

*U.S. Department of Labor
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Congressional Testimony



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Committee on Education and the Workforce
Subcommittee on Workforce Protections**

**Hearing Title:
“The Opioid Epidemic: Implications for the Federal Employees’
Compensation Act”**

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Good morning Chairman Byrne, Ranking Member Takano, and distinguished Members of the Subcommittee. Thank you for the opportunity to testify on the work of the U.S. Department of Labor (DOL) Office of Inspector General (OIG) in the Federal Employees' Compensation Act (FECA) program. My testimony today will focus on the significant work the OIG has done over the years to combat fraud and abuse in the FECA program, including our recent work involving compounded drugs and opioids. I will also discuss the OIG's recommendations to the Department and Congress to improve program integrity, efficiency, and fraud prevention. The views expressed in my testimony are based upon the independent and objective work of the OIG and are not intended to reflect the Department's position.

Overview of the FECA Program

The FECA program provides workers' compensation coverage to approximately 3 million federal and postal employees around the world for employment-related injuries and occupational diseases. Compensation coverage due to a work-related injury under the FECA program includes payments to replace lost wages, benefits for a permanent physical impairment, and survivor benefits for beneficiaries of federal employees who die from these injuries. Medical payments are made to cover the expenses of medical services, prescription drugs, equipment, and supplies from treatment for an illness and/or injury sustained while an employee was engaged in job-related activities.

The Department made payments totaling approximately \$2.9 billion in fiscal year (FY) 2017 for compensation and medical benefits. Compensation and survivors benefit payments totaled roughly \$2 billion and medical payments totaled about \$900 million. Our analysis indicates that these medical payments included \$263 million for pharmaceuticals, of which \$51 million was for opioid prescriptions.

DOL's Office of Workers' Compensation Programs (OWCP) is responsible for administering the FECA program and ensuring that it serves injured workers in an efficient and effective manner. It is important to note that federal employees or their

surviving dependents are not entitled to sue the government for work-related injuries or death. FECA benefits constitute their sole compensation. Therefore, it is incumbent upon OWCP to promptly adjudicate claims, properly pay medical bills and compensation in accepted cases, and help employees return to work. Equally important, OWCP must ensure taxpayers only pay for, and federal workers receive, medical treatments, including prescription drugs that are medically necessary, safe, and fairly priced.

OIG FECA Work Over the Years

Mr. Chairman, the OIG has dedicated significant investigative and audit resources over the years to improve the FECA program because of its significant cost to taxpayers and impact on injured federal workers and their dependents.

The OIG's work has shown that FECA, particularly its pharmaceutical program, is susceptible to fraud, waste, and abuse. Our recent investigations have focused on doctors and pharmacists who defrauded the federal government by billing for services not rendered or necessary, charging multiple times for the same procedure, billing for non-existent illnesses or injuries, overcharging for services, and participating in kickback schemes. We also investigated claimants who defrauded the program by reporting false injuries, by continuing to claim benefits after they recovered from their injuries, and by failing to report or under-reporting income from their outside employment to OWCP.

Since 2008, the OIG has opened more than 750 criminal investigations involving the FECA program. Our FECA investigations have resulted in the indictment and conviction of more than 400 individuals, including nearly 100 convictions from medical provider cases, producing more than \$270 million in monetary results.

Over the past 10 years, we have issued 32 audit reports covering various aspects of the FECA program. These reports included 54 recommendations for improving the FECA program. As of March 31, 2018, DOL had implemented 24 of our recommendations and

was working to implement an additional 19. For example, an audit in two FECA district offices found that about 20,000 claimants were receiving automatic monthly payments, including 2,860 claimants who had been receiving monthly payments for 15 years or longer, even though their reemployment status had not yet been determined as required.

Our recent audits revealed that DOL's improper payment estimation methodology for FECA continues to exclude initial payments made in the first 90 days of a compensation claim, as well as payments made on older claims that originated before the FECA program implemented its electronic case management system. While DOL disclosed these exclusions in the FY 2016 Agency Financial Report, DOL did not determine or report the full effect of those exclusions on its improper payment estimates.

Furthermore, DOL includes a fraud component based solely on actual restitution amounts in its FECA improper payment estimate, which does not take into account fraud that is undetected or not investigated. DOL's estimation methodology should include the effect of issues identified by OIG fraud investigations and the extent to which these issues exist in the overall payment population. As a result of these continuing issues, the OIG has included FECA improper payments as one of DOL's top management and performance challenges for the past several years.

Investigations and Fraud Trends Involving Compounded Drugs and Opioids

The FECA program, along with other federal government healthcare programs, experienced a dramatic increase in medical provider abuse and costs associated with compounded drugs, particularly pain-relief creams. Pharmacists create compounded drugs by combining, mixing, or altering the ingredients of commercially available drugs to fit the needs of individual patients. Once compounded, pharmacists can charge the FECA program an exorbitant amount for the newly formed medication due to the lack of

fixed pricing guidelines. The amounts charged to the FECA program for compounded drug medication often far exceeded the combined cost of the individual drugs.

As we recently reported, costs for compounded drugs in the FECA program rose from approximately \$2 million in FY 2011, to \$263 million in FY 2016, more than a hundredfold increase. During FY 2015 alone, DOL reported that compounded drug costs jumped from \$80 million to \$214 million, surpassing the costs of all other drugs billed to FECA (\$199 million) combined. Over the last five fiscal years, the FECA program paid more than \$600 million for compounded drugs.

We recognize certain compounded drugs can be beneficial and necessary for some patients. However, it is concerning that some of these medications are not subject to approval or regulation by the Food and Drug Administration, and have been found to be unsafe in some cases. In addition, billings for these medications are highly susceptible to abuse and fraud.

Some of our current investigations focus on collusion between prescribing physicians and dispensing pharmacies. In a recent compounding investigation conducted by the OIG, several pharmacists were convicted for paying more than \$6 million in illegal kickbacks to a doctor for him and his associates to prescribe compounded drugs to be filled by these pharmacists. As a result of this fraud scheme, their pharmacies received more than \$15 million dollars from FECA for compounded drugs, including pain creams. In a separate ongoing investigation, we found the FECA program paid a staggering \$15,000 for a single 15-ounce prescription of compounded cream that allegedly was not medically necessary.



Compounded cream from OIG investigation

Our investigations also focus on other types of medical provider fraud. Recently, two executives from a chain of physical therapy clinics received significant prison sentences of 10 and 25 years for their role in a scheme to defraud OWCP by billing in excess of \$13 million for services not rendered. Another recent investigation resulted in a 9-year prison sentence for a physician convicted of healthcare fraud, involving the FECA program. The investigation revealed that the physician had engaged in a sustained pattern of “upcoding,” which is when a provider performs a service and bills it at a higher price than what was actually performed. The practices of billing for services not rendered and upcoding are common themes in many of our FECA medical provider investigations.

FECA fraud is not limited to medical providers. For example, as a result of a recent OIG investigation, a former OWCP supervisor and a former OWCP claims examiner were convicted for their roles in a FECA fraud conspiracy. The OWCP supervisor received illegal payments for directing FECA claimants to seek treatment at the medical practice of a co-conspirator. The OWCP claims examiner was paid by co-conspirators to unlawfully query OWCP claimant data, falsify OWCP records, and expedite OWCP payments to co-conspirators. In total, the investigation resulted in the charging of more

than 30 defendants and the identification of fraudulent FECA billing in excess of \$9.5 million.

Another disturbing trend associated with pharmaceuticals in the FECA program involves the over-prescription and illegal distribution of opioids and other pain management medications. The OIG has seen a marked increase in the number of allegations involving opioids, and we expect this trend to continue. Opioid-related investigations are a top priority for the OIG and our law enforcement partners.

Oversight Work

In May 2017, the OIG issued an interim report on our ongoing audit of DOL's pharmaceutical management. We found OWCP had not effectively managed the use and cost of compounded pharmaceuticals in the FECA program and we identified actions to improve the management of pharmaceuticals. During our work, OWCP took steps to improve the integrity of the program, such as requiring Letters of Medical Necessity from medical providers and prior approval for compounded drug prescriptions. As a result, the Department has reported a significant decline in program costs relating to compounded drugs¹, which calls into question whether past billings were medically necessary or otherwise legitimate.

Further, as part of our current review of OWCP's management of pharmaceuticals, we are evaluating the impact of opioids in the FECA program. The OIG's preliminary analysis of data provided by the Department found costs for opioids totaled approximately \$51 million in FY 2017. Although opioid costs constituted approximately 19 percent of total pharmaceutical costs last year, our analysis is showing more than half of FECA's monthly pharmacy claims include opioid prescriptions.

¹ The reported annual cost of compounded drugs in the FECA program dropped from \$263 million in FY 2016 to \$39 million in FY 2017.

In August 2017, the Department instituted policies and procedures for reviewing newly prescribed opioid use (i.e. claims where an opioid has not been prescribed within the past 180 days, if ever). Similar to the process instituted by OWCP for compounded drugs, after an initial 60-day period of opioid use, if an injured worker still needs the medication, the treating physician must complete a Certification/Letter of Medical Necessity form in order for the Department to authorize any additional opioid medication. For all subsequent prescriptions, a Letter of Medical Necessity must be received and reviewed by claims staff before opioid medications are authorized and dispensed. Neither DOL nor OIG has yet assessed the impact of these actions on opioid use or costs.

We are concerned the Department has not yet finalized its plans for addressing claimants already taking opioids. In addition, according to DOL officials, a claimant's addiction to opioids, approved and prescribed as part of a FECA claim, will be accepted as an additional condition for which recovery and rehabilitation costs will be paid.

For our current review, we have developed a framework for the systematic operation of OWCP's FECA pharmaceutical benefit program. This framework includes determining if: (1) providers are qualified, (2) prescriptions are valid, (3) prices are fair and reasonable, (4) claimants are properly receiving prescriptions, and (5) OWCP is performing the necessary general management and program integrity activities. Using this framework, we are assessing OWCP's existing and planned controls for operating the FECA pharmaceutical program, including the impact of actions OWCP has taken in response to our interim report on compounded drugs.

The Department needs to follow through on its planned actions and measure the impact of those actions on the use and cost of prescription drugs, including opioids, as well as consider additional options for monitoring and managing the use and cost of pharmaceuticals. These options include ensuring timely removal of questionable providers from the FECA program, implementing drug exclusion lists for drugs and drug ingredients, implementing better methods for calculating pharmaceutical payments,

pursuing inclusion under the “ceiling price” statute, and improving edit checks to identify high drug prices requiring additional review and authorization. The Department also needs to ensure it has the most appropriate pricing structure for compounded drugs. Finally, the Department should continue its efforts to identify best practices by insurance providers and other federal, state, and local agencies in managing pharmaceutical use and costs, particularly for opioids.

Data Analytics

Mr. Chairman, to identify key fraud indicators, the OIG is also strengthening its data analytics capabilities for reviewing FECA’s electronic databases. Based on risk factors the OIG identified in successful fraud investigations, we have assigned risk scores to FECA providers and claims. In the past, we have relied upon traditional case intake processes, such as referrals and hotline complaints, as a basis to initiate time-consuming investigations into possible fraud. This new data analytics capability allows us to better use our limited resources by proactively investigating matters that have a higher risk of being fraudulent. Moreover, this approach will provide the OIG a better idea of the overall extent of fraud in the FECA program. The Department has started a similar effort and we continue to urge the agency to use these tools to help prevent and mitigate fraud in the program.

In May 2017, the Department published a FECA Bulletin that describes how OWCP refers matters to the OIG for criminal investigation involving suspected fraud by medical providers. Since that time, OWCP’s Program Integrity Unit has identified medical providers who may have committed fraud involving the prescribing or dispensing of compounded drugs. In the last 12 months, OWCP has referred to the OIG nearly 90 allegations of fraud. The OIG, in turn, has referred matters to the Program Integrity Unit for appropriate administrative remedies.

Administrative Remedies

The OIG also coordinates with the Department on using administrative remedies, such as suspensions, debarments, and OWCP exclusions in cases of suspected or confirmed fraud involving FECA medical providers. The Department's suspension and debarment authority is intended to ensure irresponsible companies and individuals are barred from participating in contracts and financial assistance awards with the federal government. As a result of the OIG's increased efforts in this area, we are now referring medical providers to DOL's Suspension and Debarment Official when: (1) there is a reasonable belief that the provider is engaging in fraudulent billing practices; (2) a provider has been indicted for defrauding the FECA program; or (3) a provider has been convicted of defrauding the FECA program.

In the last two years, the OIG has referred 51 individuals or entities to the Department for either suspension or debarment. The Department has taken 19 actions thus far based on the OIG's referrals, and we will continue to work with DOL to prioritize our referrals for suspension and debarment consideration.

In addition to referring individuals and entities to the Department for administrative action, the OIG has referred medical providers to state regulatory authorities so that they can take administrative action against the provider, including the revocation of professional licenses, when appropriate.

Collaboration with Other OIGs

My office has also assembled a working group with other OIGs whose agencies have faced similar problems with compounded drugs and opioids. As part of this effort, we are collaborating to identify best practices and programmatic changes that reduce susceptibility to fraud and abuse. The OIG worked closely with OWCP to help develop the framework for protocols intended to coordinate FECA-related investigations across the federal government. In June 2017, the OIG co-hosted the first Anti-Fraud

Conference with OWCP to present the protocols, which affirmed the OIG's primary responsibility in coordinating investigations with other OIGs and investigative partners.

The OIG continues to work a significant amount of our FECA-related fraud investigations with our investigative partners, including the FBI, the Drug Enforcement Administration, the U.S. Department of Health and Human Services-OIG, U.S. Department of Veterans Affairs-OIG (VA-OIG), and in particular the U.S. Postal Service-OIG (USPS-OIG).

We also led a joint inter-agency project to develop and implement a protocol for audits of the FECA program. This protocol provides a coordinated approach and promotes collaboration across the OIG community in conducting FECA-related audit, inspection, evaluation, and investigative work. The protocol has helped to coordinate the efforts of the various federal OIGs that do FECA-related audits and investigations. This coordinated approach provides more timely access to FECA data, facilitating the timely completion of work that has improved internal controls, reduced costs, returned employees to work when they are sufficiently recovered, and identified and prevented fraud, waste, and abuse in the program.

In addition, the OIG assisted the VA-OIG and the USPS-OIG in audits of their agencies' FECA programs, and is working with the Social Security Administration-OIG and DOL to facilitate a cross match between Social Security disability recipients and FECA claimants. Currently, we also are working with the VA-OIG to cross match individuals receiving FECA benefits with veterans disability beneficiaries.

Legislative Recommendations

The OIG has also proposed several legislative recommendations to improve the effectiveness and integrity of the FECA program.

First, Congress should provide DOL and the OIG statutory access to Social Security wage information and the National Directory for New Hires (NDNH). Currently, the Department can access Social Security wage information only if the claimant gives it permission to do so, and neither the OIG nor the Department have access to the NDNH. Granting routine access to these databases would aid in detecting fraud committed by individuals who conceal outside income while receiving FECA wage loss compensation. The Government Accountability Office, in its *2018 Annual Report: Additional Opportunities to Reduce Fragmentation, Overlap, and Duplication and Achieve Other Financial Benefits*, stated Congress should consider granting DOL the additional authority to access wage data to help verify FECA claimants' reported income and help ensure the proper payment of benefits.

Second, a 3-day waiting period for filing claims should be established at the beginning of the 45-day continuation-of-pay period. As currently written, the legislation places the waiting period, which is intended to discourage the filing of frivolous claims, at the end of the 45-day continuation-of-pay period, thereby negating its purpose. Legislation passed in 2006, placed the waiting period for postal employees immediately after an employment-related injury. If the intent of the law is to have a true waiting period before an employee applies for benefits, then that period should likewise come immediately after an employment-related injury for all federal workers, not just postal employees.

Third, the OIG believes that DOL should be authorized to set prescription drug prices through the Federal Ceiling Price statute (38 U.S.C. § 8126). This law established a separate brand-name drug discount program for four other federal medical programs. Granting DOL access to this drug discount program would help ensure that the prices it pays for drugs are fair and reasonable.

Finally, legislative changes are needed to enable DOL to promptly suspend payment to providers who have been indicted for fraud in their billing practices. While FECA regulations allow OWCP to exclude a provider through administrative means, OWCP must provide notice to the provider and afford the provider an opportunity for a hearing

before the DOL's Office of Administrative Law Judges. This process and its procedures can be lengthy.

Conclusion

Mr. Chairman, our oversight work has revealed that the FECA program is vulnerable to fraud, waste, and abuse. Taxpayers and federal workers deserve a program that is cost effective, free from fraud, and provides safe and medically necessary treatment for workers. We will continue to work with the Department, Congress, and our law enforcement partners to ensure that all vulnerabilities are addressed and all available remedies are pursued.

I would be pleased to answer any questions you or the other members of the Subcommittee may have.