result of their conditions. In addition to this, these forms also require the individual to mail them to the central mail room for the Division of Energy Employees Occupational Illness Compensation, which causes unnecessary delay in an already lengthy approval process.

Also, Form EE-17B places more of a burden on physicians as they will have to fill out an additional form to include with the letter of medical necessity and the plan of care that they must complete. In fact, it appears that Form EE-17B requires the physician to provide redundant information as the information required by that form can already be found in the letter of medical necessity and plan of care. Frankly, it has been estimated that it will take an additional thirty-five (35) minutes per patient for these additional forms to be completed. Given that, along with the fact that it takes, on average, one to two months for a response from the Department of Labor for home health requests, it is clear that additional delays will result if these forms are required, which would negatively impact qualified individuals as they will now have to wait longer for the care they need.

With respect to the proposed changes to 20 CFR Part 30, § 30.405, NCP believes that additional language must be added to define what reasons the Office of Workers Compensation Programs will find credible and supported by probative evidence when an individual wants to change physicians. NCP believes that further language is necessary because it appears that this proposed change would limit an individual's right to choose the physician that best meets their needs. In fact, it is NCP's belief that an individual's right to choose their own physician is of great importance as it is that individual's fundamental right to choose their own physician. Thus, any proposed amendments that would take away a person's right to choose their own physician should not be made.

Further, and in this vein, NCP believes that 20 CFR Part 30, § 30.5(ee), which defines the term "physician," should be amended as well. In this regard, the current definition of "physician" does not include Pulmonologists, Cardiologists, Oncologists, etc. The definition of "physician" needs to be amended to include the medical professionals that qualified individuals are seeing on a regular basis due to their ailments and chronic conditions. This is important because by not including these types of physicians, the Office of Workers Compensation Programs can actually be preventing individuals from being able to choose the type of physician they may want to see and/or that they may need to see.

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In regard to the proposed changes to 20 CFR Part 30, § 30.701(c)(1), and in particular, the language with respect to the potential adoption of the Home Health Prospective Payment System (HHPPS), NCP does not believe that this payment system should be adopted. This is because the HHPPS was developed and implemented by Medicare several years ago and was built to deal with acute illnesses. In regard to the HHPPS, the Department of Health and Human Services, Centers for Medicare & Medicaid Services, states that:

[D]ifferent resource costs for early home health episodes versus later home health episodes; the unit of payment under the HHPPS is a 60-day episode of care. A split percentage payment is made for most HHPPS episode periods. There are two payments – initial and final. The first payment is made in response to a Request for Anticipated Payment (RAP), and the last payment is paid in response to a claim. Added together, the first and last payments equal 100 percent of the permissible payment for the episode. There is a difference in the percentage split of initial and final payments for initial and subsequent episodes for patients in continuous care. For all initial episodes, the percentage split for the two payments is 60 percent in response to the RAP and 40 percent in response to the claim. For all subsequent episodes in periods of continuous care, each of the two percentage payments is 50 percent of the estimated case-mix adjusted episode payment. The case-mix and wage-adjusted national 60-day episode payment is adjusted for case-mix based on patient's condition and care needs or case-mix assignment.

Department of Health and Human Services, Centers for Medicare & Medicaid Services, Home Health Prospective Payment System (ICN 006816, February 2015).

In other words, implementing HHPPS will negatively affect the care that chronically ill patients on long term home health care receive. This is because a change to HHPPS will not only increase the burden on the Division of Energy Employees Occupational Illness Compensation, but it will also increase the burden on providers who will need to adjust to HHPPS to ensure accurate payments. In fact, a number of companies that are providing care to individuals under the EEPOICPA could go out of business as a result of a change to HHPPS, which would leave a number of chronically ill patients without the care they require. This potential issue could arise because when HHPPS was first implemented in the context of Medicare and Medicaid, approximately 30% to 40% of the home health agencies went out of business.

Basically, a change to HHPPS will require new coding and reporting systems to correctly account for the chronically ill that are receiving continuous care as part of the benefits they

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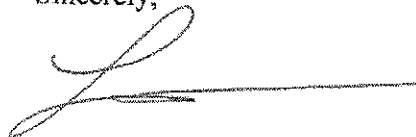
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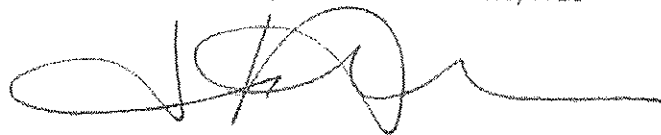
qualify for under the EEOICPA. In its current form, HHPPS is not set-up to manage the care of the chronically ill; rather, HHPPS was set-up to manage acute illnesses in which care is only required on a part-time or intermittent basis. Thus, NCP does not believe HHPPS should be implemented with respect to the services being provided to those individuals that qualify for benefits under the EEOICPA.

In summary, a number of the proposed changes would appear to have detrimental effects on the individuals the EEOICPA was designed to help. In saying this, however, NCP does believe that additional oversight and regulation is needed, but this should not come at the cost to individuals who are suffering from chronic and debilitating illnesses. NCP wants to thank you for your consideration of its comments and concerns about the proposed changes and NCP would be happy to provide any additional comment that the Division of Energy Employees Occupational Illness Compensation may ask for.

Sincerely,



Leslie Olkowski, Executive Director, NCP



Jenna Noem, Executive Director, NCP