



## **Potential Cost Impact of the COVID-19 Virus Exposure Compensability Proposal**

**Given the current rate of transmission of the COVID-19 virus, the Rating Board estimates that the proposal to establish COVID-19 virus exposure as an occupational disease could exceed \$31B in costs to the workers' compensation system.**

### **I. Legal Background**

The New York State workers' compensation law covers "accidents" and "occupational diseases." An "accident" is generally considered to be an illness or injury that arises from a specific work-related event or exposure over a reasonably defined period of time, whereas an "occupational disease" is an injury or illness that is associated with the nature of the occupation – a condition that many people in a particular line of work are prone to develop. Claims for occupational diseases are afforded longer filing time frames than accident claims. Further, given the nature of occupational diseases, claimants are generally not required to trace their illness to a single specific exposure as they may be required to do for accident claims.

Current case law has developed a reasonably clear set of legal rules for communicable diseases. Those rules generally divide workers into two categories: health care workers, and all other workers. In general, health care workers who contract illnesses may be covered under either an "accident theory" or an "occupational disease" theory whereas all other workers are covered only for "accidental" exposure.

### **II. Proposal to Establish COVID-19 Virus Exposure as an Occupational Disease**

The proposal creates a presumption in law that exposure to the COVID-19 virus is an occupational disease and as such is compensable under New York State Workers' Compensation Law. The categories of workers identified in the proposal that are eligible to make a claim based upon exposure is broad and encompasses much, if not all, of the State's public and private sector workforce. Further, by predicating compensability upon exposure instead of illness, the proposal makes most, if not all workers, eligible for benefits without testing positive for the illness.

### III. Rating Board Analysis<sup>1</sup>

The Rating Board's cost impact analysis of the above-described proposal includes the following general assumptions:

(a) According to the New York State Department of Labor's Quarterly Census of Employment and Wages, 3<sup>rd</sup> Quarter 2019, there are 9.5M private and public sector workers in New York State, of which approximately 1.6M are health care sector workers. Since the COVID-19 virus would likely qualify as an occupational disease for health care sector workers under current law, we have excluded them from this analysis. As such, analysis applies only to the remaining 7.9M non-health care sector workers in New York State.

(b) Governor Cuomo estimated that between 40% and 80% of New York State residents will contract the COVID-19 virus. For the purpose of this analysis, we assumed that 60% of New York State workers – the midpoint of Governor Cuomo's range – will contract the COVID-19 virus.

#### A. *Temporary Indemnity Benefits*<sup>2</sup>

The table below provides potential temporary indemnity costs resulting from the proposal. Several scenarios are presented with varying percentages of workers receiving benefits and with varying average number of weeks of benefits awarded.

The Rating Board's estimate of the cost of temporary indemnity benefits is predicated on the following assumptions: (i) the State's average temporary indemnity benefit is approximately \$600 per week; (ii) Governor Cuomo stated that approximately 15% of those infected will require hospitalization, and the Rating Board estimates that those hospitalized will be out of work for at least 6 weeks; (iii) the remaining 85% of infected workers claiming benefits will be out of work for approximately 2 weeks. Under these assumptions, the estimated total cost of temporary indemnity benefits is \$7.4B (= [60% x 7.9M x \$600 x 15% x 6] + [60% x 7.9M x \$600 x 85% x 2]).

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<sup>1</sup> At present, it is unknown whether benefits created by this proposal will be offset by any other federal or state benefit. In addition, the cost impact estimates contained herein reflect systemwide estimates (*i.e.*, the insured marketplace and self-insureds).

<sup>2</sup> The long-term health impact of the COVID-19 virus is presently unknown. Accordingly, this cost impact analysis focuses only on temporary indemnity benefits, hospitalization costs, and fatality claims. However, claims may also involve payments for long-term health treatment and wage loss related thereto and those losses are not estimated herein.

**Estimated Cost of  
Temporary Total Indemnity Benefits  
(\$ Billions)**

		Average Number of Weeks of Temporary Benefits				
		2	4	6	8	10
Percentage of Workers Receiving Benefits	10%	1.02	2.04	3.06	4.08	5.10
	20%	2.04	4.08	6.12	8.16	10.20
	30%	3.06	6.12	9.18	12.24	15.30
	40%	4.08	8.16	12.24	16.32	20.40
	50%	5.10	10.20	15.30	20.40	25.50
	60%	6.12	12.24	18.36	24.48	30.60
	70%	7.14	14.28	21.42	28.56	35.70
	80%	8.16	16.32	24.48	32.64	40.80
	90%	9.18	18.36	27.54	36.72	45.90
	100%	10.20	20.40	30.60	40.80	51.00

(Shaded region represents Governor Cuomo’s predicted infection rate in New York State)

**B. Hospitalization Costs**

The Rating Board’s estimate of short-term hospitalization costs are predicated on the following reported statistics: (i) Governor Cuomo stated that approximately 15% of those infected will require hospitalization; (ii) the average hospital stay cost for pneumonia with major complications is approximately \$23,000 whereas the average non-ICU hospital stay cost is approximately \$11,000; and (iii) 25% of COVID-19 hospitalizations involve ICU stays. Accordingly, the estimated average hospitalization cost for COVID-19 patients is \$14,000 (=25% x \$23,000 + 75% x \$11,000). Under these assumptions, the estimated total cost of hospitalizations is \$10.0B (=60% x 7.9M x 15% x \$14,000). It bears mention that other medical costs, such as primary care physician visits, have not been included in this analysis.

**C. Fatalities**

The Rating Board’s cost estimate of fatality claims related to the COVID-19 virus is predicated on the following assumptions: (i) the average indemnity cost for a fatality claim in New York State is approximately \$575,000; and (ii) a mortality rate of .5% for workers identified with the virus, which is less than New York State’s current mortality rate of 1% because mortalities have been driven by older individuals. Applying these assumptions together with Governor Cuomo’s estimate that 40% to 80% of the State’s residents will be infected with the virus, the Rating Board estimates that the cost of fatalities could exceed \$13.6B (=60% x 7.9M x .005 x \$575,000).

*D. Total Impact*

Combining the estimated costs for temporary indemnity benefits, hospitalizations, and fatalities, the potential cost impact of this proposal could exceed \$31B (=\$7.4B + \$10.0B + \$13.6B + other unknown costs, such as the long-term health impact). By way of comparison, current annual losses in the State's workers' compensation system, including both the insured market and self-insureds, is approximately \$8.7B.

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