

The background of the left side of the page features several stylized virus icons in shades of blue and white. These icons are circular with multiple protruding spikes, resembling coronaviruses. They are scattered across the left half of the page, with some appearing larger and more prominent than others. The overall design is clean and professional, using a blue and white color scheme.

COVID-19 Workers' Compensation Presumptions

Mental Health and PTSD Coverage

Lawmakers continue to grapple with who is eligible for workers' compensation and in what situations after essential and frontline workers were at the forefront throughout the COVID-19 pandemic.

This guide aims to give a glimpse of the current presumption bill trends in statehouses nationwide and addresses the current state of workers' compensation in the aftermath of the most grueling part of the pandemic.

IWP

The Patient Advocate Pharmacy®

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COVID-19 has left its mark on workers' compensation systems across the country. Although the virus can be better mitigated than before and vaccines finally put a jab in COVID's path, many individuals will continue to grapple with the long-term effects of COVID-19 financially, physically, mentally, and emotionally.

In response to the pandemic, some legislators suggested expanding workers' compensation to essential and frontline workers through presumption bills and including compensation for mental health-related issues arising from the pandemic, such as post-traumatic stress disorder (PTSD).

In most cases, workers' compensation does not cover ordinary diseases of life such as the common cold or even the flu.

This is due, in part, to the fact that it is usually difficult to prove an individual contracted such an illness from their workplace. To change this precedent, numerous state legislatures turned to the creation of presumption bills where it is presumed that contraction or exposure to COVID-19 is due to the nature and scope of one's employment and is thus deemed a compensable injury.

Expanding coverage to work-related illnesses is nothing new. Many states, in previous years, took action to ensure that essential-frontline worker populations, such as firefighters, were covered for certain cancers that were commonly seen with exposure from their job duties.

Should infectious diseases be covered by workers' compensation?

COVID-19 changed the nature of traditional workers' compensation claims, questioning whether infectious diseases should be covered now or in the future. The pandemic showed that certain occupations, especially essential frontline workers such as first responders and nurses, took on unprecedented work conditions and were, unsurprisingly, at much higher risk for transmission of COVID-19 in the workplace due to their work requirements.

These occupations alone made up 75% of COVID-19 claims in 2020.ⁱ Other frontline occupations with increased interaction with the public, such as transit workers, food service workers, retail employees, hospital administrative staff, home care aides, correctional officers, teachers, and similar jobs, are also under consideration for eligibility in certain states.

While essential and frontline occupations were at higher risk of contracting COVID-19 due to the requirements of their positions, many of these occupations continue to be ineligible for workers' compensation.



Those who contracted the virus on the front lines may have incurred financial setbacks, while others may continue to suffer from mild to severe long-term health issues associated with a COVID-19 diagnosis. Essential workers alone make up at least 39% of each state's workforce, yet most states currently do not offer COVID-19 presumptions for workers who contracted the virus.ⁱⁱ

In 2020, 22 states considered presumption bills, of which nine took action by enacting legislation (**Alaska, California, Illinois, Minnesota, New Jersey, Utah, Vermont, Wisconsin, and Wyoming**).ⁱⁱⁱ

Other states like **Connecticut, Florida, Kentucky, Michigan, Missouri, New Hampshire** and **New Mexico** extended coverage through regulatory activity via executive orders and emergency provisions.^{iv}

However, some of these actions are temporary and must be renewed frequently for the presumptions to be extended. In 2021, additional states proposed presumptions bills such as **Connecticut, Iowa, Maryland, Massachusetts, Hawaii, Montana, Nebraska, New Mexico, New York, North Dakota, Oklahoma, Oregon, Rhode Island, South Carolina, Texas, Washington, West Virginia, and Virginia**. Many of the bills proposed were formulated to be retroactive, allowing those who contracted the virus earlier in the pandemic to be eligible for benefits.

Many of these presumptions contain rebuttable language for employers to dispute employee claims. However, state rebuttal requirements range from state to state, with most requiring employers to prove that employees engaged in significant risk behavior outside of work.

These presumption bills differ in methods and limitations to provide workers' compensation benefits. Currently, of legislation enacted, states such as **Minnesota**, **Utah**, and **Wisconsin** limit coverage to only first responders and health care workers.^v Meanwhile, **Illinois**, **New Jersey**, and **Vermont** covers all essential workers, and legislation in **California** and **Wyoming** covers all workers. Most states considering presumption bills proposed establishing a worker's compensation presumption limited to first responders and health care workers.

At the same time, some are also including frontline workers deemed non-essential, but were in close contact with the virus daily. A select few are also utilizing the 'exclusive remedy' method where it is established that workers' compensation is the exclusive remedy for COVID-19 claims; this has been introduced in **Arkansas**, **Hawaii**, and **West Virginia**. A rare number of states, like **Massachusetts**, are considering proposals for covering workers of all economic sectors if having to engage with the "public face to face" during COVID-19, like laws in **Wyoming** and **California**. Many of these proposals written are temporary provisions that will expire in the short term or after the state's emergency order is officially lifted.

However, some states are looking long-term after COVID-19 by considering presumptions not just for COVID-19 but also for possible future pandemics by utilizing a broad presumption that purposely leaves out timelines in legislation. Twelve states (**Alaska**, **California**, **Connecticut**, **Florida**, **Iowa**, **Michigan**, **Missouri**, **New Mexico**, **New York**, **Rhode Island**, **Texas**, and **Washington**) introduced legislation for future pandemics similar or equivalent to COVID-19 as well as higher risk infectious diseases.

Most of these proposals do not include a sunset provision or timeframe, making them a more permanent addition to their state laws and procedures. These provisions also provide stability for those that may feel the effects of COVID-19 later from long-term effects not previously known.

2022 Updates:



Virginia HB932

The state reauthorized its existing covid presumption through Dec. 31, 2022, for healthcare staff with heavy bipartisan support.



Minnesota HF1203

State Legislators approved an extension into 2023 of its covid presumption for healthcare workers, first responders and certain frontline workers.



California SB213

Lawmakers in the Senate gave their approval to a covid presumption for healthcare workers. It is currently being considered in the assembly.

For many the isolation from quarantine took a toll...



For many, quarantines and isolation took a toll on Americans' mental health. According to the Centers for Disease Control ([CDC](#)), over 40% of Americans reported at least one adverse mental or behavioral health condition related to COVID-19.

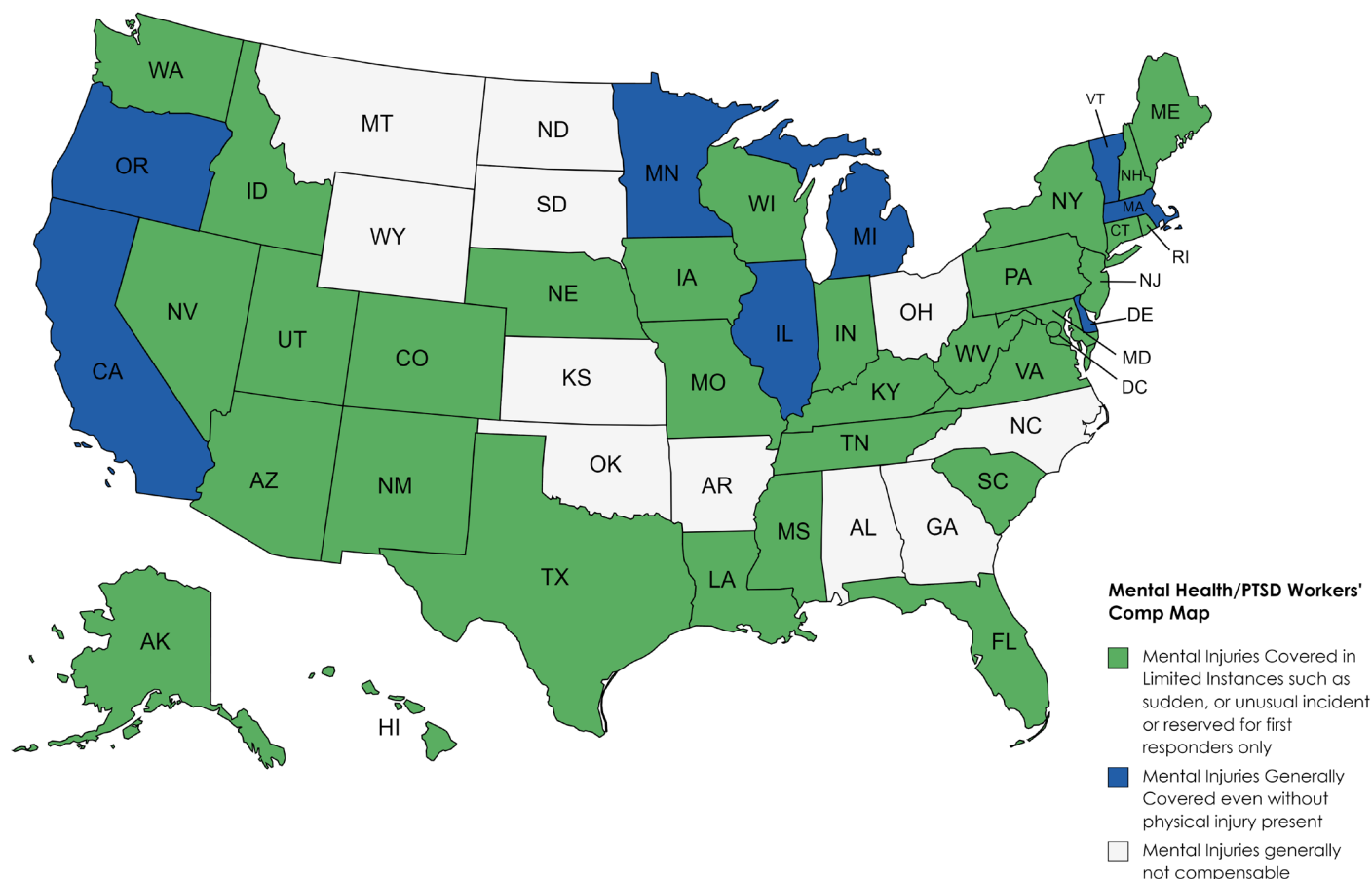
Of all employment groups, essential workers reported the highest rates of adverse mental health outcomes (CDC).^{vi} Since the beginning of the pandemic ([APA](#)), those battling COVID-19 on the front lines were more than twice as likely to be diagnosed with a mental disorder. A study through Mental Health America showed more startling numbers, especially regarding health care workers, with 80% experiencing physical or emotional exhaustion and over 70% reporting issues with sleeping patterns.^{vii}

In all, nearly 90% of these health care workers surveyed experienced anxiety and high levels of stress. Many of the respondents were younger, between the ages of 18-35 years of age, showing that younger people have been affected disproportionately and perhaps more long-term.

It is also well noted, even before COVID-19, a significant portion of essential workers already experienced traumatic events through their line of work; COVID-19 only exacerbated this predicament. PTSD and other mental

health-related issues will likely impact many of those who battled COVID-19 on the front lines at some point. PTSD is one of the most common results of handling traumatic events, especially for firefighters and paramedics, where 20% received a diagnosis, a number close to that of a combat veteran.^{viii} In contrast, the general public experienced lower levels at just 3.5% on average. Many who have PTSD also have related mental issues; according to the NIH, over 90% with PTSD were found to have had another mental impairment.^{ix}

Despite overwhelming evidence, many of those that have experienced PTSD or developed mental health problems in their line of work remain ineligible for workers' compensation benefits. Currently, most state laws and regulations on workers' compensation eligibility rely on someone suffering from a physical injury. In all, only nine states generally cover PTSD and mental health-related claims, with 28 states allowing for coverage in limited circumstances and 13 states with no coverage at all, including states with high populations, such as [Georgia](#).^x States that cover or partially cover mental health claims/PTSD have done so through a mix of legislation and executive orders.



Like general COVID-19 presumption bills, individuals with mental health-related claims will have to navigate each state's unique statutes and scope of coverage. Certain states like [Massachusetts](#), [Vermont](#), [California](#), and [Oregon](#) may provide more comprehensive legislation that includes a wider variety of frontline occupations to be eligible, while other states such as [Wisconsin](#) and [New Hampshire](#) limit mental health coverage to only first responders.

States also have varying interpretations on how PTSD and mental health issues may be covered. Certain states' bill language requires a physical injury to proceed with PTSD/mental health coverage eligibility. Some states have strict criteria, such as receiving a diagnosis from a designated specialist or having to provide definite proof that mental health problems were work-related. Other states are broader, allowing for PTSD/mental health coverage without strict conditions needing to be met.

During the 2020 legislative session, **Colorado**, **Nebraska**, **Virginia**, **Washington**, and **Wyoming** all signed off on bills related to mental health coverage for workers' compensation, with many citing COVID-19 as a reason to pass such measures. The passage of these bills continues a trend that was gaining momentum even before the pandemic. Although PTSD/mental health coverage expansion has taken a back burner compared to general COVID-19 presumption bills, some states took action in 2021.

A primary reason for COVID-19 presumption and mental health/PTSD expansion coverage bills halting in the legislature is cost.

While workers' compensation systems fared well despite a global pandemic, many states fear higher costs, and with the economy just getting back on its feet, employers worry about potentially higher rates and premiums for workers' compensation. For now, states will have to continue to weigh the balance between economic risk and the risk essential and frontline workers took on throughout the pandemic to keep public services open and economic activity afloat.



2022 Updates:



Florida HB689

Lawmakers in Tallahassee altered the timeframe for mental health claims to 90 days

after being diagnosed rather than manifestation of the impairment giving first responders more time to file a claim.



South Carolina H3939

Despite successful passage in 2021 through the lower chamber the Senate

did not further consider the PTSD benefit bill for first responders. However, the bill did receive a favorable report from the Senate Judiciary Committee.



New York

SB6373 passed the Senate allowing all employees to file a mental injury claim. Employees

must show "a factual finding that the stress was not greater than that which usually occurs in the normal work environment."

INJURED WORKERS PHARMACY (IWP)

As *THE* Patient Advocacy Pharmacy, IWP is committed to shining a spotlight on the issues that impact injured workers across the country. As the prevalence of mental health workers' compensation claims grow, IWP is committed to treating injured workers comprehensively, ensuring they have access to the services and treatments they need to get back to work. As states continue to work through this complicated legislative issue, IWP remains committed to engaging in the conversation with all stakeholders to better serve our patients.

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