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*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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Insurance Commissioner

December 20, 2021

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)

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)

Dear Senator Sypolt and Delegate Statler:

Enclosed please find the 2022 Post-Traumatic Stress Disorder (PTSD) Annual Report as mandated by W. Va. Code §23-4-1F. 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 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
Jaclyn Schiffour, Counsel, Joint Committee on Volunteer Fire Departments and Emergency Medical Services
Dave Hardy, Cabinet Secretary, Department of Revenue



I. Background and Summary

In 2021, the West Virginia Legislature passed [House Bill 3107 \(HB 3107\)](#) recognizing post-traumatic stress disorder (PTSD) as a compensable occupational disease for workers' compensation claims if suffered by a first responder and if meeting certain criteria set forth in W. Va. Code §23-4-1F(d). HB 3107 was signed into law by Governor Justice on April 21, 2021. The newly enacted W.Va. Code §23-4-1F(f) provides that the Offices of the Insurance Commissioner (OIC) shall report annually on claims data related to PTSD claims for first responders to the Joint Committee on Volunteer Fire Department and Emergency Medical Services beginning on January 1, 2022. Additionally, W.Va. Code §23-4-1F(g) provides that the amendments made to that code section during the 2021 regular session of the Legislature to recognize PTSD as a compensative injury, subject to certain provisions contained therein, shall expire on July 1, 2026, unless extended by the Legislature. The OIC does not yet possess claims data related to PTSD but is nevertheless providing this report to the Joint Committee to advise its members of activities undertaken to implement the new law.

Generally, workers' compensation claims for "mental-mental" injuries are not compensable in West Virginia. W.Va. Code §23-4-1F(a) provides that, except as provided, no alleged injury or disease may be recognized as a compensable injury or disease which was solely caused by nonphysical means, and which did not result in any physical injury or disease to the person claiming benefits. As such, prior to the enactment of HB 3107, an injured first responder claiming solely mental injuries for PTSD with no physical cause was not eligible to receive workers' compensation benefits in West Virginia. However, in passing HB 3107, the Legislature found that PTSD is a unique medical condition that may manifest itself as a psychiatric condition and pose a serious occupational hazard for first responders.

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.
- The PTSD diagnosis is made by a licensed psychiatrist and is due to exposure to an event or events that occurred in the course of and resulting from a first responders paid or volunteer covered duties.
- 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 taken in good faith by an employer.
- Benefits to first responders are contingent upon the employer electing to provide coverage for PTSD from its workers' compensation insurance carrier or to provide it through its self-insurance program, whichever is applicable.

HB 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.

II. Implementation of Availability of Coverage

Many of the first responders who would potentially qualify for PTSD workers' compensation benefits are volunteer firefighters and nearly 100% (~400 policies) of workers' compensation policies written for volunteer firefighters are written in the West Virginia residual market. As such, the first step in implementation was to ensure that the servicing carriers in West Virginia's residual market were prepared to endorse policies with this optional coverage should a policyholder with qualifying classifications elect the coverage. The OIC worked diligently with the National Council on Compensation Insurance (NCCI) as the plan administrator for West Virginia's residual market to prepare forms, rules and rates for the optional PTSD coverage. NCCI is responsible for ensuring the servicing carriers for the residual market have the appropriate protocols in place to endorse policies electing the PTSD coverage.

Since the definition of first responder included workers in different industries, the OIC and NCCI reviewed all classifications and industry codes to determine those whose employers 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 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 specific 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 other clerical employees who may not meet the definition of first responder or be eligible for the election of coverage.

Because HB 3107 contained reporting mandates and sunset provisions, as noted, the WVOIC created statistical codes for data reporting to NCCI that were directly attributed to the PTSD coverage. This data is not currently available since PTSD is generally not a compensable injury unless it is attributed to a physical injury. The new statistical codes will be used by insurers writing the coverage to report to NCCI and the OIC 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.

As noted, NCCI filed rates and minimum premiums for residual market policies that elect the coverage. The approved rates and minimum premiums by classification are:

Classification	Rate	Minimum Premium
7420	\$4.49	\$1,125
7425	\$0.92	\$358
7705	\$3.65	\$945
7710	\$1.85	\$558
7711	\$6.97	\$1,250
7720	\$1.65	\$515
7748	\$0.12	\$190

Additional coverage notes include:

- The approved rates, forms and rules in the assigned risk market become effective January 1, 2022.
- Applies only if the employer has elected to provide coverage for 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 PTSD are excluded from experience rating calculations.

Insurers writing policies in the voluntary market were also notified of the law and were instructed to file coverage specific rates and rules with the OIC should they choose to offer the coverage to policyholders covering first responders, and should those policyholders wish to purchase the additional

coverage. Voluntary market insurers are responsible for filing company specific rates and minimum premiums for the coverage. To date, three (3) insurers from the same carrier group have filed and received OIC approval of their rate plan to write PTSD coverage. However, these carriers commented that they likely wouldn't provide the coverage until more quantitative and qualitative data is available to ensure rates were adequate. Due to the unknown, and potentially prolonged and expensive nature of treating PTSD, insurers are hesitant to provide this coverage without additional data.

III. Summary and Conclusion

At this time, the WVOIC cannot estimate the number of insurers willing to write this optional PTSD coverage in the future, nor the number of employers that may elect to pay for PTSD coverage for their first responders. At present, three carriers in the voluntary market have filed and been approved to offer the coverage. Additionally, the two carriers in the residual market will begin offering it on January 1, 2022. A survey of the five (5) self-insured employers and the self-insured WV County Risk Pool that provide workers' compensation coverage to counties, local governments, and other public safety entities or agencies was performed by the OIC. At the time of this report, the OIC had not received a response from the WV County Risk Pool, as well as two (2) self-insured municipalities. The three (3) municipalities that provided a response indicated that none had received a PTSD claim since July 1, 2021, in accordance with the new law, and two responded that they didn't know whether they had explicitly agreed to provide coverage for those claims with one (1) municipality stating they would not be covering PTSD claims. The two (2) undecided municipalities indicated they would confer with their excess carriers to determine whether coverage would be afforded. However, the mechanisms are in place to monitor premium and losses for the coverage in an effort to collect reliable data. The OIC will have a better understanding and analysis of the coverage parameters for the 2023 annual report, as well as the claims data. The OIC 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.