

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

House Bill 1005 (Delegate Wood, *et al.*)
(Workers' Compensation Benefit and Insurance Oversight Committee)

Economic Matters

Finance

Workers' Compensation - Civil Defense Volunteers - Emergencies

This bill adds a qualifying "civil defense volunteer" as a covered employee of the State for purposes of workers' compensation coverage.

Fiscal Summary

State Effect: Potential significant increase in workers' compensation expenditures.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: A civil defense volunteer is defined as an individual pre-certified or pre-registered with a unit of State government to provide services at the request of the State during an emergency. It includes a credentialed or registered member of a professional volunteer health corps established by a unit of State government. "Emergency" includes (1) a catastrophic health emergency; or (2) any event for which the State provides volunteer services in accordance with a state of emergency, interstate emergency management and civil defense compact, or emergency management assistance compact (EMAC).

A civil defense volunteer is a covered employee of the State if the individual sustains an injury while providing services at the request of the State during an emergency or during scheduled emergency training. Any claim for coverage must be filed in Maryland. The

volunteer is not a covered employee of the State if the volunteer is otherwise covered by workers' compensation insurance.

For purposes of computing the average weekly wage of the volunteer for lost wage reimbursement: (1) if the volunteer received a salary or wages from another employer at the time of the accident, it is used to compute the average weekly wage; or (2) if the volunteer did not receive a wage or salary from other employment, one of the following calculations apply. If the volunteer:

- derived income from a source other than salary or wages, the maximum compensation allowed under law;
- was not engaged in a business enterprise, the weekly income last received by the volunteer when the volunteer *was* engaged in a business enterprise; or
- was never engaged in a business enterprise, the minimum compensation allowed under law.

Current Law: Citizens who volunteer in State-declared emergencies pursuant to the EMAC are entitled to workers' compensation benefits. However, citizens who volunteer are not eligible for this coverage unless they are part of the Maryland Defense Force. The only volunteers who are explicitly covered by the State for workers' compensation are enrolled volunteer members or trainees of the Maryland Emergency Management Agency, who are not clearly defined. The Maryland Defense Force is an organization separate from the Maryland National Guard that consists of commissioned or assigned officers and volunteers.

Volunteer members or trainees in Allegany, Carroll, Cecil, Charles, Frederick, Garrett, Queen Anne's, St. Mary's, Somerset, Washington, or Worcester counties are not covered, however. Volunteer fire and rescue personnel are entitled to coverage either by the local government for which they volunteer or by the volunteer company. Under the bill they would be covered.

Payment of Compensation

If an employee is *temporarily totally disabled*, the employee is entitled to recovery of two-thirds of the average weekly wage but it cannot exceed the average weekly wage of the State and cannot be less than \$50. If an employee is *temporarily partially disabled* and the employee's earning capacity is reduced while disabled, the employee is entitled to 50% of the difference between the employee's average weekly wage and the wage earning capacity in the same or other employment while disabled. It may not exceed 50% of the State average weekly wage.

In general, the average weekly wage is computed by determining the average of the weekly wages of the employee when working full time. For covered members of an organized militia (*i.e.*, the National Guard, Inactive National Guard, and Maryland Defense Force), the average weekly is the greater of (1) the wage provided for active duty; or (2) the actual wages earned by the covered employee in employment in the National Guard.

On or before December 15 of each year, the Department of Labor, Licensing, and Regulation must determine that State average weekly wage and report that to the Workers' Compensation Commission (\$801 for calendar 2006).

Background: In 2003, the Department of Health and Mental Hygiene (DHMH) created the Maryland Professional Volunteer Corps (MPVC) to ensure preparedness in case of a disaster such as the September 11 terrorist attack or a bioterrorism attack. The volunteers are recruited and trained by several licensing boards that operate under DHMH (the boards of Physicians, Nursing, Social, Professional Counselors and Addiction Counselors, Psychology, Dental Examiners, Pharmacy, and Morticians), as well as the Board of Veterinary Medical Examiners (under the Department of Agriculture). MPVC includes almost 6,000 medical personnel, of which 2,600 are trained and credentialed for emergency deployment.

DHMH raised the issue of coverage with the Workers' Compensation Insurance Oversight Committee following the recent Hurricane Katrina disaster. Over 70 MPVC members, including doctors, medical technicians, and nurses, flew to the Gulf area to assist victims of the hurricane under the auspices of EMAC and had to be sworn in as part of the Maryland Defense Force to be eligible for workers' compensation.

By law, Maryland is a member of the Emergency Management Assistance Compact that provides for mutual aid among states for disaster assistance. All states except Hawaii belong to this compact, in addition to the District of Columbia, Puerto Rico, and the Virgin Islands. Under the terms of the compact, which was ratified by Congress in 1996, each state must provide workers' compensation benefits, including death benefits, to its volunteers who provide aid under the compact. The state that requested aid must then reimburse the state that sent volunteers. However, the workers' compensation provided under the compact only applies to volunteers who are otherwise entitled under State law to receive those benefits.

Other State Laws

State laws governing workers' compensation for volunteers vary widely. Many states do not appear to cover volunteers (outside of police or firefighters) or do not specifically cover medical volunteers. Some states, such as Maryland and Idaho, provide coverage

for members or trainees of a civil defense force, while a few, such as Connecticut and Wisconsin, broadly cover most or all emergency volunteers. California covers any disaster service worker, which includes public employees performing disaster work outside the scope of their regular employment, as well as any unregistered individual “impressed into service” during declared emergencies.

The federal Health Resources and Services Administration (HRSA) examined 10 states that are part of a federal pilot program to create volunteer guidelines and found that 8 specifically cover emergency volunteers but only 4 provide full coverage for medical volunteers. Five of the pilot states (Connecticut, the District of Columbia, Ohio, Texas, and West Virginia) are included in **Exhibit 1** below.

Exhibit 1
Workers’ Compensation Coverage for Emergency Volunteers State Laws

<u>State</u>	<u>Definition of Covered Volunteers</u>
Connecticut	Any person engaged in civil preparedness duty or training should be construed as a state employee and eligible for compensation for disability or death. A formula is provided for calculating lost income for volunteers.
District of Columbia	Persons who provide voluntary service are eligible for compensation for work-related injuries unless covered by an organization that supplies volunteers to perform services (authorized by DC personnel regulations).
Maryland	Any volunteer enrolled or training with the Maryland Emergency Management Agency is covered by the State; however, certain counties are excluded.
Ohio	Covered employees include off-duty first responders and emergency medical technicians. Registered emergency management workers are covered by the state or political subdivision.
Texas	Covered volunteers include persons who perform services for the state in a declared state of emergency or scheduled emergency training who are not otherwise covered. Coverage includes medical benefits but not lost income or death benefits. Volunteers must seek treatment within 48 hours.
Utah	A volunteer is considered a government employee for receiving workers’ compensation medical benefits; only compensatory service workers are excluded (those performing service as part of probation or sentence).
West Virginia	Employers can elect to cover volunteer rescue squads or government-sponsored volunteer groups under the state emergency medical services law.

Source: HRSA, *Bioterrorism Hospital Preparedness*, September 2005; various state statutes

State Expenditures: State workers' compensation costs could significantly increase for covering civil defense volunteers. While the actual increase in cost cannot be reliably estimated at this time, based on the nature of the work being performed by these volunteers and that any one injury can have significant costs, it is assumed that any increase could be significant. The actual cost of the bill would depend on the number of volunteers in the civil defense volunteers that are deployed in a state of emergency, the extent of any injuries suffered, and whether volunteers are otherwise covered by workers' compensation insurance.

The wage replacement calculation specified in the bill is the same calculation currently used for volunteer firefighters and rescue workers. According to the Injured Workers' Insurance Fund, from 2002 through 2005, 51 policyholders (volunteer companies and local governments) paid claims totaling \$2.4 million for medical; \$762,000 for permanent partial disability; and \$543,000 for temporary total disability. The averages were:

Number of Claims	1,179
Average Medical Per Claim	\$2,032
Average Permanent Partial	\$646
Average Temporary Total	\$460

Additional Information

Prior Introductions: None.

Cross File: SB 849 (Senator Exum) (Workers' Compensation Benefit and Insurance Oversight Committee) – Rules.

Information Source(s): National Council on Compensation Insurance, Uninsured Employers' Fund, Workers' Compensation Commission, Injured Workers' Insurance Fund, Subsequent Injury Fund, Maryland Insurance Administration, Department of Legislative Services

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