



This document was emailed to law firms on December 14, 2018. The email included a message from Special Master Rupa Bhattacharyya regarding updates to the Policies and Procedures document posted to the VCF website on that date. This document provides additional explanation regarding the change to non-economic loss awards for claimants with Obstructive Sleep Apnea, and also includes two very important reminders and associated process changes.

- **Non-economic loss awards for Obstructive Sleep Apnea with CPAP use:** The VCF has become increasingly concerned about reports from the WTC Health Program Clinical Centers of Excellence of what appear to be claimants requesting sleep studies solely for purposes of increasing their VCF awards, and not due to medical necessity, as well as claim submissions made to the VCF that show isolated periods of CPAP use documented for what appears to be the sole purpose of increasing the award. Neither of these activities is consistent with the VCF's statutory obligation to prioritize funding to claimants with the most debilitating conditions. In addition, given advancements in sleep medicine, the general consensus is that the CPAP machine is no longer as disruptive to one's quality of life as it was years ago, and most users attest to the device having a positive impact on their overall well-being. As a result, effective immediately, the VCF will apply stricter scrutiny to non-economic loss claims associated with the condition of obstructive sleep apnea ("OSA"). The highest level awards available under the Zadroga Act for non-cancer conditions are reserved for those claimants with the most debilitating conditions. As applied to sleep apnea, this means that \$90,000 will be awarded only with proof showing: (a) the claimant's condition is severe over time and has a significant impact on the activities of daily living; (b) the condition requires consistent and ongoing CPAP use as prescribed by a doctor; and (c) that a CPAP is, in fact, used by the claimant on a consistent and ongoing basis, or there is medical evidence documenting both that the claimant cannot tolerate the use of the CPAP and that the inability to use the device exacerbates the effects of the condition on the claimant's daily life. Documentation that reflects a one-time finding of severity, that demonstrates CPAP use for a limited period of time, or that otherwise does not support a determination that OSA has a debilitating effect on a claimant's daily life at a level relatively similar to that experienced by claimants with the other conditions that the VCF considers to be presumptively severe, will not support the highest possible award.
- **Registrations created with "dummy" SSNs (e.g. 000-00-0000, 123-45-6789, etc.):** We have talked about this issue on past conference calls, yet we continue to see new registrations and claims with the dummy SSNs. These registrations and claims create a huge amount of work for our team that takes time away from reviewing claims and rendering decisions. Here's why:
 - The online system runs a behind-the-scenes check that automatically identifies potentially "related" claims based on matching SSNs. When we look at a claim in the system, we can see a listing of all the potentially related claims. In the case of claims with the 000 SSN, we have over 1,200 of these in the system, which means each of those claims is displaying all of the other potential duplicate registrations and claims. Since each victim is only allowed by statute to have one claim, we must review the list and resolve any duplicate claims before substantive claim review can continue.
 - The SSN cannot be corrected through the claimant portal, which means you must submit a Claim Information Resolution Form ("CIRF") in order for the SSN to be updated. This means our team needs to either process that piece of mail through to



ingestion into the system, or run a weekly report that identifies any claims with a CIRF document type uploaded. Our team then must review the document, confirm the SSN, correct it in the system, ensure there are no other claims for this individual (in which case an entirely different process needs to be executed), and properly note the change in the claim notes. If there are any questions coming from our review of the CIRF, we need to contact you and begin the cycle all over again.

- From a reporting perspective, having thousands of these claims in our system impacts the data we use to estimate resource needs, and potentially impacts our publicly reported statistics and our annual projections. Until the SSN is corrected, we are not certain how many of these claims will end up being cancelled as duplicates of other claims, or how many will be actual claims that move forward for substantive review.

There is absolutely no valid reason for you to submit a registration or claim with a fake SSN. If you feel the need to start the registration without the SSN, please start and SAVE it, come back to it once the SSN is known, and only submit it once the data is accurate and complete. This has become a significant enough issue that we will monitor which firms are routinely creating claims using these fake SSNs, and if the practice continues, we will disable the online accounts of the users who continue to create registrations with these numbers.

- **Multiple claim issues:** We continue to receive multiple claims – of the same claim type – for the same victim. Recently, we have seen an increase in the number of duplicate PI claims filed for individuals who already have a prior **paid** PI claim. It appears to us that these second claims are being filed as a way to: (1) amend the prior claim; and/or (2) change the attorney for the claim. Simply put, this practice is wrong – and it is creating an enormous amount of extra work for our team, that again takes away time spent reviewing and deciding claims.

Because of the impact this practice has on our team, we are implementing a change in how we handle these duplicate claims. Rather than ask the claimant which claim he or she intends to pursue, we will make that decision based on the claim that is farthest along in the process. In all instances, a claim with a prior eligibility or compensation determination will be the claim we move forward, with any additional claims marked as duplicates. The letters sent in these situations will explain exactly what we did and will include information on how to amend the original claim to seek additional losses and how to submit a change of attorney request if needed. If you are about to begin a registration for a new client who is not sure if he/she had a prior VCF2 claim, you should call our Helpline while with your client and ask to confirm if we already have a claim for that individual.