

State Notes

TOPICS OF LEGISLATIVE INTEREST

Winter 2021



First Responder Presumed Coverage Fund

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Introduction

Over two dozen states have enacted laws that allow first responders who develop cancer to apply for special benefits under the presumption that their illness was caused by workplace exposure to hazardous substances. Statutes vary in their eligibility criteria.¹ These benefits may replace or complement other forms of workers' compensation for the individuals receiving them, depending on the state and any associated statutory requirements.²

In Michigan, Public Act (PA) 515 of 2014 amended the Worker's Disability Compensation Act to allow qualified first responder personnel, including firefighters, to seek these benefits. Claims are paid out of the First Responder Presumed Coverage Fund (FRPCF). This paper describes the eligibility criteria for coverage and the establishment of an ongoing revenue source for the Fund.

Legislative Background

Public Act 515 of 2014 was not the first bill passed by the Michigan Legislature designed to allow first responders to claim compensation for their work-caused illnesses. Senate Bill (SB) 789 of 1997 was intended to provide access to this type of compensation. It was passed by both houses of the Legislature but vetoed by Governor John Engler.³ Although the bill specified that the eligible illnesses must have been contracted as a result of job duties, Governor Engler stated that the legislation would have allowed individuals who were never exposed to dangerous substances to claim benefits.

Introduced in the Senate in February 2013, PA 515 differed from SB 789 in several respects. Public Act 515 requires an individual to have been active in an eligible role for 60 months or more, while SB 789 bill would have allowed individuals active for only 24 months to apply for benefits. The earlier bill also would have excluded individuals who could have been shown to have been consistent users of tobacco products in the five years before the claim filing date; the 2014 Act extended this period to the previous ten years. Public Act 515, unlike the earlier bill, created a special fund for the payment of benefits, although it does not specify any revenue source or appropriate any dollars. Governor Rick Snyder signed Public Act 515 of 2014 into law on January 12, 2015.

Claims

Claims are managed by the Workers' Compensation Agency within the Department of Labor and Economic Opportunity. After filing an FRPCF claim under PA 515, any active worker's compensation claim by that individual against an employer is automatically suspended.

To be a qualified claimant, an individual must:

- Be an active, full-time member of a fully paid fire department or public fire authority, including a department of county airport or public airport authority; a State university or college; a city, township, or incorporated village; or a full-time member of a police department, a member of the Michigan State Police; a county sheriff or sheriff's deputy; a conservation officer; or an officer of the Motor Carrier Enforcement Division of the Department of State Police.
- Have been actively employed for 60 months or more in that department or authority at the time the cancer is developed.
- Be exposed to the hazardous materials related to fire suppression, rescue, or emergency medical services in the course of their duties.
- Be diagnosed with a qualifying cancer (i.e., cancer of the respiratory tract, bladder, skin, brain, kidney, blood, thyroid, testicles, prostate, or lymph nodes).
- Apply for and follow appropriate steps for qualification for any pension benefits for which they are eligible.

The presumption that the individual contracted cancer while performing his or her duties is lost if it can be shown that the individual engaged in "substantial and consistent" use of tobacco products, including cigarettes, for 10 years or more before the development of the cancer, and the use is thought to have been a significant contributing factor to the disease.

Funding Mechanisms and Appropriations History

Public Act 515 made no appropriations and did not designate a revenue source. The law specifies that claims may not be paid until sufficient funding is available. Statute requires pending claims to be paid in the order they are received and approved. Governor Snyder requested that the Legislature identify a funding source for the Fund in his signing statements.⁴

Senate Bill 802 of 2016 would have appropriated \$1.0 million General Fund/General Purpose (GF/GP) to the FRPCF, but after the Senate passed it, the House Committee on Appropriations did not take up the bill. Public Act 248 of 2016 transferred \$3.0 million from the Forest Development Fund to the FRPCF. This amount was appropriated and was permitted to be spent after the fiscal year (FY) 2016-17 budget was enacted. However, the Fund still did not have an ongoing revenue source. Given the expensive and frequently prolonged treatments associated with cancers, these one-time appropriations were unlikely to be sufficient once active claims began to be paid. No payments were made on claims at this time.

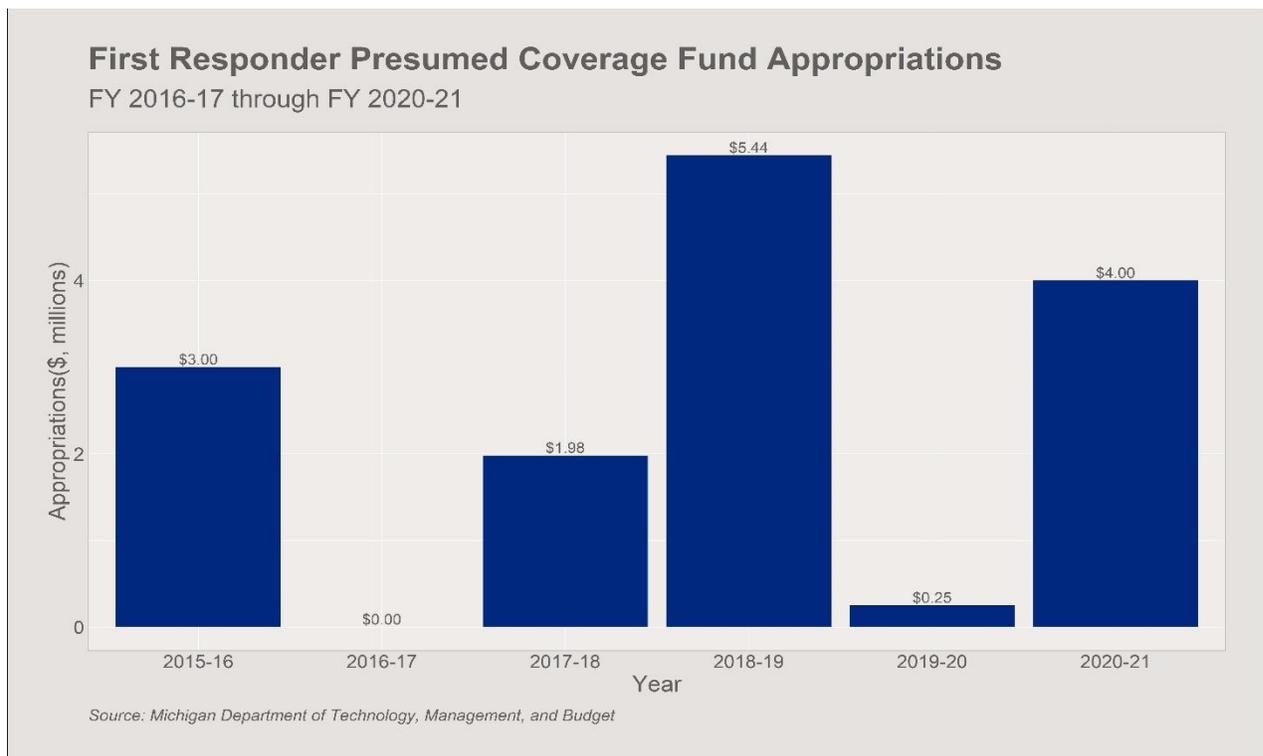
Beginning in FY 2017-18, 30% of Medical Marijuana Excise Tax revenue was dedicated to the FRPCF: \$1.8 million was appropriated by PA 107 of 2017 and \$5.2 million was appropriated by PA 207 of 2018. However, Section 601 of the Medical Marijuana Facilities and Licensing Act specified that the excise tax would be eliminated 90 days after the effective date of any law permitting recreational or nonmedical marijuana use in Michigan. Following voter approval of Initiated Law 1 of 2018, recreational marijuana use became legal and the medical marijuana excise tax was eliminated in March 2019, again leaving the Fund without an ongoing revenue source.



In 2019, PA 149 was enacted, which created the Internet Sports Betting Fund for the receipt of revenue from internet sports gaming. Money may be spent from the Fund for the Michigan Gaming Control Board's administrative expenses. After that, \$500,000 must be distributed to the Compulsive Gaming Prevention Fund, and then \$2.0 million must be distributed to the FRPCF.

In the same year, PA 152 was passed, which created the Internet Gaming Fund for the receipt of revenue from internet gaming. The Act requires money from the Internet Gaming Fund to be used to cover the Gaming Control Board's costs to regulate and enforce internet gaming. After that, and a \$500,000 deposit into the Compulsive Gaming Prevention Fund, the Act requires \$2.0 million to be deposited into the FRPCF. In total, \$4.0 million shall be deposited into the FRPCF each year from the two funds when there is sufficient revenue generated from the Internet Gaming Fund and Internet Sport Betting Fund. Revenue from each source likely will be sufficient to ensure that this amount is deposited each year. The first distribution should occur in FY 2020-21, when internet sports gaming and internet gaming begin operations in Michigan.

The stable funding source from the two funds will ensure regular deposits into the FRPCF to cover payouts under the Worker's Disability Compensation Act for first responders in the future. Deposits into the FRPCF remain there and do not lapse to the General Fund at the close of the fiscal year. The figure below illustrates the history of appropriations to the FRPCF since its inception.





Applications and Expenditures

Under the Worker's Disability Compensation Act, the Workers' Disability Compensation Agency must submit an annual report regarding the FRPCF. The report details the number of requested and approved claims, the total amount of money paid out in claims during the previous calendar year, and the cost of administration in the previous calendar year.

Applications for claims may be submitted only by paper through the US Mail. The table below shows the Fund's reported application figures for calendar years 2016 through 2019.

Application Statuses by Calendar Year					
Calendar Year	Applications	Approved	Denied	Pending	Ongoing
2016	10	6	3	1	0
2017	10	6	4	0	17
2018	9	5	2	2	17
2019	11	4	5	2	15

Source: First Responder Presumed Coverage Fund Annual Reports, 2016-2019.

According to the Workers' Disability Compensation Agency, a total of \$1.26 million in benefits has been paid to 24 qualified first responders as of January 2021. The median payment was just over \$31,000. It is essential to note that the very nature of cancer treatment means that individual claims can vary in cost to an extreme degree. Some claims may cover a short time while others could extend across many years of treatment.

Conclusion

It has taken over 20 years for the First Responder Presumed Coverage Fund to be established for payouts to first responders under the Workers Compensation Act and to establish a stable fund source. For 2021 and beyond, the Fund now has ongoing annual revenue to support current and future claims without requiring deposits from the General Fund.

¹ First Responder Center for Excellence, "Presumptive Legislation for Firefighter Cancer". Retrieved September 1, 2020.

² Sarah Calams, "Firefighter cancer laws: What's covered, what's not and next steps", Fire Rescue 1, June 20, 2016.

³ Michigan Senate Journal 61, p. 1641.

⁴ Emily Lawler, "Michigan firefighters fight cancer solo after state fails to fund assistance", *MLive*, January 19, 2019.