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# “Barry Brady Act”



## A Report with Recommendations for Tennessee Municipalities on Public Chapter 490

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## Introduction

In collaboration with the Tennessee Fire Service Coalition, the 111<sup>th</sup> Tennessee General Assembly passed HB 316/SB 1442 on May 2, 2019. Governor Bill Lee subsequently signed the legislation and on July 1, 2019, Public Chapter 490, Acts of 2019, became effective. The legislation is codified in Tennessee Code Annotated (hereinafter “T.C.A.”) § 7-51-201(d). The legislation, known as the “Barry Brady Act” (hereinafter “the Act”) made Tennessee the 43<sup>rd</sup> state in the United States to enact such legislation. The Act was named for Captain Barry Brady, a retired fire captain from the Sparta, Tennessee Fire Department. Captain Brady was a dedicated fire professional who fought a courageous battle with colon cancer. Captain Brady lost his battle with cancer but never lost his passion for the fire service or for his brothers and sisters that do the job every day.

## Summary

The Act became effective on July 1, 2019, after being passed unanimously in both the Tennessee State House of Representatives (94-0 vote) and the Tennessee State Senate (33-0 vote). The Act amends T.C.A. § 7-51-201 by adding subsection (d) which outlines specific types of cancers that are presumed to have been acquired as the result of employment in the fire service and the eligibility requirements for firefighters seeking to be covered by the presumption. This public chapter outlines specific employment, pre-employment, and annual medical monitoring that a firefighter must undergo in order to be covered by the presumption.

## UT-MTAS Recommendations

UT-MTAS recommends that public entities proactively approach and educate their employees about the requirements of the Act. Proactively addressing physical medical examinations and cancer screening demonstrates the value public entities place on the long-term health and safety of their employees. It is important to note that compliance with the Act is incumbent on the firefighter requesting appropriate physical medical examinations and cancer screenings, not the public entity.

It is recommended that public entities:

- Develop a policy that outlines the process in which the entity will seek to minimize risks associated with contracting cancer due to employee lifestyle choices and workplace exposures.
- Notify eligible employees about the Act and determine if the employee has a desire to participate in physical medical examinations and cancer screenings required by the Act.
- Document, using a waiver form, the desire of each eligible employee to either participate in a physical medical examinations and cancer screening program or waive his/her participation in the program.

## What is the Barry Brady Act?

The Act is legislation that provides that when the State of Tennessee, any municipal corporation, or other political subdivision of the state maintains a fire department that has established or establishes any form of compensation to be paid to firefighters for any condition of impairment of health that results in the loss of life or personal injury in the line of duty or course of employment, there is a presumption that any condition or impairment of health of firefighters caused by all forms of cancers covered by this statute, that results in hospitalization, medical treatment or disability, has arisen out of employment, unless the contrary is shown by competent medical evidence.

Cancers covered are all forms of the following:

- Non-Hodgkin's Lymphoma
- Colon cancer
- Skin cancer
- Multiple myeloma cancer

Any such condition or impairment of health that results in death is presumed to be a loss of life in the line of duty, to have arisen out of employment, and to have been in the actual discharge of the duties of the firefighter's position, unless the contrary is shown by a physician board certified in oncology.

Secondary employment and/or lifestyle habits may be considered when determining whether a firefighter is eligible for the presumption.

## Effective Date of the Act

The Act was signed into law by Governor Bill Lee on May 24, 2019 and became effective on July 1, 2019. This honors the life and legacy of Captain Barry Brady.

## Definitions

As used in the Act:

- Firefighter-means any full-time, paid employee of a fire department of the state or a political subdivision of the state, and
- Fire department-means a department recognized by the state fire marshal's office pursuant to the fire department recognition act, compiled in title 68, chapter 102, part 3, and manned by fulltime, paid employees.<sup>1</sup>

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<sup>1</sup> Fire department recognition must be renewed with the Tennessee State Fire Marshal's Office every three years.

## Firefighter Eligibility Requirements

In order to be eligible for the presumption, a firefighter:

- Must be employed as a firefighter for the State of Tennessee, a municipality, or other political subdivision of the state that maintains a fire department that has established or establishes any form of compensation to be paid to a firefighter for any condition or impairment of health that results in loss of life or personal injury in the line of duty or course of employment.
- Must have been exposed to heat, smoke, and fumes, or carcinogenic, poisonous, toxic, or chemical substances, while performing the duties of a firefighter in the firefighter's capacity as an employee;
- Must have completed five (5) or more consecutive years in service with an eligible fire department;
- Must acquire one of the covered cancers.
- If employed prior to July 1, 2019, must request to obtain a physical medical examination and cancer screenings, before July 1, 2020, that test for, and fails to reveal, any of the cancers covered by the Act.
- If employed on or after July 1, 2019, must request to obtain a pre-employment physical medical examination and cancer screenings that test for, and fails to reveal, any of the cancers covered by the Act.
- Must obtain an annual physical medical examination that includes cancer screening for the cancers covered by this Act.

## If I Meet All the Eligibility Requirements, Am I Automatically Covered?

No, the presumption is rebuttable. A board-certified physician of oncology may consider lifestyle habits or secondary employment when making a determination of eligibility for the presumption.

## Who Pays for Required Medical Examinations and Cancer Screenings?

The Act provides that the employer is responsible for all costs associated with any medical examinations and cancer screenings required pursuant to the Act. The firefighter must request the physical medical exam and cancer screening tests from the employer.

## How Long Are Firefighters Covered?

Firefighters that meet the eligibility requirements for the presumption are eligible for benefits for up to five (5) years from the date of the firefighter's last exposure to heat, smoke, and fumes, or carcinogenic, poisonous, toxic, or chemical substances, while performing the duties of a firefighter.

## Can My Employer Screen for Additional Types of Cancer?

Yes, your employer may elect to screen for cancer types that are not listed in the law, and this is desirable for early detection of cancer. However, if a firefighter is diagnosed with a cancer that is not listed in the law, the cancer will not be considered as having arisen out of employment under this law.

## Can My Employer Cover Additional Types of Cancer?

Yes, your employer may elect to establish a presumption that covers additional types of cancers not covered by this Act, arose out of employment. However, the inclusion of additional cancers by your employer does not impact the applicability of this Act.

## What Types of Screening Tests are Available for the Covered Cancers?

National Fire Protection Association (NFPA) Standard 1582, *Standard on Comprehensive Occupational Medical Program for Fire Departments*, 2018 edition, contains guidelines on the medical evaluation of both candidates and current members of fire departments, including screening for different types of cancer as part of both pre-employment and annual physical medical evaluations.

MTAS recommends that, if desired, municipalities consult with a physician for definitive medical advice on the types of cancer screenings the municipality may elect to use.

### Non-Hodgkin's Lymphoma

Non-Hodgkin lymphoma is a form of cancer that affects the lymphocytes, a type of white blood cell found in the lymphatic system. A medical exam is the starting point for screening for Non-Hodgkin's Lymphoma. The physician will perform a physical exam, checking for swollen lymph nodes in the neck, underarm, and groin, and will check for a swollen spleen or liver. The exam will include questions about the firefighter's personal and family medical history. If the physician believes that there is a likelihood of cancer, the physician will order tests and procedures used to diagnose the stage and type of non-Hodgkin's lymphoma, including:

- Blood and urine tests to help rule out an infection or other disease.
- An ultrasound to look for an enlarged lymph node(s) near the surface of the body and for an enlarged spleen and/or liver.
- Imaging tests, such as X-ray, CT, MRI and positron emission tomography (PET), to look for tumors in the body.
- A lymph node biopsy procedure to remove all or part of a lymph node for laboratory analysis to reveal whether the firefighter has non-Hodgkin's lymphoma and, if so, which type.

- Pleural or peritoneal fluid sampling, where fluid is drawn from the chest or abdomen to look for cancer cells.
- A bone marrow aspiration and biopsy procedure to look for non-Hodgkin's lymphoma cells.
- A lumbar puncture to look for cancer cells in the cerebrospinal fluid.

These tests are usually progressive in nature, starting with the least invasive, and will be determined by the physician based upon the findings of the medical history and physical exam.

## Colon cancer

Colon cancer is a malignancy that begins in the colon or large intestine. In general, doctors recommend that colon cancer screenings begin at age 50; however, it is recommended that African Americans begin getting colon cancer screenings at age 45. The Act requires that firefighters be screened for colon cancer regardless of their age. The best screening test is a colonoscopy. However, colonoscopies are expensive, which can drive up the cost of an employers' healthcare budget. Most physicians recommend that patients receive a colonoscopy once every ten years starting at age 50, or age 45 for African Americans, so what options are available for those under 50 and 45, respectively?

Screening can be performed, from the least invasive to the most invasive, via the use of a fecal occult blood test, fecal immunochemical testing, screening imaging via a camera swallowed, and colonoscopy.

Current medical consensus is leaning toward the use of fecal immunochemical testing as an annual screen, followed by additional evaluation for anyone with positive results.

Fecal occult blood testing may be used for screening, but some people may not be eligible for this screening due to underlying pre-existing bowel disease. NFPA 1582 recommends annual fecal occult blood testing for all members. The cost for this test is between \$3 and \$40.<sup>2</sup>

A stool DNA test analyzes the DNA from a person's stool sample to look for cancer. The test uses changes in the DNA that occur in polyps and cancers to determine whether a colonoscopy should be done. The cost for this test is between \$400 and \$800.

Capsule endoscopy may be used before a colonoscopy. The patient swallows a small pill capsule with two small video cameras. The pill passes through the digestive tract and the cameras wirelessly transmit images to a recorder the patient wears on a belt. The physician will review the

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<sup>2</sup> The estimated cost ranges for the screening included in this document come from various medical websites on the Internet.



images and determine if further testing is needed. The cost for this test is between \$1,141 and \$2,379.

A colonoscopy would be used for patients determined to be at higher risk, or with positive test results, as determined by a physician. The cost of a colonoscopy is between \$1,100 and \$3,000.

## **Skin cancer**

Skin cancer is the abnormal growth of skin cells and can occur anywhere on the skin. There are three major types of skin cancer: basal cell carcinoma, squamous cell carcinoma, and melanoma.

A physician will screen for skin cancer by performing a medical exam that includes obtaining a patient's personal and family medical history, asking about any symptoms the patient may have noticed or experienced, and conducting a physical exam that involves looking for any abnormal areas on the skin.

If the physician finds anything that is abnormal, he/she may order a skin biopsy to test for cancerous cells. Additional tests might include imaging tests to examine the nearby lymph nodes for signs of cancer, a sentinel lymph node biopsy, or removal of a lymph node and testing signs of cancer.

NFPA 1582 recommends screening for skin cancer as part of the annual medical physical examination, so the cost for this screening should be nominal.

## **Multiple myeloma cancer**

Multiple myeloma is a type of blood cancer that affects plasma cells, causing malignant plasma cells to accumulate in the bone marrow crowding out the normal plasma cells that help fight infection.

Screening for multiple myeloma starts with a medical exam that includes a physical and patient and family history. The physician will ask about signs and symptoms associated with multiple myeloma. After the medical exam, if the physician believes that additional screening is required, he/she can order specific tests to confirm a diagnosis of multiple myeloma. These tests include:

- A complete blood count (hereinafter "CBC")
- blood chemistry tests
- urine tests
- a fine needle or core needle biopsy
- a bone marrow biopsy
- an abdominal fat pad aspirate biopsy
- imaging tests including X-rays, magnetic resonance imaging (MRI), computed tomography (CT) scans, and positron-emission tomography (PET) scans
- a genome sequencing test
- an echocardiogram.



The most common screening test for multiple myeloma is the CBC, which is a part of a routine medical exam. The cost for a CBC is between \$6 and \$167.

## Conclusion

Firefighters provide vital public safety services to the public at large. The job brings with it many inherent hazards that can cause serious physical and emotional injuries, including death. The Act establishes a presumption that firefighters who acquired any of the four (4) types of cancer covered by this legislation, acquired the cancers as the result of being exposed to the some of the inherent hazards mentioned above, in the line of duty. It is important for firefighters to obtain the required physical medical examinations and cancer screenings, and make good lifestyle choices, in order to be and remain eligible for the presumption.

## Questions or Assistance

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## Additional Resources

### Public Chapter 490, Acts of 2019

Hyperlink: <https://publications.tnsosfiles.com/acts/111/pub/pc0490.pdf>

### IAFC Health Care Provider's Guide to Firefighter Physicals

The International Association of Fire Chiefs (IAFC) developed the Health Care Provider's Guide to Firefighter Physicals.

<http://www.fstaresearch.org/resource/?FstarId=11591>

### NIOSH Study

The federal National Institute for Occupational Safety and Health (NIOSH) published the results of the largest firefighter cancer study to date in 2013. Researchers examined cancer risks for career firefighters by examining data from nearly 30,000 firefighters from three large U.S. cities (San Francisco, Chicago, and Philadelphia). NIOSH researchers looked at both cancer incidence and mortality between 1950 and 2009.

### CDC Study

Daniels et al., 2013 – Daniels, R. D., Kubale, T. L., Yiin, J. H., Dahm, M. M., Hales, T. R., Baris, D., & Pinkerton, L. E. Mortality and cancer incidence in a pooled cohort of US firefighters from San Francisco, Chicago and Philadelphia (1950–2009). *Occupational and environmental medicine*, 71(6), 388-397. Retrieved from:

[http://www.cdc.gov/niosh/firefighters/pdfs/OEM\\_FF\\_Ca\\_Study\\_10-2013.pdf](http://www.cdc.gov/niosh/firefighters/pdfs/OEM_FF_Ca_Study_10-2013.pdf)

### LeMaster's Study

See also Cancer risk among firefighters: a review and meta-analysis of 32 studies by LeMasters et al, 2006. Abstract at <http://www.ncbi.nlm.nih.gov/pubmed/17099456>.

### Recommended Firefighter Physical Exam and Screening Tests

An open letter to health care providers regarding firefighter physical exam and screening tests from Dr. Michael G. Hamrock for the Boston Fire Department.

<https://www.safetystanddown.org/wp-content/uploads/2019/04/FCSN-Letter-to-Primary-Care-Provider.pdf>

## **NFPA 1582, Standard on Comprehensive Occupational Medical Program for Fire Departments, 2018 edition**

The National Fire Protection Association (NFPA) provides free, read-only access to its standards. Use this link to gain access:

<https://www.nfpa.org/Codes-and-Standards/All-Codes-and-Standards/Free-access>.

### **Sample Medical History and Examination Form for Firefighters**

MTAS has a link to a sample Medical History and Examination Form for Firefighters based on NFPA 1582 available on the MTAS Knowledgebase website at this link:

<http://www.mtas.tennessee.edu/knowledgebase/nfpa-1582-standard-medical-requirements-firefighters-and-fire-department-physicians>

### **Sample Barry Brady Act Waiver Form:**

MTAS has a link to a sample Barry Brady Act Waiver Form on the MTAS Knowledgebase website at this link:

<https://www.mtas.tennessee.edu/knowledgebase/brady-act-pre-employment-physical-medical-examination>