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FISCAL AND POLICY NOTE

House Bill 977

(Prince George's County Delegation and Montgomery
County Delegation)

Economic Matters

Finance

Maryland-National Capital Park and Planning Commission Park Police -
Workers' Compensation - Lyme Disease Presumption - Repeal of Termination
Date
PG/MC 110-14

This bill makes permanent a workers' compensation occupational disease presumption for park police officers of the Maryland-National Capital Park and Planning Commission (M-NCPPC) who suffer from Lyme disease. The presumption applies only during the time that the officer is regularly stationed in an outdoor wooded environment (and for three years after the last date that the officer was regularly assigned to an outdoor wooded environment) and if the condition was not pre-existing before the regular assignment.

Fiscal Summary

State Effect: Potential minimal increase in hearings before the Workers' Compensation Commission due to making the presumption permanent. Any additional workload can be handled with existing resources.

Local Effect: Expenditures of the self-insured M-NCPPC increase minimally beginning in FY 2016 due to medical expenses, lost wages, and treatment associated with Lyme disease exposure by officers. Long-term disability payments may increase expenditures significantly in future years. Commission revenues are not affected. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: None.

Analysis

Current Law: Workers’ compensation law establishes a presumption of compensable occupational disease to certain public employees who are exposed to unusual hazards in the course of their employment. It is assumed that these injuries or diseases are due to the employee’s work and, therefore, require no additional evidence in the filing of a claim for workers’ compensation. As shown below, generally presumptions are based on particular occupations and their associated health risks.

<u>Type of Personnel/Occupation</u>	<u>Type of Disease</u>
Volunteer and career firefighters; fire fighting instructors; fire marshals employed by an airport authority, a county, a fire control district, a municipality, or the State; rescue squad members; and advanced life support unit members	Heart disease, hypertension, or lung disease that results in partial or total disability or death Specified cancers under specified conditions
Deputy sheriffs, police officers, and correctional officers in specified jurisdictions	Heart disease or hypertension that results in partial or total disability or death
Department of Natural Resources (DNR) paid law enforcement employees, park police officers of M-NCPPC, and certain other employees of M-NCPPC	Lyme disease under specified conditions

Under these circumstances, a covered employee is entitled to workers’ compensation benefits in addition to any benefits that the individual is entitled to receive under the retirement system. The weekly total of workers’ compensation and retirement benefits may not exceed the weekly salary paid to the individual.

Although statute is silent on the issue, occupational disease presumptions have long been considered rebuttable presumptions. Two court decisions address the use of “is presumed” in reference to occupational diseases in current law, specifying that the term “without contrary qualification, should be read to be a presumption, although rebuttable, of fact.” (See *Board of County Commissioners v. Colgan*, 274 Md. 193, 334 A.2d 89 (1975); and *Montgomery County Fire Board v. Fisher*, 53 Md. App. 435, 454 A.2d 394, aff’d, 298 Md. 245, 468 A.2d 625 (1983)). However, the Court of Special Appeals has

stated that, “after the last injurious exposure to a hazard and the conclusion of employment the nexus between an occupational disease and an occupation becomes increasingly remote.” (See *Montgomery County, Maryland v. Pirrone*, 109 Md. App. 201, 674 A.2d 98 (1996).)

The Lyme disease presumption for a DNR law enforcement officer applies if the employee did not have the disease prior to assignment to a position that regularly places him or her in an outdoor wooded environment. Chapter 98 of 2008 established a similar occupational disease presumption for a M-NCPPC park police officer who suffers from Lyme disease; however, it only applies while the officer is assigned to a position that regularly places him or her in an outdoor wooded environment and for three years after the last date of such an assignment. Moreover, this M-NCPPC presumption is in place for only seven years, with a scheduled termination date of September 30, 2015.

Chapter 709 of 2009 further extended the occupational disease presumption for Lyme disease to other employees of M-NCPPC who are not park police officers; however, more stringent requirements apply to these other employees. Specifically, such an employee has to (1) have worked for M-NCPPC on a full-time basis (not on a seasonal or intermittent basis) for at least one year prior to filing a claim for workers’ compensation; (2) have been assigned to a position that regularly stationed the employee in an outdoor wooded environment for at least one year; and (3) file the claim by the third anniversary of the last date the employee was in that assignment. This presumption is also temporary, remaining in place for six years and terminating on September 30, 2015.

Background: Workers’ compensation law has long recognized Lyme disease as a compensable occupational disease if the claimant is able to prove that a tick bite causing the disease occurred while he or she was on duty.

Lyme disease is a bacterial disease that is transmitted by the bite of an infected blacklegged tick. Symptoms include fever, headache, fatigue, and skin rash. Left untreated, Lyme disease may spread to the joints, heart, and nervous system. Most cases, particularly those cases diagnosed soon after transmission of the disease, can be effectively treated with antibiotics. Some patients, including those who are not treated in the early stages of the disease, can have persistent or recurrent symptoms and lingering health concerns long after initial treatment.

According to the U.S. Centers for Disease Control and Prevention, there were 1,113 confirmed cases of Lyme disease in Maryland in 2012. Maryland has the tenth highest rate of infection in the nation with 18.9 cases per 100,000 individuals.

Local Fiscal Effect: M-NCPPC is self-insured for workers’ compensation, meaning that all claims are paid directly by the commission rather than through an outside insurer.

Thus, M-NCPPC expenditures increase because the commission may no longer deny tick bite or Lyme disease claims for park police officers if the specified conditions are met.

M-NCPPC reports an increase in cases and claims related to tick bites and Lyme disease after the occupational disease presumption for park police officers went into effect on October 1, 2008. As illustrated in **Exhibit 1** below, in the five-year period prior to this presumption, there were 10 tick bite claims and only 1 Lyme disease claim. After the presumption, the number of tick bite claims and Lyme disease claims increased substantially. M-NCPPC advises that the only occasion in which it denied claims related to tick bites and Lyme disease before the presumption took effect was when claimants did not submit medical documentation. Additionally, M-NCPPC reports that the single case of Lyme disease that occurred prior to the presumption is a particularly severe case compared to those accepted after the presumption was established, explaining why the costs are greater in the period before the presumption took effect, despite the different amount of total cases.

The costs below represent only those cases that began in each five-year period. Due to the long-term nature of the effects of the disease, expenditures for individual cases may continue to rise as follow-up and additional treatments become necessary for long-term disability benefits and payments. The expenditure increase due to making the presumption permanent is unpredictable and depends on the number and severity of future cases of Lyme disease.

Exhibit 1
Park Police Workers' Compensation Claims for Tick Bites and Lyme Disease
Comparison of Claims Experience
Before and After Effective Date of Presumption
(October 1, 2008)

	Before Presumption Effective <u>2003-2008</u>	After Presumption Effective <u>2008-2013</u>	<u>Change</u>	<u>10-year Totals</u>
Tick Bite Claims	10	43	330%	53
Bite Claims Accepted	4	23	475%	24
Bite Claims Denied	2	0	-100%	2
Bite Claims with No Medical Cost	4	20	400%	24
Average Tick Bite Claims Per Year	2	8.6	330%	5.3
Lyme Disease Confirmed Claims	1	4	300%	5
Confirmed Cases Accepted	1	4	300%	5
Confirmed Cases Denied	0	0	0%	0
Average Lyme Claims Per Year	0.2	0.8	300%	0.5
Payouts to Date				
For All Tick Claims	\$43,637	\$24,990	-43%	\$68,628
For Lyme Claims Only	\$42,129	\$22,725	-46%	\$64,854

Notes: "Claims Experience" reflects date of first report of injury filed by claimant, regardless of payment dates. "Payouts to Date" cannot capture future claims activity based on an initial occurrence; thus, they do not reflect additional payments for claims that remain open or claims that are re-opened for further treatment. Actual payouts for these existing claims are likely to grow over time. Lyme Claims are a subset of Tick Bite Claims.

Source: Maryland-National Capital Park and Planning Commission

Additional Comments: The bill makes permanent only the occupational disease presumption for park police officers. The presumption for other employees of M-NCPPC under Chapter 709 of 2009 still expires on September 30, 2015.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Chesapeake Employers Insurance Company, Maryland-National Capital Park and Planning Commission, Montgomery and Prince George's counties, Workers' Compensation Commission, U.S. Centers for Disease Control and Prevention, Department of Legislative Services

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