

Information Bulletin

PROPOSED REGULATIONS: VOLUNTEER FIREFIGHTER ENHANCED CANCER DISABILITY BENEFITS PROGRAM

On May 30, 2018, the Division of Homeland Security and Emergency Services adopted the following regulations relating to the Volunteer Firefighter Cancer Disability Benefits Program on an emergency basis. The regulations will be published in the June 20, 2018 edition of the State Register and will be proposed for permanent adoption through the State Administrative Procedures Act (SAPA). Public comment on the proposed regulations will be accepted until August 19, 2018.



Title 9 of the New York State Codes, Rules & Regulations

A new part 210 is added to read as follows:

Volunteer Firefighter Enhanced Cancer Disability Benefits Program

(Statutory authority: General Municipal Law §205-cc)

Section 210.1. Authority, intent and purpose

- (a) The Division of Homeland Security and Emergency Services, Office of Fire Prevention and Control has authority to establish rules and regulations related to claims, denials and qualifications for the enhanced cancer disability benefit, pursuant to General Municipal Law Section 205-cc.
- (b) The intent and purpose of the regulations are to establish processes by which an active volunteer firefighter or his or her beneficiaries can establish qualification for benefits, file a claim for benefits or appeal from a denial of benefits.

Section 210.2. Definitions

For purposes of this Part:

- (a) "Authority Having Jurisdiction" shall mean the governmental body which possesses the legal responsibility for providing fire protection as follows:
- (1) For a fire district and joint fire district it shall mean the board of fire commissioners.
 - (2) For a village it shall mean the village board of trustees.
 - (3) For a fire protection district, it shall mean the town board that contracts to provide fire protection.
 - (4) For a city it shall mean the governing body vested with such power.
- (b) "Active Volunteer Firefighter" shall mean a person who has been approved by a legally organized fire district, department or company as a firefighter and who is faithfully and actually performing service in the protection of life and property from fire or other emergency, accident or calamity in connection with which the services of the fire district, department or company are required.
- (c) "Benefit Provider" shall mean an insurance company authorized to engage in the business of insurance in this State providing Enhanced Cancer Disability Benefits to eligible volunteer firefighters or the authority having jurisdiction that is self-funding an Enhanced Cancer Disability Benefits Program.
- (d) "Cancer" shall mean (i) a disease caused by an uncontrolled division of abnormal cells in a part of the body or a malignant growth or tumor resulting from the division of abnormal cells and (ii) affecting the prostate or breast, lymphatic, hematological, digestive, urinary, neurological, or reproductive systems or melanoma.
- (e) "Enhanced Cancer Disability Benefits" shall mean the benefits set forth in General Municipal Law section 205-cc(2)(a)-(d).
- (f) "Faithful and actual service" shall mean participation in the firefighting activities of a legally organized volunteer fire district, department or company.
- (g) "Fit Test" shall mean the self-contained breathing apparatus fit test conducted yearly pursuant to requirements of 29 CFR 1910.134 for an immediately dangerous to life and health atmosphere.
- (h) "Interior Firefighter" shall mean an active volunteer firefighter who (a) has the minimum training to conduct interior structural firefighting duties as determined by the fire district, department or company,

(b) has been deemed physically and medically qualified pursuant to 29 CFR 1910.134 to use self-contained breathing apparatus; (c) has successfully completed fit test(s); and (d) has been designated by the fire district, department or company to perform interior structural firefighting duties in an immediately dangerous to life and health atmosphere.

(i) "Office of Fire Prevention and Control" shall mean the New York State Division of Homeland Security and Emergency Services Office of Fire Prevention and Control.

(j) "Physical Examination" shall mean a medical evaluation by a board-certified physician or other licensed health care professional, who, within the scope of their practice, determined the interior firefighter's ability to use a respirator and perform interior structural firefighting activities, and shall include completion of the mandatory OSHA Respiratory Medical Evaluation Questionnaire contained in 29 CFR 1910.134, Appendix C.

(k) "Reporting Year" shall mean December 1st through November 30th.

(l) "Total disability" means a disability caused by cancer and that prevents a volunteer firefighter from being an active volunteer firefighter.

(m) "Year of firefighting service" means a consecutive twelve-month period during which an active volunteer firefighter participates in the service of and meets the minimum standards established by the fire district, department or company.

Section 210.3. Eligibility

(a) A volunteer firefighter must meet the following criteria to be eligible for enhanced cancer disability benefits:

- (1) Five or more years of faithful and actual firefighting service as an interior firefighter;
- (2) Has submitted proof of five years of interior structural firefighting service by providing verification that he or she has passed at least five annual fit tests;
- (3) Successful completion of a physical examination prior to the commencement of duties as an interior firefighter, which failed to reveal evidence of cancer; and
- (4) Diagnosis of cancer.

- (b) A volunteer firefighter shall remain eligible for enhanced cancer disability benefits specified in General Municipal Law section 205-cc(2)(a), (b), and (d) for 60 months after the formal cessation of the volunteer firefighter's status as an active volunteer firefighter.

Section 210.4. Documentation

- (a) Fire districts, departments and companies shall provide information on the enhanced cancer disability benefit to all its members and make available such information upon request.
- (b) Upon request, the fire district, department or company shall provide a claim form and instructions to its member or their beneficiary(ies) detailing how to file a claim for enhanced cancer benefits with the benefits provider.
- (c) As part of any claim submitted and filed with the benefit provider, fire districts, departments and companies shall provide a certification of eligibility for enhanced cancer disability benefits using a form prescribed by the office of fire prevention and control. This form must be signed by the head of the department or company, sworn to under penalty of perjury as true, correct and complete, notarized and contain, at a minimum, the following information:
- (1) The full legal name of the eligible volunteer firefighter;
 - (2) The full legal name of the fire district, department or company;
 - (3) The dates the eligible volunteer firefighter was an active volunteer firefighter of the fire district, department or company;
 - (4) The number of years of firefighting service as an interior firefighter;
 - (5) A statement that the eligible volunteer firefighter performed interior structural firefighting duties inside a building; and
 - (6) A statement that the eligible volunteer firefighter successfully completed a physical examination, prior to the commencement of duties as an interior firefighter, which failed to reveal any evidence of cancer;

Section 210.5 Proof of Benefit Coverage

(a) A fire district, department or company must submit to the Office of Fire Prevention and Control by January 1, 2019 and annually thereafter an attestation that the fire district, department or company will provide the enhanced cancer disability benefit by:

(1) carrying an insurance policy issued by an insurance company authorized to engage in the business of insurance in this State sufficient to cover its eligible volunteer firefighters and provide a death benefit to their beneficiaries; or

(2) proof that the authority having jurisdiction: (i) possesses taxing authority; (ii) has agreed in writing to fund any and all claims of eligible volunteer firefighters and their beneficiaries through existing and future revenues.

(b) The policy coverages and or financial responsibilities of a fire district, department or company shall include:

(1) A lump sum payment of \$25,000 for each diagnosis payable to the eligible volunteer firefighter upon acceptable proof to the benefit provider of a diagnosis by a board-certified physician in the medical specialty appropriate for the type of cancer diagnosed that there are one or more malignant tumors characterized by the uncontrollable and abnormal growth and spread of malignant cells with invasion of normal tissue and that either:

i. there is metastasis; and

a. surgery, radiotherapy, or chemotherapy is medically necessary; or

b. there is a tumor of the prostate, provided that it is treated with radical prostatectomy or external beam therapy; or

c. the firefighter has terminal cancer, his or her life expectancy is 24 months or less from the date of diagnosis, and will not benefit from, or has exhausted, curative therapy;

- (2) A lump sum payment of \$6,250 for each diagnosis, payable to the eligible volunteer firefighter upon acceptable proof to the benefit provider of a diagnosis by a board-certified physician in the medical specialty appropriate for the type of cancer involved that either:
- ii. there is a carcinoma in situ such that surgery, radiotherapy, or chemotherapy has been determined to be medically necessary; or
 - iii. there are malignant tumors that are treated by endoscopic procedures alone; or
 - iv. there are malignant melanomas;
- (3) A monthly benefit of \$1500, of which the first payment shall be made six months after total disability and submission of acceptable proof of said disability to the benefit provider that such disability is caused by cancer and that the cancer precludes the eligible volunteer firefighter from serving as a firefighter, provided that the benefit shall continue for up to thirty-six (36) consecutive months; and
- (4) A death benefit of \$50,000 payable to the eligible volunteer firefighter or his or her beneficiary upon acceptable proof by a board-certified physician that the firefighter's death resulted from complications associated with cancer.

Section 210.6. Claims Process

- (a) (1) An eligible volunteer firefighter or their beneficiary(ies) shall file a claim with the benefit provider within 120 days after the diagnosis of a covered cancer, the death of the eligible volunteer firefighter, or commencement of a covered total disability. Failure to file a claim within such time shall not invalidate or reduce any claim if it shall be shown not to have been reasonably possible to file such claim and that a claim was filed as soon as reasonably possible. A claim shall be filed by submitting a claim form(s) as may be required by the benefit provider to the benefit provider. The claim form must be signed by the

eligible volunteer firefighter or their beneficiary(ies) and sworn to under penalty of perjury as true, correct and complete.

(2) The benefit provider shall have the right and opportunity to examine the person of the eligible volunteer firefighter when and as often as the benefit provider may reasonably require during the pendency of claim and also the right and opportunity to make an autopsy in case of death where it is not prohibited by law.

(b) The benefit provider shall review the claim and determine if the claim will be paid within thirty (30) days of receipt of the claim. However, if the benefit provider requires additional information from the claimant to make a determination, the benefit provider shall provide written notice to the claimant within such thirty (30) days requesting the information. The claimant shall be afforded at least forty-five (45) days from receipt of the request to furnish the information. The thirty (30) days in which the benefit provider shall make a determination on the claim shall be tolled and shall resume as of the date the claimant furnishes the information to the benefit provider or the end of the forty-five (45) day period afforded to the claimant to provide such information.

(c) If the claim is approved, the benefit provider shall mail or deliver written notification to the claimant and the fire district, department or company within five (5) business days of the approval. The benefit provider shall pay benefits within thirty (30) days of mailing or delivering such notification.

(d) If the claim is denied, the benefit provider shall mail or deliver written notification to the claimant and the fire district, department or company within five (5) business days of the denial. If the benefit provider making the denial is an insurance company, then the written denial notification shall include a statement that the claimant may file a complaint with the New York State Department of Financial Services and provide the Department's website address, mailing address, and telephone number. Any denial

notification by a benefit provider shall include the reasons for such denial. The only permissible reason(s) for denial of a claim shall be the following:

- (1) the volunteer firefighter does not have 5 or more years of service as interior firefighter; or
- (2) the volunteer firefighter did not successfully complete a physical examination, prior to the commencement of duties as an interior firefighter, which examination failed to reveal any evidence of cancer; or
- (3) the volunteer firefighter has not passed 5 yearly fit tests; or
- (4) the volunteer firefighter ceased to be an active volunteer firefighter for more than sixty (60) months prior to the submission of the claim for benefits; or
- (5) The volunteer firefighter is receiving or has already received benefits as a paid firefighter under General Municipal Law Article 10; or
- (6) The diagnosis of cancer is not for a type covered by this Part; or
- (7) the volunteer firefighter does not have a total disability as referenced in General Municipal Law section 205-cc(2)(c).

(e) Upon receipt of the denial of the claim, the claimant shall have sixty (60) days to appeal the denial pursuant to section 210.7 of this Part.

Section 210.7. Denial of Benefits

- (a) If the benefit provider is an insurance company, then the claimant shall appeal the denial to the insurance company. If the insurance company denies the claimant's appeal, then a claimant may bring an action at law or in equity to recover on the insurance policy. However, a claimant shall not bring an action at law or in equity to recover on the insurance policy prior to the expiration of sixty (60) days after the claim was filed pursuant to section 210.6 of this Part and a claimant shall not bring such an action after the expiration

of two (2) years following the time the claimant was required to file the claim pursuant to section 210.6 (a)(1) of this Part.

(b) Except where the benefit provider is an insurance company, as provided in subdivision (1) of this section, any denial of benefit of Enhanced Cancer Disability Benefits shall be considered a final and binding agency determination within the meaning of the New York State Civil Practice Law and Rules.

Section 210.8. Annual Reports

(a) Annual Claims Report. The fire district, department or company shall report to the office of fire prevention and control, no later than December 1, 2019 and annually thereafter, on the claims and benefits payments for the reporting year using forms prescribed by the office for fire prevention and control.

(1) This report must be signed by the head of the department or company, sworn to under penalty of perjury as true, correct and complete and shall be notarized.

(2) The office of fire prevention and control shall develop an annual claims report form to be maintained on its website, containing at a minimum the following information:

- i. Number of claims in the reporting year;
- ii. The types of claims in the reporting year;
- iii. The types of cancer claims in the reporting year; and
- iv. The number of eligible volunteer firefighters who received enhanced cancer disability benefits in the reporting year.

(b) Annual Roster of Interior Firefighters. The fire district, department or company shall report to the Office of Fire Prevention and Control, no later than December 1, 2019 and annually thereafter, a complete list of its interior firefighters for the reporting year.

(c) The office of fire prevention and control shall make information related to interior firefighters and applicable training available to fire districts, departments or companies upon request.