



The following topics were discussed during the conference call held with law firms on May 21, 2019. The meeting covered important updates and reminders about the VCF.

- **General Announcements**

As of April 30, 2019, the VCF has awarded over \$5.1 billion dollars to more than 23,000 eligible claimants. In all, we have made over 30,000 compensation determinations (including decisions and dispositions of amendments). Thus far in 2019, we have held nearly 300 compensation appeal hearings, which is more than twice the number of hearings held during the same period last year. And, year-to-date in 2019, we have granted expedited status to almost 175 claims, which puts us on pace to approve close to 450 expedite requests in 2019, a staggering and sobering number.

We currently have approximately 16,800 claims in eligibility review, approximately 900 claims in compensation review where eligibility has already been approved, and approximately 2,500 amendments pending review. We are currently deciding claims filed in mid-2017; claims filed in late 2017 are under review; and claims filed in 2018 will come under review soon. We are adding resources to our eligibility and Fast Track teams, as we continue to see high volumes of claims filed for non-economic loss only. Although we have seen a reduction in compensation form filings since the record number filed in January, our monthly average is about 700 new compensation forms, in each of the past two months. This is consistent with the historical rate of claim filings over the last few years, but is above the number of estimated claims per month that was used when formulating the projections in the Annual Report.

Reductions due to insufficiency of funding have been fully implemented, and, in the period between February 25, 2019, when those reductions became effective, and April 30, 2019, we have issued 535 awards that have been subject to reduction.

- **Reductions due to Insufficiency of Funding:** The reductions being made due to the Special Master's determination of funding insufficiency are the rule, not the exception. We were very deliberate in our process, and sought your input on how this should be done. Many of you suggested – and the Special Master agreed – that an across-the-board percentage reduction was the fairest way to handle the situation. These reductions were put in place for reasons that were driven by the data, and that took into account other critical policy considerations that the Special Master felt were imperative to ensuring that we met our statutory mandates. One of those considerations is that the VCF preserve enough funding so that every person who is eligible for compensation receives an award. With every exception that is made to the reduction policy, the VCF gets closer to the possibility of depleting the funds for those who come into the program at later dates.

The VCF has issued some unreduced awards since the reductions took effect, and in almost all cases, the award was not subject to reduction because the substantive work on the claim was done well before the reductions took effect, or the decision was on an appeal for a prior unreduced award. The number of claims falling into these exceptions is now very low (most of these award letters have already gone out), which means going forward, each award that is not reduced is an exception decision personally made by the Special Master. The VCF does not have the funds to issue unreduced awards except in truly extraordinary and rare circumstances. Please do not seek reconsideration of a reduced award or file appeals on issues that we have made clear are not appropriate for an appeal hearing in an effort to circumvent the application of the reduction. We ask that you respect the processes, policies, and procedures we have put in place, and work *with* us to maintain fairness and equilibrium for all claimants.



- **Clarification on reductions due to insufficient funding as they apply to scenarios involving previously paid claims:** We have received questions about how the reductions are applied specific to claims with prior paid awards, for example, wrongful death claims for victims who received a personal injury award, and amendments on previously paid claims, including claims paid in VCF1. Our goal in February was to continue to process claims without undue delay, and decisions on claims with prior paid awards have been made based on what we believed to be the best approach for each specific claim. We recognize this has created some confusion when “like claims” come up for review and new questions are presented. We now have the benefit of having reviewed a number of these situations, and we can use these examples to refine our approach and remain consistent going forward. We are working to clarify the approach to these claims based on the expanded set of example claims and appreciate your patience. We are also working to fine tune our correspondence about these claims so that the letter that you and the claimant receive provides a clear explanation of what was done.

- **Claim Filing Reminders**

- **Private Physician Process Exception Requests:** The Private Physician verification process is available in only very limited circumstances. For those who already have a certified condition and are seeking to add an eligible cancer, there is no need to request a Private Physician verification review as an exception; we will review those claims as a matter of course. An exception request should be made, however, in cases, where the claimant would suffer “significant hardship” in seeking certification by the WTC Health Program. The number of these requests has increased recently and as a result, we would like to make clear what is meant by the phrase “significant hardship” and what types of circumstances will or will not qualify.

As a general rule, we will grant a Private Physician verification request as an exception in cases where there is documentation that the claimant is homebound, has significant mobility issues (for example, is in a wheelchair), or is severely immune-compromised. This includes a letter from the claimant’s treating physician or a rehabilitation facility stating that traveling to a CCE or other provider would impose a significant hardship on the claimant and why. Please do not ask the claimant’s physician to write such a letter unless there is a legitimate reason to do so. We will also grant a Private Physician verification request as an exception if the claimant lives in a remote area that is a significant distance from a CCE/provider and there are medical (or other) issues that significantly impact his/her ability to travel the distance.

A Private Physician exception will not be granted solely because the claimant is elderly. We have seen an increasing number of requests for claimants in their 70s who are seeking an exception based on “advanced age.” Age is not a factor that, on its own, will support approval of the request. An exception also will not be granted solely because the claimant has cancer and is undergoing treatment. Sadly, the population of claimants who are suffering from cancer is large and ever-growing. If requests from any claimant that is in active treatment for cancer are approved, the exception would swallow the rule. Unless there is a letter from the oncologist/treating physician stating that the claimant cannot travel to a clinic or be in public because, for example, the individual’s immune system is severely compromised as a result of the treatment, we will not approve those requests.

The VCF also receives many exception requests for claimants who live in the NYC metropolitan area and are being treated at Mount Sinai, Memorial Sloan Kettering, NY Presbyterian/Cornell, and other hospitals in the area. Our expectation is that, if the claimant



can travel to their doctor, they can travel to a CCE for an appointment. There is no expectation or requirement that the claimant use the WTC Health Program as his or her primary, regular provider.

- Pending SSA (or Workers' Comp) Disability Determinations for an Eligible Condition: The VCF needs to know if a disability application is pending because economic loss cannot be awarded without the relevant offset information. There is a question on the claim form specific to pending applications. Please answer it! Do not wait to receive the award, or appear at a compensation appeal hearing, to let us know about the pending application.
- Outstanding Amended Letters of Administration: We have a large number of claims that are ready for an award letter, but the letter cannot be issued because we are awaiting amended Letters of Administration. If you have received a Missing Information–Loss Calculation letter requesting amended LOAs, please impress upon your clients how important it is to get this done, and to get the amended letters to us as quickly as possible.

- **Appeals and Expedites**

- Invalid Eligibility Appeals: We have seen an increase in the number of claims that were denied due to insufficient proof of presence where additional information is provided with the appeal request that cures the deficiency. It is our practice to send out missing information letters when we see that more documentation is needed to support eligibility. Please respond to those requests in a timely fashion. Do not wait for us to deny the claim to initiate or redouble efforts to obtain additional proof. That creates a significant, and unnecessary, drain on our Appeals Team staff. If you are not able to obtain additional proof until after the claim has been denied, then the appropriate avenue is through an amendment, not an appeal. Filing an appeal request will not accelerate the additional review process; in fact, it will delay it and will also divert the attention of our dedicated staff from triaging and preparing for other, valid appeals as they evaluate whether these additional documents obviate the need for a hearing. As a reminder, an eligibility amendment to file additional documents in support of presence after an eligibility denial, or for any other reason, does not affect the prioritization of the claim. Claims are prioritized for review based on their compensation submit date, so a denied or inactive claim in which an eligibility amendment is filed will reactivate into the *same priority order* as it had prior to the denial or deactivation, assuming the compensation form has been submitted.
- In-Person Hearing Participation: Every effort should be made to have your client participate *in person* at the hearing. There have been many recent hearings where the claimant and witnesses are participating by phone. It can be very challenging to follow testimony, assess credibility, and control the flow of the hearing when claimants and witnesses are not in the same room as their attorneys and the Hearing Panel. Our expectation is that the claimant and, if possible, witnesses, will be physically present at the hearing – not participating by phone – unless the claimant is in very poor health or lives far away.
- Hearing-Related Letters: Our Appeals Team triages appeal requests and identifies appeals that are invalid or are being deferred in light of the reductions policy. As a result of those efforts, you may have received one or both of two new hearings-related letters: the “Invalid Appeal” letter and the “Deferred Hearing” letter.

The “Invalid Appeal” letter is issued when the VCF determines that a hearing is not appropriate. This includes requests for additional loss where information potentially supporting an increase was not previously provided. For example, if a claimant was awarded



\$200,000 for prostate cancer, and you appeal that decision claiming that the claimant is suffering long-term complications from the cancer based on information that was *not* submitted at the time of initial review, we will issue an “Invalid Appeal” letter and not hold a hearing. It has come to our attention that some of these appeals – most notably, the prostate cancer appeals – are being filed in an effort to get around the application of the reduction to the additional \$50,000, if warranted. Those efforts are a significant drain on resources, and will not be countenanced. Those types of issues should be submitted as compensation amendments and they will be reviewed in priority order.

The “Deferred Hearing” letter is issued in cases involving requests for additional non-economic loss for less severe conditions. As set forth in our [Policies & Procedures](#) document, in those cases, the requested hearing will be deferred until after December 18, 2020. In the meantime, payment of the reduced value will be issued.

- Expedite Requests that are not ripe for consideration: When submitting an expedite request, documents necessary for us to evaluate the request and process the claim must be submitted. This includes proof to support the expedite request – that is, documentation of significant financial hardship or terminal illness and a signed Exhibit A so that the VCF can send the claim to NIOSH. Without these documents, the VCF cannot take action on the claim. Nearly one-third of the expedite requests we have received from represented claimants over the last few months fall into this category.

- **Partner Agency Updates**

- NIOSH feedback: In our continued partnership with NIOSH, they asked that we share some feedback on their behalf. First, please carefully consider how you communicate with your clients specific to the WTC Health Program, and avoid sending letters with misinformation and/or instructing clients to make requests that are not consistent with the way the Health Program does business.

Second, the Health Program has received calls from firms asking for the status of many applicants at one time. Some of these calls are taking up to one hour and tying up phone lines. Since a number of these calls are occurring soon after the applications are received, the updates are usually that the application is still being processed. In order to keep phone lines open for members who are calling, NIOSH has provided several “Do’s and Don’ts”:

- **Do:**
  - **DO** – contact your clients first, and only reach out to the WTC Health Program call center if there are issues.
  - **DO** – wait at least eight weeks from when the application would have been received before calling for updates.
  - **DO** – wait two months after someone is enrolled and has gone for their initial evaluation before calling to check on the status of certification.
- **Don’t:**
  - **DON’T** – tell people they can apply over the phone. Applications can be completed online or sent in hard copy by mail. The WTC Health Program Call Center will help with questions, but cannot file an application.
  - **DON’T** – tell claimants to call for an appointment if they have not yet had an initial evaluation or are not officially enrolled. Also, the call center does not schedule appointments – the CCEs and NPN do, but only after someone is enrolled, not just when they are applying.



- **DON'T** – tell claimants to call the WTC Health Program if they have not received a certification within 30 days of an evaluation.
- **DON'T** – request information on more than three applications at a time if you are calling to request information about your clients.

- **Policy and Procedure Updates and Reminders**

- **Pre-Screen Process for Claims with Personal Representatives (“PR”)**: The VCF will pre-screen these claims for the documents required to validate the PR (which must be done before any additional review of the claim), and if items are missing, a Missing Information letter will be sent with a 60-day response timeframe, and the claim will be placed in “Inactive” status. Historically, we have allowed these claims to remain “inactive” indefinitely. We are now changing our process with these claims to match our broader pre-screen process and moving forward, if the documents are not received in 60 days, and the VCF is not contacted to request an extension due to a valid reason, the VCF will deny the claim for “failure to respond.” Once the documents are available, they can be submitted and the VCF will pick the claim back up for review, maintaining the original priority date.

- **Claimant Portal Updates**

- **New Functionality**: We appreciate the positive comments we have received about the recent changes to minimize the multiple claim issue and to move the “Create a New Registration” button. We are always open to your feedback and ideas about system enhancements, so please share them with our law firm liaisons. We can’t promise every suggestion will be implemented, but we can promise our team will consider the requests and evaluate the feasibility of the changes.
- **Security and Acceptable Use Policy**: We appreciated the response to our March 26 email about the risks involved when delegating claims, which included a request to let us know of any staff members who have left the firm or no longer work VCF claims. This was not a one-time request but a reminder of the **ongoing obligation** to notify us as outlined in the VCF [Online Claims System Acceptable Use Policy](#).

All users with an account in the system **MUST** review and abide by the Acceptable Use Policy. This policy was introduced when the claimant portal was redesigned in August 2016, and it is still very much in effect. It is available on the “Information for Law Firms” page on our website. **Please make sure any employee at your firm who has an account in the system reviews the policy in detail – and ensure your firm’s users are compliant.** As a reminder, if a user within your firm leaves, you **MUST** notify the VCF to deactivate their account. Please contact the Helpline, or our law firm liaisons with the individual’s name and username so the account can be deactivated.

Given the heightened sensitivity to online security and protection of sensitive data, we also ask that you not use “personal” email addresses, such as Gmail or Yahoo as the email associated with your account, or as the email address from which you send any emails to any VCF email box (such as an individual team member’s email, or an email to one of the generic email boxes). The email associated with your account is the email to which we send notifications of correspondence on a claim, as well as confirmation of document uploads. Email exchanges to these “personal” email addresses present an unnecessary risk of sensitive information getting into the wrong hands. If you are using a personal





email for your VCF claim activity, please consider changing it to an email associated with your firm.

- **Miscellaneous**

- Organizations misrepresenting themselves as part of the VCF: The VCF has received a few complaints recently about law firms and other organizations that appear to be presenting themselves as the VCF in various marketing materials. We have contacted some specific firms to discuss their marketing and we appreciate the general willingness to listen to our concerns and to take steps to minimize potential confusion among the community we all serve. One entity in particular was brought to our attention because it appears to be a “middle man” that has been hired to gather information through a short survey, conduct a triage of sorts based on the responses, and then route the individual to a law firm for assistance filing a VCF claim. This entity is doing targeted advertising on social media, going directly to individuals who have visited Facebook pages for the well-established 9/11 advocacy groups. To the uninformed, they could easily appear to be a legitimate part of the VCF. We do not know who is behind this effort, but we have consulted with the DOJ Office of the Inspector General regarding our options for identifying who is behind this activity and how best to put a stop to it. If you happen to know who might be involved in this, we would appreciate you contacting them and asking them to change their marketing so as not to confuse potential VCF claimants.
- DOJ Financial System maintenance: The DOJ financial system that is used to process VCF payments will be down for maintenance June 1-11. We do not expect a major impact to VCF payments. The VCF will continue to authorize payments, and they will proceed to the finance office as usual. The finance office will continue to do their review so that once the system is back online, their staff will be ready to enter the pending payments. Expedites will be paid on the usual schedule during the maintenance period.