



West Manatee Fire & Rescue District

Memorandum

Date: September 10th, 2019

To: West Manatee Fire & Rescue Board of Commissioners

From: Tom Sousa, Fire Chief

Subject: Florida Statute 112.1816

Executive Summary

Florida Statute 112.1816 enacted into law on July 1st, 2019, requires that county and local governments provide specific benefits for firefighters that are diagnosed with twenty-one identified cancers. These benefits to be provided in lieu of claims for workers compensation benefits.

In order to be entitled for such benefits, the firefighters must:

- Be employed full-time as a firefighter
- Be employed by the state, university, city, county, port authority, fire control district
- Have been employed by his or her employer for at least five years; and
- Not have used tobacco products for at least the preceding five year; and
- Have not been employed in any other position in the preceding five years which is proven to create a higher risk for cancer.

The employer is required to provide the following benefits:

A one-time cash payout of \$25,000, upon the firefighter's initial diagnosis of cancer; and Reimbursement for any out-of-pocket deductible, copayment, or coinsurance cost incurred for the treatment of cancer; and

Specified cancers are treated as line of duty disability's regarding benefits provided in the firefighter's retirement plan;

The firefighter's retirement plan must consider the firefighter to have died in the line of duty as a result of cancer and provide a death benefit.

The statue specifically states that a firefighter shall maintain health coverage in the Districts health plan in order to be eligible for reimbursement of costs for cancer treatment. In addition, the District shall provide coverage for all benefits for ten years after a firefighter terminates for any reason.

This bill has been interpreted by various interest groups and attorneys in many ways.

Recommendation

It is my recommendation that we follow the consensus gathered from legal as well as other agencies regarding the application of the law at this time. It is not known whether the law will be amended by the legislature or judicial decree. The attached policy does provide clear guidance on the application of the law. The probability of a challenge to this policy remains low. The District is budgeting \$25,000 in assigned funds to cover any future liabilities. In addition, the District is purchasing insurance to cover the onetime lump sum benefit for approximately \$3,000 per year.

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1 A bill to be entitled
2 An act relating to firefighters; creating s. 112.1816,
3 F.S.; providing definitions; granting certain benefits
4 to a firefighter upon receiving a diagnosis of cancer
5 if certain conditions are met; requiring an employer
6 to make certain disability payments to a firefighter
7 in the event of a total and permanent disability;
8 providing for death benefits to a firefighter's
9 beneficiary if a firefighter dies as a result of
10 cancer or cancer treatments; specifying that any costs
11 associated with benefits granted by the act must be
12 borne by the employer; specifying that an employer may
13 not increase employee contributions to fund the
14 benefits granted by this act; requiring the Division
15 of State Fire Marshal to adopt certain rules; amending
16 s. 121.735, F.S.; adjusting the allocation of funds to
17 provide line-of-duty death benefits for members in the
18 investment plan of the Florida Retirement System;
19 directing the Division of Law Revision to adjust the
20 employer contribution rates for the Special Risk Class
21 and DROP in the Florida Retirement System; providing a
22 declaration of important state interest; providing an
23 effective date.

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25 Be It Enacted by the Legislature of the State of Florida:

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27 Section 1. Section 112.1816, Florida Statutes, is created
28 to read:

29 112.1816 Firefighters; cancer diagnosis.—

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- 30 (1) As used in this section, the term:
- 31 (a) "Cancer" includes:
- 32 1. Bladder cancer.
- 33 2. Brain cancer.
- 34 3. Breast cancer.
- 35 4. Cervical cancer.
- 36 5. Colon cancer.
- 37 6. Esophageal cancer.
- 38 7. Invasive skin cancer.
- 39 8. Kidney cancer.
- 40 9. Large intestinal cancer.
- 41 10. Lung cancer.
- 42 11. Malignant melanoma.
- 43 12. Mesothelioma.
- 44 13. Multiple myeloma.
- 45 14. Non-Hodgkin's lymphoma.
- 46 15. Oral cavity and pharynx cancer.
- 47 16. Ovarian cancer.
- 48 17. Prostate cancer.
- 49 18. Rectal cancer.
- 50 19. Stomach cancer.
- 51 20. Testicular cancer.
- 52 21. Thyroid cancer.
- 53 (b) "Employer" has the same meaning as in s. 112.191.
- 54 (c) "Firefighter" means an individual employed as a full-
- 55 time firefighter within the fire department or public safety
- 56 department of an employer whose primary responsibilities are the
- 57 prevention and extinguishing of fires; the protection of life
- 58 and property; and the enforcement of municipal, county, and

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59 state fire prevention codes and laws pertaining to the
60 prevention and control of fires.

61 (2) Upon a diagnosis of cancer, a firefighter is entitled
62 to the following benefits, as an alternative to pursuing
63 workers' compensation benefits under chapter 440, if the
64 firefighter has been employed by his or her employer for at
65 least 5 continuous years, has not used tobacco products for at
66 least the preceding 5 years, and has not been employed in any
67 other position in the preceding 5 years which is proven to
68 create a higher risk for any cancer:

69 (a) Cancer treatment covered within an employer-sponsored
70 health plan or through a group health insurance trust fund. The
71 employer must timely reimburse the firefighter for any out-of-
72 pocket deductible, copayment, or coinsurance costs incurred due
73 to the treatment of cancer.

74 (b) A one-time cash payout of \$25,000, upon the
75 firefighter's initial diagnosis of cancer.

76
77 If the firefighter elects to continue coverage in the employer-
78 sponsored health plan or group health insurance trust fund after
79 he or she terminates employment, the benefits specified in
80 paragraphs (a) and (b) must be made available by the former
81 employer of a firefighter for 10 years following the date on
82 which the firefighter terminates employment so long as the
83 firefighter otherwise met the criteria specified in this
84 subsection when he or she terminated employment and was not
85 subsequently employed as a firefighter following that date. For
86 purposes of determining leave time and employee retention
87 policies, the employer must consider a firefighter's cancer

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88 diagnosis as an injury or illness incurred in the line of duty.

89 (3) (a) If the firefighter participates in an employer-
90 sponsored retirement plan, the retirement plan must consider the
91 firefighter totally and permanently disabled in the line of duty
92 if he or she meets the retirement plan's definition of totally
93 and permanently disabled due to the diagnosis of cancer or
94 circumstances that arise out of the treatment of cancer.

95 (b) If the firefighter does not participate in an employer-
96 sponsored retirement plan, the employer must provide a
97 disability retirement plan that provides the firefighter with at
98 least 42 percent of his or her annual salary, at no cost to the
99 firefighter, until the firefighter's death, as coverage for
100 total and permanent disabilities attributable to the diagnosis
101 of cancer which arise out of the treatment of cancer.

102 (4) (a) If the firefighter participated in an employer-
103 sponsored retirement plan, the retirement plan must consider the
104 firefighter to have died in the line of duty if he or she dies
105 as a result of cancer or circumstances that arise out of the
106 treatment of cancer.

107 (b) If the firefighter did not participate in an employer-
108 sponsored retirement plan, the employer must provide a death
109 benefit to the firefighter's beneficiary, at no cost to the
110 firefighter or his or her beneficiary, totaling at least 42
111 percent of the firefighter's most recent annual salary for at
112 least 10 years following the firefighter's death as a result of
113 cancer or circumstances that arise out of the treatment of
114 cancer.

115 (c) Firefighters who die as a result of cancer or
116 circumstances that arise out of the treatment of cancer are

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117 considered to have died in the manner as described in s.
118 112.191(2) (a), and all of the benefits arising out of such death
119 are available to the deceased firefighter's beneficiary.

120 (5) (a) The costs to provide the reimbursements and lump sum
121 payments under subsection (2) and the costs to provide
122 disability retirement benefits under paragraph (3) (b) and the
123 line-of-duty death benefits under paragraph (4) (b) must be borne
124 solely by the employer.

125 (b) The employer or employers participating in a retirement
126 plan or system are solely responsible for the payment of the
127 contributions necessary to fund the increased actuarial costs
128 associated with the implementation of the presumptions under
129 paragraphs (3) (a) and (4) (a), respectively, that cancer has, or
130 the circumstances that arise out of the treatment of cancer
131 have, either rendered the firefighter totally and permanently
132 disabled or resulted in the death of the firefighter in the line
133 of duty.

134 (c) An employer may not increase employee contributions
135 required to participate in a retirement plan or system to fund
136 the costs associated with enhanced benefits provided in
137 subsections (3) and (4).

138 (6) The Division of State Fire Marshal within the
139 Department of Financial Services shall adopt rules to establish
140 employer cancer prevention best practices as it relates to
141 personal protective equipment, decontamination, fire suppression
142 apparatus, and fire stations.

143 Section 2. Subsection (3) of section 121.735, Florida
144 Statutes, is amended to read:

145 121.735 Allocations for member line-of-duty death benefits;

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146 percentage amounts.—

147 (3) ~~Effective July 1, 2017,~~ Allocations from the Florida
 148 Retirement System Contributions Clearing Trust Fund to provide
 149 line-of-duty death benefits for members in the investment plan
 150 and to offset the costs of administering said coverage, are as
 151 follows:
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Membership Class	Percentage of Gross Compensation
Regular Class	0.05%
Special Risk Class	<u>1.21%</u> 1.15%
Special Risk Administrative Support Class	0.03%
Elected Officers' Class— Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders	0.15%
Elected Officers' Class— Justices, Judges	0.09%

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Elected Officers' Class—	0.20%
County Elected Officers	

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Senior Management Service	0.05%
Class	

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Section 3. (1) In order to fund the benefit changes provided by this act to the Florida Retirement System, the required employer contribution rates for the members of the Florida Retirement System are increased as follows:

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(a) By 0.08 percentage point for the rate established in s. 121.71(4), Florida Statutes, for the Special Risk Class.

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(b) By 0.01 percentage point for the rate established in s. 121.71(5), Florida Statutes, for the Special Risk Class.

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(c) By 0.02 percentage point for the rate established in s. 121.71(5), Florida Statutes, for DROP.

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(2) The adjustments provided in subsection (1) are in addition to any other changes to such contribution rates which may be enacted into law to take effect on July 1, 2019. The Division of Law Revision is directed to adjust accordingly the contribution rates provided in s. 121.71, Florida Statutes.

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Section 4. The Legislature determines and declares that this act fulfills an important state interest.

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Section 5. This act shall take effect July 1, 2019.



Introduction:

Florida Statute 112.1816 was enacted by the Legislature and signed into law by the Governor. The statute makes firefighters who are diagnosed with certain cancers eligible to receive certain disability or death benefits. Specifically, in lieu of pursuing worker's compensation coverage, a firefighter shall be entitled to benefits as defined in this policy.

Cancer Diagnosis- "As used in this policy, the term: Covered Cancer includes:

1. Bladder
2. Brain
3. Breast
4. Cervical
5. Colon
6. Esophageal
7. Invasive Skin
8. Kidney
9. Large Intestinal
10. Lung
11. Malignant Melanoma
12. Mesothelioma
13. Multiple Myeloma
14. Non-Hodgkin's Lymphoma
15. Oral Cavity and Pharynx
16. Ovarian
17. Prostate
18. Rectal
19. Stomach
20. Testicular
21. Thyroid

Procedure:

Eligibility for Coverage:

1. Be employed full-time as a firefighter with the District at the F.S 112.1816 enacted date.
2. The firefighter has not used tobacco products for at least the five preceding years.
3. Have been employed by the District for five continuous years.
4. Have not been employed in any other position in the preceding five years which is proven to create a higher risk for cancer.

Cancer vs Non-Cancer diagnosis:

1. Cancer is a malignant tumor that is 1) fast-growing, 2) invasive, 3) infiltrates, 4) non-capsulated and/or 5) metastasize; hence, cancerous.
2. Benign tumor is 1) capsulated, 2) slow growing, 3) non-invasive; hence, non-cancerous.



Pre-cancerous cells (also called premalignant cells) are defined as abnormal cells that could turn into cancerous cells, but which by themselves are not invasive. Non-cancerous diagnosis is not eligible for reimbursement of cost-shares or the lump sum cash benefit. Example, Basal Cell Carcinoma and Squamous Cell Carcinoma are the most common diagnosis of skin cancer but deemed a benign and non-melanoma as they are slow growing and not invasive.

3. Cancer diagnosis only applies to full-time employed firefighters, hence, no benefits for part-time or volunteer firefighters.

Cancer Diagnosis- The Diagnosis must be made by a Physician who is board certified in the medical specialty that is appropriate for the type of cancer involved.

Reimbursements of Cancer treatment:

1. Actual cancer treatment must be covered within an employer-sponsored health plan for the reimbursement of out-of-pocket deductible, copayment, or coinsurance costs incurred.
2. Non-covered investigative or experimental cancer treatment is not reimbursable.
3. Balance billing is not reimbursable if treatment is provided out-of-network.
4. Only copays, deductibles, or coinsurance under the out-of-pocket limits for the District's Group Health Plan are reimbursable. See Summary of Benefits and Costs and/or the Summary Plan Document for maximum out-of-pocket limits. Presently (eff. 1/1/19) the PPO has a \$3,000 individual out-of-pocket limit, and \$6,000 family out-of-pocket limit in-network.
5. Diagnosis of cancer must occur with a date of service on or after 7/1/19 when determining eligibility for cost-share reimbursements, except as otherwise noted in number 7 below.
6. Reimbursement of out-of-pocket copays, deductibles or coinsurance for cancer treatment are not eligible if incurred prior to 7/1/19; however, reimbursements of cost-shares incurred after 7/1/19, even if the cancer diagnosis is pre-7/1/19, are eligible for reimbursement.
7. General out-of-pocket healthcare costs are not the same as out-of-pocket cost shares, such as a copay, deductible or coinsurance. Balance billing, experimental or investigative treatment are examples of general out-of-pocket healthcare cost.
8. Reimbursements are owed each year employed and owed for up to 10 years after employment terminates provided all other criteria are met.

One-time Lump Sum Cash Benefit:

1. ICD9 / ICD10 Statistical Classification of Diseases (ICD) needs to be reviewed and confirmed to determine initial cancer diagnosis.
2. This is a one-time cash lump sum benefit upon initial diagnosis of cancer after 7/1/19.
3. Cancer diagnoses prior to 7/1/19 are not eligible for the one-time cash lump sum benefit.
4. The one-time cash lump sum benefit is allowed only for the initial diagnosis of one of the



enumerated cancers. This cash lump sum benefit is not provided or allowed for subsequent new diagnosis, or reoccurrence of the same diagnosis that was formerly in remission. The cash lump sum benefit is not owed more than once regardless of how many diagnoses of cancer or body parts affected.

5. The one-time lump sum shall be a taxable benefit that is excluded from W-2 earnings.

Medical Release of PHI to Third Parties:

1. Need to get release signed to request medical diagnosis directly from the treating physician who made the initial cancer diagnosis.
2. Initial cancer diagnosis paperwork from the employee directly may not be solely relied upon. Medical records must be requested and authenticated directly from the treating physician.
3. See Exhibit-A for standard medical release of PHI

Affidavit:

1. Has been employed by West Manatee Fire Rescue District for at least 5 continuous years prior to receiving benefits.
2. Has not used tobacco products for at least the preceding 5 years prior to receiving benefits.
3. Has not been employed in any other position outside of the West Manatee Fire Rescue District in the preceding 5 years which is proven to create a higher risk for any cancer.
4. Has not been employed as a firefighter with another employer during the 10-year period after employment terminates with West Manatee Fire Rescue District.
5. See attached Exhibit-B for standard affidavit.

Explanation of Benefits (EOB):

1. Need copy of EOB to clarify Current Procedural Terminology (CPT) code, treatment date of service, and related to cancer treatment under a cancer diagnosis.
2. EOB will also be needed for reimbursement of out-of-pocket copays, deductibles, and coinsurance related to treatment of cancer.
3. General receipts, Visa charges, checking account debit charges presented as proof of payment should not be solely relied upon to determine reimbursements. This documentation should be added and supported by the corresponding EOB.
4. EOB are generally available within 30 - 60 days with the electronic auto adjudication of most healthcare claims.



Post-employment Benefit:

1. Reimbursement of out-of-pocket cost shares and the one-time cash lump sum benefit are to be paid to a firefighter for up to 10 years after employment terminates.
Provided the firefighter meets the criteria specified in §112.1816, Florida Statutes.
2. Was not subsequently employed as a firefighter following the employment termination date.
This means benefits are no longer due or owed upon new employment as a firefighter. See "firefighter" definition within earlier in the statutes for guidance.
3. Employment termination may occur due to the firefighter's resignation, dismissal, disability or retirement. Employment does not have to terminate due to voluntary resignation only.
4. Must elect to continue coverage under the District Health Plan upon separation of employment. Election of coverage under retirement or continuation of coverage under COBRA due to qualified event are both deemed elections of coverage.

Miscellaneous Provisions:

- 1) A covered cancer shall be considered a line of duty illness and firefighters shall be eligible for salary and benefits for all lost time due to absence for the treatment of a covered cancer.
- 2) Firefighters shall be eligible for disability benefits in the Districts retirement plan and the disability benefits shall be considered in the line of duty.
- 3) Firefighters shall be eligible for death benefits in the Districts retirement plan and benefits payable, shall be as if the illness was in the line of duty, or if he or she, dies as a result of covered cancer or circumstances that arise out of the treatment of a covered cancer.
- 4) All cost for benefits granted by this policy shall be borne by the District.

This policy shall provide guidance for the application of the provisions of F.S. 112.1816. This policy may be amended if any provision should be found to be invalid, unlawful, or not enforceable by reason of any law now existing or subsequently enacted by the State Legislature or decree of any appropriate judicial authority.

AUTHORIZATION FOR USE AND DISCLOSURE OF PRIVATE HEALTH INFORMATION TO THIRD-PARTIES

Unless otherwise indicated, I hereby authorize _____,
any of his officers, agents, employees or designees to disclose
confidential information about the patient listed below.

Please Print All Responses

***If you do not fill out this form completely, the employer may be unable
to process your request. Incomplete authorization requests will be
returned to the patient.***

**I UNDERSTAND THAT THIS AUTHORIZATION IS VOLUNTARY and that
the information to be disclosed may no longer be protected by Federal
law, and the recipient might re-disclose it.**

Patient Name:	Social Security # or Insurance I.D.#: XXX - XX -	Date of Birth:
Street Address:	City, State, & Zip Code:	Daytime Phone #:

**I authorize the individual or company identified below to receive
confidential information pertaining to the patient named above.**

West Manatee Fire Rescue
Attn: Julie Kichar, Privacy Officer, or other designee
P.O. Box 14028
Bradenton, FL. 34280
Office (941) 761-1555
Email- pritchj@wmfr.org

**Information to be disclosed to the individual or company designated above,
may include, but is not limited to, application or enrollment information,
eligibility information, claims records, claim status, patient management
records, medical reports, medical tests, and medical records. Disclosure
requested will include otherwise confidential medical information. If our
records include claims or other information pertaining to chronic diseases,
behavioral health conditions, including alcohol or substance abuse,
communicable diseases, including HIV/AIDS, and/or genetic marker
information, these records may be included in the information we will make
available to the individual or company designated above unless you otherwise
indicate below (please be specific):**

Type of coverage to which this authorization applies (check all that apply):

MEDICAL **DENTAL** **WORKER'S COMPENSATION** **E.A.P.**
 PENSION **STATUTORY LIFE/AD&D** **Other:** _____

IMPORTANT: *Your signature below means that you understand and agree to the following:*

- Requests for paper copies of claims and encounter information we receive from the individual or company you have authorized to receive your confidential information, may require payment of a fee for reproduction costs pursuant to Florida Statute (except where prohibited by law).
- You understand that your eligibility for benefits and payment for services covered by the West Manatee Fire Rescue benefit plans will not be affected if you do not sign this form. *(However, without your signature, your request to release the information described above to a third party will not be honored.)*
- The confidential information provided to the authorized individual or company upon their request, may include diagnosis and treatment information, including information on chronic diseases, behavioral health conditions, including alcohol or substance abuse, communicable diseases, including HIV/AIDS, and/or genetic marker information.
- You understand that you may receive a copy of this form if you ask for it by writing to the Privacy Officer listed above.
- You understand this authorization will expire the later of ten (10) years after the employee / insured's employment with West Manatee Fire Rescue District terminates or when the last benefit is paid under §112.1816(2)(a)-(b), Fla. Stat., unless you indicate a terminal date here: _____.
- You also understand that if you sign this form, you may revoke the authorization at any time by notifying West Manatee Fire Rescue Districts Privacy Officer above in writing; however, this revocation will won't have any effect on actions that West Manatee Fire Rescue District , or other authorized parties, took before we received the written notification.
- You agree to exempt, discharge, release, and hold harmless the authorized individual or company identified above from any claim or liability (including, but not limited to, any claim brought under a confidentiality or privacy law) in connection with the release at your request of the information and records checked as applicable herein.

Exhibit-A

Signature of Patient, or legal guardian or representative:	Date:
Print name Patient, or legal representative (if applicable):	

AFFIDAVIT OF _____

Reference: Benefits pursuant to §112.1816, Florida Statutes

BEFORE ME the undersigned Affiant appeared, _____, who hereby attests and swears as follows:

1. My name is _____, I am over 18 years of age and I have personal knowledge of the facts set forth herein.
2. I have been employed continuously since _____ as a full-time firefighter with West Manatee Fire Rescue District . My primary responsibilities have been the prevention and extinguishing of fires; the protection of life and property; and the enforcement of municipal, county, and state fire prevention codes and laws pertaining to the prevention and control of fires.
3. I have not used tobacco products for at least the preceding five (5) years prior to receiving any benefits paid, or payable, under §112.1816, Florida Statutes.
4. I have not been employed in any other position outside of West Manatee Fire Rescue District in the preceding 5 years prior to receiving any benefits paid, or payable, under §112.1816, Florida Statutes, which is proven to create a higher risk for any cancer.
5. I have not been employed as a firefighter with another employer at any time during the 10-year period after my employment terminated with the West Manatee Fire Rescue District .
6. I will not seek double reimbursement from West Manatee Fire Rescue District for any prescription drug coinsurance cost for which I have also been paid, or requested payable, under a separate copay assistance card, copay savings program, copay coupon, or other patient assistance program; or reimbursement of copays, deductibles or coinsurance for which I have also been paid, or requested payable, under a coordination of benefits as a dependent covered on a secondary basis by other applicable insurance.

FURTHER AFFIANT SAYETH NAUGHT.

(Type name)

SWORN TO AND SUBSCRIBED before me this ____ day of _____, 20 ____, in Sunrise, Broward County, Florida.

Affiant is personally known to me. _____
Produced I.D. _____

Notary Public

My Commission Expires (stamp):