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DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

20 CFR Part 725

RIN 1240-AA11

Black Lung Benefits Act: Medical Benefit Payments

AGENCY: Office of Workers' Compensation Programs, Labor.

ACTION: Final rule; delay of applicability date.

SUMMARY: The Office of Workers' Compensation Programs (OWCP) has encountered unforeseen delays in implementing a new computer system to process payments for professional medical and hospital outpatient services made by the Black Lung Disability Trust Fund (Trust Fund) under the Black Lung Benefits Act (BLBA). This action delays the applicability date of two rules relevant to these payments, which were published in the *Federal Register* on June 14, 2018.

DATES: *Effective date:* This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Applicability date: The applicability date for 20 CFR 725.708(a) and (b) and 725.710 is delayed from November 30, 2019 to April 26, 2020.

FOR FURTHER INFORMATION CONTACT: Michael A. Chance, Director, Division of Coal Mine Workers' Compensation, Office of Workers' Compensation Programs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Suite N-3520,

Washington, D.C. 20210. Telephone: 1-800-347-2502. This is a toll-free number.

TTY/TDD callers may dial toll-free 1-800-877-8339 for further information.

SUPPLEMENTARY INFORMATION: The Trust Fund pays for covered medical services and treatments provided to certain miners who are entitled to BLBA disability benefits. *See generally* 33 U.S.C. 907, as incorporated by 30 U.S.C. 932(a); 83 FR 27690 (June 14, 2018). On June 14, 2018, OWCP published a final rule revising its regulations governing the payment of medical benefits by the Trust Fund. 83 FR 27690–27699. The revised rules adopt payment formulas that accurately reflect prevailing community rates for authorized treatments and services.

While the revised regulations became effective on August 31, 2018, 83 FR 27690, the Department set a separate applicability date for the rules governing payments for professional medical and outpatient services. *Id.*; *see also* 20 CFR 725.708(c) and 725.710(d). In adopting this approach, the Department explained that payment of these bills “would require extensive modifications to the existing computer processes for full implementation. The Department is currently transitioning to a new computer system and will realize cost-savings by building the new payment methodologies into that system rather than modifying the existing one.” 83 FR 27691.

The Department has been diligently working toward developing and deploying a new computer system to implement the new payment formulas but has encountered unforeseen delays. While many of the issues causing these delays have been resolved, OWCP cannot complete development of the new computer system without shifting significant resources from other critical workloads in time to process professional and outpatient bills by the current November 30, 2019 applicability date. As an alternative,

OWCP considered, but rejected, manually processing these bills in the interim. Based on black lung program data from FY 2015 through FY 2017, OWCP estimates it receives an average of approximately 69,000 requests annually for payment of professional medical services alone. OWCP does not have the staff necessary to manually process this volume of bills. Thus, without an adequate computer system, it would be impractical for OWCP to timely process and pay professional and outpatient bills due to the volume. As a result, the Department is delaying the applicability date of the rules governing payment of these bills until April 26, 2020, the day before the new computer system is now scheduled to become operational.

The Department's implementation of this action without opportunity for public comment, effective immediately upon publication, is based on the good cause exceptions in the Administrative Procedure Act, 5 U.S.C. 553(b)(B) and 553(d)(3). Section 553(b)(B) provides that an agency may issue a rule without notice and comment when the agency for "good cause" finds "that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." Section 553(d) provides that final rules may not become effective less than thirty days after publication in the *Federal Register* "except... as otherwise provided by the agency for good cause," among other exceptions.

Under these standards, the Department has determined that there is good cause for making this rule final without notice and comment procedures, and effective immediately upon *Federal Register* publication. As already noted, OWCP does not have the capacity to manually process the volume of bills it receives for professional and outpatient medical services. Thus, delaying the rule's application is a necessity: without the delay,

OWCP would no longer be able to promptly pay medical professionals and hospitals who provide treatment services to totally disabled coal miners. That result is contrary to the interests of miners and medical providers alike. Delaying the rules' application also does not impose any additional procedural burdens on the treatment providers. They will continue to seek payment in the same manner they do now no matter when the rules become applicable. *See generally* 20 CFR 725.714 and 725.715.

Finally, neither medical professionals nor outpatient services providers will be harmed economically by the delay in any significant way. The Department summarized its economic impact analysis of the new payment formulas in its notice of proposed rulemaking. 82 FR 739, 745–765 (Jan. 4, 2017). The Department compared payments it actually made from the Trust Fund in FY 2014 with payments it would have made if the new payment formulas in the proposed (and eventually final) rules applied. For both medical professionals and outpatient services, total annual Trust Fund payments decreased, in the aggregate, under the new payment formulas: \$8,493 for professionals and \$1,719,543 for outpatient services. 82 FR 746–748. Thus, delaying application of the new payment formulas will not, in the aggregate, harm the providers of either professional or outpatient services.

List of Subjects in 20 CFR Part 725

Administrative practice and procedure, Black lung benefits, Claims, Coal miners' entitlement to benefits, Health care, Reporting and recordkeeping requirements, Survivors' entitlement to benefits, Total disability due to pneumoconiosis, Vocational rehabilitation, Workers' compensation.

For the reasons set forth in the preamble, the Department of Labor amends 20 CFR part 725 as follows:

PART 725—CLAIMS FOR BENEFITS UNDER PART C OF TITLE IV OF THE FEDERAL MINE SAFETY AND HEALTH ACT, AS AMENDED

1. The authority citation for part 725 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); Pub. L. 114-74 at sec. 701; Reorganization Plan No. 6 of 1950, 15 FR 3174; 30 U.S.C. 901 *et seq.*, 902(f), 921, 932, 936; 33 U.S.C. 901 *et seq.*; 42 U.S.C. 405; Secretary's Order 10-2009, 74 FR 58834.

§ 725.708 [Amended]

2. In § 725.708, amend paragraph (c) by removing the date “November 30, 2019” and adding in its place “April 26, 2020”.

§ 725.710 [Amended]

3. In § 725.710, amend paragraph (d) by removing the date “November 30, 2019” and adding in its place “April 26, 2020”.

Julia K. Hearthway,

Director, Office of Workers' Compensation Programs.