

## **The Insurance Federation of Pennsylvania, Inc.**

**1600 Market Street  
Suite 1720  
Philadelphia, PA 19103  
Tel: (215) 665-0500 Fax: (215) 665-0540  
smarsahl@ifpenn.org**

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To: The Honorable Members of the House Veterans Affairs and Emergency Preparedness Committee

From: Samuel R. Marshall

**Re: Possible amendments to Act 46 of 2011 – an exemption from subrogation?**

We appreciate the goal of holding down the costs to local governments for the expanded workers compensation coverage Act 46 provides to firefighters suffering from cancer.

We are concerned, however, with exempting those responsible for this coverage from the medical costs of it – at least if the firefighter had health insurance that paid those costs prior to the cancer being established as work-related and therefore covered under the Workers Compensation Act.

The purpose of workers compensation coverage is to hold employers responsible for the injuries their employees suffer on the job – and that includes medical costs as much as indemnity costs (lost wages and the like). Yes, medical costs can be prohibitive. That's one reason we've pushed to hold down those costs in workers compensation, whether by modernizing the fee schedule, correcting physician dispensing abuses, or establishing treatment guidelines.

This proposal, however, doesn't reduce medical costs – it only transfers them, and on a somewhat random basis: It wouldn't apply to Federal health programs (we're not sure how it would impact the ACA), and we're not sure this prohibition could legally control ERISA-exempt health plans. Further, this presumably only applies if a health plan inadvertently paid for cancer treatments before realizing the individual had been a firefighter entitled to Act 46 coverage.

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That makes it impossible to accurately predict (and rate) how often these medical costs will be paid by somebody else, versus the firefighter's workers compensation insurer. It will depend on who the "somebody else" is, and how a particular claim was submitted and processed.

We are unaware of other medical costs incurred as part of a work-related injury that are excused from the responsibility of the entity providing workers compensation. That is a dangerous precedent: It invites uncertainty into the market, certainly for anticipating and pricing risk. It also invites uncertainty for the firefighter suffering from cancer: His workers compensation carrier will have every incentive to withhold accepting a claim in the hope that another entity pays for the medical treatment as long as possible; but those other entities will have the same incentive to deny initial payments as long as possible – which inevitably will leave the firefighter not only facing uncertainty on who will pay his medical bills, but also uncertainty on how quickly his indemnity claims will be paid.

The Department of Labor and Industry is scheduled to submit data on Act 46 claims experience to the House and Senate Labor and Industry Committees by July 7. It makes sense to review that data, and to see if it outlines who is paying what on medical costs – especially how much is currently being paid on medical claims by health insurers, and how much they are then collecting through subrogation from the firefighters' workers compensation carriers.

That will enable you and those other legislative committees to better consider all perspectives and the actual results of Act 46 in coming up with any refinements or corrections.

Thank you for the chance to comment.