



MEMORANDUM

March 20, 2017

To: Hon. David B. McKinley
Attention: Margie Almanza

From: Scott Szymendera, Analyst in Disability Policy, [REDACTED]

Subject: **Potential Impact of the American Health Care Act on the Amendments to the Black Lung Benefits Act Made by the Affordable Care Act**

This memorandum is in response to your request for information on the potential impact of the American Health Care Act (AHCA) on the amendments to the Black Lung Benefits Act that were included in P.L. 111-148, the Patient Protection and Affordable Care Act [commonly referred to as the Affordable Care Act (ACA)]. This analysis is based on the legislative text of AHCA posted by the House Committee on the Rules.¹

If you have any questions or would like any additional information please contact me [REDACTED]
[REDACTED]

Potential Impact of the AHCA on the ACA Black Lung Benefits Act Amendments

There are no provisions in the American Health Care Act (AHCA) that would repeal or otherwise affect the amendments to the Black Lung Benefits Act that were included in the Affordable Care Act (ACA). The ACA amendments are discussed below.

ACA Black Lung Benefits Act Amendments

The Black Lung Benefits Act provides cash and medical benefits to coal miners totally disabled due to pneumoconiosis.² Cash benefits are also paid to the survivors of miners who die from pneumoconiosis.

¹ This version is identified by filename G:\OFFICE\RAMSEYER\R15\BUDGET_REC_2017.XML and is posted on the website of the House Committee on the Rules at <http://docs.house.gov/billsthisweek/20170320/BILLS-115hrPIH-AHCA.pdf> (accessed March 20, 2017).

² 30 U.S.C. §§ 901 *et seq.* Section 402(b) of the Black Lung Benefits Act [30 U.S.C. § 902(b)] defines pneumoconiosis as “a chronic dust disease of the lung and its sequelae, including respiratory and pulmonary impairments, arising out of coal mine employment.” In general discussions of mine health, the term coal workers’ pneumoconiosis (CWP), or black lung disease is often used. However, since the Act refers to pneumoconiosis, and provides an expansive definition of this term in the regulations, the term pneumoconiosis, rather than CWP or black lung disease is used in this memorandum. Additional information on pneumoconiosis can be found on the website of the National Institute for Occupational Safety and Health (NIOSH) at <http://www.cdc.gov/niosh/topics/pneumoconioses/>.

Benefits under Part B of the Act, which covers claims filed on or before December 31, 1973, are paid out of general revenue. Claims under Part C of the Act, which covers claims filed on or after January 1, 1974, are paid by the responsible mine operator, or, if no such responsible operator can be found or can pay, by the Black Lung Disability Trust Fund.

Section 1556 of the ACA provided for the following changes to the Black Lung Benefits Act:

- Change to one of the presumptions used to determine eligibility for black lung benefits;
- Change in the rules regarding the reapplication for benefits by the survivors of a miner who died while eligible for black lung benefits; and
- Retroactive application of these changes to certain claims filed after January 1, 2005.

Amendment to the Eligibility Presumptions

Eligibility Presumptions

Section 411(c) of the Black Lung Benefits Act contains five presumptions used to determine if a miner is eligible for black lung benefits.³ Three of these presumptions are “rebuttable,” meaning that, in the absence of any contrary evidence, eligibility is presumed. One presumption is “irrebuttable” and eligibility for black lung program benefits is established if the statutory requirements of the presumption are met.

Table 1, at the conclusion of this memorandum, provides a summary of the following five presumptions provided by Section 411(c) of the Act, as amended by the ACA.

1. A rebuttable presumption that the pneumoconiosis of a miner who was employed in mining for at least 10 years was caused by his or her employment.
2. A rebuttable presumption that the death of a miner who worked in mining for at least 10 years and who died of any respirable disease, was due to pneumoconiosis. This presumption does not apply to claims filed on or after January 1, 1982, the effective date of the Black Lung Benefits Amendments of 1981.⁴
3. An irrebuttable presumption that a miner with any chronic lung disease which meets certain statutory tests or diagnoses is totally disabled due to pneumoconiosis or died due to pneumoconiosis.
4. A rebuttable presumption that a miner employed in mining for at least 15 years, and who has a chest roentgenogram (x-ray) that is interpreted as negative with respect to certain statutory standards but who has other evidence of a totally disabling respiratory or pulmonary impairment, is totally disabled due to pneumoconiosis or died due to pneumoconiosis. This presumption may only be rebutted by the Secretary of Labor establishing that the miner does not or did not have pneumoconiosis or that the miner’s respiratory or pulmonary impairment did not arise out of connection to mine employment. *Prior to the enactment of the ACA, this presumption did not apply to claims filed on or after January 1, 1982, the effective date of the Black Lung Benefits Amendments of 1981.*
5. A presumption that a miner who died on or before March 1, 1978 and who was employed in mining for at least 25 years before June 30, 1971 died due to pneumoconiosis, unless it is established that at the time of the miner’s death he or she was not at least partially disabled due to pneumoconiosis. This presumption does not apply to claims filed on or

³ 30 U.S.C. § 921(c).

⁴ P.L. 91-173.

after June 29, 1982, which is 180 days after the effective date of the Black Lung Benefits Amendments of 1981. This presumption is not listed in the law as either rebuttable or irrebuttable.

ACA Amendment

Section 1556(a) of the ACA removed the prohibition on applying the fourth presumption to cases filed on or after January 1, 1982. None of the other presumptions were changed in any way by the ACA.

Amendment to the Continuation of Benefits for Survivors Rule

Continuation of Benefits for Survivors

Section 422(l) of the Black Lung Benefits Act provides that, for claims filed under Part C of the black lung benefits program, the survivors of a miner who was determined to be eligible to receive benefits at the time of his or her death are not required to file new claims for benefits or revalidate any claim for benefits.⁵ *Prior to the enactment of the ACA, this provision did not apply to claims filed on or after January 1, 1982, the effective date of the Black Lung Benefits Amendments of 1981.*

Amendment

Section 1556(b) of the ACA removed from this provision the exception for claims filed on or after January 1, 1982.

Effective Date of Amendments

The amendments to Sections 411(c) and 422(l) of the Black Lung Benefits Act provided in Section 1556 of the ACA apply to any claims filed under Part B or C of the Act after January 1, 2005, that were pending on or after March 23, 2010, the date of enactment of the ACA.

⁵ 30 U.S.C. § 932(l).

Table I. Eligibility Presumptions Provided in Section 411 of the Black Lung Benefits Act, as Amended by Section 1556 of the Affordable Care Act (ACA)

Presumption Number ^a	Type of Presumption	Minimum Number of Years of Mine Employment	Basic Presumption	Exception
1	Rebuttable	10	If a miner has pneumoconiosis, then pneumoconiosis was caused by employment	None
2	Rebuttable	10	If death was from respirable disease, then death was due to pneumoconiosis	Does not apply to claims filed on or after January 1, 1982
3	Irrebuttable	None	If miner has chronic dust disease of the lung which meets statutory standards, then he or she is totally disabled due to pneumoconiosis or died due to pneumoconiosis	None
4	Rebuttable	15	If miner has negative chest roentgenogram, but has other evidence of respiratory or pulmonary impairment, then he or she is totally disabled due to pneumoconiosis or died due to pneumoconiosis	None ^b
5	--- ^c	25, before June 30, 1971	If miner died before March 1, 1978, then miner died due to pneumoconiosis, unless it is established that the miner did not have at least a partial disability due to pneumoconiosis at the time of death	Does not apply to claims filed on or after June 29, 1982

Source: Congressional Research Service (CRS)

- a. The presumption number corresponds to the paragraph number in Subsection (c) of Section 411 of the Black Lung Benefits Act [30 U.S.C. § 921(c)] and listed on page 2 of this memorandum.
- b. Prior to the enactment of the ACA, this presumption did not apply to claims filed on or after January 1, 1982.
- c. This presumption is not listed in the law as either rebuttable or irrebuttable.