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State: Fla.

Bills Have Different Standards for PTSD Coverage: Top [2017-11-17]

Florida Democrats have introduced dueling bills that would allow first responders to receive workers' compensation benefits in mental-mental claims for injuries such as PTSD, but the measures have differing evidentiary standards.



Sen. Victor Torres

Workers advocates support Senate Bill 126, sponsored by Sen. Victor Torres, D-Kissimmee, who proposes to change the evidentiary standard from the current “clear and convincing” to “a preponderance.”

The proposal would cover first responders for lost wages even if no physical injury occurred. Current Florida law allows medical benefits for first responders who can prove post-traumatic stress disorder or other mental injuries with clear and convincing evidence.

On Monday, Rep. Robert Asencio, D-Miami and a retired police captain, introduced House Bill 629, an identical bill to SB 126 and also supported by claimants' attorneys.

Both bills are in response to the June 2016 Pulse Nightclub mass murders in Orlando, where 49 patrons died and 58 others were wounded. Torres introduced a similar bill during the legislative session earlier this year, but it died in committee.

Torres, a retired New York City Transit Police officer, said he prefiled SB 126 in advance of the 2018 legislative session, which convenes Jan. 9, after meeting former Orlando police Officer Gerry Realin and his family.

Realin developed PTSD after recovering bodies from the Pulse Nightclub and won early retirement benefits from the Orlando Police Pension Board in July. His attorney has vowed to sue the city for negligence if it won't pay workers' compensation benefits.

“First responders have our backs,” Torres said Thursday. “They respond to us any time of day. And we need to be there for them. I remember the things I encountered on the force but didn't know it was PTSD. I heard about officers committing suicide. Looking back now, I realize these are things my department should have taken care of.”

Two other House and Senate companion bills also would allow first responders to collect lost wages for mental injuries unaccompanied by physical ailments, but they would impose more restrictions.

HB 227, by Rep. Matt Willhite, D-Royal Palm Beach, and SB 376, by Sen. Lauren Book, D-Plantation, would use the “clear and convincing” evidentiary standard, and would require certain conditions for first responders to receive compensation.

To get indemnity benefits, police, firefighters, paramedics and emergency medical technicians would have to witness a murder, suicide, fatal injury or child death, or arrive on a scene where mass casualties were suffered.

In addition, the first responder would have to have begun mental health treatment within 15 days of the incident and meet the criteria for PTSD as described in the most recent edition of the Diagnostic and Statistical Manual of Disorders published by the American Psychiatric Association. Claimants' attorneys object to the tight deadline, contending that often symptoms don't appear until long after the traumatic experience.

Willhite, who was elected in 2016 and is an active-duty captain with Palm Beach County Fire Rescue, said his bill is a "starting point" and that he is open to compromise on the 15-day treatment window by perhaps expanding it to 60 or 90 days.

"I do think there are opportunities for amending it, and we're already having discussions on that," Willhite said. "We need to make sure there's an identifiable problem and that we get them treatment and get them back to work.

"It's difficult for first responders to admit they have a problem," he said. "They put it away and don't talk about it. Then they develop relationship problems, addictions, alcoholism as a way to cope with it. It's difficult to bring forward because of the stigma."

Winter Park claimants' attorney Geoff Bichler said the witness standards and 15-day treatment window are unrealistic for claimants.

"Most first responders never witness an actual murder, suicide, fatal injury or child death. In most cases they arrive after the fact," said Bichler, who represents Realin in his case against the city of Orlando.

"No one I know has begun treatment for PTSD within the first 15 days of a trauma," he said. "It's just unrealistic. They're trying to add some hurdles to coverage. In a weird way, it makes the law worse and more restrictive. Right now, we can get medical care for first responders who have PTSD. This legislation requires additional requirements."

Bichler said the competing legislation leaves room for negotiation, however. He said he hopes lawmakers pass Torres' simple and straightforward fix — a diagnosis of PTSD with the civil court standard of a preponderance of evidence.

"We need to put squarely on employers an obligation to provide full benefits for PTSD at the earliest stage," Bichler said. "Hopefully it would encourage more proactive assessment of these kinds of problems. There's a stigma attached to this. A lot of folks don't want to make these claims because of the way it could impact their careers."

The Florida League of Cities and the Florida Chamber of Commerce have taken no position on any of the PTSD bills, officials said, although the league earlier this year expressed concerns about the potential fiscal impact if the standard of proof were changed, and the scope of benefits broadened, for first responders with mental injuries.

The American Insurance Association had no one to respond to the PTSD bills on Thursday, but Southeast Region Vice President Ron Jackson said during the same debate in the 2017 legislative session that he feared a proliferation of claims.

"Our folks have always had concerns about lessening the evidentiary standard and perhaps setting up situations where non-work-related mental stress could proliferate in the workers' compensation context," Jackson said at the time.

Florida lawmakers have prefiled other workers' compensation bills in advance of the 2018 special session:

- SB 258, by Sen. Gary Farmer Jr., D-Lighthouse Point, would prohibit attorney fees paid by insurers to be included in their rate base or used to justify a rate or a rate change.
- HB 687, sponsored by Rep. Cory Byrd, R-Neptune Beach, would increase the initial term of judges of compensation claims to six years, from four years. Each full-time compensation judge would earn \$10,000 less than the annual salary paid to a circuit court judge. Compensation claims judges currently earn \$124,564 a year — \$36,124 less than circuit court judges (\$160,688).
- SB 280, sponsored by Sen. Aaron Bean, R-Jacksonville, would urge insurers, including those that write workers' compensation, to cover services provided through telehealth. An insurer that offers a rate plan approved under Section 4 of 627.0915 of the Florida Statutes would be "encouraged" to cover telehealth services, defined as a provider using telecommunications technology to treat patients in remote locations.
- HB 21, sponsored by Rep. Jim Boyd, R-Bradenton, would require providers to complete a two-hour continuing

education course on prescribing controlled substances. The course would have to include current standards on opiates and the risk of addiction following all stages of treatment in managing acute pain. Opioid prescriptions would be limited to a three-day supply for acute pain and seven days if the provider finds and documents medical necessity.

- SB 534, by Sen. Denise Grimsley, R-Sebring, would regulate pharmacy benefit managers by adding them to the list of administrators who directly or indirectly solicit coverage of premiums or settle claims for health insurance coverage, including workers' compensation claims.
- SB 648, by Sen. Dennis Baxley, R-Ocala, would provide workers' compensation coverage for disabled participants in an adult or youth work experience activity.

Though the Legislature doesn't convene its regular 2018 session until Jan. 9, lawmakers use the fall for "interim" committee hearings to vote on whether to pass bills favorably to other committees.