



**Act 150 (2020) Report:
Impact of COVID-19 on the Workers'
Compensation System in Vermont**

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August 15, 2020

Report overview

This report is organized into six parts:

- (I) Summary of Legislative charge, stakeholder engagement, and data sources;
- (II) Background on workers' compensation insurance;
- (III) Overview of COVID-19 activity in Vermont;
- (IV) Discussion of COVID-19 related workers' compensation claims costs, influencing factors, and projections (which section satisfies the Legislature's directive in subsections (4)(a)(1) through (3) of Act 150);
- (V) Discussion of issues related to the creation of a special fund and utilization of Coronavirus Relief Fund monies (which section satisfies the Legislature's directive in subsections (4)(a)(4) and (5) of Act 150); and
- (VI) Report summary and conclusion.

I. Summary of Legislative charge, stakeholder engagement, and data sources

A. Legislative charge

Section 4 of Act No. 150 of 2020, an act relating to temporary workers' compensation amendments related to COVID-19 (Act 150), directs the Commissioner of the Department of Financial Regulation (DFR or the Department) to "examine the potential for creating a special fund that can be used to reimburse workers' compensation insurers, intermunicipal insurance associations, and self-insured employers for workers' compensation costs related to COVID-19." The Commissioner is directed to consult with interested parties, including relevant trade groups and advocates for employers, workers' compensation insurers, and employees, and to examine the following issues:

- (1) the average cost of paying a COVID-19 related workers' compensation claim in Vermont;
- (2) factors that can influence the cost of a COVID-19 related workers' compensation claim, including medical costs, the average amount of time that a worker must be out of work, applicable deductibles, and any other factors that the Commissioner determines are appropriate;
- (3) potential COVID-19 related impacts on workers' compensation costs and experience modifiers based on the experience of Vermont and other states with respect to COVID-19 infection rates and COVID-19 related workers' compensation claims, as well as projections for future rates of COVID-19 infections and COVID-19 related workers' claims in Vermont;

- (4) the amount of funding and any legislative action that would be necessary to substantially mitigate or eliminate the impact of COVID-19 related workers' compensation claims on workers' compensation costs; and
- (5) requirements for structuring such a fund so that monies from the Coronavirus Relief Fund can be used in compliance with the requirements of section 5001 of Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136 (the CARES Act), as may be amended, and any guidance issued pursuant to that section.

In accordance with the Legislature's directive in Act 150, Commissioner Pieciak hereby submits the following report of the Department's findings and recommendations for legislative action to the House Committee on Commerce and Economic Development and the Senate Committee on Economic Development, Housing and General Affairs.

B. Stakeholder engagement and data sources

In preparing this report, the Department consulted with a variety of stakeholders to gain a deeper understanding of COVID-19 activity in Vermont as it relates to workers' compensation claims that have been filed, denied, and accepted, and potential COVID-19 related workers' compensation impacts on insurers, employers and employees. The following is a brief summary of that engagement and workers' compensation data sources the Department utilized.

- The Vermont Department of Labor (VDOL), which is in charge of workers' compensation claims administration, provided a list of all workers' compensation first reports that have been filed in Vermont, together with the status of each claim, the claimant's occupation and employer, and the employer's insurance carrier.
- The Vermont Department of Health (VDH) provided data about reported COVID-19 positive test results and rates of hospitalization, intensive care unit (ICU) stays, fatalities, and, in some instances where available, occupation types.
- The Department collected claims data from large self-insured employers, intermunicipal associations, and commercial insurance carriers representing a meaningful share of the Vermont workers' compensation market.
- We consulted with the National Association of Insurance Commissioners and the National Council on Compensation Insurance (NCCI) and utilized an online tool designed by NCCI to model potential impacts of COVID-19 on workers' compensation claim costs and losses in the State under a range of scenarios.

- We held telephone and video conferences with, or received written comments or input from a number of organizations representing workers' compensation insurers, employers, and employees, including the American Property and Casualty Insurance Association, National Association of Mutual Insurance Companies, Vermont League of Cities and Towns (VLCT), Vermont School Boards Insurance Trust, Lake Champlain Chamber, Bi-State Primary Care Association, Vermont Health Care Association, Bayada Home Health and Hospice, and Working Vermont.

The Department also reviewed relevant state and federal legislation, including the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), as well as literature and resources available online regarding COVID-19 biology and epidemiology and COVID-19 impacts on workers' compensation.

II. Background on workers' compensation insurance

The workers' compensation insurance system in the United States "evolved as a compromise between labor and management" and is designed to provide for the efficient resolution of workplace injury claims outside of the court system.¹ Workers' compensation claims are "no fault" and serve as the exclusive remedy of employees and their families for damages related to work-related injuries, illnesses, and death. In other words, an injured employee will be compensated without having to demonstrate that their employer was negligent, and their employer is not permitted to utilize traditional tort defenses. Outside of exceptional circumstances, the employee is also barred from bringing a civil suit against their employer related to their injury.²

Workers' compensation is mandatory in Vermont. Most Vermont employers purchase a workers' compensation insurance policy through a commercial insurance carrier. However, if a business is new or has a history of significant claims issues, they may not be able to obtain coverage in the voluntary market. In that case, the business may obtain coverage in the residual market (also known as the assigned risk pool), which is the coverage source of last resort. Residual market rates are necessarily higher because of the higher level of risk insured. All licensed workers' compensation carriers in the State are required to participate in the assigned risk pool and assume profits and losses in proportion to the amount of voluntary market premiums they write. The NAIC reports that, in 2019, licensed insurance companies in Vermont wrote approximately \$185 million in workers' compensation premium.

¹ https://content.naic.org/cipr_topics/topic_workers_compensation_insurance.htm

² 21 V.S.A. § 622.

Some large employers, such as the University of Vermont Health System, have obtained permission from VDOL (in consultation with DFR) to establish and maintain self-insurance. Others, such as the Vermont League of Cities and Towns Property and Casualty Intermunicipal Fund (PACIF) and the Vermont School Board Insurance Trust, have established and maintain intermunicipal associations to cover their members' liabilities.³ Additionally, employer associations may establish and participate in nonprofit self-insurance corporations.⁴

According to a report by the National Academy of Social Insurance, 87.2 percent of the total workers' compensation benefits paid in 2017 in Vermont were paid by commercial insurers and 12.8 percent were paid by self-insured employers.⁵

An employee is entitled to workers' compensation when they sustain "a personal injury by accident arising out of and in the course of employment." Under Vermont law, this includes occupational diseases that result "from causes and conditions characteristic of and peculiar to a particular trade, occupation, process, or employment, and to which an employee is not ordinarily subjected or exposed outside or away from the employment."⁶ If an employee is injured on the job or contracts an occupational disease, workers' compensation insurance must cover:

- 100 percent of medical and vocational rehabilitation expenses;⁷
- Indemnity (a portion of lost wages for the duration of the disability);⁸ and
- In case of the employee's death, burial and funeral expenses, as well as survivor benefits.⁹

Employers are responsible for making a first report of any employee injury or illness to their workers' compensation provider and to VDOL. Except where there is a statutory presumption otherwise, employees have the burden of proving their injury occurred on the job by submitting evidence, such as medical records, witness statements, and other documentation. Employers may also submit contrary evidence. A licensed insurance adjuster investigates each claim, communicates with the employer and employee, and examines the evidence submitted before

³ 24 V.S.A. Subchapter 121; Regulation I-1990-1.

⁴ See 21 V.S.A. § 687.

⁵ [https://www.nasi.org/sites/default/files/nasiRptWkrsComp201710_31%20final\(1\).pdf](https://www.nasi.org/sites/default/files/nasiRptWkrsComp201710_31%20final(1).pdf)

⁶ 21 V.S.A. § 618.

⁷ Medical expenses include medical, surgical, hospital, and nursing services and supplies, prescription drugs, and durable medical equipment. 21 V.S.A. §§ 640, 641.

⁸ Wage replacement is generally equal to 2/3 of an employee's average weekly wages plus, in some cases, \$10.00 per week for each dependent child. 21 V.S.A. §§ 642, 645.

⁹ Burial and funeral expenses not to exceed \$10,000 plus up to \$5,000 for out-of-state transportation to the place of burial. 21 V.S.A. § 632.

issuing an acceptance or denial and/or adjustment of the claim. A claimant has the right to contact VDOL to dispute or appeal an adjuster's decision. During the investigation period, an insurance carrier or employer may elect to "pay without prejudice" all or a portion of benefits without accepting the claim.¹⁰

Workers' compensation benefits will be paid until "medical end result," which is the point at which the injured worker is deemed to have recovered from their disability such that no significant further improvements are expected, regardless of treatment. When a claim is accepted, a workers' compensation provider (whether commercial carrier or self-insured organization) sets aside reserves to cover the full estimated cost of the claim over time.

Like the majority of states, Vermont has designated the National Council on Compensation Insurance as its licensed rating and statistical organization. NCCI utilizes a coded employer classification system by which each individual employer is assigned to a category based on the type of operations it conducts. NCCI annually provides DFR with industry average loss cost recommendations for both the voluntary and assigned risk markets, which DFR uses to approve rates for each class code. Insurers in the voluntary market apply their own loss cost multipliers to these loss costs to reflect their expenses and any differences in risk due to their pool of policyholders; NCCI's filed rates for the assigned risk market include loss costs and expense provisions. NCCI also reviews each employer's individual payroll and loss information to develop and assign an experience rating, which is compared to that of other employers in the respective class code. Experience modification factors are distributed to insurers and used to adjust premiums up or down for individual employers.

III. Overview of COVID-19 activity in Vermont

A. Rate of infection

As of August 14, Vermont had 1,501 cumulative confirmed cases of COVID-19, which represents 0.24 percent of the total population of Vermont.¹¹ However, leading virus models estimate that the actual percentage of Vermonters that have been infected with COVID-19 to date is close to two percent (representing about seven times the number of reported cases). Independent data scientist Youyang Gu, whose model utilizes machine learning, is regarded as one of the leading experts on COVID-19 virus modeling; his predictions are included in the CDC ensemble estimates and often cited by Harvard and other COVID-19 epidemiology reports. Gu projects that the total number of infections in Vermont will grow to three percent by November 1. Gu's

¹⁰ http://labor.staging.vermont.gov/sites/labor/files/doc_library/Rule1-27-Adopted-11-1-16.pdf

¹¹ The population of Vermont is 623,989 based on the U.S. Census Bureau's most recent available estimate. <https://www.census.gov/quickfacts/VT>

model also estimates that approximately 13 percent of the entire U.S. population has been infected to date and that 19 percent will have been infected by November 1.¹²

B. Workers’ compensation claims

As of August 11, 2020, according to VDOL workers’ compensation claim data, there had been a total of 156 COVID-19 related first reports of injury.

First reports of injury (COVID-19)	156
Claim being further investigated	74
Claim denied	65
Claim paid without prejudice	11
Claim accepted	6

Sixty-five of the 156 first reports of injury had been denied for various reasons. In many cases, the claim may have been filed immediately due to exposure or possible exposure to COVID-19, but denied because the claimant subsequently tested negative. Six claims had been accepted and 11 had been paid without prejudice. The remainder of the claims remain open.

IV. Discussion of COVID-19 related workers’ compensation claims costs, influencing factors, and projections

A. The average cost of paying a workers’ compensation claim in Vermont

The cost of a workers’ compensation claim is also referred to as claim severity. Factors that impact claim severity are length of hospitalization, volume and type of medical services provided (including critical care and prescription drugs), the employee’s average weekly wage, the amount of time the employee is unable to work, whether the injury or illness results in partial or total disability or is fatal, and the number and age of the employee’s dependents. In this section we provide calculations of average claim cost in Vermont, a hypothetical mild claim, and an average severe, fatal claim.

1. Average COVID-19 claim cost in Vermont

Of the COVID-19 related claims that had been accepted as of August 11, the average incurred loss was \$7,472. The average paid loss was \$3,876 and average loss reserves totaled approximately \$3,596. These numbers reflect the fact that COVID-19 cases among Vermont’s working age population have tended to be mild or moderate in nature. However, claims data

¹² <https://covid19-projections.com/us-vt>

indicate that at least one severe COVID-19 related claim has been accepted, with a paid loss of approximately \$150,000 and reserves over \$50,000. Additional claims of this nature could have a measurable impact on average claim costs.

NCCI’s COVID-19 Hypothetical Scenarios Tool¹³ provides average COVID-19 claim cost estimates for Vermont based on two hypothetical scenarios. Data about current rates of hospitalization, critical care, and fatalities among COVID-19 cases in Vermont more closely resemble Scenario A. It is important to disclaim that NCCI’s tool does not contemplate long-term disabilities resulting from COVID-19 or the subsequent development of mental illness. As a result, actual total costs may end up much higher than those provided in this report.

Scenario	Hospitalization rate ¹⁴	Critical care rate ¹⁵	Fatal rate ¹⁶	Estimated average COVID-19 claim cost
A	10%	15%	0.5%	\$6,613
B	15%	20%	1.0%	\$10,317

2. Average cost of a mild COVID-19 claim

VLCT estimated the cost of a hypothetical mild COVID-19 workers’ compensation claim in Vermont to be between \$1,036 and \$5,306, which consists of the following:

- Wage replacement benefits: \$936 to \$2,806;¹⁷ and
- Medical cost: \$100 to \$2,500.¹⁸

3. Average cost of a severe, fatal COVID-19 claim

Using the methodology and assumptions outlined in its research brief “COVID-19 and Workers Compensation: Modeling Potential Impacts,”¹⁹ NCCI estimates the total cost of a severe, fatal COVID-19 workers’ compensation claim for a health care worker in Vermont to be, on average, \$544,396, which consists of the following:

¹³ <https://www.ncci.com/SecureDocuments/COVID-19-Scenarios.html>

¹⁴ Hospitalization rate is the percentage of infected individuals that require hospitalization.

¹⁵ Critical care rate is the percentage of admitted hospital cases that will involve the intensive care unit or ventilation.

¹⁶ Fatal rate is the percentage of claims that result in death benefits. Vermont’s cumulative fatal rate is approximately four percent, driven primarily by outbreaks in long term care facilities. 0.5% is assumed to be the fatal rate for Vermont’s working age population.

¹⁷ Representing two weeks’ wage replacement at the current Vermont minimum and maximum benefit rates.

¹⁸ Approximate cost of one to two office visits, testing, and laboratory fees.

¹⁹ <https://www.ncci.com/Articles/Documents/Insights-COVID-19-WorkersComp-Modeling-Potential-Impacts.pdf>

- Wage replacement benefits: \$4,296;²⁰
- Death and survivor benefits: \$475,780;²¹ and
- Medical cost: \$64,320.

While this example provides an estimate of an average severe, fatal claim with the parameters described, NCCI emphasizes that the costs associated with individual claims may vary dramatically.

B. Discussion of factors that can influence the cost of a COVID-19 related workers' compensation claim

In addition to the standard factors influencing workers' compensation claim severity, the uncertain long-term health effects of COVID-19 could have a measurable impact on costs. Employer precautions related to the health and safety of employees could also influence costs and may be increased if the employer has a deductible policy. Both factors are discussed below.

1. Uncertainty about long-term health impacts of COVID-19

Workers' compensation claims have a long tail, which means premiums collected in one year must cover losses for an unknown number of future years. Since COVID-19 is caused by a novel coronavirus, there is much scientists do not yet understand about its health effects. Acute health issues related to COVID-19 are evident in rates of hospitalization, critical care, and death. However, chronic health issues related to the disease are still relatively unknown, making it very challenging to estimate the corresponding cost of medical care and amount of time, on average, an employee will have be out of work.

While it is well-known that people hospitalized with COVID-19 often face long recoveries, researchers and health professionals have reported that even people who recover from a mild case of COVID-19 may experience ongoing severe health challenges, including heart, lung, kidney, and neurological issues. Much recent literature addresses the potential but uncertain health impacts of COVID-19. For instance, "a paper this week in *JAMA Cardiology* found that 78 of 100 people diagnosed with COVID-19 had cardiac abnormalities when their heart was imaged on average 10 weeks later."²² Some experts warn that medical professionals should anticipate long-term health problems similar to those observed in survivors of Severe Acute Respiratory

²⁰ NCCI currently assumes six weeks of lost wages for severe COVID-19 cases based on the World Health Organization's estimate of median time between the onset of symptoms and clinical recovery.

²¹ Annual cost of living adjustments may increase the total amount of survivor benefits payable.

I. ²² <https://www.sciencemag.org/news/2020/07/brain-fog-heart-damage-covid-19-s-lingering-problems-alarm-scientists>

Syndrome (SARS) and Middle East Respiratory Syndrome (MERS), including reduced lung function and ability to exercise, mental health problems, and a low quality of life.²³

NCCI estimated in 2013 that “more than 10 percent of the cost of medical benefits for the workplace injuries that occur this year will be for services provided more than two decades into the future.”²⁴ COVID-19 could potentially increase this percentage, stressing the workers’ compensation system for years to come.

2. Workers’ compensation policy deductibles

Employers may choose a workers’ compensation policy with a deductible because it offers a lower premium in exchange for the employer taking on a portion of the risk. With a deductible policy, the employer is responsible for reimbursing the insurer for the first dollars of a claim up to the deductible amount. Assuming a portion of monetary risk may motivate an employer to increase vigilance around workplace health and safety in an effort to keep the number of claims (and their costs) low.

Vermont requires commercial workers’ compensation insurance carriers to make available, at the written request of an employer, a policy with a minimum \$500 deductible.²⁵ According to a 2016 NAIC study, approximately nine percent of U.S. workers’ compensation policies in 2013 had a deductible. Of these policies, approximately 54 percent had a “small” deductible less than \$100,000 and approximately 46 percent had a “large deductible” of \$100,000 or more.²⁶

C. Potential COVID-19 related impacts on workers’ compensation costs and experience modifiers

The Department used the NCCI’s COVID-19 Hypothetical Scenarios Tool to model COVID-19 related workers’ compensation cost impacts based on a number of different assumptions. We determined that the percentage impact of COVID-19 claims on total expected losses is measurable for all employer groups, but most significant for health care employers. Set forth below are discussions of: (1) assumptions utilized in modeling cost impacts; (2) the predicted cost impacts for the scenarios modeled; (3) the impact of Act 150’s frontline worker compensability presumption; (4) the approach taken by NCCI to next year’s rates and experience rating; (5) reinsurance and potential COVID-19 related solvency impacts; and (6) offsetting factors.

²³ https://www.medicaljournals.se/jrm/content_files/download.php?doi=10.2340/16501977-2694

²⁴ https://www.ncci.com/Articles/Pages/II_Med-Svcs-20yrs.pdf

²⁵ 21 V.S.A. § 687

²⁶ https://www.naic.org/prod_serv/WCD-OP-16.pdf

1. Assumptions used

The following are major assumptions used by the Department and NCCI in modeling cost impacts.

a) Symptom severity

NCCI's tool assumes the following rates of symptom severity for the total infected population, which generally aligns with Vermont's experience with COVID-19 cases so far:

- 90 percent with mild symptoms;
- 8.5 percent with moderate symptoms; and
- 1.5 percent with severe symptoms.²⁷

b) Hospitalization, critical care, and fatal rates

The Department's assumptions around hospitalization and fatalities are based on symptom severity. We assumed a 10 percent hospitalization rate, with 15 percent of those hospitalized requiring treatment in the intensive care unit or ventilation, and a 0.5 percent fatal rate. These rates were informed by VDH COVID-19 case data.

c) Compensability rate

Compensability rate is the percentage of cases entitled to worker's compensation benefits. The Department assumed compensability rates of (1) 75 percent for first responders and health care workers and (2) 25 percent for the total workforce, based on the relative strengths of the compensability presumptions established in Act 150 for frontline and non-frontline workers.

d) Report rate

We assumed report rates of (1) 40 percent for the total workforce and health care workers and (2) 50 percent for first responders. At one minus the asymptomatic rate, report rate represents the percentage of employees who contract COVID-19 and experience symptoms severe enough that they seek medical care or become unable to work as a result. It is intended to capture the percentage of infected individuals that can be expected to file a workers' compensation claim.

Our assumed report rates of 40 percent for the total workforce and health care workers are based on the equation $(1-x)$ where x is calculated as follows:

²⁷ <https://www.ncci.com/Articles/Documents/Insights-COVID-19-WorkersComp-Modeling-Potential-Impacts.pdf>

- 40 percent overall COVID-19 asymptomatic rate as estimated by the CDC;²⁸ plus
- 10 percent, representing the number of infected persons experiencing very mild symptoms that will not seek testing or medical attention or become unable to work; plus
- 10 percent, conservatively representing both the approximate number of currently unemployed Vermonters that we would not expect to report a workers' compensation claim²⁹ and the employed individuals that work 100 percent remotely.

Our assumed 50 percent report rate for first responders is calculated the same way, except we do not include 10 percent unemployed individuals because first responders (firefighters and police officers) are deemed to be essential workers and have not experienced the same levels of unemployment and have less opportunity for telework.

e) Infection rate

Two leading COVID-19 data models estimate Vermont's infection rate to be between 1.1 and 1.8 percent of the population; and one of those models predicts that this rate will rise to three percent by November 1.³⁰ Because the rate of infection is likely to change over time and is subject to a number of variables, we projected losses for infection rates between two and 15 percent.

2. Predicted cost impacts

In three charts set forth below are the results of the Department's modeling of the amounts by which aggregate workers' compensation total expected losses³¹ may be expected to increase due to COVID-19 with respect to the following categories of employees in Vermont:

- Total Vermont workforce;
- Vermont first responders;³² and

²⁸ According to the CDC, "an asymptomatic case is an individual infected with SARS-Co V-2 who does not exhibit symptoms during the course of infection." <https://www.cdc.gov/coronavirus/2019-ncov/hcp/planning-scenarios.html>

²⁹ <https://labor.vermont.gov/press-release/press-release-vermonts-unemployment-rate-decreases-94-percent-june>

³⁰ Infection rate is the percentage of workers who contract COVID-19. https://pandemicnavigator.oliverwyman.com/forecast?mode=states®ion=US_US-VT&panel=baseline; <https://covid19-projections.com>

³¹ Total expected losses represent the aggregate expected losses for all private and public employers in Vermont, regardless of funding.

³² For purposes of scenario modeling, NCCI included the following class codes in this group: Firefighter (7704, 7710, 7711) and Police (7720).

- Vermont health care workers.³³

a) NCCI Hypothetical Scenarios Tool: Results for Vermont’s total workforce

The average COVID-19 related workers’ compensation claim cost claim is estimated to be approximately \$6,613 with respect to all Vermont employees.

Col.(1) Vermont statewide infection rate	Col.(2) Vermont expected losses related to COVID-19 (in millions)	Col.(3) Vermont expected losses without COVID-19 (in millions)	Col.(4) = (2)+(3) Vermont total expected losses including losses related to COVID-19 (in millions)	Col.(5) = (4)/(3)- 1.0 Vermont overall percentage change in expected losses due to COVID-19
2%	\$4.1	\$194.2	\$198.2	+2%
3%	\$6.1	\$194.2	\$200.2	+3%
5%	\$10.1	\$194.2	\$204.3	+5%
10%	\$20.3	\$194.2	\$214.4	+10%
15%	\$30.4	\$194.2	\$224.5	+16%

b) NCCI Hypothetical Scenarios Tool: Results for Vermont first responders

The average COVID-19 related workers’ compensation claim cost claim is estimated to be approximately \$7,067 with respect to Vermont first responders.

³³ For purposes of scenario modeling, NCCI included the three largest health care-related class codes in this group: (a) Dentist & Clerical; Physician & Clerical (8832); (b) Asylum, Hospital & Sanatorium Professional Employees (8833); and (c) Homemaker Service- Physical Assistance- Business. & Home, Public & Traveling Health Care (8835).

Col.(1) Vermont statewide infection rate	Col.(2) Vermont expected losses related to COVID-19 (in millions)	Col.(3) Vermont expected losses without COVID-19 (in millions)	Col.(4) = (2)+(3) Vermont total expected losses including losses related to COVID-19 (in millions)	Col.(5) = (4)/(3)- 1.0 Vermont overall percentage change in expected losses due to COVID-19
2%	\$0.1	\$4.6	\$4.7	+3%
3%	\$0.2	\$4.6	\$4.8	+4%
5%	\$0.3	\$4.6	\$4.9	+7%
10%	\$0.6	\$4.6	\$5.2	+14%
15%	\$0.9	\$4.6	\$5.5	+20%

c) NCCI Hypothetical Scenarios Tool: Results for Vermont health care workers

The average COVID-19 related workers' compensation claim cost claim is estimated to be approximately \$7,292 with respect to Vermont health care workers.

Col.(1) Vermont statewide infection rate	Col.(2) Vermont expected losses related to COVID-19 (in millions)	Col.(3) Vermont expected losses without COVID-19 (in millions)	Col.(4) = (2)+(3) Vermont total expected losses including losses related to COVID-19 (in millions)	Col.(5) = (4)/(3)- 1.0 Vermont overall percentage change in expected losses due to COVID-19
2%	\$1.5	\$15.9	\$17.4	+9%
3%	\$2.2	\$15.9	\$18.1	+14%
5%	\$3.6	\$15.9	\$19.6	+23%
10%	\$7.3	\$15.9	\$23.2	+46%
15%	\$10.9	\$15.9	\$26.9	+69%

As the charts above demonstrate, the percentage impact on total expected losses is highest with respect to health care workers. We can attribute these higher expected losses to both their higher risk of COVID-19 exposure for health care workers and the strong frontline worker compensability presumption. Although claim severity is similar to that for health care workers, COVID-19 claims are predicted to have a smaller relative impact with respect to first responders

because of the level of risk inherent in first responders' professions. In other words, because first responders have higher than average expected losses per unit of payroll before taking COVID-19 into account, the impact of expected COVID-19 losses as a percentage of total expected losses is muted, relative to other professions and the workforce in general.

3. Impact of Act 150 frontline worker presumption

According to VDH data, approximately 17 percent of Vermonters (one in six) with confirmed cases of COVID-19 are health care workers. More than 60 percent of first reports of injury filed with VDOL to date have been submitted by self-insured employers, such as large hospital and health systems and the State of Vermont, and intermunicipal insurance associations, such as VLCT and VSBIT. These organizations insure a large percentage of employees in the fields of health care and public safety, such as emergency medical technicians, nurses, physical therapists, dentists, physicians and related clerical staff, hospital workers, group home employees, police officers, firefighters, and correctional facility employees. Most employees in these occupations are defined as "frontline workers" and their claims are presumed compensable if they receive a positive laboratory test for or a diagnosis of COVID-19 from a licensed healthcare provider between March 1, 2020 and January 15, 2021.³⁴

On July 27, 2020, VDOL issued a memorandum directing workers' compensation insurers and adjusters to review all COVID-19 related first reports of injury filed since March 1, 2020 that were not accepted as compensable.³⁵ As a result of this review, previously denied claims will be reopened and reexamined in light of Act 150's presumptions, which could increase the number of accepted claims to date and the costs to insurers and employers, particularly those of frontline workers.

4. 2021-22 rates and experience rating

NCCI has stated that loss cost and rate filings for 2021-22 "will be based on pre-COVID-19 premium and loss data and will not include an explicit adjustment for the impact of the COVID-19 pandemic." According to NCCI, this is because of the difficulty of forecasting future claims and estimating future losses related to COVID-19 and the "unavailability of quantitative COVID-19-related ratemaking data."³⁶

³⁴ <https://legislature.vermont.gov/Documents/2020/Docs/ACTS/ACT150/ACT150%20As%20Enacted.pdf>

Note that Act 150's presumption of compensability for non-frontline workers requires a positive laboratory test for or diagnosis of COVID-19 between April 1, 2020 and January 15, 2021.

³⁵

https://labor.vermont.gov/sites/labor/files/doc_library/memo%20on%20passage%20of%20S342%28Act%20150%29.pdf

³⁶ https://www.ncci.com/Articles/Pages/II_2020-2021-Rate-Filing-Season-Need-to-Know.aspx

In addition, DFR has approved an NCCI rule specifying that COVID-19 claims will not be used in experience rating. The rule applies to claims with accident dates after December 1, 2019, and no ending accident date has yet been established. This will effectively prevent COVID-19 claims from having any adverse impact on employers' workers' compensation premiums in the near term.

5. Reinsurance and impact on solvency

Most workers' compensation providers purchase reinsurance policies to backstop individual claims above certain individual and/or aggregate retention limits. If adequately covered by reinsurance, it is unlikely that an insurer or self-insurer would be rendered insolvent because of individual large COVID-19 related workers' compensation claims. However, intermunicipal insurance associations and self-insurers could be financially impaired by a sufficiently high volume of COVID-19 related workers' compensation claims. In addition, it is also possible but unlikely that reinsurers with a very large market share of excess workers' compensation policies could be financially impaired by claims relating to COVID-19.

Intermunicipal insurance associations such as VLCT PACIF are member-owned non-profits funded entirely by their member-owners which, in the case of VLCT PACIF, are Vermont municipalities. As VLCT has noted in Legislative testimony, the reserves of VLCT PACIF were to be depleted as a result of an increased number of first responders' COVID-19 related workers' compensation claims, then member municipalities would be responsible for funding additional reserves. A similar situation could also impact self-insured employers, such as hospitals, if they experience a high number of claims— understandably made more difficult by the fact that municipalities and hospitals, like many other businesses, may be experiencing decreased revenues and increased costs due to the COVID-19 pandemic.

6. Offsetting factors

It has been suggested that the temporary closures ordered by Governor Scott of in-person operations of nonessential businesses and the ongoing capacity limitations, social distancing guidelines, and other safety measures imposed during Vermont's state of emergency have resulted in temporary and permanent layoffs in a variety of sectors. This has led, in turn, to decreases in base wages used to determine workers' compensation premiums and non-COVID-19 related claim pressures, both of which may offset cost increases due to COVID-19.

D. Conclusion

So far in 2020, a fairly low number of COVID-19 related workers' compensation claims have been submitted in Vermont, so the impact of COVID-19 on the State's workers' compensation

system, at least in the near term, may be modest compared to many other states. Indeed, based on available data, it is likely that neither workers' compensation providers nor employers will be severely impacted by such costs *this year*. However, the long-tail nature of workers' compensation claims and the uncertainty about the health impacts of COVID-19 mean that *future* costs could be substantial. Because self-insured employers and intermunicipal insurance associations insure a large portion of Vermont's frontline workers, these providers may bear a disproportionate share of the increased costs.

V. Discussion of issues related to the creation of a special fund and utilization of Coronavirus Relief Fund monies

A. The amount of funding and any legislative action necessary to substantially mitigate or eliminate the impact of COVID-19 related workers' compensation claims on workers' compensation costs

The creation of a COVID-19 workers' compensation reimbursement fund would require legislation to establish the fund, appropriate the requisite monies, and set parameters for reimbursement, such as retention limits.

The Minnesota Senate passed a bill to create a workers' compensation reimbursement fund similar to that contemplated by the Legislature in Act 150.³⁷ Although the bill has not been passed by the House of Representatives in Minnesota, the Department has looked to its provisions for guidance. The Minnesota bill would create a fund to reimburse workers' compensation providers for COVID-19 related costs paid in 2020 solely with respect to employees subject to Minnesota's statutory COVID-19 compensability presumption for frontline workers.³⁸ It would appropriate \$375 million in CRF monies to the fund. To the Department's knowledge, no other state has taken steps to create such a workers' compensation reimbursement fund.

Set forth below is the Department's analysis of legislative action required to establish a COVID-19 related workers' compensation reimbursement fund in Vermont and an estimate of the funding necessary to substantially mitigate or eliminate the impact of COVID-19 on Vermont workers' compensation costs.

³⁷

https://www.revisor.mn.gov/bills/text.php?number=SF4564&version=latest&session=ls91&session_year=2020&session_number=0

³⁸ Minnesota's statutory presumption applies to licensed peace officers, firefighters, paramedics, emergency medical technicians, correctional facility employees, health care providers, employees of home and long-term care facilities, and workers required to provide child care to first responders and health care workers.

<https://www.revisor.mn.gov/laws/2020/0/72/>

1. Creation of the fund

As a special fund, the proposed workers' compensation reimbursement fund would be required to comply with the provisions of 32 V.S.A. § 588 with respect to its purpose and identification, receipts, interest, appropriations and expenditures, balances, and accounting and reporting.

2. Administration of the fund

Since VDOL administers workers' compensation claims, that department appears to be best situated to review and approve reimbursement requests.³⁹ However, VDOL has stated that they do not have adequate resources to perform this responsibility. Insurers do not regularly report individual claims costs in a format that would lend itself to this purpose (e.g. indemnity paid, medical costs paid, and other expenses) to either VDOL or DFR and existing data systems are not equipped to track this type of data. Therefore, the administration of a reimbursement fund would require updates to existing procedures and systems.

3. Appropriation of monies

The amount of the appropriation required for the Legislature's proposed reimbursement fund hinges on two major decision points. The first is whether reimbursement would be available to cover the costs of workers' compensation providers with respect to all COVID-19 related claims or only those of employees subject to the frontline worker compensability presumption in Act 150. The second whether reimbursement would be available to all workers' compensation providers or only a subset thereof.

a) Types of claims eligible for reimbursement

Assuming a three percent infection rate for Vermont by the end of 2020, our modeling indicates that total losses related to *all* COVID-19 related claims are expected to be approximately \$6.1 million. This is the estimated total amount, not the amount that is expected to be paid in 2020.

Assuming the same three percent infection rate, our modeling indicates that total losses related to the COVID-19 related claims of frontline workers only are expected to be approximately \$2.4 million. Again, not all of this amount is expected to be paid in 2020.

b) Insurance providers eligible to claim reimbursement

In the time allotted for this report, the Department was unable to gather sufficient data to determine the portion of total expected COVID-19 related losses attributable to self-insurers and

³⁹ Reimbursements from the Minnesota fund would be made by the commissioner of Minnesota Department of Labor and Industry.

intermunicipal insurance associations. However, because frontline workers have filed most of the COVID-19 related workers' compensation claims with the self-insured employers and intermunicipal insurance associations for which we have data, we can estimate total losses to be similar to (or slightly higher than) the number estimated to be attributable to frontline workers in subsection (a) above.

4. Retention limits

As is contemplated by the Minnesota bill, the Department suggests that reimbursement funds be available on a first come, first served basis and subject to certain deductibles or retention limits. Including retention limits would require workers' compensation providers to be responsible for a certain amount of benefits before they are eligible for reimbursement, which would ensure that only providers experiencing a sufficiently large amount of losses would qualify.

The Minnesota bill includes retention limits of \$100,000 for self-insured local government entities, local government self-insurance pools, and self-insurers with annual premiums of less than \$5 million and \$1 million for other workers' compensation providers (including commercial insurers). We would recommend similar retention limits for Vermont.

a) Self-insurers

In the chart below we estimate the amount of funding that would be required to reimburse approximately five, ten, and 20 claims that breach two possible retention limits for self-insured employers and intermunicipal insurance associations in Vermont. For purposes of providing these estimates, we assume \$150,000 to be the average amount of a losses paid prior to the end of 2020 with respect to a severe claim breaching each retention limit. While it is possible that self-insurers and intermunicipal insurance associations could see one or more very large claims in the range of \$500,000 or more,⁴⁰ the Department considers it unlikely that the portion of such large claims paid in 2020 would exceed the estimated allocations below.

Retention limit	Amount required to reimburse five claims	Amount required to reimburse ten claims	Amount required to reimburse 20 claims
\$50,000	\$500,000	\$1 million	\$2 million
\$100,000	\$250,000	\$500,000	\$1 million

⁴⁰ Municipal insurance pools in some other states have seen claims of this magnitude. Please refer to the chart provided by VLCT in Appendix A.

b) Commercial insurers

With respect to commercial insurers in Vermont, imposing a \$1 million retention limit or even a lower \$500,000 retention limit would likely yield no fund reimbursement requests. Based on the available data, the Department considers it unlikely that any COVID-19 related workers compensation claims will have associated paid losses greater than \$500,000 prior to the end of 2020.

c) Recommendation

To maximize the impact of reimbursement for workers' compensation providers, the Department recommends the Legislature impose reasonable retention limits of \$100,000 for self-insurers and intermunicipal insurance associations, and \$500,000 for commercial insurers. At these retention limits, we estimate the amount of funding required to reimburse workers' compensation providers to be between \$250,000 and \$1 million.

If the Legislature decides to allocate CRF monies (which must be spent or forfeited by December 30, 2020) to the proposed reimbursement fund, we suggest including in statute a mechanism for reviewing the amount of unallocated money in the fund by a specific date (e.g. November 15). If a certain threshold has not been reached by such date, then the Legislature would have an opportunity to reallocate unused CRF funds for another eligible purpose and avoid forfeiting them.

5. Reinsurance considerations

The Department was not able to fully analyze considerations related to reinsurance in the time allotted. However, the Department suggests that the Legislature include a mechanism to prevent overlap in reimbursement of claim costs between the proposed reimbursement fund and the proceeds of reinsurance. We also suggest that the Legislature consider any possible adverse selection issues that may result from reimbursing individual claim costs that might otherwise be aggregated with other claim costs to reach an aggregate reinsurance threshold.

B. Requirements for structuring such a fund so that monies from the Coronavirus Relief Fund can be used

Based on a review of the CARES Act and Treasury guidance, we have determined that the reimbursement of employers for COVID-19 related workers' compensation costs may be an eligible use of Vermont's Coronavirus Relief Fund monies, depending on the ultimate structure of the Legislature's proposed reimbursement fund. Ongoing discussions in Congress regarding the eligibility of CRF monies could change our analysis and this question should be reexamined

if Congress passes another COVID-19 economic relief bill or Treasury issues additional guidance.

The Coronavirus Relief Fund, included in the CARES Act, provided up to \$150 billion in direct allocations to state, local, territorial, and tribal governments. Vermont was allocated the CRF small state minimum amount of \$1.25 billion. The CARES Act states that CRF monies may be used to cover costs that:

- (1) are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19);
- (2) were not accounted for in the budget most recently approved as of the date of enactment of this section for the State or government; and
- (3) were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.⁴¹

The following is an analysis of these three prongs.

1. Necessary expenditures incurred due to COVID-19

Treasury has issued two documents that aim to clarify permitted uses of CRF monies:

- “Coronavirus Relief Fund Guidance for State, Territorial, Local, and Tribal Governments,” updated June 30, 2020 (the June 30 guidance);⁴² and
- “Coronavirus Relief Fund Frequently Asked Questions,” updated August 10, 2020 (the August 10 guidance).⁴³

Neither document directly addresses the issue of whether the reimbursement of insurers and/or employers for COVID-19 related workers’ compensation expenses is an eligible use of CRF monies, but they offer some direction.

First, the June 30 guidance states that “damages covered by insurance” are ineligible expenditures. In the workers’ compensation context, we believe this to mean that CRF monies may not be used to pay medical expenses or lost wages if those expenses are simultaneously paid as workers’ compensation benefits. The Legislature’s proposed COVID-19 workers’ compensation reimbursement fund would not pay damages that are also covered by insurance, but rather reimburse workers’ compensation insurers and employers for extraordinary costs incurred as a result of the COVID-19 pandemic.

⁴¹ <https://www.congress.gov/116/bills/hr748/BILLS-116hr748enr.pdf>

⁴² <https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Guidance-for-State-Territorial-Local-and-Tribal-Governments.pdf>

⁴³ <https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Frequently-Asked-Questions.pdf>

The August 10 guidance addresses the eligibility of workers' compensation expenses with the following question and answer:

Q: In some cases, first responders and critical health care workers that contract COVID-19 are eligible for workers' compensation coverage. Is the cost of this expanded workers' compensation coverage eligible?

A: Increased workers' compensation cost to the government due to the COVID-19 public health emergency incurred during the period beginning March 1, 2020, and ending December 30, 2020, is an eligible expense.

The answer to this FAQ clarifies that costs *to the government* of expanded workers' compensation coverage for first responders and health care workers is an eligible use of CRF monies. If the Legislature's proposed fund were to use CRF monies to pay a subset of the State's self-insured workers' compensations claims directly, this would appear to be an eligible use of CRF. However, Treasury guidance does not specifically address whether CRF monies may be used to cover workers' compensation costs incurred by private insurers and employers (or whether such costs may be reimbursed the State).

Some have argued that Treasury may allow for the use of CRF monies to cover increased workers' compensation costs to the private sector because the answer to the FAQ above refers to "critical health care workers," which are generally not employed by governments, which is a persuasive argument.

Finally, the June 30 guidance clarifies that governments may use CRF monies to provide economic support to small businesses in connection with the COVID-19 public health emergency (such as reimbursement of business interruption costs). Based on this example, it is safe to extrapolate that the use of CRF monies to support small self-insured businesses by reimbursing them for COVID-19 related workers' compensation expenses would also be permitted.

Although most self-insured employers in Vermont are large organizations,⁴⁴ the August 10 guidance addresses the question of what constitutes a small business by stating that "governments have discretion to determine what payments are necessary."

Accordingly, it appears likely that such a fund would satisfy the first prong of the analysis.

⁴⁴ https://labor.vermont.gov/sites/labor/files/doc_library/Self-InsuredList8-2019.pdf

2. Not accounted for in the State's most recently approved budget

The analysis of this prong is straightforward. The State's most recently approved budget did not account for any workers' compensation costs for insurers, intermunicipal insurance associations, or self-insured employers related to COVID-19.

3. Incurred during the period March 1 to December 30, 2020

If the first two prongs are satisfied, an expense must still be incurred between March 1 and December 30, 2020 to be an eligible use of CRF funds. The June 30 guidance indicates that, for a cost to be incurred between March 1 and December 30, 2020, performance or delivery must occur within that period (although the payment itself does not have to be made prior to the end of the period). In addition, the subrecipient of funds must use them to purchase goods or services which are both needed and received by December 30, 2020.⁴⁵

The establishment of reserves for a serious workers' compensation claim may occur prior to December 30, 2020, but if reserves are not actually be used to cover those costs prior to year-end, according to Treasury guidance, those costs will likely not be "incurred" in the covered period. Likewise, the establishment of an annuity or other payment instrument to cover estimated but non-concrete future costs is likely not permitted.

Accordingly, it appears likely that a fund could be established to reimburse various worker compensation costs, such as medical expenses rendered, prior to December 30, 2020. However, even if an employee contracted COVID-19 during the covered period, long-tail claims with expenses that are not known or paid until after December 30, 2020 are most likely ineligible.

4. Conclusion

Based on our review of the CARES Act and Treasury guidance issued to date, the Department believes it is likely permissible to use CRF monies to reimburse small businesses for COVID-19 related workers' compensation expenses incurred between March 1 and December 30, 2020 under certain circumstances.⁴⁶

⁴⁵ <https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Guidance-for-State-Territorial-Local-and-Tribal-Governments.pdf>

⁴⁶ If the Inspector General of the Treasury, who has been tasked with overseeing the use of CRF funds, determines that this is an ineligible use of CRF, then those funds will be treated as a debt owed to Treasury.
<https://www.congress.gov/116/bills/hr748/BILLS-116hr748enr.pdf>

VI. Report summary and conclusion

Governor Scott, his administration, and the Vermont Legislature have taken aggressive action to curb the spread of COVID-19 in Vermont. Additionally, Vermonters have been vigilant about wearing masks, social distancing, and generally staying home and staying safe. For these reasons and others, the State continues to experience a relatively low number of confirmed cases of COVID-19 and a relatively low number of COVID-19 related workers' compensation claims. Costs of such claims to workers' compensation insurers, employers, and intermunicipal insurance organizations have been modest, and based on the Department's modeling of future infections, claims, and influencing factors, we believe it is likely that costs will remain modest *in the near term*. Uncertainty surrounding the long-term health impacts of the disease make it difficult to predict the costs of COVID-19 related workers' compensation claims in the long term.

The Department has determined that CRF monies may be used for a workers' compensation reimbursement fund prior to December 30, 2020, under certain circumstances. We provide a range of possible allocations and suggest that such funding may provide the greatest benefits if reasonable retention limits are imposed and the fund is structured to avoid overlap with reinsurance proceeds.