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FISCAL IMPACT REPORT

SPONSOR Armstrong, D/
Stansbury **ORIGINAL DATE** 2/8/2019 **LAST UPDATED** 2/19/2019 **HB** 324/aHHSC

SHORT TITLE PTSD as Firefighter Employment Condition **SB** _____

ANALYST Chenier

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Unknown	Unknown	Unknown	Recurring	Local Governments

(Parenthesis () Indicate Expenditure Decreases)

Similar to House Bill 157 from the 2017 Session

SOURCES OF INFORMATION

LFC Files

Responses Received From

Human Services Department (HSD)

New Mexico Municipal League (NMML)

Workers' Compensation Administration (WCA)

No response from General Services Department (GSD)

SUMMARY

Synopsis of HHSC Amendment

The House Health and Human Services Committee amendment to House Bill 324 strikes references to “mental health disorder” included in the original bill.

Synopsis of Bill

House Bill 324 amends the Occupational Disease and Disablement Law to add post-traumatic stress disorder (PTSD) to the list of conditions that are presumed to be caused by a firefighter’s employment. If PTSD is added, an employer shall provide medical treatment as would be done for other job-related conditions. The bill also makes minor adjustments such as changing references of “disease” to “condition”.

FISCAL IMPLICATIONS

No response was received from GSD to see if there would be an impact to their workers compensation fund.

The Workers Compensation Administration 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.

NMML provided the following:

This 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 or other mental health disorders such as depression, anxiety or other common issues. The National Institute on Mental Health estimates that 18.1 percent of Americans ages 18 and older suffer from a diagnosable mental disorder in a given year. Many of these disorders begin early in life but do not manifest themselves until a person reaches adulthood.

The New Mexico Self Insurers' Fund, administered by the New Mexico Municipal League, currently insures 780 fulltime non-volunteer firefighters throughout New Mexico. If the National Institute on Mental health statistic of 18.1 percent of American ages 18 and older is applied to this population, it can be anticipated that the Fund could be covering up to 140 claims for PTSD or other mental disorders on an ongoing basis.

SIGNIFICANT ISSUES

HSD provided the following:

Unlike the other 12 conditions listed in Section 52-3-32.1 that are presumed to be proximately caused by employment as a firefighter, PTSD and mental health disorders are added without tying those conditions to a specific timeline for manifestation (the other conditions are time dependent).

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." 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 (Centers for Disease Control and Prevention, The National Institute for Occupational Safety and Health (NIOSH), *Traumatic Incident Stress*, 2013). The importance of not including a specific timeline for PTSD and mental health disorders is that, while some people experience stress reactions immediately at the scene, symptoms in others may occur weeks or months later. There is also stigma about behavioral health conditions that often prevents people from seeking help (American Addiction Centers, *The Treatment Needs of Our Firefighters & First Responders*, 2015). The unfortunate reality of a delayed reaction to stress has been reported in data on suicides. According to the *Morbidity and Mortality Weekly Report* (MMWR July 1, 2016: 641–645), females

working in protective service occupations (e.g., law enforcement officers and firefighters) had the highest rate of suicide compared to all other occupations.

WCA provided the following:

The legislation would apply to all future, present, and former fighters. The proposed bill would afford any former, current, or future New Mexico firefighter, who is diagnosed with PTSD to a presumption that he or she is entitled to benefits.

Under current law, – firefighters may file a claim for benefits asserting that a diagnosis of PTSD is related to employment. 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, NMSA 1978, §§ 52-3-1, *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 § 52-3-33). In those instances when an employer denies the PTSD is connected to employment, 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 a worker’s health care provider is not controverted by another health care provider or independent medical examiner, the worker’s physician’s opinion on causation is binding under the uncontroverted medical evidence rule in workers’ compensation. However, under the currently legal framework the onus is placed on New Mexico first responders to demonstrate entitlement to benefits. This bill seeks to treat PTSD and other mental health disorders consistent with other physical maladies attendant to work as a firefighter.

TECHNICAL ISSUES

WCA said that the new provision as written does not necessarily limit the PTSD, or other mental health disorder, to the date of taking the oath as a firefighter. It is recommended to add the language “appearing and diagnosed after entry into employment,” to the new Subsection (B) (13), as is the case in Subsection (B)(12). Additionally, the definition of disablement set forth in NMSA 1978, § 52-3-4(D) (2) only references diseases, not conditions. It is recommended to not change “disease” to “condition” or to use both terms “disease or condition” in order to make this section align with the definition section.

EC/gb