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FISCAL IMPACT REPORT

ORIGINAL DATE 2/7/2017

SPONSOR Armstrong, D LAST UPDATED 3/1/2017 HB 157/aHHHC/aHLEDC

SHORT TITLE Firefighter PTSD and Mental Health SB _____

ANALYST Chenier

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Unknown	Unknown	Unknown	Recurring	Unknown

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Human Services Department (HSD)

Municipal League

Department of Health (DOH)

Public Employees Retirement Association (PERA)

Workers' Comp Administration (WCA)

No response for General Services Department (GSD)

SUMMARY

Synopsis of HLEDC Amendment

The House Labor and Economic Development Committee amendment to House Bill 157 removes “and mental health disorder”, from the long title bringing it in line with the HHHC amendment.

Synopsis of HHHC Amendment

The House Health and Human Services Committee amendment to House Bill 157 eliminates “or mental health disorder” from the list of cancers, diseases, and conditions that are presumed to be caused by a firefighters employment.

Synopsis of Bill

House Bill 157 amends the Occupational Disease and Disablement Law to add post-traumatic stress disorder (PTSD) to the list of cancers, diseases, and conditions that are presumed to be caused by a firefighter's employment.

FISCAL IMPLICATIONS

WCA stated that, as with all of the conditions presented in the current law, PTSD presumption would be rebuttable, resulting in the possibility of new cases being brought before the Workers' Compensation Administration for dispute resolution proceedings.

The Municipal League provided the following:

The bill could result in increased workers' compensation costs to governmental entities that employ full time non-volunteer firefighters resulting from an increase in the frequency in claims from firefighters claiming to suffer from PTSD.

SIGNIFICANT ISSUES

WCA provided the following:

“Claims for a discrete or particular psychologically traumatic event resulting in a diagnosis of PTSD can currently be filed under the provisions of the Workers' Compensation Act. Additionally, claims for a series of exposures to psychologically traumatic events resulting in a diagnosis of PTSD can be filed under the Occupational Disease and disablement Law, Section 52-3-1 NMSA 1978, et seq. and *Herrera v. Fluor Utah, Inc.*, 1976-NMCA-045 (interpreting the definition of “occupational disease”, which is identical to the current definition under Section 52-3-33 NMSA 1978).”

In accordance with HM 40 passed during the 2013 legislative session, the WCA conducted a study on PTSD claims and presumptions in workers' compensation for firefighters and other first responders. The study evaluated data on claims filed by all first responders and was not a study exclusive to firefighters. Unfortunately, the WCA lacked sufficient data to conduct a meaningful analysis which resulted in limitations, as noted in the conclusion. Of the claims data available, the study noted six claims for “mental disorders and syndromes” filed by first responders from 1994 to 2013. Based on data available, the study estimated an annual cost per claim of \$30.2 thousand. Available data showed that as between firefighters/EMTs and police officers, police officers filed more claims involving a mental disorder or syndrome between 1999 and 2013. Preliminary claims data show a similar trend in 2015 and 2016 with police officers filing more claims than firefighters in both years.

In *DiLuzio v. City of Santa Fe*, 2015-NMCA-042, the Court of Appeals determined that Section 52-3-32.1 NMSA 1978 applies to all future, present and former firefighters, regardless of when they cease being firefighters. Applying this decision to the new proposed amendment regarding PTSD and mental health disorders, it should be noted that there is no minimum employment requirement in the proposed amendment. Therefore, anyone who takes the oath of firefighter at any time, and works for any period of time, will be entitled to the presumption that any future PTSD diagnosis is related to

employment as a firefighter, even decades later. Absent evidence to overcome the presumption, any former firefighter with PTSD will be entitled to occupational disease benefits.

Even without a presumption of causation, firefighters - and any other category of worker - can currently file a claim for benefits asserting that a diagnosis PTSD is related to their employment. In those instances when an employer denies the claim, the worker can establish the causal relationship through medical testimony of a health care provider testifying within that area of expertise. If the opinion offered by worker's health care provider is not controverted by another health care provider or independent medical examiner, the worker's physician is binding under the uncontroverted medical evidence rule in workers' compensation.

PERA stated that eligible firefighters will continue to receive disability retirement benefits and their survivors will continue to receive preretirement death benefits in accordance with the statutory standards outlined in the Public Employees Retirement Act (PERA Act). Under the provisions of the PERA Act, the standard for duty-related disability pension benefits and duty death survivor pension benefits requires the applicant to establish that the death or the disability was "the natural and proximate result of causes arising solely and exclusively out of and in the course of the member's performance of duty with an affiliated public employer." , Sections 10-11-10.1 and 10-11-14.5 NMSA 1978.

Human Services Department provided the following:

According to the Center for Disease Control and Prevention (CDC), traumatic incident stress is associated with firefighters and other first responders.

Workers who are the first to arrive at a fire or other disasters may "experience physical, cognitive, emotional, or behavioral symptoms of stress." Firefighters must respond quickly and maintain focus when faced with dangerous or traumatic situations which can result in cognitive, traumatic stress. Cognitive stress presents as confusion, poor concentration, or nightmares. Emotional stress presents as anxiety, guilt, depression, or hyperarousal. Behavioral stress presents as anger, emotional outbursts, substance abuse, or withdrawal. According to the National Institute of Mental Health, these are manifestations of PTSD in firefighters.

With regard to the timing of the development of PTSD, "some people experience these (stress) reactions immediately at the scene, while for others symptoms may occur weeks or months later." The time for a behavioral health condition to develop is not easily defined. Stigma about behavioral health conditions also prevents some people from seeking help. Delayed reaction to stress has been reported as a factor in data on suicides. According to the Morbidity and Mortality Weekly Report (MMWR, 2016), females working in protective service occupations (e.g., law enforcement officers and firefighters) had the highest rate of suicide compared to all other occupations.

ALTERNATIVES

Educate firefighters and other first responders about the provisions of the Occupational Disease and Disablement Law, including benefits for medical treatment and lost time benefits.

EC/jle/al/jle