ANALYSIS OF MONTANA HOUSE BILL (HB) 505
Presumption of Compensability for Career Firefighters
As Introduced in 2011

NCCI estimates that, if enacted as currently proposed, House Bill (HB) 505 may result in an increase in workers compensation (WC) costs for professional firefighters in Montana; however, the magnitude of such an increase is unclear due to the uncertainty in the number of new claims that would be considered compensable under this proposal and their associated costs. The impact on Montana's overall workers compensation system costs is expected to be negligible[1] since the occupational class directly targeted by this proposal—professional firefighters—represents a relatively small proportion of Montana's total system benefits.

Additional considerations associated with HB 505, in its current form, are discussed at the conclusion of this analysis.

Summary of Bill

HB 505 would create a presumption of workers compensation coverage for career firefighters who contract a disease, including the following occupational diseases[2]:

- Heart disease
- Lung disease
- Brain cancer
- Leukemia
- Non-Hodgkin's lymphoma
- Multiple myeloma
- Malignant melanoma
- Colorectal cancer
- Prostate cancer
- Skin cancer
- Testicular cancer
- Tuberculosis
- Hepatitis A, B, C, or D
- Human immunodeficiency virus
- Diphtheria
- Hemorrhagic fever
- Meningococcal disease
- Rabies
- Methicillin-resistant staphylococcus aureus

Currently, the employee has the burden of proof for compensability of a WC disability claim. HB 505 would establish a presumption of coverage for firefighters for disability as a result of certain diseases. As such, the proposed language would shift the burden of proof from the employee to the employer (and/or insurer) in certain cases. The presumption may be rebutted by a preponderance of medical evidence which may include the use of tobacco products, physical fitness

[1] Negligible is defined in this context to be an impact on overall system costs of less than 0.1%
[2] The proposed language may be interpreted to include more than the listed diseases.

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and weight, lifestyle, hereditary factors and exposure from non-employment activities.

HB 505 includes some limitations to the presumption of compensability. Specifically, the presumption would not be applicable in the following cases:

- In the absence of a physical examination showing no evidence of the existence of a presumptive disease prior to employment;
- The claim is filed more than 60 months after the end of a claimant's employment;
- Prostate cancer diagnosed after the age of 50;
- Heart or lung disease if the claimant is a regular user of tobacco products;
- Heart disease, lung disease, brain cancer, malignant melanoma, multiple myeloma, leukemia, non-Hodgkin's lymphoma, colorectal cancer, prostate cancer, skin cancer, and testicular cancer unless the claimant has served less than 5 years;
- Myocardial infarction unless experienced within 72 hours of an accident (defined in Montana Statute 39-71-119(2)).

If enacted, this proposal would be applicable to claims for injuries occurring on or after July 1, 2011.

Actuarial Analysis of Bill

If this bill were enacted, a career firefighter suffering from a qualifying presumptive disease would be entitled to compensation benefits unless the employer or insurer is able to prove that the condition was not materially caused or contributed to by the claimant's employment. Thus, the burden of proof shifts to the employer as a result of this proposal.

Under the proposal, additional claims for certain cancers and diseases would be anticipated because:

1) Cancer and disease cases are currently not filed or are denied due to the burden of proof resting on the employee.
2) The employee currently may not connect their contraction of cancer or disease with occupational exposure. The worker may be motivated to file under WC to receive first dollar medical benefits as well as lost-time benefits. In addition to lost-time and medical benefits for the employee,

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dependent survivors of an employee who dies due to a cancer contracted on the job would likely file to receive fatal benefits.

3) Additional disabilities or medical conditions may develop as a result of the initial disease, which would also be compensated in Montana due to the statutory 'major contributing cause' provision.

Based on system stakeholder input and NCCI data to date, we currently observe very few accepted Montana WC claims for the firefighters' occupational diseases (OD) listed in this proposal. If this proposal were to be enacted, we may continue to observe very few claims related to this provision since there may be a delay in reporting such claims due to the latency of cancer and other diseases. Therefore, it may take a number of years for such experience to emerge for a given exposure year.

To estimate the percentage increase in firefighter claims due to the presumption in the proposal, we considered cancer incidence rates, firefighters' average tenure, and the statute of limitations. Cancer rates per 100,000 males and females from the National Cancer Institute and the Centers for Disease Control and Prevention were incorporated, and reweighted to reflect the male-dominated firefighter profession. Next, an adjustment for increased rates of cancer for firefighters was incorporated. According to published research on cancer among firefighters, the incidence rates of cancer for firefighters may be higher than the incidence rates of the general population[3]. Finally, an adjustment was included to estimate the impact of the service and age limitations (since the presumption for certain diseases only applies to firefighters who have served less than 5 years and for prostate cancer, the firefighter must have been diagnosed before age 50).

Given the amount of uncertainty and judgment required, NCCI has provided an illustrative example of the potential impacts resulting from such a change. NCCI made the following Montana specific assumptions for this analysis:

- Firefighters who have served for less than 5 years represent 30% to 35% of firefighters.
- The likelihood of developing prostate cancer is 50% to 65% lower for those who are 50 years of age or younger.

[3] "Cancer Risk Among Firefighters: A Review and Meta-analysis of 32 Studies" by Grace K. LeMasters, Ash M. Genaidy, et al.

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NCCI Statistical Plan data for countrywide claims for policy years 2006-2010 suggests that the average cost per case for claims involving the types of diseases included in this bill may be 2 to 3 times higher than the current average firefighter cost per case. **IF** an additional 3% to 5% claims were expected, and **IF** the presumption results in 2 to 3 times higher cost per case for cancer claims compared to the current firefighter cost per case, Montana HB 505 could potentially increase benefit costs by 6% to 15% for career firefighters in Montana. The impact on overall Montana workers compensation system costs is expected to be negligible since benefits for the firefighter class code represent about 0.3% of Montana's total system benefit costs[4]. Some self-insureds and the Montana Municipal Insurance Authority (MMIA) WC pool do not report data to NCCI and are therefore not considered in this estimate. Similar impacts are expected from self-insureds and the MMIA WC pool that employ firefighters. **To reiterate, the estimated impacts derived above are for illustrative purposes only.**

Additional considerations related to this bill:

NCCI has not explicitly incorporated any cost impacts for the following potential issues.

1) Excluding volunteer firefighters from the presumption of compensability may cause an inequity of benefits and issues concerning its constitutionality may arise. Increased attorney involvement may also result to resolve disputes over the interpretation of the word "firefighters".

2) Claimants with other related diseases or occupations may file new claims, in the spirit of this bill. This could lead to additional benefits and increased attorney costs.

3) Based on the proposed language, the limitations listed in 39-71-116-2(2) may be interpreted several different ways, due to several exceptions to exclusions. As currently worded, this subsection may be interpreted to diminish the bill's requirement that the presumptive disease be experienced within 60 months of last employment. For example, this subsection may be interpreted to mean that the statute of limitations does not apply to a firefighter who is a regular user of

[4] Based on Montana WCSP classification payroll data and the latest approved voluntary loss costs.

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tobacco products suffering from heart or lung disease. Additional attorney involvement may result from resolving disputes regarding this language.

4) NCCI's analysis and estimated cost impact does not take into account the provision for, and costs associated with, pre-employment physical examinations. Based on surveys with stakeholders, we expect that this will not provide much mitigation to the potential increase in the number of OD claims.

5) The proposed language ("...who through exposure to hazardous substances on the job has contracted a disease, including...") could invite claims for other diseases not listed in the statute. This may result in more claims and disputes over whether other types of cancers and diseases should also be presumed compensable. This may lead to additional benefits and increased attorney costs.

6) A portion of the impact will likely be felt by governmental entities (municipalities) that are typically the employers of firefighters.

7) NCCI's analysis is focused on the provisions of HB 505 which would apply prospectively and would only apply to exposure occurring on or after the date of enactment. As the version of HB 505 reviewed by NCCI contains an effective date of July 1, 2011, the proposed language appears to apply retroactively, thus creating an unfunded liability.

The presumption of compensability for certain disease claims has not been a part of the Montana statutory benefit provisions. As a result, such benefits were not contemplated in the funding mechanisms for the affected entities. To the extent that benefits for those prior periods increase at a later time, without the ability for the funding mechanism to also be adjusted, an unfunded liability is created.

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