

VOLUNTARY CANCER AWARD PROGRAM FAQ

What is the Voluntary Cancer Award Program (VCAP) and why is it needed?

Following the passage of the 2007 presumption of cancer legislation, a number of reports began circulating stating that firefighters were denied workers' compensation benefits or experiencing delays in the receipt of their benefits for as long as two years or more. There have also been cases where injured firefighters passed away before a claim determination was made or any benefits were disbursed. In many cases, this caused financial hardship to the surviving families.

The VCAP was designed to address this concern by providing immediate payment upon diagnosis of any of the following five currently covered cancers: brain, skin, digestive, hematological, or genitourinary. This would provide immediate payment to more firefighters and result in an increase in the amount paid to firefighters at a reduced cost for employers when compared with the current statutory environment.

How is this program voluntary and what happens if we elect not to opt in?

Under our proposed model, the state's fire agencies will have a choice: they can elect to remain under the current workers' compensation presumption statute, or to opt into the new VCAP model. Once a department elects the VCAP option they can opt out of it at the next renewal and go back to the 2007 WC firefighter presumption statute.

What is the most outstanding feature as to why a department would elect this VCAP program?

If a fire department stays in the current 2007 presumption statute, adjusters will continue to send Tentative Notice of Contest (TNO) notifications to claimant firefighters. This is due in part to the intrusive and often lengthy investigations and legal proceedings that come with the workers' compensation process. Should a department choose to join the VCAP, they will come under the newer statute and the Trust will begin sending out award payments based on type and stage of a covered cancer that is diagnosed within 10 days of submitting the claim.

How did the idea for the VCAP program come about?

The VCAP was conceived by meetings of the City Municipal League, Special Districts Association of Colorado, the Colorado Fire Chiefs Association, and the Colorado Professional Fire Fighters Association, which had previously formed the Colorado Firefighter Heart and Circulatory Benefits (CFH) Trust. Since that model was successful in handling cardiac claims, it is believed that this model would also work for cancer.

What is the 2007 "Presumption of Cancer" statute?

Section 8-41-209, C.R.S. defines certain cancers as work-related for firefighters, and therefore, compensable as an occupational disease if the employer is unable to provide sufficient evidence that the cancer is not job-related. The statute also creates eligibility criteria. These include a requirement that upon joining the fire service a firefighter must have undergone a physical examination that neglected to identify any trace of cancer at the time, and be employed for a minimum of five years.

What are the advantages for the firefighters?

There are several reasons, all of which apply direct benefit to the firefighters themselves. These include:

- 1) **No More Invasive Investigation:** When adjusting a cancer claim, it can take more than three months for an employer to research prior exposures and investigate prior employment, lifestyle, family history, and medical records. Through the VCAP, firefighters will no longer be subject to this type of an intrusive investigation.
- 2) **More Claims will be Eligible for Compensation:** More firefighters' claims will be accepted on receipt of diagnosis with one of the five covered cancers. No investigation into the cause of the cancer will be needed upon confirmation of eligibility.
- 3) **Faster Pay Outs:** Claim process will be streamlined and payments will start within 10 days of confirmation to the Trust of a diagnosed cancer. It is not going to get any easier for a firefighter to collect under the current 2007 presumption due in part to the 2016 State Supreme Court rulings on 3 claims, which upheld the employer's right to investigate and rebut cancer claims.
- 4) **Line of Duty Benefits:** Through the VCAP, a diagnosis of cancer will be considered as a line of duty event.

What are the advantages for a department?

- Limited liability for former employees is capped to 10 years as opposed to the current unlimited liability for a firefighter to claim cancer as career related even after being retired for 30 years.
- Improves relationship between management and firefighters by removing the delay previously needed for investigations into health and lifestyle.
- Caps losses covered under the award program to \$250,000, which previously could be well in excess of \$500,000 and goes into a department's experience rating.
- The VCAP Trust is member-owned, so every member department has a say in how the Trust operates.
- Funding stays in Colorado for the use of further supporting Colorado firefighters as opposed to funding going to other states to pay stockholders and executive salaries.
- Reduction of WC rates/costs allowing relief from the current financial burden.

What are the eligibility requirements for firefighters?

- The firefighter's employer must elect to join the VCAP Trust and pay their annual contribution.

- He or she must be a full-time firefighter for 5 years or a part-time or volunteer firefighter in active service for 10 years with the latter having maintained minimum training participation in their department for 36 hours each year.
- He or she must have had a physical examination after being hired, and prior to diagnosis.

Please note that a break in active service of no more than one year will not be considered a break in continuous full-time employment for full-time firefighters.

How does the VCAP affect workers' compensation rates?

Workers' compensation rates for firefighters in Colorado have grown proportionately higher than all other classes since the passage of the 2007 presumptive cancer statute, creating an unsustainable cost burden to employers. The VCAP would effectively reduce WC rates over time. As employers move from WC to the VCAP, their WC cancer experience will not go into the NCCI rate calculation. Subsequently, NCCI rates will decrease as cancer claims go down. Some current providers of worker's compensation are considering credits for participation in the VCAP program.

Can an employee still file a workers' compensation claim?

Yes, however it may not make sense to. The 2017 VCAP legislation, as currently written, takes away the 2007 presumptive cancer statute for those employers electing to opt in and replace it with the new VCAP legislation parameters. A preexisting worker's compensation statute from 2006 still gives firefighters the right to file a claim as a work-related disease, but the burden of evidence is on the firefighter to prove that the cancer was job-related. If a claimant does receive an award under workers' compensation, it would be offset by any payments issued under the VCAP and vice versa.

What is the difference between the 2007 WC presumptive statute and the 2006 statute?

The 2007 firefighter presumptive statute simply reversed the burden of proof from the employee having to prove cancer was job-related to the employer having to prove that any one of five cancers was not job-related.

How does an employer participate in the VCAP?

Upon passing a Governing Body Resolution to join the Trust, qualified employers would then sign a Trust Agreement, submit a roster of qualifying firefighters, and pay the associated contribution. Any cancer claims already filed under the workers' compensation system prior to the participation will not be transferred to the VCAP. The VCAP accepts full participation only, meaning a fire operation must enroll all eligible firefighters, including full-time, part-time and volunteer.

How much is paid out under the VCAP?

Awards are organized into tiered award levels, ranging from \$200 up to \$250,000 depending on the covered individual's type and stage of cancer. Awards under \$4,000 are paid out in a lump sum while amounts over this will pay \$4,000 every two weeks.

Is the award considered disability coverage or medical coverage?

Neither. It is a cash award based solely on diagnosis. The reimbursement is set for the covered firefighter's anticipated cash needs.

Is the award taxable?

No. The VCAP working group has been advised that under current rules the cash award, with the exception of rehabilitation expense, is not taxable.

What are Line of Duty benefits?

“Line of duty” is a designation that the incident is considered to have happened in the line of duty. The VCAP statute designates cancer claims as a line of duty event under this program. Since each individual fire operation determines what benefits are given for a line of duty occurrence, there is no set standard that we are aware of.

Who gets to decide where firefighters receive treatment and does the VCAP have preferred providers?

Medical benefits are provided by the employer or the individual’s own health benefit plan. There is no directed care or preferred providers at this time. Firefighters can use their own personal physician.

Is there a Coverage Plan Document available?

Yes, you can request a copy from jdepaepe@mcgriff.com. Our diagnosis-based coverage form works much like an accident policy, with cash awards set to cover a window of deficiencies between an employer’s current medical benefits, retirement, short and long-term disability, and post-employment medical benefits.

Where will the VCAP funds be kept and who will manage them?

As a multiple employer trust, the firefighter’s employers hold the responsibility of managing the VCAP funds in the interest of firefighters and their respective employers who are in the Trust. To that end, the funds will be managed by a Trust administrator under the oversight of the Board of Trustees. The VCAP funds will be located in Colorado banks.

Who will be represented on the Trust Board?

The Trust Board will consist of either 7 or 9 members who represent professional firefighters and fire departments. Representatives will include a large and small city, a large and small district, and 2 or 4 positions reserved for non-career firefighters such as human resources and risk management professionals.