Impact of and Strategies to Manage Expanding Work Comp Presumptions

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Minnesota

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History of Presumptions in Minnesota

Lung and Heart Presumptions
- 1980s
- First Responders: Law Enforcement, Firefighters
- Claim Experience

PTSD 2013
- Applies to all employees
- Requires findings using DSM V by licensed psychiatrist or psychologist
- Does not apply to PTSD arising from employment actions
- Claim experience

PTSD 2017 and 2019

Minnesota Legislative & Political Landscape

Workers’ Compensation Advisory Council (WCAC)
Chair by Commissioner of State Department of Labor and Industry (DoLI)
- Commissioner appointed by Governor
- Responsible for administration of work comp in Minnesota

Represents Labor and Management
- Gatekeeper for all legislation proposed regarding workers’ compensation
- Recommendations are generally accepted by legislators and signed by the Governor
The First Push for PTSD Presumption

First introduced in 2016/2017 Legislative Session
- Police Officer (House)
- WC Plaintiff Counsel (Senate)

Message
- Want to "do something" for first responders
- System victimizes our heroes

Applied to First Responders
- Bill was vetted by the WCAC but was not acted on
- Supporters attempted to have the bill heard anyway
- Expected to see it in the next session

Behind the Scenes

Between Legislative Sessions
WCAC held a number of meetings with experts on PTSD
State department (DOLI) met with employers looking for an alternative
- MCIT, LMCIT, Chamber of Commerce
New legislative standard bearer emerged
Increased press on PTSD (not the presumption)
Firefighter union began strong campaign
Emergence of law firm(s) that marketed to police and fire
The Successful Effort

Reintroduced in 2017/2018 Legislative Session

WCAC held several meetings

- In the 11th hour supported the bill and sent it to the legislature
- Amended to include jailers/correctional staff

Election year - Legislators did not want to offend anyone

Mandated that DOLI expedite treatment parameters for PTSD

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Today

Treatment parameters are being developed

- Stakeholders consulted and the process is slow

Pools’ Position

- Quality and effective treatment
- Include return to work

Claims experience

- Treatment for PTSD is not required
- Return to work difficult given the professions
- Claim experience: Cash out and move on
MCIT's EAP
- Retooled for law enforcement (road deputies, jailer and dispatchers)
- Network includes counselors with law enforcement background

LMCIT
- Funding a Washington State University study
  - Attempt to establish a physiological stress baseline
  - Evaluate/develop resiliency strategies
- Investigate health/wellness initiatives for PTSD

Hope this session is void of discussions regarding PTSD

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New Jersey

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**Who Is MEL?**

- Municipal Excess Liability Joint Insurance Fund
- 19 Member JIFs
  - Municipalities, Housing Authorities and Utility Authorities
  - 582 member entities
  - 34,343 total employees
- Annual contributions of $215 million
- Surplus of $230 million
- Ultimate incurred claims of $2.5 billion
- Lost Time Accident Frequency (LTF) per 100 employees is 1.8
  - In 1991 the LTF was 5.73

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**Presumption for Firefighters**

**Estimated Annual Cost Countrywide**

- $771 million
- $498 million for heart attack
  - 65 percent of total
- $105 million for lungs/respiratory
- $169 million for PTSD
NJ Firefighter Cancer Presumption

- Firefighter only
  - 7,287 career firefighters
  - 37,803 volunteer firefighters
- Pending legislation awaiting action
- As written – no chance for rebuttal
- Projected costs as written between $40 and $218 million
- Projected costs if modified between $5 and $13 million

Cost Controls for Firefighter Cancer Presumption

- **Statutory cutoff** for presumption at 5 years from fire service retirement date or age 65 when the firefighter becomes eligible for Medicare
- Clear and reasonable legal **standard to rebut**
- **Limitations in** language about **type of cancer**
- Covered based upon **scientific evidence**
- Alternative program for **volunteer firefighters**
State by State Comparison
Of Firefighter Cancer Presumption Laws

12 States have no presumptions

10 States have no presumptions but do have alternative benefit sources

28 States have presumption with controls

Alternative benefit sources:
- Disability Pension: Alabama, Iowa, Kansas, Missouri, Oklahoma
- Claims Commission: Arkansas
- Special Heart and Cancer Fund: Connecticut
- Purchase of Lump Sum Policy: Georgia
- Disability Insurance: New York

NJ Heart Presumption

- Employer must disprove cardiovascular or cerebral vascular claims
- Applies to full time, part time and volunteer member of police, fire, EMS
**NJ Lung/Respiratory Presumption**

- Similar presumptions as for heart
- Focus on occupational disease
- Respiratory claims develop over time
- If employee satisfies criteria for compensable they win unless the employer can rebut

**NJ PTSD Presumption**

- No statutory presumption
- In practice, claims are rarely denied
- Best defense is showing the exposure or event was no different than in claimant's daily life
Insight into PTSD Presumption

- 34 percent of first responders have been diagnosed with clinical depression or PTSD
- 19 states allow for mental-only claims without a physical manifestation ("mental mental")
- 16 states require extraordinary or unusual circumstances to qualify for benefits

Resources

- State Division of Fire Safety
- American Cancer Society
- National Institute for Occupational Safety and Health (NIOSH)
- National Institutes of Health
- National Cancer Society
- Safety National Insurance Company
- AGRIP membership
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Colorado

Jenniffer Alvarado
CSD Pool Administration, Colorado Special Districts Property and Liability Pool

Colorado Experience

• Heart Program Accident Coverage
• Cancer Program Accident Coverage
• PTSD
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Heart and Cancer Programs

2,555 career firefighters + 198 volunteer firefighters

24 cancer claims from 2017 to 2018
• Total $598,670

31 cardiac claims from 2015 to 2018
• Total $285,980

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Heart Program Accident Coverage

• $4,000 cash award for out-of-pocket expenses upon diagnosis of covered heart or circulatory malfunction other than hypertension or angina – paid within 10 days

• $10,500 cash award with admittance for less than 48-hours

• $50,000 cash award with admittance for more than 48-hours

• $250,000 cash award where totally and permanently disabled

• Limited benefits apply for retraining/education and cosmetic surgery
Heart Program Accident Coverage

- Legislatively enabled with defined benefits and a Multiple Employer Trust (MET)
- Administered by McGriff, Seibels & Williams, Inc.
- State funding due to objection of CML to an unfunded mandate
  - Labor found funding
- Open to competition and self insurance
  - 2 other markets have entered the field
  - 5 largest cities self insure

Heart Program Accident Coverage

- 2,900 firefighters covered
- 27 of 31 claims presented have been paid
- Initial $4,000 payment within 10 days of completed claim form
- To date the Heart Program pure loss cost is $90 per firefighter
Cancer Program Accident Coverage

• 16,000 firefighters
  • One-third paid; balance volunteer

• Survey 8 years of data on 5,000 firefighters
  • Cancer within five systems: Genitourinary, Digestive, Hematological, Skin, Brain

• Annual estimated cost of $6.4 million
  • Estimated annual claims cost of $400 per firefighter

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Cancer Program Accident Coverage

• Employers agree to pay same incurred indemnity amounts as paid since 2007 plus 50 percent of incurred legal to all future claimants as a group

• Indemnity and out of pocket expenses from $4,000 minimum to maximum cap of $250,000 with potential future increases

• 10 cash award levels upon diagnosis of one of five types of cancer and five stages within each type

• Multiple Employer Trust, owned by employers, administers the program with representation from the professional FF
Cancer Program Accident Coverage

- Moderate cost reduction with twice as many claims being accepted
- Limit employer liability to 10 years after employment
- Removes cancer from work comp
- Firefighter gets cash award upon diagnosis with no investigation, no directed care, and no litigation
- Employers save 50 percent of the litigation costs

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Source: FPPA Annual Report 2003-2013. Additional data on retired police is excluded above.
CO PRIMA Cancer Survey vs. CSD Fire Members

Average annual exposure is 3,302 career firefighters and 1,649 volunteer firefighters (including the CSD Pool)

From 2007 to 2013 = 63 cancer claims

Total $8,465,479

Average cost per claim by cancer type
- Genitourinary $154,443
- Digestive $171,424
- Hematological $170,180
- Skin $86,504
- Brain $440,050

Currently covers 2,583 career firefighters and 1,105 volunteer firefighters (90% of them are in the CFHC Trust)

From 2007 to 2018 = 104 cancer claims

Total $7,733,899

Costs
- Indemnity $3,104,285 (40%)
- Medical $4,023,744 (52%)
- Legal $605,871 (8%)

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PTSD

- Allows for total permanent disability
- Arising primarily from current occupation
- Tied to current events
- Determination by Psychiatrist or Psychologist
- Psychologically Traumatic Event
  - Violent attempt of deadly force
  - Serious bodily injury
  - Witnesses death
PTSD

- 3,500 firefighters
- No claims since July 1 inception
- Developing a culture of active EAP
- Suggest too much overtime leads to burnout and contributes to PTSD

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