

Department of Legislative Services  
Maryland General Assembly  
2021 Session

FISCAL AND POLICY NOTE  
First Reader

Senate Bill 860  
Finance

(Senators Zucker and Guzzone)

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**Workers' Compensation - COVID-19 Occupational Disease Presumption - Public School Employees**

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This emergency bill establishes an occupational disease presumption for paid public school employees in the public elementary and secondary education systems of the State, including teachers, administrators, and support staff, who test positive for or are diagnosed with COVID-19 under specified circumstances. The bill must be construed to apply retroactively and must be applied to and interpreted to affect workers' compensation claims filed on or after March 1, 2020. **The bill terminates July 31, 2022.**

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**Fiscal Summary**

**State Effect:** General fund expenditures for the Maryland School for the Deaf (MSD) may increase in FY 2021, 2022, and 2023 due to the bill's establishment of a new occupational disease presumption. Revenues are not affected.

**Chesapeake Employers' Insurance Company (Chesapeake) Effect:** Chesapeake expenditures may increase in FY 2021, 2022, and 2023, as additional workers' compensation benefits are paid on behalf of MSD and the Carroll County Board of Education by Chesapeake. Revenues increase to the extent that premiums are raised due to claims experienced under the expanded occupational disease presumption.

**Local Effect:** Local board of education expenditures increase, potentially significantly, beginning in FY 2021, 2022, and 2023 due to the bill's establishment of a new occupational disease presumption. Revenues are not affected.

**Small Business Effect:** None.

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## Analysis

**Bill Summary:** A paid public school employee who is a covered employee is presumed to have an occupational disease that is compensable under workers’ compensation law if:

- on or after March 1, 2020, the employee tested positive for or was diagnosed with COVID-19 within 14 days after a day on which the employee performed labor or services at the public school or another assigned workplace (that is not the employee’s home) at the employer’s direction; and
- the test was performed or the diagnosis was made by a health care practitioner who is licensed, certified, or otherwise authorized by State law to perform the test or make the diagnosis.

The presumption is rebuttable with substantial evidence to the contrary that demonstrates that the employee tested positive for or was diagnosed with COVID-19 for reasons not arising out of and in the course of employment.

**Current Law:** Workers’ compensation law establishes a presumption of compensable occupational disease for certain public safety employees who are exposed to unusual hazards in the course of their employment. It is assumed that these injuries or diseases are due to the employees’ work and, therefore, require no additional evidence in the filing of a claim for workers’ compensation. As shown below, generally presumptions are based on particular occupations and their associated health risks.

<u>Type of Personnel/Occupation</u>	<u>Type of Disease</u>
Volunteer and career firefighters, firefighting instructors, rescue squad members, and advanced life support unit members; fire marshals employed by an airport authority, a county, a fire control district, a municipality, or the State	Heart disease, hypertension, or lung disease that results in partial or total disability or death  Leukemia or prostate, rectal, throat, multiple myeloma, non-Hodgkin’s lymphoma, brain, bladder, kidney or renal cell, testicular, or breast cancer under specified conditions
Deputy sheriffs, police officers, and correctional officers of specified counties	Heart disease or hypertension that results in partial or total disability or death
Department of Natural Resources paid law enforcement employees and park police officers of the Maryland-National Capital Park and Planning Commission	Lyme disease under specified conditions

A covered employee who receives a presumption is entitled to workers' compensation benefits in addition to any benefits that the individual is entitled to receive under the retirement system. The weekly total of workers' compensation and retirement benefits may not exceed the weekly salary paid to the individual.

Although statute is silent on the issue, occupational disease presumptions have long been considered rebuttable presumptions. Two court decisions address the use of "is presumed" in reference to occupational diseases in current law, specifying that the term "without contrary qualification, should be read to be a presumption, although rebuttable, of fact." (See *Board of County Commissioners v. Colgan*, 274 Md. 193, 334 A.2d 89 (1975); and *Montgomery County Fire Board v. Fisher*, 53 Md. App. 435, 454 A.2d 394, aff'd, 298 Md. 245, 468 A.2d 625 (1983).) However, the Court of Special Appeals has stated that, "after the last injurious exposure to a hazard and the conclusion of employment the nexus between an occupational disease and an occupation becomes increasingly remote." (See *Montgomery County, Maryland v. Pirrone*, 109 Md. App. 201, 674 A.2d 98 (1996).)

**State/Local Expenditures:** While most public school employees covered by the bill work for locally operated school systems, employees of MSD are also covered by the bill. Any increase in expenditures for MSD and local boards of education depends on (1) how many employees contract COVID-19 and consequently qualify for the occupational disease presumption and (2) whether any of those employees would have received workers' compensation for COVID-19 absent the bill. The Department of Legislative Services advises that a covered employee may still receive workers' compensation for COVID-19 under current law; the presumptions established under the bill ensure no additional evidence is required to qualify for benefits.

Given the retroactive application of the bill's occupational disease presumption and the potentially severe physical and mental health effects of COVID-19 and rate of hospitalization for the illness, the impact on MSD and local school systems could be significant, depending on the number of claims experienced. *For illustrative purposes*, Chesapeake advises that, as of February 10, 2021, it has received 768 first reports of injury but only 92 total claims related to COVID-19, totaling 63 State government claims, 16 local government claims, and 13 private industry claims, of which:

- 43 have been accepted by the Workers' Compensation Commission (WCC);
- 16 have been contested and are awaiting judicial review;
- 5 have been withdrawn by the claimant;
- 25 are still being investigated; and
- 3 have been denied by WCC.

**Chesapeake Expenditures:** As the administrator of workers' compensation claims for the State and the workers' compensation insurer for one local board of education (the Carroll County Board of Education), Chesapeake anticipates more claims may be paid out due to the additional occupational disease presumption beginning as early as fiscal 2021. As noted above, Chesapeake has already received 92 claims related to COVID-19 as of February 10, 2021, and is likely to receive many more claims as the pandemic continues.

**Additional Comments:** In March 2020, the Governor declared a state of emergency and the existence of a catastrophic health emergency to deploy resources and implement the emergency powers of the Governor to control and prevent the spread of COVID-19. The declaration has been renewed several times, most recently on February 19, 2021. For more information on the COVID-19 pandemic, please see the **Appendix – COVID-19**.

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### **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** None.

**Information Source(s):** Maryland School for the Deaf; Chesapeake Employers' Insurance Company; Subsequent Injury Fund; Uninsured Employers' Fund; Maryland State Department of Education; Department of Legislative Services

**Fiscal Note History:** First Reader - March 8, 2021  
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## Appendix – COVID-19

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In December 2019, a novel strain of coronavirus known as severe acute respiratory syndrome coronavirus 2 emerged in Wuhan, China. Coronavirus disease (COVID-19) is an infectious disease caused by this virus. As the number of cases spread globally by March 2020, the World Health Organization declared COVID-19 a pandemic.

### *Testing, Cases, and Deaths in Maryland*

Maryland's first three confirmed cases of COVID-19 were recorded on March 6, 2020, with the first two deaths occurring March 16, 2020. As of January 27, 2021, Maryland reported a total of 346,559 confirmed cases, 31,468 individuals ever hospitalized, and 6,821 confirmed deaths. The jurisdictions with the highest number of cases have been Prince George's, Montgomery, and Baltimore counties and Baltimore City. Statewide, 8.4% of cases (28,954) and 45.9% of COVID-19 deaths (3,130) occurred in congregate living settings (*i.e.*, nursing homes, assisted living, and group homes). Updated data on COVID-19 in Maryland is available on the Maryland Department of Health (MDH) dashboard: <https://coronavirus.maryland.gov>.

### *Vaccines*

In December 2020, the U.S. Food and Drug Administration approved both Pfizer-BioNTech and Moderna's COVID-19 vaccines for emergency use. Due to limited quantities, distribution began with priority groups as determined by states. Maryland began distribution in January 2021 with Phase 1A, which includes health care workers, residents and staff of nursing homes, first responders, public safety, corrections staff, and front-line Judiciary staff. Phase 1B began January 18, 2021, and includes residents of assisted living facilities and other congregate settings, adults age 75 and older, staff of K-12 schools and child care facilities, high-risk incarcerated individuals, and those involved in continuity of government. As of January 27, 2020, the State is in Phase 1C, which includes adults aged 65 and older, additional public safety and public health workers, and essential workers in food/agriculture, manufacturing, public transit, and the postal service. Phase 2 will include individuals aged 16 to 64 at increased risk of severe illness, incarcerated adults, and remaining essential workers. Phase 3 will include the general public. As of January 27, 2021, 852,625 doses of the vaccine have been distributed, and 419,579 doses have been administered (363,282 first doses and 56,297 second doses). Updated data is available on the MDH dashboard: [coronavirus.maryland.gov/#Vaccine](https://coronavirus.maryland.gov/#Vaccine).

### *Declaration of a State of Emergency and Initial Executive Orders*

On March 5, 2020, Governor Lawrence J. Hogan, Jr. declared a state of emergency and the existence of a catastrophic health emergency to deploy resources and implement the emergency powers of the Governor to control and prevent the spread of COVID-19. The declaration, which has been renewed several times (most recently January 21, 2021), initiated a series of executive actions, including moving the Maryland Emergency Management Agency to its highest activation level, activating the National Guard, and closing all public schools. The Governor then ordered the closure of in-house dining at bars and restaurants and banned mass gatherings of more than 50 people. This action was followed by a more extensive stay-at-home order on March 30, 2020, requiring closure of all nonessential businesses. This order remained in effect until May 15, 2020.

### *Emergency Legislation*

Chapters 13 and 14 of 2020 (the COVID-19 Public Health Emergency Protection Act of 2020) authorized the Governor, for the duration of the emergency, to take actions relating to health insurance, Medicaid, retailer profits, employer actions, and personnel at State health care facilities as a result of the state of emergency and catastrophic health emergency. The Acts also authorize the Secretary of Labor to determine certain individuals eligible for unemployment insurance (UI) benefits due to COVID-19. The Acts terminate April 30, 2021.

### *Subsequent Executive Orders and Advisories*

Since March 2020, the Governor has issued numerous executive orders relating to COVID-19, including (1) closing Maryland ports and harbors to passenger vessels; (2) expanding child care access; (3) expanding the scope of practice for health care practitioners, activating the Maryland Responds Medical Reserve Corps, controlling and restricting elective medical procedures, closing adult day care centers, and providing additional health care regulatory flexibility; (4) augmenting emergency medical services; (5) prohibiting price gouging; (6) fast tracking lab testing processes; (7) authorizing expanded telehealth services; (8) delegating authority to local health officials to control and close unsafe facilities; (9) extending certain licenses, permits, and registrations; (10) authorizing remote notarizations; (11) prohibiting evictions of tenants suffering substantial loss of income due to COVID-19, additionally prohibiting certain repossessions, restricting initiation of residential mortgage foreclosures, and prohibiting commercial evictions; (12) regulating certain businesses and facilities and generally requiring the use of face coverings; (13) establishing alternate health care sites and authorizing regulation of patient care space in health care facilities; and (14) implementing alternative correctional detention and supervision.

## *Federal Legislation Regarding COVID-19*

Five federal emergency bills have been enacted to address the COVID-19 pandemic:

- the **Coronavirus Preparedness and Response Supplemental Appropriations Act**, which provided \$8.3 billion in emergency funds for federal agencies (including \$950 million through the U.S. Centers for Disease Control and Prevention for state and local response);
- the **Families First Coronavirus Response Act**, which addressed emergency family and medical leave and paid sick leave, specified insurance coverage of COVID-19 testing, and provided additional funding for nutrition assistance programs and unemployment benefits;
- the **Coronavirus Aid, Relief, and Economic Security (CARES) Act**, which included a Coronavirus Relief Fund for state and local governments; an Education Stabilization Fund for states, school districts, and institutions of higher education; a Disaster Relief Fund for state and local governments; additional funding for public health agencies to prevent, prepare for, and respond to COVID-19; funding for transit systems; an expansion and extension of eligibility for UI benefits, and additional temporary unemployment compensation of \$600 per week; \$349 billion for the establishment of the Paycheck Protection Program (PPP); a \$500 billion lending fund for businesses, cities, and states; and Economic Impact Payments to American households of up to \$1,200 per adult and \$500 per child;
- the **Paycheck Protection Program and Health Care Enhancement Act**, which provided an additional \$310 billion to PPP, \$75 billion for health care providers, \$60 billion for small business disaster loans, and \$25 billion for increased testing capacity; and
- the **Consolidated Appropriations Act, 2021, and Other Extensions Act**, which included \$908 billion in relief, including another \$284 billion for PPP, \$82 billion for schools, \$45 billion for transportation, \$25 billion in emergency assistance to renters, \$20 billion for vaccine distribution, \$13 billion for a major expansion in Supplemental Nutrition Assistance benefits, \$13 billion for agriculture and rural programs, \$10 billion for child care assistance, extended federal unemployment benefits of up to \$300 per week, extended the federal moratorium on evictions through January 31, 2021, and provided a second stimulus payment of up to \$600 per person.

### *Federal Funding for Maryland to Address COVID-19*

The CARES Act and the Families First Coronavirus Response Act provided Maryland with a significant amount of federal aid. More than \$6 billion in assistance has been made available to the State and local governments, including an enhanced federal matching rate for Medicaid. More than \$900 million was directly provided to local governments. The largest and most flexible portion of CARES Act funding is the Coronavirus Relief Fund, which totals \$2.3 billion, \$691 million of which was allocated directly to Baltimore City and Anne Arundel, Baltimore, Montgomery, and Prince George's counties.

CARES Act funding also included \$800 million for the Disaster Recovery Fund; \$696 million for transit grants; \$575 million in enhanced Medicaid matching funds (through December 2020); \$239 million in CDC grants; \$108 million for airports; \$74 million for community development block grants; \$50 million for homelessness assistance; \$46 million for grants for local education agencies and higher education institutions; \$46 million for child care and development block grants; \$36 million for public housing and rental assistance grants; \$24 million for community health centers; \$20 million for senior nutrition; \$19 million for energy assistance; \$18 million for justice assistance grants; \$17 million for administration of the UI program; \$14 million for community service block grants; \$13 million for emergency food assistance; \$8 million for Head Start; \$8 million for the Women, Infants, and Children program; and \$7 million for election security.

The Consolidated Appropriations Act is estimated to provide Maryland with \$1.2 billion for education (including \$869 million for K-12 education, \$306 million for higher education, and \$57.7 million for the Governor's Fund); \$1.1 billion for transportation (including \$830.3 million for transit in the Washington, DC area, \$149.3 million for highways, \$76.2 million for transit in Baltimore, \$22.5 million for airports, and \$9.1 million for rural area grants); more than \$475 million for health (including \$335.6 million for testing, \$75.3 million for vaccines, \$32.6 million for mental health assistance, and \$31.9 million for substance use assistance); \$402.4 million for rental assistance; and \$140.6 million for human services (including \$130.4 million for child care).