



# First responder legislation trend continues

---

BY **DESIREE TOLBERT-RENDER**

*AVP, National Technical Compliance,  
Workers' Compensation, Sedgwick*

The introduction and passage of legislation across the country impacting benefits for first responders continues to be a trend in 2019. These bills primarily focus on cancer presumptions, mental health coverage, the expansion of covered first responder personnel and benefits for eligible spouses. Here is a summary of the state bills addressing each of these areas.

---



## CANCER PRESUMPTIONS

Several states have passed bills that expanded cancer presumptions for first responders this year. Many trace the acceleration of this trend to the October 14, 2013 release of research by the National Institute for Occupational Safety and Health (NIOSH) that found higher rates of cancers, including mesothelioma, among firefighters than in the U.S. population as a whole. According to the researchers, these findings strengthened the scientific evidence for a relation between firefighting and cancer because it involved a larger population of firefighters than previous studies and the firefighters were followed for a longer period of time. States that recently passed bills expanding cancer presumptions include Montana, New Jersey, Texas and Virginia.

### **MONTANA**

Reportedly, Montana was one of only approximately five states without a “presumptive law” for firefighters. This changed on April 18, 2019 when Governor Steve Bullock signed Senate Bill 160, the Firefighter Protection Act, into law. This legislation defines presumptive diseases as those contracted during work, including myocardial infarction, colorectal cancer, mesothelioma, non-Hodgkin’s lymphoma and cancers of the esophagus, brain, lung and breast. This measure also provides insurers with an option to rebut these claims.

---

## NEW JERSEY

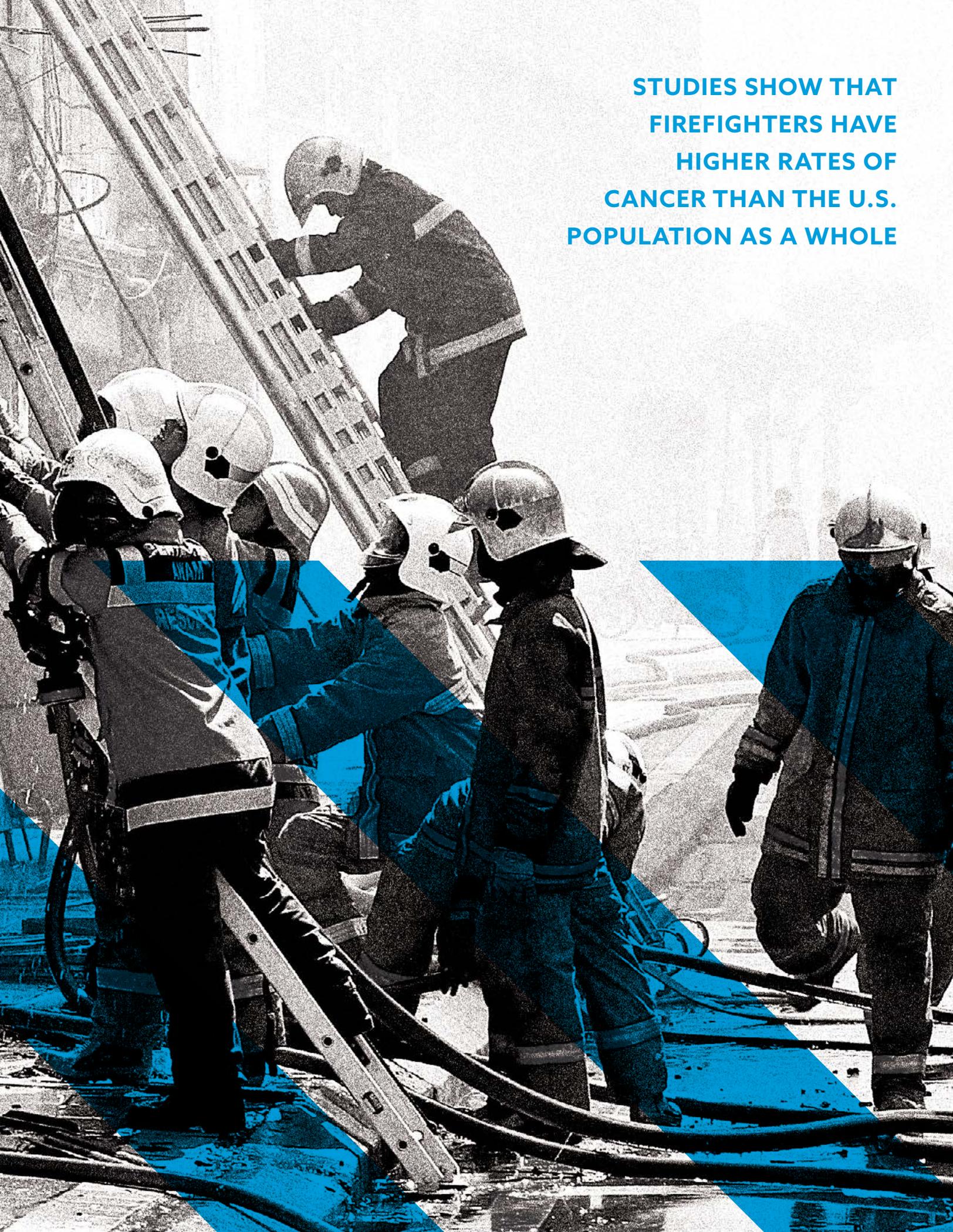
On July 8, 2019, Governor Phil Murphy signed Assembly No. 4882/Senate No. 3474 and Senate Bill 716/Assembly No. 1741 into law. This legislation adds presumptions for New Jersey public safety employees, including those who volunteered for 9/11 rescue, recovery and clean-up efforts at World Trade Center sites.

Under Assembly 4882, permanent and total disability resulting from a qualifying condition or impairment of health will be presumed to have occurred during and as a result of performing the employee's regular duties if they participated in World Trade Center rescue, recovery or clean-up operations for a minimum of eight hours. This presumption is rebuttable by competent evidence and available whether or not the employee was instructed by an employer to participate. This bill was named after Lieutenant Bill Ricci, a professional firefighter, who volunteered to serve at Ground Zero after the terrorist attacks on September 11, 2001 and was ineligible for an accidental disability retirement under previously existing law.

Senate No. 716 reforms New Jersey workers' compensation law to no longer require first responders and firefighters to prove causation for their illnesses. Under the new law, firefighters under age 76 with seven or more years of service who suffer an injury, illness or death that may be caused by cancer are presumed to be covered under workers' compensation.

For all other first responders, including paid or volunteer emergency, correctional, fire, police and medical personnel, a rebuttable presumption of coverage is created with evidence of exposure to a known carcinogen, cancer-causing radiation or radioactive substances in the course of employment. Public safety workers are also required to prove that the injury, illness or death manifested during their employment. Employers are required to maintain records of instances of the workers deployed where the presence of known carcinogens was indicated under the Worker and Community Right to Know Act and where events occurred that could result in exposure to those carcinogens.

---



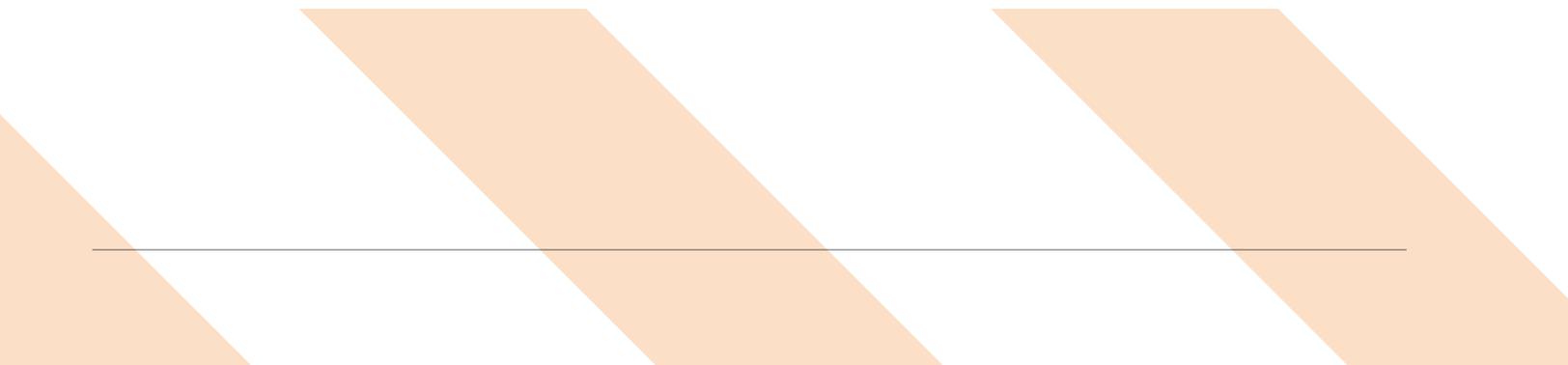
**STUDIES SHOW THAT  
FIREFIGHTERS HAVE  
HIGHER RATES OF  
CANCER THAN THE U.S.  
POPULATION AS A WHOLE**

## TEXAS

Senate Bill 2551 was signed into law by Governor Abbott on June 10, 2019 and became effective immediately. The bill specifies the 11 cancers subject to the legal presumption regarding cancer. This measure also details the process for rebuttal of the presumption. To aid in managing the financial risks associated with this bill, self-insured governmental entities are granted the authority to create an account that is allowed to accumulate and reinvest assets for exclusive payment of lifetime income and death benefits to current and future beneficiaries.

## VIRGINIA

House Bill 1804/Senate Bill 1030 added cancers of the colon, brain or testes to the list of cancers presumed to be an occupational disease covered by the Virginia Workers' Compensation Act for firefighters and other specified first responders who develop cancer. To become effective, this measure must be reenacted by the 2020 session of the Virginia General Assembly. This bill directs the 2020 session of the General Assembly to consider any research, findings and recommendations from the Joint Legislative Audit and Review Commission's review of the Virginia Workers' Compensation program when considering and enacting any legislation relating to workers' compensation and the presumption of compensability for certain cancers.



# MENTAL HEALTH COVERAGE

First responders by the nature of their jobs are faced with traumatic and stressful events beyond what the general public typically experiences. According to a May 2018 Supplemental Research Bulletin by Substance Abuse and Mental Health Services Administration focused on mental health and substance use concerns in first responders, approximately 30% develop behavioral health conditions including, but not limited to, depression and post-traumatic stress disorder (PTSD). Connecticut, Florida, Louisiana, Nevada, New Hampshire, New Mexico and Oregon were among the states to pass bills this year that will allow coverage for PTSD for first responders.

## CONNECTICUT

Senate Bill 164 adds coverage for state and local police, parole officers or firefighters if diagnosed with PTSD as a direct result of a qualifying event in the line of duty. Additionally, this bill requires the Connecticut Department of Emergency Services and Public Protection, the Department of Corrections, the State Fire Marshall and municipalities, in consultation with the Department of Mental Health and Addiction Services, to provide self-care and resiliency training for various emergency personnel. Most provisions of this legislation became effective July 1, 2019.

## FLORIDA

House Bill 983 ratifies a rule implementing the 2018 legislation, Senate Bill 376, which allowed workers' compensation benefits for PTSD without an accompanying physical injury. Florida Rule 69L-3.009 provides additional guidance on the statutory language as it relates to qualifying events in the course of employment that involve "grievous bodily harm of a nature that shocks the conscience." The Notice of Ratification was published on June 28, 2019 in volume 45, number 126, in the Florida Administrative Register.

---



**30%**

DEVELOP BEHAVIORAL HEALTH  
CONDITIONS INCLUDING, BUT NOT  
LIMITED TO, DEPRESSION AND  
POST-TRAUMATIC STRESS DISORDER

## LOUISIANA

Senate Bill 107 adds post-traumatic stress injury as presumptively an occupational disease for any fire employee, including voluntary firefighters covered under a workers' compensation policy that provides coverage for a volunteer member of a volunteer company, emergency medical services personnel or any employee of a police department. A post-traumatic injury that arises solely from a legitimate personnel action such as a transfer, promotion, demotion or termination is not excluded as compensable. This legislation became effective August 1, 2019.

## NEVADA

Assembly Bill No. 492 revises the circumstances in which a first responder or an employee of the state or local government is eligible to receive compensation under industrial insurance for stress-related claims. This bill also requires an agency which employs a first responder, including those serving as volunteers, to provide educational training to the first responder related to the awareness, prevention, mitigation and treatment of mental health issues. These provisions became effective upon approval by Governor Steve Sisolak on June 3, 2019.

## NEW HAMPSHIRE

Senate Bill 59 was signed into law on July 17, 2019 and added PTSD and acute stress disorder to the definition of "injury" for the purposes of workers' compensation for an employee who meets the definition of an "emergency response/public safety work" employee under the law. This bill also established a commission to study the incidence of PTSD in first responders.

Additionally, this legislation amended language regarding the eligibility for a first responder's cancer presumption from a responder who lived a tobacco-free life to a tobacco-free "lifestyle." A "tobacco-free lifestyle" is defined as no use within the past six months of any tobacco product, including cigarettes, cigars, chewing tobacco, snuff or pipe tobacco four or more times in a week, except in the case of religious or ceremonial use of tobacco, such as by Alaska natives or Native Americans.

---

## **NEW MEXICO**

On April 2, 2019, Governor Michelle Grisham signed House Bill 324 into law. This bill adds PTSD diagnosed by a physician or psychologist that results in physical impairment, primary or secondary mental impairment or death to the list of conditions presumed to be proximately caused by employment as a firefighter.

## **OREGON**

Senate Bill 507 creates a new presumption of compensability for acute stress disorder or PTSD filed by first responders working for public entities and diagnosed by a psychiatrist or psychologist. The presumption of compensability can be rebutted by the employer proving through clear and convincing evidence the work duties were “not of real importance or great consequence” in causing the condition. This applies to claims filed on the 91<sup>st</sup> day after the legislative sessions ended on June 30, 2019.

# INCREASED DEATH BENEFITS FOR SURVIVORS

Tragically, first responders sometimes die in service to their communities. This year, Alabama and West Virginia passed legislation to expand the death benefits paid to help the families of first responders replace the loss of income.

## **ALABAMA**

In 2018, House Bill 192 revised the law to provide that if a dependent is the surviving spouse of a law enforcement officer or firefighter killed as a result of injuries received while engaged in the performance of his or her duties, the compensation does not cease upon remarriage. During this year’s legislative session, House Bill 187 amends that provision to cover deaths occurring on or after January 1, 2018.

## **WEST VIRGINIA**

Senate Bill 291 which has been approved by Governor Jim Justice changed the name of the West Virginia Fire and EMS Survivor Benefit Act to the West Virginia Emergency Responders Survivor Benefit Act. Division of Forestry personnel who die as a proximate

---

result of their participation in wildland fire fighting, emergency response or disaster response operations are added as eligible for survivor benefits the same as other first responders.

The fiscal impact of these presumption bills for first responders on state, county and local government is usually difficult to forecast. A research brief published in November 2018 by the National Council on Compensation Insurance discusses the challenges to estimating the cost of first responder presumption bills and highlights key issues to be considered when such legislation is proposed.

*Despite the unknown costs, the trend of introducing these bills is expected to continue. If you have questions on workers' compensation benefits for first responders, please contact your Sedgwick client services director.*

## RESOURCES

### NIOSH research article

<https://oem.bmj.com/content/71/6/388.full>

### Montana Senate Bill 160

<https://leg.mt.gov/bills/2019/billpdf/SB0160.pdf>

### New Jersey Assembly No. 4882/ Senate No. 3474

<https://www.njleg.state.nj.us/bills/BillView.asp?BillNumber=A4882>

### New Jersey Senate Bill 716/Assembly No. 1741

<https://www.njleg.state.nj.us/bills/BillView.asp?BillNumber=S716>

### Texas Senate Bill 2551

<https://capitol.texas.gov/tlodocs/86R/billtext/pdf/SB02551F.pdf#navpanes=0>

### Virginia House Bill 1804/Senate Bill 1030

<http://lis.virginia.gov/cgi-bin/legp604.exe?191+ful+CHAP0415+pdf>

### Virginia Joint Legislative Audit and Review Commission's review of the Virginia Workers' Compensation program

<http://jlarc.virginia.gov/calendar.asp>

### Supplemental Research Bulletin by Substance Abuse and Mental Health Services Administration

<https://www.samhsa.gov/sites/default/files/dtac/supplementalresearchbulletin-firstresponders-may2018.pdf>

### Connecticut Senate Bill 164

<https://www.cga.ct.gov/2019/ACT/pa/pdf/2019PA-00017-R00SB-00164-PA.pdf>

### Florida House Bill 983

<http://laws.flrules.org/2019/139>

### Florida Rule 69L-3.009

<https://www.myfloridacfo.com/Division/WC/pdf/69L-3.009-Adopted.pdf>

### Florida Notice of Ratification

[https://www.flrules.org/Gateway/View\\_notice.asp?id=22062279](https://www.flrules.org/Gateway/View_notice.asp?id=22062279)

### Louisiana Senate Bill 107

<http://www.legis.la.gov/legis/ViewDocument.aspx?d=1143719>

### Nevada Assembly Bill No. 492

<https://www.leg.state.nv.us/App/NELIS/REL/80th2019/Bill/6945/Overview>

### New Mexico House Bill 324

<https://nmlegis.gov/Sessions/19 Regular/final/HB0324.pdf>

### Oregon Senate Bill 507

<https://olis.leg.state.or.us/liz/2019R1/Downloads/MeasureDocument/SB507/Enrolled>

### Alabama House Bill 187

<http://alisondb.legislature.state.al.us/alison/searchableinstruments/2019RS/bills/HB187.html>

### West Virginia Senate Bill 291

[http://wvlegislature.gov/Bill\\_Text\\_HTML/2019\\_SESSIONS/RS/bills/SB291%20SUB1%20ENR.pdf](http://wvlegislature.gov/Bill_Text_HTML/2019_SESSIONS/RS/bills/SB291%20SUB1%20ENR.pdf)

### National Council on Compensation Insurance research brief

<https://www.ncci.com/Articles/Documents/Insights-Research-Brief-Presumptive-Coverage.pdf>