

December 2022

*West Virginia Offices of the  
Insurance Commissioner*



# Post-Traumatic Stress Disorder Annual Report

Allan L. McVey  
Insurance Commissioner



STATE OF WEST VIRGINIA  
*Offices of the Insurance Commissioner*

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December 6, 2022

**VIA EMAIL**

The Honorable Dave Sypolt  
Chair, Joint Committee on Volunteer Fire Departments and Emergency Medical Services  
Room 214W, Building 1  
State Capitol Complex  
Charleston, WV 25305  
([dave.sypolt@wvsenate.gov](mailto:dave.sypolt@wvsenate.gov))

The Honorable Joe Statler  
Chair, Joint Committee on Volunteer Fire Departments and Emergency Medical Services  
Room 442M, Building 1  
State Capitol Complex  
Charleston, WV 25305  
([joe.statler@wvhouse.gov](mailto:joe.statler@wvhouse.gov))

Dear Senator Sypolt and Delegate Statler:

Enclosed please find the 2023 Post-Traumatic Stress Disorder (PTSD) Annual Report as mandated by W. Va. Code §23-4-1E. The information used in the preparation of this report was compiled from the National Council on Compensation Insurance (NCCI) filings, insurer filings, self-insured employers, and the West Virginia Offices of the Insurance Commissioner (WVOIC).

The overall goal of this report is to provide the reader with an overview of the current policies and procedures related to post-traumatic stress disorder claims for first responders. Please contact Juanita Wimmer at (304) 414-8491 or [Juanita.D.Wimmer@wv.gov](mailto:Juanita.D.Wimmer@wv.gov) with any questions or concerns.

Sincerely,

Allan L. McVey  
CPCU, ARM, AAI, AAM, AIS  
Insurance Commissioner

Enclosure

cc: Carl Fletcher, Counsel, Joint Committee on Volunteer Fire Departments and Emergency Medical Services  
Anita Valentino, Counsel, Joint Committee on Volunteer Fire Departments and Emergency Medical Services  
Dave Hardy, Cabinet Secretary, Department of Revenue



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## *House Bill 3107*

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Introduced in the 2021 West Virginia Legislative regular session, [House Bill 3107](#) recognized that post-traumatic stress disorder (PTSD) may be considered as a compensable occupational disease workers' compensation claim if suffered by a first responder and meeting the criteria outlined in W. Va. Code §23-4-1 (f). The house bill was enacted effective April 10, 2021 and later signed into law by Governor Justice. There is a provision within the enacted bill that states the amendments made to recognize PTSD as a compensable injury for first responders shall expire on July 1, 2026 unless extended by the Legislature.

Prior to the enactment of HB3107, an injured first responder claiming mental injuries with no physical cause was precluded from receiving workers' compensation benefits in West Virginia. However, the Legislature found that PTSD is a unique medical condition that may manifest itself as a psychiatric condition and poses a serious occupational hazard for first responders. First responders are required to expose themselves to traumatic events during the course of their employment and thus are at a recognized higher risk of developing PTSD. The Legislature determined that due to the severe nature and debilitating effects of PTSD on first responders, it is the moral obligation of the state to permit coverage to this class of individuals for a work-related disease when the following criteria are met:

- The Employer has elected to provide coverage for PTSD as an occupational disease. This is considered an optional coverage and employers may choose to pay additional premium for this coverage.
- PTSD diagnosis must be made by a licensed psychiatrist due to exposure to an event that occurred in the course of and resulting from a first responders paid or volunteer covered duties. Applies only to claims occurring after the first day of the policy term for which PTSD coverage has been secured.
- While the diagnosis must be made by a licensed psychiatrist, mental health treatment consistent for a post-traumatic stress disorder diagnosis may be offered by a licensed mental health provider other than the diagnosing psychiatrist.
- PTSD diagnosis shall not include consideration of layoff, termination, disciplinary actions, or similar personnel actions.
- Benefits to first responders are contingent upon the employer electing to purchase the coverage as part of the workers' compensation policy issued by the insurer.

House bill 3107 further defined the following terms to clarify the provisions in the bill:

- “First responder” means a law enforcement officer, firefighter, emergency medical technician, paramedic, and emergency dispatcher.
- “Post-traumatic stress disorder” means a disorder that meets the diagnostic criteria for post-traumatic stress disorder specified by the American Psychiatric Association in the Diagnostic and Statistical Manual of Mental Disorders, fifth edition, or a later edition as adopted by rule of the insurance commissioner.
- “Licensed mental health provider” means a psychiatrist, psychologist, licensed professional counselor, licensed marriage and family therapist, or licensed social worker who is qualified to treat post-traumatic stress disorder.
- “Employer” means any entity that controls, consistent with the provisions of West Virginia law relating to an employment relationship, the paid or volunteer employment of a first responder eligible for benefits under this section.

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## *Implementation of Availability of Coverage*

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Many of the qualifying first responders are volunteer firefighters and nearly 100% (~400 policies) of those policies are written in the residual market so the first step of the implementation was to ensure the West Virginia residual market servicing carriers were prepared to endorse policies should a policyholder with qualifying classifications elect the coverage. Voluntary market insurers were notified of the law and were instructed to file coverage specific rates and rules with the WVOIC should they choose to offer PTSD to the policyholders meeting the definition of first responders and that elected to pay additional premium for the coverage.

In order to comply with the enacted law, the West Virginia Offices of the Insurance Commissioner (WVOIC) worked relentlessly and diligently with the National Council on Compensation Insurance (NCCI) to prepare forms, rules and rates for the PTSD coverage. NCCI is the residual market plan administrator and is responsible for ensuring the servicing carriers have the appropriate protocols in place to endorse policies electing the PTSD coverage.

As the “first responder” definition included different industries, the WVOIC and NCCI had to decide what classification or industry codes met the definition and would be eligible to purchase the optional PTSD coverage. After a review of over 500 classification descriptions, it was determined that the following classifications were appropriate for the PTSD exposure:

- 7420—Aviation—Aerial Firefighting—Flying Crew
- 7425—Aviation—Helicopters—Flying Crew
- 7705—Ambulance Service Companies and EMS (Emergency Medical Service) Providers & Drivers
- 7710—Firefighters & Drivers
- 7711—Firefighters & Drivers—Volunteer
- 7720—Police Officers & Drivers
- 7748—First Responder Emergency Dispatcher

Classification code 7748 is a newly created West Virginia only state special code that separates the 911 call center dispatchers from the previous classification of 8810 – Clerical. This separation was required to segment the employees meeting the definition of first responder from all other clerical employees that were not eligible for the election of coverage.

HB 3107 further contained reporting mandates and sunset provisions for this coverage, so we further created statistical codes for data reporting to NCCI that were directly attributed to the PTSD coverage. The statistical codes will be used by insurers writing the coverage to report to NCCI and the WVOIC the claims count, the losses incurred, the premium paid and other data subsets that will be used in the ratemaking process as well as analyzed for adequacy and other PTSD benchmarks.

Voluntary market insurers are responsible for filing company specific rates and minimum premiums for the coverage. To date, 34 insurers from nine (9) different carrier groups have filed and received WVOIC approval of their rate plan to write PTSD coverage. Due to the unknown nature and possibly prolonged and expensive nature of treating PTSD, insurers are hesitant to provide this coverage as a single claim may result in a deficit where an insurer doesn't collect sufficient premium to cover claim costs.

NCCI did file rates and minimum premiums for residual market policies that elect the coverage. The November 2022 approved rates and minimum premiums by classification are:

Classification	Rate	Minimum Premium
7420	\$4.06	\$1,033
7425	\$0.84	\$341
7705	\$3.26	\$861
7710	\$1.73	\$532
7711	\$7.03	\$1,250
7720	\$1.47	\$476
7748	\$0.10	\$182

Additional coverage notes include:

- The approved rates, forms and rules initially became effective January 1, 2022, with updates to the rates and minimum premiums included in the November 2022 NCCI filing.
- Applies only if the employer has elected to provide coverage for post-traumatic stress disorder (PTSD) as an occupational disease in accordance with West Virginia Code §23-4-1f.
- If PTSD coverage is added to the policy, the minimum premium for the ratable portion of the policy premium will be increased by \$500, subject to the maximum minimum premium of \$1,250.
- The charge for PTSD coverage must be applied to the entirety of the corresponding first responder payroll.
- Paid claims that are reported for optional occupational disease coverage available to first responders for post-traumatic stress disorders are excluded from experience rating calculations.

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### *Coverage Information*

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The WVOIC requested and received the 2022 data extract from NCCI to determine if the utilization of this coverage ensured rate adequacy, claims administration and treatment was appropriate and that the coverage was appropriate for the exposure. However, the data extract revealed that no policies were endorsed with the PTSD optional coverage; there were \$0.00 premium and 0 claims. In short, no policy purchased the additional and optional PTSD coverage for their paid or volunteer emergency responders. There are self-insured employers that have stated that PTSD claims are currently, and have historically been, compensable in the past but most do not differentiate between PTSD claims and/or traumatic or other disease claims so a data extract may prove to be a hardship if requested.

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## *Summary*

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The WVOIC has prepared the West Virginia workers' compensation market to offer and provide PTSD coverage if elected by a policyholder with qualifying classifications meeting the definition of first responders.

Residual market servicing carriers are prepared to bind coverage if requested on the policy. The voluntary market currently has 34 insurers with an approved filing in place but expressed concern about the coverage pricing and unknown total costs of psychiatric treatment of PTSD claims.

At this time, the WVOIC does not know nor cannot estimate the extent of the number of insurers willing to write the coverage nor if any employers will purchase this coverage in the future. However, the mechanisms are in place to capture premium and losses for the PTSD coverage and the WVOIC will continually monitor the processes and utilization for this voluntary coverage.