



ROUND TABLE

August 23, 2019

- History overview
- MMIA is concerned about how to be more proactive, as they are also involved in the preventative side, providing general health insurance to its fire departments.
- Should they be doing cancer screening? Is that invasive (e.g., colonoscopy) or infringe on privacy (e.g., genetic testing)?
- What about pricing?
- They currently rarely get cancer claims. There has been an uptick since the legislation passed
- Attorneys are saying that people didn't know they could make claims (as an occupational disease, exposure). These still would have been compensable before, but the burden of proof has changed.
- There is a public education issue; fire fighters aren't aware of the presumptive illness law and its implications.
- Data collection – how is this being done? Looking to DLI for guidance.
- For examinations – what info is helpful for the doctors to have; are physical examinations required or would a medical and occupational history be sufficient?
- Considering current legal environment, consider what examinations would look like (and don't call them IMEs) Is an interview sufficient or is a physical exam necessary?
- DLI could develop rules that could guide the process (Bill Wheeler will investigate what other states are doing and consider rule making in MT)
- Would an examination be more of an interview than a physical examination because they will already have a diagnosis from their oncologist [tele medicine]? An examination could include swab genetic testing, if that ends up being an option. (GINA probably precludes genetic testing)
- Medical history will be important – especially family history and smoking habits. Particularly history taken by the physician (as opposed to support staff).
- Insurers will still be responsible in cases of pre-existing conditions, but potentially only as an aggravation.
- It is very likely that presumption is going to win the vast majority of the time in court. The courts are going to be very generous to the employee under this current law and the legal environment. It's hard to know if medical history will even be admissible.
- How to address possible aggravation issues (smoking, genetic disposition, past exposures - for example radiation therapy)? Now insurers carry the burden of proof.
- Smoking may strip presumption



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- What kind of examinations after a claim is filed would be useful in this legal environment?
- Are insurers responsible for having the firefighter receive medical evaluation to make diagnosis of the cancer?
- Annual exams are required for preventative screening and fitness for duty
- Co-author of National Physical Occ Med Examination nfp.com - treatment guides that include primary care - National Fire Protection Association (NFPA) Standard
- Would genetic testing be appropriate to determine risk factors? Can insurers compel it? (GINA probably precludes genetic testing)
- Is it too invasive to meet statute? It is currently considered invasive, so probably not an option. It would be valuable to defense for identifying aggravations
- How can insurers use the testing done at the time of hiring? It might be helpful for establishing a base line. This would need to work around existing practices (as opposed to requiring genetic testing at time of hiring, which is illegal-GINA)
- Look into existing preplacement fire department policies, which vary. NFPA 1582
- Treatment guidelines (including diagnosis)
- Should probably be developed with the help of an oncologist (as opposed to an occ doc)
- Use an academic oncologist as opposed to treating
- Look to National Comprehensive Cancer Network (NCCN) for oncology diagnostic and treatment guidelines for all cancers
- Looking to other states for guidance on many of these questions is probably our best bet.
- Montana law is modeled after Idaho's
- Idaho also has PTSD as presumptive illness, likely Montana will follow suit at some point, it was in the original bill and removed.
- Idaho has a very high suicide rate among firefighters and law enforcement.
- Other resources include nfpa.com
- It is unclear how these types of cancers were chosen, and the medical evidence is sketchy.
- The amount of time actually fighting fires, and exposure to smoke and heat (as opposed to administrative or EMT tasks) is accounted for in the bill
- "Call out sheets" are the documents of the fires fought that are maintained by some, but not all, fire departments. There is sometimes a large quantity of information in the call out sheets and adjusters may not have the expertise to make sense of them. Who would be the best specialty for this? Industrial Hygiene? Toxicologist?
- Important to not forget firehouse exposures as well, like inhaling exhaust and particles left on suits and from fire engines and equipment
- Exposures that do not meet the limits can still be addressed as WC occupational disease exposures, they just are not considered presumptive illnesses
- It was discussed that we may be over-thinking this and can look at ways of simplifying the guesswork



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- Because we don't know how the court will act, it makes it hard to predict
- DLI rules will be valuable to adjusters. Bill will look into it, and research what other states have done as examples, they vary state to state. Particularly looking at Idaho as they are the ones the law is modeled after
- What will be reporting requirements? Too many requirements will be burdensome.
- DLI can help with rules for parameters of exams
- Researchers will look into what information will be needed from carriers (that is not an undue burden)
- DLI hopes to include all the stakeholders in the rule making, with a goal of this fall.
- There are several states worth tracking and talking to, to guide the process.
- There is interest in continuing these discussions, potentially in a web-based format. REOH will arrange a web-based discussion (GO TO MEETING?) for sometime in October.