



## **ANALYSIS OF MONTANA HOUSE BILL (HB) 408 VERSION 2 Presumption of Compensability for Career Firefighters and Certain Diseases**

**House Bill (HB) 408 version 2, if enacted, may result in a 3% to 31% increase in workers compensation (WC) costs for the firefighter class code in Montana, due to an increase in compensable cancer and contagious disease claims for career firefighters.**

**The impact on the overall Montana workers compensation system costs would be negligible since benefits from the firefighter class code represent a very small proportion of Montana's total system benefits. Any overall impact that emerges will be realized through future loss experience and reflected in subsequent loss cost filings.**

**While the proposed language would seem to create a presumption for *any* disease (“...who through exposure to hazardous substances on the job has contracted a disease, including...”), NCCI only considered the cost impact of the listed cancers and diseases in this analysis.**

**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.**

### **Summary of Proposal**

HB 408 version 2 would create a presumption of workers compensation coverage for career firefighters who contract a disease, including the following occupational diseases:

- heart disease
- lung disease
- bladder cancer
- brain cancer
- breast cancer
- cancer of the blood or lymphatic systems
- leukemia
- non-Hodgkin's lymphoma
- multiple myeloma
- malignant melanoma
- cervical cancer
- colorectal cancer
- cancer of the digestive system
- kidney cancer
- liver cancer
- lung cancer
- ovarian cancer
- prostate cancer
- skin cancer
- testicular cancer
- ureter cancer
- tuberculosis
- hepatitis A, B, C, or D
- human immunodeficiency virus
- diphtheria
- hemorrhagic fever
- meningococcal disease
- rabies



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Currently, the employee has the burden of proof for compensability of a WC disability claim. HB 408 version 2 would establish a presumption of coverage 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). The presumption may be rebutted by a preponderance of medical evidence which may include the use of tobacco products, physical fitness and weight, lifestyle, hereditary factors and exposure from non-employment activities.

HB 408 version 2 includes some limitations to the presumption of compensability. Specifically:

- The presumption does not apply if the claims is filed more than 60 months after the end of a claimant's employment;
- The presumption for prostate cancer does not apply if it is diagnosed by a physician after the age of 50;
- The presumption of heart or lung disease does not apply if the claimant is a regular user of tobacco products;
- The presumption for malignant melanoma, multiple myeloma, leukemia, non-Hodgkin's lymphoma, bladder cancer, primary brain cancer, colorectal cancer, testicular cancer, and ureter cancer only applies if the claimant has served less than 10 years;
- A myocardial infarction only qualifies if experienced with 72 hours of an accident (defined in Montana Statute 39-71-119(2)).

### **Actuarial Analysis of the Proposal**

If this bill were enacted, career firefighters developing one of the listed cancers or diseases would receive compensation benefits, unless one of the previously mentioned limitations apply or the employer or insurer is able to show clear and convincing medical evidence 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) Cases where the employee currently would 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, dependent survivors of an employee who dies due to a cancer contracted on the job would likely file to receive fatal benefits.



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- 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 an analysis of cancer rates per 100,000 persons done by the National Cancer Institute, Montana's rates of cancer for the types listed in HB 408 version 2 are generally comparable to the national average. According to research papers on cancer among firefighters, the incidence rate of cancer for firefighters may be 1.5 to 2.5 times higher than the incidence rate of the general population<sup>1,2</sup>.

Comparing the expected rate of cancer and contagious disease per 100,000 firefighters to the current all-claim frequency rate per 100,000 firefighters in Montana (and reflecting the HB 408 version 2 limitations on certain cancer compensability due to tobacco use, years of service and age), NCCI expects roughly a 10% to 16% increase in claim frequency for career firefighters, which is a 2% to 14% frequency increase for all firefighters (i.e., including volunteers). After comparing the average cost of cancer and contagious disease claims to all claims in NCCI's WCSP data for all states combined, it is expected that HB 408 version 2 will increase the average cost per case between 1% and 15% for all firefighters in Montana. As a result, **system costs for the firefighter class code may increase between 3% (= 1.02 x 1.01) to 31% (= 1.14 x 1.15) due to the passage of HB 408 version 2.** A similar impact is expected for those municipalities which are self-insured or insured through the WC pool with the Montana Municipal Insurance Authority.

Based on the premium and losses reported in NCCI's WCSP data for policy years 2001-2005, firefighter experience comprises approximately 0.1% of the insurance data for the Montana workers compensation system. **The impact on the overall Montana workers compensation system costs would be negligible since benefits from the firefighter class code represent a very small proportion of Montana's total system benefits.**

In the analysis of HB 408 version 2, NCCI interpreted "firefighters" to include career firefighters only. If the term firefighters is interpreted to include career and volunteer firefighters in the presumption of compensability, the overall cost impact to the firefighter class code would be an increase of between 15% to 70%, and an overall Montana system cost increase of up to +0.1%.

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<sup>1</sup> Christopher Jankosky, M.D., M.P.H.; Testimony on behalf of the Utah State Association of Fire Fighters; October 15, 2003

<sup>2</sup> "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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### **Additional Issues Related to this Bill**

- 1) 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.
- 2) 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".
- 3) Much of the impact would be felt by governmental entities (municipalities) who are the employers of firefighters.
- 4) 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. Additional attorney involvement may result from resolving disputes regarding this language.
- 5) NCCI's analysis is focused on the provisions of HB 408 version 2 which would apply prospectively and would only apply to exposure occurring on or after the date of enactment. As the version of HB 408 reviewed by NCCI contains an effective date of July 1, 2009, 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.