Legislating Post-Traumatic Stress Disorder and Presumption

Achieving Balance Between Issues and Solutions
PTSD National Statistics*

- 70% of adults in the U.S. have experienced some type of traumatic event at least once in their lives. This equates to approximately 223.4 million people.

- Up to 20% of these people go on to develop PTSD. As of today, that equates to approximately 44.7 million people who were or are struggling with PTSD.

- An estimated 8% of Americans – 24.4 million people – have PTSD at any given time. That is equal to the total population of Texas.

- An estimated one out of every nine women develops PTSD, making them about twice as likely as men. In the past year alone the number of diagnosed cases in the military jumped 50% and that’s only the reported and diagnosed cases.

- The annual cost to society of anxiety disorders is estimated to be significantly over $42.3 billion, often due to misdiagnosis and under-treatment. This includes psychiatric and non-psychiatric medical treatment costs, indirect workplace costs, mortality costs, and prescription drug costs.

- According to the VA, experts estimate that up to 20% of Operation Enduring Freedom and Operation Iraqi Freedom veterans, up to 10% of Gulf War veterans, and up to 30% of Vietnam War veterans have experienced PTSD. Consequently, demand for PTSD treatment continues to grow.

*Source: PTSDUnited.org
Forces Driving PTSD Presumption

Emerging trends

- 34% of first responders have been diagnosed with clinical depression or PTSD
- Best guess – at least 20% to 37% of first responders likely to be diagnosed with PTSD
- 24 states now permit the use of medical marijuana to treat first responder PTSD

Much of it flows from the debt of 9/11 and its aftermath

- First responders have earned unquestionable protection of health under the law
- A generation of veterans now fill the ranks of first responders

And in some ways, the role of workers’ compensation has changed

- Very easy means of assuaging a community’s need to help
- Likely increase in cost to community led by the desire to “do the right thing”
- Lack of persuasive scientific evidence is irrelevant – sentiment over science

Still plagued by uncertainty, sources weigh the fiscal cost of PTSD differently

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Consider the Scope of PTSD Legislation in 2017

States passing PTSD specific legislation for first responders

- **Colorado** – Two bills: First recognizes PTSD as compensable under workers’ compensation and second allows for treatment of PTSD with medical marijuana

- **South Carolina** – Created a $500,000 fund to help fund first responders’ out of pocket medical costs related to treatment of PTSD

- **Texas** – Act eases evidentiary burden for first responders filing PTSD claims: “pre-ponderance of evidence” and without the need to declare mental impairment

- **New York** – Included PTSD references in 2018 budget allowing first responder claims for mental injury based on extraordinary work-related stress

- **Vermont** – Created a true occupational presumption for PTSD

- **Maine** – Created a true occupational presumption for PTSD

States that considered PTSD legislation but did not pass

- **Florida**
- **Connecticut**
- **Minnesota**
- **New Mexico**
- **Ohio**
Consider the Scope of PTSD Legislation in 2018

**States considering PTSD presumption legislation for first responders**

- **New Hampshire** – Language nearly identical to VT and ME with loosening of qualified professional able to diagnosis PTSD
- **Washington** – Legislation sought to extend presumption for up to five years following cessation of service – enacted into law June 2018
- **Arizona** – Tied creation of PTSD presumption with required treatment schedule and continuation of benefits and salary while receiving therapy
- **Minnesota** – Broad expansion of covered occupations including forestry, conservation and correctional employees – enacted into law in May 2018.

**State that loosened evidentiary bar to filing PTSD claims in the workers’ compensation system**

- **Florida** – A relatively conservative model that allows first responders to file occupational claims without demonstrating a physical injury
Consider the Scope of PTSD Legislation in 2019

**States considering or passing PTSD legislation for first responders**

- **Nevada** – Allows for submission of PTSD claims in the comp system
- **Idaho** – Created presumption for PTSD
- **Ohio** – Legislation designed to allow for mental/mental claims specific to PTSD
- **Connecticut** – Very unique legislation allowing for submission of PTSD within the comp system provided first responder is diagnosed by a psychiatrist or psychologist and witnessed one of six traumatic events
- **Louisiana** – Created presumption for PTSD
- **Pennsylvania** – Likely modification of mental/mental without carrying the burden of demonstration of traumatic event
2017 PTSD Legislation Examples – Vermont HB 197

Legislative Intent

- Establishes a rebuttable presumption for first responders diagnosed with PTSD or presuming PTSD was incurred during service in the line of duty; and included mental conditions under the definition of "occupational disease"
- Diagnosis must be made within three years of last active date of employment

Definition of Traumatic Event

- Stressful event compared to the “average employee across all occupations…”

Definition of Mental Health Professional

- Very broad description of mental health professional and includes clinical social worker, mental health counselor and alcohol or drug abuse counselor

Basis to Rebut

- Must be shown by a preponderance of the evidence that the PTSD was “caused by nonservice-connected risk factors or exposure”

Fiscal Impact

- NCCI estimated HB 197 would potentially “result in a significant impact on systems costs for police, fire, rescue or ambulance worker classification”
2018 PTSD Legislation Examples – Minnesota HF 3873

Legislative Intent

- Creates a PTSD presumption for first responders but expands broadly to forest officer, state correctional officer, state crime bureau employees and others

Definition of Traumatic Event

- Limited to one single event and not cumulative
- Licensed psychiatrist or psychologist
- Does not list stressful situations

Definition of Mental Health Professional

- Limited to licensed psychiatrist or psychologist
- References DSM

Basis to Rebut

- Cannot be diagnosed prior to employment
- May rebut by demonstrating the condition arose from disciplinary action, work evaluation, etc.
- No evidentiary standard listed

Fiscal Impact

- Significant range of estimated cost ranging from $27 million to $52 million annually
2019 PTSD Legislation Examples – Louisiana SB 107

**Legislative Intent**

- Creates a PTSD presumption for defined first responders

**Definition of Traumatic Event**

- No requirement of demonstration of one unique traumatic event – “caused by an event occurring in the course and scope of employment.”

**Definition of Mental Health Professional**

- Limited to licensed psychiatrist or psychologist
- References DSM V

**Basis to Rebut**

- Establishes a *prima facie presumption of disease* only and allows for rebuttal on cause of diagnosis and prior conditions outside of occupation
- May rebut by demonstrating the condition arose from disciplinary action, work evaluation, etc.
- No evidentiary standard listed

**Fiscal Impact**

- *Could be significant as presumption applies “regardless of whether the first responder is engaged in service at the time of diagnosis.”*
2019 PTSD Legislation Examples – CT SB 164

Legislative Intent

• Creates access within the workers’ comp system for police, parole officers and firefighters diagnosed with PTSD
• Essentially a “temporary benefit” legislative style with 52 week duration

Definition of Traumatic Event

• Required demonstration of one of six unique traumatic events occurring in the course and scope of employment.

Definition of Mental Health Professional

• Limited to licensed psychiatrist or psychologist with reference to DSM

Basis to Rebut

• Traumatic event causing PTSD not one listed as “qualifying”
• Qualifying event not a substantial factor in causing the disorder

What’s Unique?

• Built through first responder partnership with government and municipal representatives
• Establishes a possible interim legislative step without creating a presumption
What does the Future Hold for PTSD Legislation and Presumption?

First Responders seek to improve/broaden existing workers’ compensation laws

- Fewer limitations regarding eligibility
  - Lobby efforts to legislate closer to the Vermont and Maine models
  - Easier burden of proof for first responders
  - More mental/mental legislation
  - PTSD specifically defined as a mental/nervous condition for workers’ compensation
- Broadening volunteer first responder coverage

Public entities and insurance markets will develop alternative approaches to fit legislative requirements

- Improvements in Occupational Stress Management Programs
- PTSD suite of insurance products
- Improvements in behavioral health tele-medicine and on-site clinics
- More effective employee assistance programs – taken from examples in the private sector
- Better communication strategies
- Improved training upon entry and ongoing
Challenge I - Resource Variations and Inconsistencies at the Local Level

Geography

- Larger cities and counties likely have broader, deeper, more expensive resources
- Smaller cities and counties may offer Employee Assistance Programs but resources often have a low rate of utilization
- Often cities and counties may share or borrow resources when faced with larger traumatic event

First Responder Differences

- Law enforcement and the fire service have differing views on resource requirements and allocation
- Both services see the value of peer support programs as pivotal to providing support following a traumatic event and throughout the year

Occupations Outside of Police and Fire

- The spectrum of occupations eligible for PTSD resources and support will continue to grow and expand
Challenge II - Shifting Workplace Culture

Plays a significant role in how first responders react and deal with trauma

• Stigma associated with mental health conditions continues to have a negative effect on well-being and the desire to seek out support and assistance.

• Fear of saying the wrong things in a difficult setting and possibly risking loss of occupation

• Often there is great concern, when sharing symptoms, of lost confidentiality

Only a shift in culture will lessen or remove these barriers

• Must address the problematic issues as a group, not a top down mandate

• Everyone must be committed to change

Positive Consequences of Cultural Shift

• Greater productivity, attendance and worker engagement

• Reduction in absenteeism with fewer performance and morale issues
Building a Consistent PTSD/Behavioral Health Support Model
Program Structure – Three Segments and Technology Platform

1. State Level Best Practices Segment
   • Strategy and Program Development
   • Workplace Campaigns/Training
   • Creation of First Responder Mental Health Provider Network
   • Intervention and Treatment

2. Clinical Segment
   • Assessment
   • Training
   • Engagement
   • Treatment

3. Financial Protection Segment
   • Support when Diagnosed with PTSD or Similar Mental Health Condition
   • Easily Accessed Suite of Benefits to Offset Costs of Diagnosis
   • Outside of the Workers’ Compensation system

4. Linking Technology Segment
   • Website – online access to Assessment, Training, Treatment
   • Mobile App Focus - immediate access to those who have “been there” to provide support
Program Structure - Best Practices 3+2 Strategy

Strategy and Program Development

• With senior management support, develop strategies and programs drawn from input from all stakeholders to insure proper fit

• The Program must reflect a positive culture dedicated to supporting colleagues and with defined roles and responsibilities

• Programs would likely include EAP, Peer Support and Critical Incident Stress Debriefing

Workplace Campaigns

• Clear and effective communication of available programs and resources

• Every stakeholder must be aware of the Program with dedicated Program champions reinforcing its value

Training

• Every stakeholder must participate not only in initial training but ongoing
Mental Health Providers

• Identify mental health counselors who are experienced in treating trauma

• Create a formal or informal network of counselors who would provide counseling to those first responders demonstrating symptom of PTSD

• Telemedicine may help provide resources to more rural areas

Intervention/Treatment

• All stakeholders must be trained to identify symptoms in themselves and others

• Peer support services should be structured to provide quick and effective engagement with the colleague demonstrating symptoms

• Use the network of mental health providers to support in the intervention

• If the colleague is at risk to harming himself or others, establish an action plan to engage with immediate treatment
Assessment, Training, Engagement & Treatment

Assessment

Evaluation upon entry into the first responder service OR upon initial phases of rolling out service to current FR population

- These evaluations will be used to provide pre- & post-test data and research on the program, its effectiveness, and future needs

Training

Online Resiliency Education – accessible to districts that engage in this program

- Videos teach about the physical, mental, and emotional impacts of PTSD, develop coping strategies, and learn how to support others

- Train “Second Responders” to provide immediate support to first responders – research shows that the sooner the intervention, the better the prognosis for recovery
Program Structure – Clinical Segment

Assessment, Training, Engagement & Treatment

Engagement

- **Primary obstacle to proper engagement is stigma and lack of information**
- **Creating a marketing/communication platform to increase likelihood of engagement in training and in treatment**
- **Working on developing a national awareness and campaign around “normalizing” getting support**

Treatment

- **Access to treatment through trained network of trauma counselors, available online. Similar structure to an EAP.**
- **Referral to inpatient treatment when individual poses a threat to self or others**
Program Structure - Assessment and Treatment

Step 1  Entering First Responder Program

- Psychological Assessment upon Entry
- Scoring Assessment to identify behavioral health risks or predisposition

Step 2  Resiliency and Education

- Resiliency training for all first responders
- Ongoing education on effects of trauma, identification of symptoms

Step 3  Traumatic Incident Engagement

- Assessment of individuals affected
- Determine necessary services
- Local peer support

Step 4  Access to Care

- Direct contact with clinician
- Determination of appropriate treatment program

All Assessment and Treatment Information is kept Highly Confidential
Program Segment - Financial Protection

Step 1  Benefit Design

- Two products designed to supplement existing benefit programs
- Lump-sum Benefit paid upon diagnosis by psychologist or psychiatrist
- Disability Benefit paid if first responder is unable to return to work

Step 2  State Filing

- Carrier Partner will file products in states participating in Program
- Majority of states will be fully-insured
- States with more difficult departments of insurance may be self-insured

Step 3  Timeframe

- Assume six months work in advance of rollout of program in any state
Program Segment - Technology Platform

Part 1  Website Design

• Program will have dedicated website to link elements of the Program together
• Will provide a repository of information/training modules/ “how to” guidance on three Segments of Program
• Will provide guidance on treatment

Part 2  Mobile App

• Participating first responders will also have 24/7 access to the website
• Once symptoms identified, first responder will have quick access to support and assistance across the Program

Part 3  Communication/Feedback Platform

• First responders across the state will utilize the platform to communicate and share ideas/identify areas of concern
• Technology platform will be customized to fit the collective needs for first responders in any state – they are the architects