

111TH CONGRESS
1ST SESSION

S. 757

To amend the Energy Employees Occupational Illness Compensation Program Act of 2000 to expand the category of individuals eligible for compensation, to improve the procedures for providing compensation, and to improve transparency, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 31, 2009

Mr. UDALL of Colorado (for himself, Mr. BENNET, and Mr. UDALL of New Mexico) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Energy Employees Occupational Illness Compensation Program Act of 2000 to expand the category of individuals eligible for compensation, to improve the procedures for providing compensation, and to improve transparency, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Charlie Wolf Nuclear Workers Compensation Act”.

(b) **TABLE OF CONTENTS.**—The table of contents of this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings; purpose.
- Sec. 3. Specified disease.
- Sec. 4. Definitions for program administration.
- Sec. 5. Change in presumption for finding of cancer.
- Sec. 6. Distribution of information to claimants and potential claimants.
- Sec. 7. Enhancement of site profiles of Department of Energy facilities.
- Sec. 8. Clarification of covered illnesses.
- Sec. 9. Payment of compensation to survivors and estates of contractor employees.
- Sec. 10. Wage loss resulting from exposure.
- Sec. 11. Expansion of toxic substance exposure for covered illnesses.
- Sec. 12. Extension of statute of limitations for judicial review of contractor employee claims.
- Sec. 13. Expansion of authority of Ombudsman of Energy Employees Occupational Illness Compensation Program.

[Sec. 14. Payment for transportation and personal care services.](#)

[Sec. 15. Enhancement of transparency in claims process.](#)

[Sec. 16. Extension of time for claimants to respond to requests for information.](#)

SEC. 2. FINDINGS; PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7384 et seq.) (referred to in this subsection as the “Act”) was enacted to ensure fairness and equity for the civilian men and women who, for more than 50 years, have performed duties uniquely related to the nuclear weapons production and testing programs of the Department of Energy (including predecessor agencies of the Department of Energy) by establishing a program to provide efficient, uniform, and adequate compensation for—

(A) beryllium-related health conditions; and

(B) heavy metal-, toxic chemical-, and radiation-related health conditions;

(2) the Act (42 U.S.C. 7384 et seq.) provides a process for the consideration of claims for compensation by individuals who were employed at relevant times and at various locations, which includes provisions to designate employees at certain other locations as members of a special exposure cohort the claims of whom are subject to a less-detailed administrative process;

(3) the Act (42 U.S.C. 7384 et seq.) authorizes the President, upon a recommendation by the Advisory Board on Radiation and Worker Health established under section 3624(a)(1) of the Act ([42 U.S.C. 7384o\(a\)\(1\)](#)), to designate additional classes of employees at facilities under the jurisdiction of the Department of Energy as members of a special exposure cohort if the President determines that—

(A) it is not feasible to estimate with sufficient accuracy the magnitude of the radiation dose that the cohort received; and

(B) there is a reasonable likelihood that the radiation dose may have endangered the health of members of the cohort;

(4) it is not feasible to estimate with sufficient accuracy the magnitude of radiation doses received by employees at facilities under the jurisdiction of the Department of Energy because—

(A) many radiation exposures by employees were unmonitored or were not monitored adequately over the lifetime of each facility, as demonstrated in 2004, when an individual employed during the 1950s agreed to be scanned under the former radiation worker program of the Department of Energy and was found to have a significant internal deposition of radiation that had been undetected and unrecorded for longer than 50 years;

(B) lung counters used for the detection and measurement of plutonium and americium in the lungs of the employees were not available at some facilities until the late 1960s, thus—

(i) preventing the very insoluble oxide forms of plutonium from being detected; and

(ii) leading to a result in which a large number of employees experienced inhalation exposures that went undetected and unmeasured;

(C) exposure to neutron radiation was not monitored at some facilities until the late 1950s, and most of the measurements taken at the facilities from the period beginning in the late 1950s and ending in 1970 have been found to be in error;

(D) in some areas of the facilities, neutron doses were 2 to 10 times as great as the gamma doses received by employees, although only gamma doses were recorded;

(E) the radiation exposures of many employees at certain facilities were not measured, and in some cases estimated doses were assigned, while some records for doses have been destroyed or lost;

(F) as a result of the practices described in subparagraph (E), the available exposure histories and other data are not adequate to properly determine whether employees qualify for compensation under the Act ([42 U.S.C. 7384 et seq.](#)); and

(G) the model that has been used for dose reconstruction by the National Institute for Occupational Safety and Health in determining whether certain workers qualify for compensation under the Act ([42 U.S.C. 7384 et seq.](#)) contains errors because—

(i) the default values used for particle size and solubility of internally deposited plutonium in employees are in error; and

(ii) the use of those erroneous default values to calculate internal doses for claimants can result in dose calculations that may be 3 to 10 times below the calculations as indicated by the example of the records and autopsy data of the Rocky Flats Environmental Technology Site of the Department of Energy;

(5) the administrative costs arising from claims have been disproportionately high relative to the number of claims that have been approved;

(6) many employees, despite working with tons of plutonium and having known exposures that have lead to serious health effects, have been denied compensation under the Act ([42 U.S.C. 7384 et seq.](#)) as a result of—

(A) potentially flawed calculations based on records that are incomplete

or in error; and

(B) the use of incorrect models;

(7) the purposes of the Act (42 U.S.C. 7384 et seq.) are more likely to be achieved if claims by the employees described in this subsection are subject to administrative procedures applicable to members of the special exposure cohort;

(8) Charlie Wolf, an employee at the nuclear weapons facilities of the Savannah River Site, the Fernald Site, and the Rocky Flats Environmental Technology Site of the Department of Energy, died in 2009 from complications due to glioblastoma multiform brain tumors;

(9) the difficulties of Mr. Wolf in securing compensation for the illness that he likely incurred from exposures to toxic and radioactive materials at the nuclear weapons facilities described in paragraph (8) reinforce the need to ensure that the Act (42 U.S.C. 7384 et seq.) will be carried out more efficiently and humanely for employees similar to Mr. Wolf;

(10) Mr. Wolf's first tumor was discovered after he had worked for several years at the Rocky Flats Environmental Technology Site of the Department of Energy, during which he served as the director of buildings numbered 771 (which was once considered the most dangerous nuclear facility in the United States), 774, and 779, 3 facilities at which toxic and radioactive materials were present and handled by employees;

(11) prior to working at the Rocky Flats Environmental Technology Site of the Department of Energy, Mr. Wolf ran plutonium metal production lines at the Savannah River Site of the Department of Energy;

(12) Mr. Wolf and his family spent almost 7 years of their lives seeking compensation under the Act (42 U.S.C. 7384 et seq.), although, due to the requirements of the Act (42 U.S.C. 7384 et seq.) and the manner by which the regulations and procedures were carried out, the claims of Mr. Wolf were subjected to lengthy and repeated delays and complications that resulted from the difficulties associated with establishing the reconstruction of radiation doses;

(13) as a result of the experiences of Mr. Wolf, and many others like him, there is a need to reform the Act (42 U.S.C. 7384 et seq.), and the program carried out in accordance with the Act (42 U.S.C. 7384 et seq.), to improve the processing of claims; and

(14) the reforms established through the amendments made by this Act broaden the list of specified cancers, broaden the membership of the special exposure cohort, and change the presumption of cancer due to work-related exposures to help streamline the claims process and help workers like Mr. Wolf and their survivors.

(b) PURPOSE.—The purpose of this Act is to amend the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7384 et seq.) to

improve the processing of claims for work-related illnesses at facilities under the jurisdiction of the Department of Energy.

SEC. 3. SPECIFIED DISEASE.

Section 4(b)(2) of the Radiation Exposure Compensation Act (42 U.S.C. 2210 note; Public Law 101–426) is amended—

(1) by striking “(other than chronic lymphocytic leukemia)” and inserting “(including chronic lymphocytic leukemia)”;

(2) by inserting “posterior subcapsular cataracts, nonmalignant thyroid nodular disease, parathyroid adenoma, malignant tumors of the brain and central nervous system, bronchio-alveolar carcinoma, benign neoplasms of the brain and central nervous system,” after “disease,”; and

(3) by striking “or lung” and inserting “lung, skin, kidney, salivary gland, rectum, pharynx, or prostate”.

SEC. 4. DEFINITIONS FOR PROGRAM ADMINISTRATION.

(a) **ATOMIC WEAPONS EMPLOYEE.**—Section 3621(3)(A) of the Energy Employees Occupational Compensation Program Act of 2000 (42 U.S.C. 73841(3)(A)) is amended by inserting “, or an individual employed by a contractor or subcontractor of an atomic weapons employer,” after “atomic weapons employer”.

(b) **ESTABLISHED CHRONIC BERYLLIUM DISEASE.**—Section 3621 of the Energy Employees Occupational Compensation Program Act of 2000 (42 U.S.C. 73841) is amended by striking paragraph (13) and inserting the following:

“(13) **ESTABLISHED CHRONIC BERYLLIUM DISEASE.**—The term ‘established chronic beryllium disease’ means chronic beryllium disease, as established by—

“(A) an occupational or environmental history, or epidemiological evidence of beryllium exposure; and

“(B) any 3 of the following criteria:

“(i) Characteristic chest radiographic (or computed tomography) abnormalities.

“(ii) Restrictive or obstructive lung physiology testing or a diffusing lung capacity defect.

“(iii) Lung pathology consistent with chronic beryllium disease.

“(iv) A clinical course consistent with a chronic respiratory disorder.

“(v) An immunologic test demonstrating beryllium sensitivity (with preference given to a skin patch test or a beryllium blood test).”.

(c) MEMBER OF SPECIAL EXPOSURE COHORT.—

(1) IN GENERAL.—Section 3621(14) of the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7384l(14)) is amended by adding at the end the following:

“(D) The employee—

“(i) is not covered under subparagraph (A), (B), or (C); and

“(ii) was employed by the Department of Energy, or a contractor or subcontractor of the Department of Energy, before January 1, 2006.”.

(2) REAPPLICATION.—A claim for which an individual qualifies, by reason of paragraph (14)(D) of section 3621 of the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7384l) (as added by paragraph (1)), for compensation or benefits under that Act (42 U.S.C. 7384 *et seq.*) shall be considered for compensation or benefits notwithstanding any denial of any other claim for compensation with respect to the individual.

(d) SPECIFIED CANCERS.—

(1) IN GENERAL.—Section 3621(17) of the Energy Employees Occupational Compensation Program Act of 2000 (42 U.S.C. 7384l(17)) is amended—

(A) in subparagraph (D), by striking “(other than chronic lymphocytic leukemia)”; and

(B) by adding at the end the following:

“(E) Basal cell carcinoma.

“(F) Skin cancer.”.

(2) REAPPLICATION.—A claim for which an individual qualifies, by reason of subparagraph (E) or (F) of paragraph (17) of section 3621 of the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7384l) (as added by paragraph (1)), for compensation or benefits under that Act (42 U.S.C. 7384 *et seq.*) shall be considered for compensation or benefits notwithstanding any denial of any other claim for compensation with respect to the individual.

SEC. 5. CHANGE IN PRESUMPTION FOR FINDING OF CANCER.

Section 3623(b) of the Energy Employees Occupational Compensation Program Act of 2000 (42 U.S.C. 7384n(b)) is amended by striking “if, and only if, the cancer specified in that subclause was at least as likely as not related to” and inserting “, unless it is determined, by clear and convincing evidence, that such cancer was not sustained as a result of”.

SEC. 6. DISTRIBUTION OF INFORMATION TO CLAIMANTS AND POTENTIAL

CLAIMANTS.

(a) INDEPENDENT PHYSICIANS FOR PERFORMANCE OF MEDICAL AND IMPAIRMENT SCREENINGS.—Section 3631(b)(2) of the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7384v(b)(2)) is amended—

- (1) in subparagraph (A), by striking “; and” and inserting a semicolon;
- (2) by redesignating subparagraph (B) as subparagraph (C); and
- (3) by inserting after subparagraph (A) the following:

“(B) lists that contain descriptions of physicians who are—

“(i) qualified to perform medical and impairment screenings on matters relating to the compensation program; and

“(ii) identified for purposes of this subparagraph by 1 or more independent medical associations, institutions of higher education, or both that are selected by the President for purposes of this subparagraph; and”.

(b) NOTICE OF AVAILABLE BENEFITS.—Section 3631 of the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7384v) (as amended by subsection (a)) is amended by adding at the end the following:

“(d) NOTICE TO CLAIMANTS REGARDING AVAILABLE BENEFITS.—The President shall provide to an individual who files a claim for compensation under this subtitle or subtitle E a written notice that contains a description of the benefits for which the individual may be eligible under this Act.”.

SEC. 7. ENHANCEMENT OF SITE PROFILES OF DEPARTMENT OF ENERGY FACILITIES.

(a) INCLUSION OF TRADE NAMES OF CHEMICALS IN SITE PROFILES.—Section 3633 of the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7384w–1) is amended by striking subsection (c) and inserting the following:

“(c) DEFINITION OF SITE PROFILE.—In this section, the term ‘site profile’ means an exposure assessment of a facility that—

“(1) identifies the toxic substances or processes that were commonly used in each building or process of the facility, and the time frame during which the potential for exposure to toxic substances existed; and

“(2) includes the trade name (if any) of any substance described in paragraph (1).”.

(b) PUBLIC ACCESS TO SITE PROFILES AND RELATED INFORMATION.—

Section 3633 of the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7384w-1) (as amended by subsection (a)) is amended by adding at the end the following:

“(e) PUBLIC ACCESS TO SITE PROFILES AND RELATED INFORMATION.—The Secretary of Labor shall make available to the public—

“(1) each site profile prepared under subsection (a);

“(2) any other database used by the Secretary of Energy to evaluate claims for compensation under this Act; and

“(3) statistical data regarding the number of claims filed, the illnesses claimed, the number of claims filed for each illness, the number of claimants receiving compensation, and the length of time required to process each claim, as measured from the date on which the claim is filed to the final disposition of the claim.”.

SEC. 8. CLARIFICATION OF COVERED ILLNESSES.

(a) DEFINITION OF COVERED ILLNESS.—Section 3671 of the Energy Employees Occupational Compensation Program Act of 2000 (42 U.S.C. 7385s) is amended by striking paragraph (2) and inserting the following:

“(2) COVERED ILLNESS.—The term ‘covered illness’ means an illness or death resulting from exposure to a toxic substance, including—

“(A) all forms of cancer;

“(B) silicosis;

“(C) asbestosis;

“(D) mesothelioma;

“(E) lung fibrosis;

“(F) chronic obstructive pulmonary disease;

“(G) chronic renal insufficiency;

“(H) peripheral neuropathy;

“(I) chronic encephalopathy;

“(J) occupational asthma; and

“(K) pneumoconiosis.”.

(b) REAPPLICATION.—A claim for which an individual qualifies, by reason of section 3671(2) of the Energy Employees Occupational Compensation Program Act of

2000 (42 U.S.C. 7385s(2)) (as amended by subsection (a)), for compensation or benefits under that Act (42 U.S.C. 7384 et seq.) shall be considered for compensation or benefits notwithstanding any denial of any other claim for compensation with respect to the individual.

SEC. 9. PAYMENT OF COMPENSATION TO SURVIVORS AND ESTATES OF CONTRACTOR EMPLOYEES.

Section 3672 of the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7385s-1) is amended to read as follows:

“SEC. 3672. COMPENSATION.

“(a) CONTRACTOR EMPLOYEES; SURVIVORS.—

“(1) CONTRACTOR EMPLOYEES.—

“(A) IN GENERAL.—In accordance with section 3673, a covered contractor employee of the Department of Energy shall receive contractor employee compensation under this subtitle.

“(B) COMPENSATION AFTER DEATH OF CONTRACTOR EMPLOYEE.—Except as provided in paragraph (2)(B), if the death of a contractor employee described in subparagraph (A) occurs after the date on which the contractor employee applies for compensation under this subtitle, but before the date on which such compensation is paid, the amount of compensation that the contractor employee would have received under this paragraph shall be paid to—

“(i) a survivor of the contractor employee in accordance with section 3674; or

“(ii) if, as of the date of the death of the contractor employee, no survivor of the contractor employee exists, the estate of the contractor employee.

“(2) SURVIVORS.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), a survivor of a covered contractor employee of the Department of Energy shall receive contractor employee compensation under this subtitle in accordance with section 3674.

“(B) ELECTION OF CONTRACTOR EMPLOYEE COMPENSATION OR SURVIVOR COMPENSATION.—A survivor of a contractor employee described in subparagraph (A) who is otherwise eligible to receive compensation pursuant to subparagraph (A) and paragraph (1)(B) shall—

“(i) receive compensation pursuant to subparagraph (A) or paragraph (1)(B), as elected by the survivor of the contractor employee; and

“(ii) not receive compensation pursuant to both subparagraph (A) and paragraph (1)(B).

“(b) APPLICABILITY.—Subsection (a) is subject to each other provision of this subtitle.”.

SEC. 10. WAGE LOSS RESULTING FROM EXPOSURE.

Section 3673(a)(2)(A)(i) of the Energy Employees Occupational Compensation Program Act of 2000 (42 U.S.C. 7385s–2(a)(2)(A)(i)) is amended by inserting “that contributed to the wage loss of the employee” after “that employee”.

SEC. 11. EXPANSION OF TOXIC SUBSTANCE EXPOSURE FOR COVERED ILLNESSES.

Section 3675(c)(1) of the Energy Employees Occupational Compensation Program Act of 2000 (42 U.S.C. 7385s–4(c)(1)) is amended—

(1) in subparagraph (A), by inserting “(including radiation or a combination of a toxic substance, including heavy metals, and radiation)” after “toxic substance”; and

(2) in subparagraph (B), by inserting “(including radiation or a combination of a toxic substance and radiation)” after “toxic substance”.

SEC. 12. EXTENSION OF STATUTE OF LIMITATIONS FOR JUDICIAL REVIEW OF CONTRACTOR EMPLOYEE CLAIMS.

Section 3677(a) of the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7385s–6(a)) is amended, in the first sentence, by striking “within 60 days” and inserting “not later than 1 year”.

SEC. 13. EXPANSION OF AUTHORITY OF OMBUDSMAN OF ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM.

Section 3686 of the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7385s–15) is amended—

(1) by striking subsection (c) and inserting the following:

“(c) DUTIES.—The Office shall—

“(1) assist individuals in making claims under this subtitle and subtitle B;

“(2) provide information regarding—

“(A) the benefits available under this subtitle and subtitle B; and

“(B) the requirements and procedures applicable to the provision of the benefits described in subparagraph (A);

“(3) function as an advocate on behalf of individuals seeking benefits under

this subtitle and subtitle B;

“(4) make recommendations to the Secretary regarding the location of centers (to be known as ‘resource centers’) for the acceptance and development of claims for benefits under this subtitle and subtitle B; and

“(5) carry out such other duties as the Secretary may require.”;

(2) in subsection (d), by inserting “and subtitle B” after “this subtitle”;

(3) in subsection (e), by inserting “and subtitle B” after “this subtitle” each place it appears; and

(4) by striking subsection (g) and inserting the following:

“(g) CONTRACT AUTHORITY.—The Ombudsman may enter into 1 or more service contracts with individuals who possess expertise in any matter that the Ombudsman considers appropriate for the performance of the duties of the Office, including matters relating to health physics, medicine, industrial hygiene, and toxicology.”.

SEC. 14. PAYMENT FOR TRANSPORTATION AND PERSONAL CARE SERVICES.

(a) DEFINITION OF COVERED INDIVIDUAL.—In this section, the term “covered individual” means an individual who receives medical benefits under section 3629(a) of the Energy Employees Occupational Illness Compensation Program Act of 2000 ([42 U.S.C. 7384t\(a\)](#)).

(b) REGULATIONS.—Not later than 90 days after the date of enactment of this Act, the Secretary of Labor shall promulgate regulations to provide for the direct payment to providers of the costs to covered individuals of—

(1) personal care services (as that term is used in [section 30.403](#) of title 20, Code of Federal Regulations (as in effect on the day before the date of enactment of this Act)) authorized pursuant to section 3629 of the Energy Employees Occupational Illness Compensation Program Act of 2000 ([42 U.S.C. 7384t](#)); and

(2) necessary and reasonable transportation expenses incident to securing medical services, appliances, or supplies pursuant to section 3629(c) of the Energy Employees Occupational Illness Compensation Program Act of 2000 ([42 U.S.C. 7384t\(c\)](#)).

SEC. 15. ENHANCEMENT OF TRANSPARENCY IN CLAIMS PROCESS.

(a) INFORMATION PROVIDED ON DENIAL OF CLAIM; REQUIREMENTS RELATING TO CORRESPONDENCE.—Not later than 90 days after the date of enactment of this Act, the President shall promulgate regulations to ensure that—

(1) any notification to an individual making a claim under the Energy Employees Occupational Illness Compensation Program Act of 2000 ([42 U.S.C.](#)

7384 et seq.) that the claim of the individual has been denied, and all other correspondence with the individual relating to the claim, are written in language that is clear, concise, and easily understandable; and

(2) any notification described in paragraph (1) contains—

(A) an explanation of each reason for the denial of the claim described in that paragraph; and

(B) a description of the information, if any, that the individual could have submitted that could have resulted in approval of the claim.

(b) DOCUMENT RETENTION.—Not later than 90 days after the date of enactment of this Act, the Secretary of Labor and the Secretary of Energy shall jointly promulgate regulations to ensure that the Department of Labor and the Department of Energy—

(1) retain each original document in the possession of the Department of Labor or the Department of Energy relating to a facility under the jurisdiction of the Department of Energy if—

(A) any employee of the facility might reasonably be expected to file a claim for compensation under the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7384 et seq.); and

(B) the document might reasonably be expected to be used by any employee described in subparagraph (A) in making a claim for compensation under the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7384 et seq.); and

(2) provide each employee described in paragraph (1)(A) with access to each document described in that paragraph.

SEC. 16. EXTENSION OF TIME FOR CLAIMANTS TO RESPOND TO REQUESTS FOR INFORMATION.

If the Secretary of Labor submits to an individual who has filed a claim for compensation under the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7384 et seq.) a request for information that relates to the claim for compensation, the individual shall be required to respond to the request by not earlier than 120 days after the date on which the individual receives the request.
