**Kentucky is experiencing what experts are calling the worst epidemic of black lung on record, but a new state law may limit miners’ ability to get workers’ compensation benefits.** Black lung is an incurable disease that impacts coal miners, and is triggered when miners inhale coal and rock dust. Previously, federally certified radiologists were able to assess coal miners’ X-rays for benefit claims, but as [Vice reported](https://na01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fcim.us5.list-manage.com%2Ftrack%2Fclick%3Fu%3Db285e549286d86af513895ece%26id%3D14cc0672ed%26e%3D2c02a1805a&data=01%7C01%7Cmousset%40unr.edu%7C98d3d69a08e44dc8df5208d5e8dda4fd%7C523b4bfc0ebd4c03b2b96f6a17fd31d8%7C1&sdata=aEWaBcvf2YAfklOQ7sffz9tw8MqsKJtXlKFVQy6D0BM%3D&reserved=0) yesterday, the new law will allow only pulmonologists to do that work, reducing the number of specialists able to do the work to five, down from 11 previously. The law goes into effect tomorrow.

## **Coal miners are dying of black lung, and a Kentucky law could make it harder to claim benefits**

COAL RUN, Kentucky — Kentucky is at the center of what experts are calling the worst black lung epidemic on record. But instead of making it easier for miners to get access to health care, Kentucky’s lawmakers [passed a law](http://www.lrc.ky.gov/recorddocuments/bill/18RS/HB2/bill.pdf) that may soon hinder miners’ ability to obtain workers’ compensation benefits.

The [new law](http://ohiovalleyresource.org/2018/03/28/amidst-black-lung-surge-kentucky-changes-benefits-miners/), which goes into effect on July 14, bars federally certified radiologists from assessing coal miners’ X-rays in state black lung workers’ compensation claims. Instead, the state will require that only pulmonologists, physicians whose focus is lung disease, be allowed to judge X-rays for benefit claims. Right now, there are only [11 doctors in Kentucky](https://wwwn.cdc.gov/niosh-rhd/cwhsp/ReaderList.aspx?formid=USReaders&lastname=&state=KY+Kentucky&sortkey=state&format=table&btnSubmit_US=Submit) who are certified to examine X-rays for state benefits claims, and the new law will cut that number down to five.

“It doesn't make any sense from a medical perspective,” Centers for Disease Control epidemiologist and [black lung expert](https://www.cdc.gov/mmwr/volumes/65/wr/mm6549a1.htm) Scott Laney told VICE News in an interview at the agency’s Morgantown, West Virginia, offices. The law could restrict coal miners’ access to care, he said. “Certainly it's going to restrict their access to disability compensation proceedings.”

Moreover, of the five pulmonologists who will still be allowed to examine X-rays when state claims are filed, three have acted as expert witnesses on behalf of coal companies or their insurers as they sought to challenge miners’ benefit claims, as was reported by [NPR](https://www.npr.org/2018/03/31/598484688/kentucky-lawmakers-limit-black-lung-claims-reviews-despite-epidemic) in March. Because of this, many black lung experts and advocates say the law is an attempt by the coal industry to limit the amount of money they have to spend on coal miner healthcare in the midst of a mounting epidemic.

“I mean, it's anti-science, is what it is. It's absurd”

“I mean, it's anti-science, is what it is. It's absurd,” says [Wes Addington](https://appalachianlawcenter.org/about-us-3/staff/), a lawyer at the Appalachian Citizens’ Law Center who represents miners who make federal benefits claims. “It's almost like saying, ‘You know, your biopsy sample is not going to be read by a pathologist. We're going to have some other physicians look at it.’”

The CDC’s Laney agreed, explaining that there’s no evidence to suggest that a radiologist would be less qualified to diagnose black lung for a state benefit claim, compared with a pulmonologist. Federally certified radiologists may, in fact, be more qualified than pulmonologists in this matter because looking at X-rays is their specialty, he said.

Adam Koenig, the Kentucky House representative who sponsored the bill, told VICE News that the law was passed to address a state [Supreme Court decision](https://scholar.google.com/scholar_case?case=16847677888031720215&q=Vision+Mining,+Inc+v.+Gardner&hl=en&as_sdt=6,33&as_vis=1) that found that miners who seek benefits face [tougher requirements](http://ohiovalleyresource.org/2018/03/28/amidst-black-lung-surge-kentucky-changes-benefits-miners/) than other people with similar lung illnesses. The new law is intended to fix that, Koenig said. “One radiologist found a 41 percent incidence of black lung, [whereas] another one had found 91 percent. So that's an issue; it has to be consistent.”



Dr. Brandon Crum is a radiologist at United Medical Group in Coal Run Kentucky. He’s one of the first doctors to detect the rise of black lung disease in Central Appalachia.

When asked about the reasons underpinning the state’s decision to exclude radiologists, Koenig said that although radiologists and pulmonologists are “both doctors,” pulmonologists are lung disease specialists. “And so, that's how we got to the pulmonologists being the ones that would be required to check it out.”

Koenig said he consulted with “experts and insurance, basically,” before passing the bill into law. “We also heard a lot from the coal association on this,” he added, in reference to the Kentucky Coal Association. [Tyler White](http://www.kentuckycoal.org/tyler-white/), the president of the association, sat next to Koenig during a c[ommittee hearing in March](https://www.ket.org/legislature/?archive&program=WGAOS&epoch=2018&nola=WGAOS+019251), and testified in favor of the bill.

When asked if he’d consulted with doctors while drafting the bill, Koenig said that he did not hear from radiologists “until after the bill became law.” He also said he had consulted with the Kentucky Medical Association and that the organization had raised no concerns about the law.

Emily Schott, communications director for the Kentucky Medical Association, said the group “did not take a position on this bill,” adding that there “were no concerns raised to us by our members with that provision or any others contained in House Bill 2,” the bill in question.

**A preventable epidemic**

There is no cure for black lung disease, but its cause is well-established. It’s triggered by tiny particles of coal and rock dust that are inhaled and then settle in lung tissue. These particles cause the lungs to scar over, limiting their function. Dying of black lung can therefore be likened to slowly suffocating to death.

Until recently, black lung disease was generally considered an illness of the past; it peaked in the 1970s and then steadily declined. But in 2000, that started to change, as [an increasing number of American coal miners](https://www.thelancet.com/pdfs/journals/lanres/PIIS2213-2600%2817%2930127-3.pdf) received diagnoses. Since then, the prevalence of black lung among coal miners has doubled nationally, exceeding 10 percent among current miners who’ve worked in coal mines for 25 years or more, Laney said, citing data from the National Institute for Occupational Safety and Health’s Coal Workers’ Health Surveillance Program.

But the increase in black lung isn’t uniform across the U.S. It’s largely the result of the high levels of black lung recorded in Central Appalachia, where severe black lung diagnoses among the region’s [20,000 active coal miners](https://www.eia.gov/coal/annual/pdf/table18.pdf) have hit the [highest level recorded](https://www.thelancet.com/pdfs/journals/lanres/PIIS2213-2600%2817%2930127-3.pdf) in the past 25 years. Today, one in every five current, long-tenured miner in the region has some form of black lung, Laney said.

And things aren’t getting any easier for those affected. The end stages of black lung used to take 20 or 30 years to develop, but now take a much shorter period of time — 10 years, Laney explained. This has prompted Laney and others to call the Central Appalachian [epidemic the worst on record](https://www.npr.org/2018/02/06/583456129/black-lung-study-biggest-cluster-ever-of-fatal-coal-miners-disease).

Former coal miner Vernon Caudill getting a checkup for his black lung at United Medical Group in Coal Run, Kentucky.

“Premature mortality is serious with black lung, and it seems to be worse now than in the past, where miners would be diagnosed much later in life,” Laney said. “This is a health crisis. I think I'm beginning to exhaust the way that I describe my alarm, concern, and outrage.”

“Premature mortality is serious with black lung, and it seems to be worse now than in the past”

Coal miners tend to get screened for black lung after they leave the mining industry, and the coal industry has experienced a significant downturn in recent years, so it’s possible that at least some of the uptick that scientists have identified is related to increased testing among former coal miners. But that doesn’t explain the entire epidemic, because scientists are now seeing an increase in the number of current miners who are getting sick, at an earlier age.

So what’s going on? Improvements in mining equipment efficiency are at least partially to blame for the rise in black lung disease, Laney says. Increased mechanization has caused the dust to be finer, and with increasing coal production [over the last few decades](https://www.eia.gov/totalenergy/data/annual/showtext.php?t=ptb0702), miners have also been exposed to more of it, “in a much shorter period of time.”

But the CDC researcher also suspects that [coal companies don’t always comply](https://www.npr.org/templates/story/story.php?storyId=128665256) with federal dust regulations. “We know well what the exposure-response relationship between coal mine dust and human health effects from black lung disease are. We've known this for 60 years,” Laney said. “If the measurements that coal mine inspectors take when visiting mines reflected the conditions that miners regularly face when they’re working in mines, you would not see this level of impairment in these miners; there's something that is not jiving with those two things.”

Three current and former coal miners told VICE News that mining companies often use appropriate safety measures during inspections — only to remove them when inspectors leave the premises because they’re too cumbersome and too time-consuming to maintain. “It ain’t right. But you can’t do nothing about it,” said a former coal miner who’d seen this happen on the job. He was recently diagnosed with black lung.

On July 11, eight employees working for Armstrong Coal in Western Kentucky [were indicted](https://insideclimatenews.org/news/11072018/kentucky-coal-mining-black-lung-disease-armstrong-indictments-parkway-kronos-mine-safety-health) for conspiracy to falsify coal mine dust sampling in the district court of Western Kentucky. The indictment alleges that these management-level employees, all of whom had previously received training on dust regulations, willfully altered the company's required dust-sampling procedures, “by circumventing the dust-sampling regulations, submitting false samples, and by making false statements on dust certification cards.”

Armstrong Coal was listed as an unindicted co-conspirator. Its parent company, Amstrong Energy, [went bankrupt in 2017](https://money.cnn.com/2017/11/01/investing/coal-bankruptcy-kentucky-trump-armstrong/index.html), and the mines mentioned in the indictment have been closed or sold. VICE News attempted to reach the indicted former employees for comment; these attempts were unsuccessful.

According to the Federal Mine Safety and Health Administration, coal companies are following dust regulations to the letter; inspectors report a rate of compliance of around 99 percent. In an email, a Department of Labor spokesperson told VICE News that the Administration inspects underground mines four times a year and surface mines twice a year. Through this process, MSHA issued nearly [47,000 coal mine health and safety citations](https://www.msha.gov/data-reports/statistics/mine-safety-and-health-glance) in 2017 — down from 93,000 citations in 2011.

**Compensation roadblocks**

Regardless of the epidemic’s cause, Central Appalachian miners are in trouble. Because more miners are seeing the disease progress to debilitating stages, there’s also been an [increase in lung transplants](https://onlinelibrary.wiley.com/doi/pdf/10.1002/ajim.22856) in the workforce — a procedure that costs an average of $1.2 million. So, any law that affects how miners access workers’ compensation benefits is bound to be controversial.

“We were trained specifically to read chest X-rays from the beginning of our residency,” says Brandon Crum, a radiologist in Coal Run who’ll soon be barred from evaluating X-rays for state benefit claims. “I have no idea why you would want to limit the number of physicians that could be able to help individuals when you're in one of the largest epidemics or the largest epidemic in the United States history for occupational lung disease.”

“I was seeing a significant amount of disease, and in very young miners”

Crum has diagnosed hundreds of cases of black lung in Kentucky. And as a former coal miner himself, he says he’s uniquely qualified to talk to coal miners about the work that made them sick. Perhaps as a result, Crum was the first to [alert the CDC](https://www.npr.org/2016/12/15/505577680/advanced-black-lung-cases-surge-in-appalachia) to [the cluster of severe cases of black lung](https://www.cdc.gov/mmwr/volumes/65/wr/mm6549a1.htm) in Eastern Kentucky in 2016.

“I was seeing a significant amount of disease, and in very young miners,” he said. “And that was my primary concern — the individuals in their 30s and 40s with complicated disease, which is the most severe form.”

Miners and advocates worry about the effect of having fewer doctors reviewing their claims. But that’s not the only reason they’re concerned. In late 2016, the families of two deceased coal miners [filed a class action lawsuit](https://www.buzzfeed.com/chrishamby/johns-hopkins-hospital-defrauded-sick-coal-miners-lawsuit-al?utm_term=.bi891y6z5#.emrV4DW27) against Johns Hopkins Hospital, accusing one of its doctors of intentionally misreading the coal miners’ X-rays when they filed for benefits. The lawsuit [was eventually thrown out;](https://www.law360.com/articles/958505/miners-can-t-sue-johns-hopkins-over-black-lung-benefits) the federal judge presiding over the case ruled that the doctor was immune to litigation.

Today, Johns Hopkins no longer does work on black lung benefits claims. “Johns Hopkins took swift action when we learned of potential issues with the program,” said Kim Hoppe, director of public relations at Johns Hopkins Medicine. “We [suspended the program](https://abcnews.go.com/US/amid-controversy-johns-hopkins-quietly-drops-black-lung/story?id=34161753) immediately and later decided it would remain closed.”

For coal miners in Central Appalachia, allegations like that have contributed to a general mistrust of doctors. “When you read about doctors giving false readings on black lung, major hospitals — I think the Hopkins Center gave false readings on black lung — why would you trust them?” said current coal miner Jeff Tiller, who was diagnosed with black lung a year ago in Virginia.

Now, Kentucky’s new law runs the risk of deepening that mistrust among the state’s miners, as three out of the five remaining physicians who’ll still be able to evaluate claims have worked for coal companies or their insurers.

VICE News reached out to the three pulmonologists to ask them about the law and their previous work for coal companies. [Dr. Thomas Jarboe](https://caselaw.findlaw.com/us-4th-circuit/1665011.html) and [Dr. Byron Westerfield](https://caselaw.findlaw.com/us-6th-circuit/1470484.html) declined to comment. [Dr. Bruce Broudy](http://www.opn.ca6.uscourts.gov/opinions.pdf/14a0286p-06.pdf), who works at Lexington Clinic with Dr. Jarboe, agreed to talk to about the new law during an on-camera interview. But less than two hours before the discussion was set to take place, a PR specialist representing the clinic, named Brandon Thompson, canceled the interview, stating that the clinic “had made the determination that Dr. Broudy is not going to participate.”

When asked about the pulmonologists’ work for coal companies, Kentucky Representative Koenig said he had faith that the state’s pulmonologists would do what they think is best for patients.

**Amid Black Lung Surge, Kentucky Changes Benefits Process For Miners**

William McCool is a 64-year-old former coal miner from Letcher County, Kentucky, with an advanced form of black lung disease. Health experts say the condition is entirely preventable with dust control measures in mines. But today, [more miners in Appalachia are being diagnosed](https://www.npr.org/2018/02/06/583456129/black-lung-study-biggest-cluster-ever-of-fatal-coal-miners-disease) with severe black lung than ever before.

**“**I’ve worked all my life, I’ve seen a lot of coal go down the beltline,” McCool said, pausing to catch his breath between phrases. “Somebody’s made money, but the cheapest thing the company’s got is the worker. Everything else costs them all kinds of money but they can get workers.”

Black lung is a disabling condition caused by the work environment, so [miners like McCool](http://ohiovalleyresource.org/2018/02/09/living-with-black-lung-coal-miners-caught-in-a-surging-epidemic/) are eligible for benefits. The state and federal government both have systems that allow miners to make a claim against their employer for medical expenses and a small stipend. Getting approved can be a long process.

Howard Berkes, NPR

Mackie Branham views a lung X-ray with Dr. James Brandon Crum, who was among the first physicians to note an uptick in black lung diagnoses.

“State black lung compensation took about 2 years, then probably 5 or 6 years I got my federal black lung,” he said.

Some miners have waited over a decade for a decision on federal black lung benefits. Many die before they receive them. State benefits have traditionally been quicker. But black lung attorney Evan Smith at the [Appalachian Citizens’ Law Center](https://appalachianlawcenter.org/) said that’s been changing.

“The idea was that these federal laws were going to be a national baseline, then many states would grant additional protections to treat their workers better than was the minimum required,” Smith said. “What’s ended up happening, especially in recent years, is states have ended up having a race to the bottom.”

Amid a historic surge in black lung cases in Appalachia, Kentucky lawmakers have approved sweeping changes to the state’s workers’ compensation programs, including changes to the process miners must use to qualify for black lung benefits. Miners and advocates warn the changes may shift the balance in favor of coal companies, and make it harder for those with black lung to get benefits.

**Ruling Out Radiologists**

Phillip Wheeler is an attorney in Pikeville, Kentucky, who represents clients seeking state black lung benefits. Wheeler has been very critical of Kentucky’s workers’ compensation reform bill, known as [House Bill 2](https://legiscan.com/KY/bill/HB2/2018).

“On its face the amendments in relation to black lung law may seem very benign,” Wheeler said. “But they have a very nefarious purpose.”

Wheeler and other critics say the bill will make it harder for sick miners to get state benefits by restricting the pool of doctors who can determine a miner’s eligibility for state benefits and tilt the process in favor of coal companies.

**“**I do believe the coal industry is writing this bill to exclude certain doctors that they don’t like,” Wheeler explained. “Essentially it’ll be limited to approximately five doctors in Kentucky.”

Among those excluded is radiologist James Brandon Crum. He’s the doctor who first alerted [federal researchers](http://ohiovalleyresource.org/2017/04/04/black-lung-update-federal-researchers-seek-allies-appalachia/) to the spike in cases of severe black lung, which has since been confirmed as the largest cluster of the disease ever documented.

Clinicians who are certified to read chest X-rays for work-related diseases like black lung are known as B-readers. Among B-readers, radiologists like Crum are generally considered to be the most qualified doctors, since the entirety of their training centers on reading X-rays and other diagnostic images. Yet the Kentucky legislation would bar radiologists from providing diagnoses for state benefits claims. Instead, the legislation requires that B-readers also be certified pulmonologists in order to diagnose patients for the state black lung benefits system.

Crum said the move to push radiologists out of the process caught him by surprise.

“Throughout the United States I know of nowhere where radiologists are taken completely out of the evaluation for potential black lung disease,” he said. “That’s what we’re primarily trained in.”

Dr. Kathleen DePonte was also surprised. DePonte is a board-certified diagnostic radiologist and B reader in Norton, Virginia, with more than 20 years of experience in practice.

“It strikes me as odd that radiologists are excluded in part of the process,” she said. “It is curious to me that the legislators feel that the pulmonologist is more qualified to interpret a chest radiograph than a radiologist is. This is very much what radiologists do.”

William McCool said he thinks the change in eligible doctors would have made his claims process much more difficult.

“It’d be pretty much impossible,” McCool said. “I’ve had lung doctors tell me I don’t have black lung.”

**Debate in Frankfort**

In debate on the bill, Letcher County Democratic Representative Angie Hatton warned the measure could hurt miners.

“When we’re finding increased amounts of this illness it seems to me that this is when they need us the most,” Hatton said. “Why are we making it tougher for them to prove their illness?”

Adam Koenig is a Republican from Kenton County, and the bill’s lead sponsor. He defended the changes as necessary to fix constitutional issues with the state’s existing system stemming from a 2011 state supreme court [decision in a case known as Vision Mining.](https://www.lanereport.com/33172/2014/06/lawmakers-told-black-lung-issues-may-require-further-legislative-action/) The court ruled the state system at that time was unconstitutional because miners faced tougher requirements than did people who contracted pneumoconiosis apart from mining.

**“**No one here is trying to deny anyone who does that work from getting their black lung claims,” Koenig said, “But the fact of the matter is the way we’re doing it now is not constitutional, so we’re trying to fix it.”

Phillip Wheeler, the black lung attorney, said he believes that the newly passed bill is itself unconstitutional. He plans to contest the legislation.

“If it’s anything like we expect it will operate, then you betcha we’re gonna file some challenges,” he said.

The bill’s provisions include a period of up to 6 months for implementation. Miners who file for benefits before then may still be able to use the current system.