

House Education and Workforce Committee Subcommittee on Workforce Protections
“The Opioid Epidemic: Implications for the Federal Employees’ Compensation Act”
May 8, 2018

The House Education and Workforce Committee, Subcommittee on Workforce Protections held a hearing on the Opioid Epidemic: Implications for the Federal Employees’ Compensation Act (FECA). For a webcast of the hearing, the Chairman’s opening statement and full witness testimony, see [here](#).

Subcommittee Chairman Bradley Byrne (R-AL) began the hearing by explaining that prescription opioids account for an alarming forty percent of opioid fatalities nationwide. It is a public health emergency that is not only impacting employees and employers in the private sector, but has serious implications for FECA program at the Department of Labor (DOL). FECA provides workers comp benefits, wage replacement, reasonable and necessary medical, compensation for any impairment. Unfortunately, as prescribing practices have changed in the health sector, change has been slower on workers compensation. There are discrepancies in state by state prescribing practices that are important for members of subcommittee to understand.

Ranking Member Mark DeSaulnier (D-CA) said that it is very troubling to be here to look at something that was meant to alleviate pain that has caused so much pain. He pointed out that the Department of Labor receives 118,000 injury claims each year. DeSaulnier said that providing a robust level of case management requires adequate resources, but DOL FECA staff has dropped significantly from 2013 to 2019. The DOL lacks the staff to carry out extensive oversight and robust management. Additionally, the Department has no policy covering those patients on opioids for a lengthy period of time. Rep. DeSaulnier said that cases of opioid abuse should be reviewed every six months.

Witness Testimony:

Dr. Scott D. Szymendera, Acting Section Research Manager, Congressional Research Service Library of Congress, Washington, D.C.

Dr. Szymendera said that since 1960, federal employees have been protected from economic injuries and families have been protected by work related deaths. In addition to cash benefits, FECA provides medical coverage and prescriptions for employees with work related injuries. The FECA statute mandates that care provided must be prescribed by qualified physician. He said that OWC should cover long-term existing opioid abuse as well as new cases.

Ms. Ramona P. Tanabe, Executive Vice President and Counsel, Workers Compensation Research Institute, Cambridge, MA

Ms. Tanabe explained that WCRI is a not for profit organization that provides information on workers compensation for all stakeholders. She said her organization has focused on the differences between state policies on opioid prescriptions. For example, at least 1 in 15 injured workers in Massachusetts, Wisconsin and Louisiana, received opioids and benzodiazepine within 1 week of an opioid refill. In contrast, the rate in Texas is less than 1% because preauthorization is required for such a prescription.

Mr. Joe Paduda, President, CompPharma, LLC, Maggie Valley, NC

Mr. Paduda argued that the workers comp industry has made great strides since the problem has been identified, with opioid prescriptions reduced by one third in the past two years and one half over the

past five. He said that the Division of Federal Employees' Compensation (DFEC) initial effort on opioid controls are insufficient and wildly inconsistent with state guidelines. Paduda pointed to Washington State as a leader in reducing opioid usage. Today opioids make up less than 4% of the drug spend on workers comp in Washington state. He said Washington requires screening tools, documentation of changes in functionality and pain, and individualized understanding of each chronic user. Paduda concluded his opening remarks by arguing that physicians want to do the right thing and get their patients off opioids and it is FECA's job to provide education training and guidance to physicians to do this.

The Honorable Scott S. Dahl, Inspector General, Office of Inspector General, U.S. Department of Labor, Washington, D.C.

Dahl began his remarks by providing several examples of ongoing criminal investigations. He described one investigation in which three pharmacists were convicted of paying over \$6 million in kick-backs for doctors prescribing compounding drugs. He explained this led to over \$15 million in FECA payments. Dahl said that the FECA program is susceptible to fraud waste and abuse, particularly the pharmaceuticals program.

Dahl said that over the past 18 months following recommendations from the Attorney General's (AG) office and others, the Department of Labor significantly reduced prescriptions of compounded drugs by requiring letters of medical necessity and prior approval from FECA program. He explained that allegations including the over-prescription of opioids are a top priority for the AG. Dahl said that the AG's office is working closely with law enforcement partners to combat fraudulent activity, particularly by strengthening analytics capabilities.

Question and Answer:

Rep. Virginia Foxx (R-NC) asked Mr. Dahl to explain how his office is strengthening analytics capabilities to improve review of FECA program. She asked, "Will what you're doing allow for earlier detection before fraudulent billing takes place?"

Dahl explained that they have taken a list of 100,000 medical providers from FECA and signed risk orders for them to better target the investigation. This allows the AG to be more proactive to find the ones where there are significant anomalies in the billing system. Dahl said likewise, the Office of Workers' Compensation Program (OWCP) has same data analytics capabilities.

Foxx asked Ms. Tanabe whether there are certain geographical regions where injured workers are more likely to receive an opioid prescription for their injuries, and whether there is any variation between rural and urban areas. Tanabe replied that there are no studies on rural versus urban and they have not seen any patterns across the U.S.

Rep. Bobby Scott (D-VA) referred back to Mr. Dahl's example that one small prescription under the FECA program can cost \$30,000. Dahl clarified that in this particular instance, reimbursement was later reduced but FECA is structured in a way that if there is a doctor's order the FECA program pays, no matter what. He said that Medicare, Medicaid, and DOD TriCare had the same issue and put controls in place several years ago.

Rep. Byrne pointed out that 33% of people aren't aware they're taking opioids. He asked, "Isn't there an obligation to inform this patient on what is being prescribed and what that drug is doing to them?" Ms. Tanabe said she was not aware of a requirement. Byrne followed up and asked whether there is

any sort of requirement that physicians inform their patients on what's being prescribed, and Ms. Tanabe said there isn't one that she is aware of.

Rep. Donald Norcross (D-NJ) emphasized that the basis for all of this is the disease of addiction. He said we should be following the lives that are impacted and people that are dying of disease rather than the money. He asked Dr. Szymendera to provide a number of overdose deaths per year for those on workers comp, and Szymendera replied that he had never seen that kind of data. He said that it is important to understand that there is no federal oversight over state workers comp.

Rep. Elise Stefanik (R-NY) asked Mr. Dahl how long investigations take, and Dahl replied that they're usually completed within a year. He said the focus of the investigations has shifted to the medical provider side because of the greater harm to the program. Those cases are more complex and involve multiple parties.

Rep. DeSaulier said that the U.S. has less than 5% of the world's population but consumes over 80% of the opioids. He asked the panel to explain why they think "the feds are behind" on this issue, and why states like Washington have been able to effectuate change. Mr. Paduda said there has been a failure to recognize the depth and significance of the problem. He said that the State of Washington looked at death and tracked backwards from opioid complications. He said that as Mr. Dahl had mentioned, data analytics plays a big part. OWCP is taking some initial and very minor steps to address not digging the hole any deeper, but it does not go as far as it should to stop additional harm.

Rep. Drew Ferguson (R-GA) pointed out that there is a lot of talk about opioid prescriptions but we don't talk about why they are prescribed in the first place. He said that by prescribing 60 days of a narcotic, you create an addict. He argued that we need to discuss alternative treatments and look at how physicians and providers are reimbursed in this arena as well.

Rep. Carol Shea-Porter (D-NH) explained that New Hampshire has struggled with high rates of opioid deaths. She asked Dahl to explain whether any action has been taken to enact price controls for prescription drugs outrageous bills. She said that it seems like this has been a pattern for a long time. Dahl responded that OWCP does have a reimbursement schedule for drugs, but they are not focused on what a fair price is. Their abilities to refer to a ceiling price for drugs is not available to them under the law as it is for other programs. Dahl said, "I think part of the problem is that the way the FECA program is structured is that when a doctor or prescriber orders certain treatment or medication, the program pays for that by default and there aren't enough controls in place to prevent the kinds of things we are seeing with compounded drugs."

The hearing concluded with Ranking Member DeSaulier calling on the Department of Labor to act with great urgency to implement some of the panelists' suggestions, and Chairman Byrne pointing out that the hearing showed just how important congressional oversight can be.