



**State Representative  
Jack Cera**

**HOUSE INSURANCE COMMITTEE**

**June 21, 2017**

10:00 A.M. --- ROOM 116

SPONSOR TESTIMONY – HB 99

Thank you Chairman Brinkman, Vice Chair Henne, and Ranking Member Bocchieri ---

To my colleagues on the House Insurance Committee:

Black Lung Disease is a disease of the lungs caused by inhaling coal dust. As the disease progresses, patients experience severely impaired lung function. Sadly, quality of life decreases. House Bill 99 is legislation that creates new procedures for processing workers' compensation claims for coal miners with pneumoconiosis (black lung).

The Federal government, and most states, have laws in place for providing compensation, benefits, or both for individuals who contract coal miner's pneumoconiosis in the course of and arising out of the individual's employment. This proposal calls for Ohio to set up a specific board, the Occupational Pneumoconiosis Board that consists of 5 physicians. This board's primary duty will be to hear all medical disputes in all "black lung" claims.

The bill lays out the criteria an individual must have in order to be eligible for benefits: An individual exposed to the hazards of coal mining for a specified, continuous time-period is eligible to apply for benefits. The appropriate insurer must receive the completed application for benefits within three years after (1) the last day of the last continuous period of 60 days or more during the time the employee was exposed to the hazards of occupational pneumoconiosis or (2) a diagnosed impairment due to occupational pneumoconiosis was made known to the employee by a physician. In the case of death, the employee's dependents must file within two years after the employee's death.

A few years ago, the National Institute for Occupational Safety and Health (NIOSH) was asked by the Eastern Ohio Regional Hospital's Black Lung clinic to bring their mobile examination unit to Belmont County to give miners the opportunity to be examined and become part of a study known as the Enhanced Coal Workers Health Surveillance Program. This brought in miners both young and old who are now part of this study. Recent studies have shown that after years in which black lung cases have declined, the disease is once again on the rise. A report from the CDC published in December of 2016 describes the resurgence of the disease in Eastern Kentucky. Here is the link to the report,  
[https://www.cdc.gov/mmwr/volumes/65/wr/mm6549a1.htm?s\\_cid=mm6549a1\\_w](https://www.cdc.gov/mmwr/volumes/65/wr/mm6549a1.htm?s_cid=mm6549a1_w)

When talking to miners who were waiting to be seen at the NIOSH unit, I was struck by the fact that miners who lived in Ohio but worked in West Virginia could receive Temporary Black Lung Benefits while miners who

lived in Ohio and worked in Ohio rarely received benefits. While both were able to apply for Federal Black Lung, the problem is that receiving those benefits are difficult and often is a lengthy process. So long, that miners often say that they have to die, have an autopsy and hope that their spouses may receive benefits after they are gone. This bill would set up a process that would give miners who have been diagnosed with Black Lung an opportunity to receive temporary benefits while awaiting word on their federal case.

That day in Belmont County when the NIOSH unit came to town, I watched as miners who had worked 30 or more years in the coal mine waited to be examined. They were proud of the work they did but concerned about their health and family. Now our young coal miners who work long hours are facing an increase in cases of Black Lung which may create hardship for themselves and their families. This bill is an important step to help these miners.

Attached you will find a dot analysis of the program as outlined in the legislation. I respectfully ask for your favorable consideration of this measure.

Thank you for your consideration. I am happy to answer any questions.

## **Dot Analysis for Black Lung Legislation (Occupational Pneumoconiosis)**

- This bill creates the Occupational Pneumoconiosis Board to determine all medical questions relating to workers' compensation claims for compensation and benefits for occupational pneumoconiosis.
- Requires the Board to consist of five physicians who are board-certified internists or board certified pulmonary specialists appointed by the Administrator of Workers' Compensation.
- Specifies that the bill applies to occupational pneumoconiosis claims arising on or after the bill's effective date.

### **Claims Process**

- Establishes a statute of limitations for filing an occupational pneumoconiosis claim with the Bureau of Workers' Compensation or a self-insuring employer as, for a disability claim, three years after the latter of two specified events (extended from current law) and, in the case of death, two years after the date of death (similar to current law).
- Requires an employee or employee's dependent to submit to the Administrator or a self-insuring employer a written certification by a board-certified pulmonary specialist stating that the employee is or was suffering from pneumoconiosis or pulmonary massive fibrosis and the occupational pneumoconiosis has or had resulted in the employee's pulmonary impairment of at least 15%.
- Within 90 days after receiving the claimant's application and written certification, requires the Administrator or a self-insuring employer to determine all non-medical findings, including whether the employee was exposed to occupational pneumoconiosis over specified time periods.
- Requires the Administrator or a self-insuring employer to provide interested parties written notice of the determination and makes that determination final unless the claimant or employer objects to the determination within 60 days after receiving it.
- Permits a claimant who objects to the Administrator's determination to appeal the claim in accordance with continuing law's procedures governing workers' compensation appeals.
- Requires, if an employer objects to the determination regarding an occupational pneumoconiosis claim, the Administrator to refer the claim to the Board.

### **Board Procedures**

- Establishes procedures for claimants and employers appearing before the Board, producing evidence, and submitting to examination, including the following:
  - Requiring the claimant and employer to submit all medical reports and medical examinations that show the employee's condition.
  - If the employee is living, requiring the claimant to submit to any examination required by the Board.
  - If the employee is deceased, allowing the Board to require the claimant to produce any documentation necessary for an autopsy to be performed.
- Permits the Board to consider X-ray evidence in determining the presence of occupational pneumoconiosis, but prohibits the Board from giving X-ray evidence greater weight than other evidence demonstrating occupational pneumoconiosis (current law specifically allows X-ray evidence in certain occupational pneumoconiosis claims).
- Requires the Board, after completing its investigation of an occupational pneumoconiosis claim, to issue to the Administrator or self-insuring employer a written report on its determination of every medical question

in controversy and to send one copy of the report to the claimant and the claimant's employer, if the employer is not a self-insuring employer.

- Requires the Board to include the following in its determination:
  - Whether the employee contracted occupational pneumoconiosis and, if so, the percentage of permanent disability resulting from the occupational pneumoconiosis;
  - Whether the exposure in the employment caused the employee's occupational pneumoconiosis or aggravated an existing occupational pneumoconiosis or other occupational disease;
  - What, if any, physician appeared before the Board on the claimant's or employer's behalf and what, if any evidence the physician produced.
- Creates a presumption, which is not conclusive, that the employee is or was suffering from occupational pneumoconiosis if both of the following are shown:
  - The employee was exposed to the hazard of inhaling minute dust particles in the course of and arising from the employee's employment for 10 years during the 15 years immediately preceding the employee's last exposure to the hazard;
  - The employee has or had sustained a chronic respiratory disability.
- Requires any party contesting the Board's determination to file an appeal with the Industrial Commission in accordance with continuing law's procedures for workers' compensation appeals.
- Generally prohibits a claimant who receives a Board determination that the claimant has no evidence of occupational pneumoconiosis from filing a new claim or pursuing an existing but unrul'd upon claim for occupational pneumoconiosis for three years.
- Specifies that the three-year prohibition does not apply if the claimant demonstrates that the occupational pneumoconiosis has deteriorated.

### **Benefits and compensation for occupational pneumoconiosis claims**

- Provides for an employee or claimant filing an occupational pneumoconiosis claim to receive medical and death benefits under continuing law's provisions for those benefits under the Workers' Compensation Law.
- Provides for the following compensation amounts for an occupational pneumoconiosis claim:
  - Temporary total disability (TTD) – 66 2/3% of the employee's average weekly wage (AWW), up to 100% of statewide average weekly wage (SAWW) (potential increase from current law). Minimum benefit is 33 1/3% SAWW (similar to current law). TTD compensation payable up to 104 weeks (less than current law).
  - Permanent partial disability (PPD) – 66 2/3% of the employee's AWW, up to 70% of SAWW (increased from current law). Minimum Benefit is 33 1/3% SAWW (Maximum under current law). PPD awards must be computed on the basis of 4 weeks compensation for each percentage of disability the Administrator determines is permanent.
  - Permanent total disability (PTD) – benefit amount same as TTD (increased from current law). PTD compensation payable up to age 70 (current law does not have an age limit).
- Percentage of permanent disability determined by the degree of whole body medical impairment found by the Board.
- In computing occupational pneumoconiosis claims, requires the Administrator or a self-insuring employer to deduct the amount of prior compensation and benefits paid to the same claimant due to silicosis.