

United States Senate

WASHINGTON, DC 20510

April 10, 2020

The Honorable Eugene Scalia
Secretary
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

The Honorable Alex M. Azar II
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Secretary Scalia and Secretary Azar:

As our Nation grapples with the COVID-19 pandemic, miners living with coal workers' pneumoconiosis, better known as black lung disease, are at particularly high risk. Many of these miners rely on black lung clinics, funded by the Department of Health and Human Services' (HHS) Health Resources and Services Administration, for essential services. These services include assistance with filing claims for black lung health and disability benefits administered by the Department of Labor's (DOL) Office of Workers' Compensation Programs. We write to request that DOL and HHS immediately provide clinics and the miners they serve with clear, written guidance regarding how miners' black lung benefit claims will be processed during this public health emergency and what specific flexibilities are being instituted to ensure miners do not lose access to essential benefits and treatment through no fault of their own.

Miners who develop black lung disease are at higher risk for complications if they contract the 2019 novel coronavirus, known as COVID-19, because of their underlying lung disease. These miners suffer from impaired lung function as a result of their prolonged exposure to coal and silica dust, leaving them vulnerable to severe respiratory illnesses. As COVID-19 spreads across the United States, it is critical that all steps are taken to minimize their risk of exposure while also ensuring continued access to vital Black Lung Program health and disability benefits miners and their families rely on for needed medical treatment and financial support.

Many miners rely on black lung clinics for assistance with medical diagnoses, treatment and education as well as for assistance with filing claims for Black Lung Program benefits. These clinics are spread across coal mining states and serve as lifelines for many miners and their families, particularly those living in rural communities. Black lung clinics, funded and overseen

by HHS, work closely with DOL to ensure miners' claims for Black Lung Program benefits are correctly submitted and contain all necessary evidence and supporting materials. COVID-19 has necessitated many changes to standard operating procedures to protect the health of miners and clinic staff. These steps are needed, but they have also created a great deal of uncertainty surrounding how cases should be processed and how critical services and treatments will be provided.

To address this uncertainty, it is essential that DOL and HHS provide clear and detailed guidance to black lung clinics and the miners they serve. Verbal assurances that deadlines will be relaxed and general statements that flexibility will be provided are not sufficient and leave miners with limited recourse should the agencies' positions change. As such, we request that DOL and HHS provide detailed written guidance to black lung clinics, miners and miners' family members receiving benefits regarding each of the following issues and post this guidance on the agencies' websites.

1. Miners and black lung clinic staff are concerned that miners who are not able to obtain and provide necessary medical evidence and supporting materials during this public health emergency may be punished for missing claims deadlines. While DOL has generally stated that deadlines will be relaxed, these individuals require detailed written guidance on which deadlines will be extended and for how long at each level of the claims process. This guidance should include suspension of specific time limits contained in the "Schedule for the Submission of Additional Evidence" and should extend deadlines by at least the amount of time that miners have been unable to access necessary testing and evaluation during this pandemic.
2. If DOL takes the position that it cannot legally extend any deadline, written guidance must be provided identifying the specific deadlines and explaining what steps DOL will take to ensure that any failure to meet these deadlines during this public health emergency will not permanently undermine miners' right to due process or access to benefits.
3. Many clinics have suspended all pulmonary examinations ordinarily used to determine benefit eligibility because the clinics believe that these examinations cannot be conducted safely at this time. The agencies should provide detailed and uniform guidance to all clinics instructing them to pause such examinations if it is unsafe to perform them. The agencies should provide further information on what changes to existing procedures must be made to enable the eventual safe resumption of testing.
4. During this public health emergency, miners with black lung disease need access to essential health services. The agencies should make available information on how quickly miners who were recently placed into payment status will receive the black lung benefits identification cards they present when receiving needed respiratory treatment and take every measure possible to get these cards delivered to miners as quickly as possible. The agencies should also provide written information on how miners who have not yet received their cards can obtain coverage for necessary respiratory treatment related to their underlying condition or COVID-19 without copays.
5. The agencies should provide information on how authorization is being provided for coverage of prescription drugs, medical services, needed medical equipment and other costs covered by Black Lung Program medical benefits. The agencies should detail any

additional flexibilities being granted to miners and their health care providers to ensure they do not lose access to medications, services or equipment.

6. Many miners undergoing pulmonary rehabilitation services may have their services interrupted during this public health emergency. Black lung clinics are concerned that the interruption may set miners' rehabilitation progress back. The agencies should provide information on how the authorization of these rehabilitation services will be handled now and going forward. This should include an allowance for miners to receive additional treatment sessions or re-start their rehabilitation to overcome setbacks from being forced to miss sessions.

Our Nation is facing incredible uncertainty, and DOL and HHS must fulfill their mission to protect the health of miners by providing clear information. Thank you in advance for your attention to this important matter. Please also send any guidance produced to the undersigned offices.

Sincerely,

/s/
Robert P. Casey, Jr.
United States Senator

/s/
Joe Manchin III
United States Senator

/s/
Sherrod Brown
United States Senator

/s/
Tim Kaine
United States Senator

/s/
Mark R. Warner
United States Senator