

## Department of Planning and Budget 2021 Fiscal Impact Statement

**1. Bill Number:** SB1367

**House of Origin**    ☒ Introduced    ☐ Substitute    ☐ Engrossed  
**Second House**    ☐ In Committee    ☐ Substitute    ☐ Enrolled

**2. Patron:** DeSteph

**3. Committee:** Judiciary

**4. Title:** Line of Duty Act; requiring licensed health practitioners to conduct medical reviews.

**5. Summary:** Requires that, for any medical review of a claim made pursuant to the provisions of the Line of Duty Act, the Virginia Retirement System shall require that such review be conducted by a doctor, nurse, or psychologist who is licensed in the Commonwealth or a contiguous state. The bill has a delayed effective date of July 1, 2022.

**6. Summary of Impacts:**

**Benefit(s) impacted:** Line of Duty Act benefits.

**Impact to unfunded liability (see Item 9 for details):** None.

**Impact to contribution rate(s) (see Item 9 for details):** None at this time. Increased cost for medical board reviews will increase premiums over time.

**Specific Agency or Political Subdivisions Affected (see Item 10):** VRS and employers that have LODA covered employees.

**VRS cost to implement (see Item 7 and Item 8 for details):** No additional funding required.

**Employer cost to implement (see Item 7 and Item 8 for details):** None at this time.

**Other VRS and employer impacts (see Item 7, Item 9, Item 11, and Item 12 for details):** None at this time.

**GF budget impacts (see Item 8 for details):** Cannot be determined at this time.

**NGF budget impacts (see Item 8 for details):** Cannot be determined at this time.

**7. Budget Amendment Necessary:** The impact to current or future Line of Duty Act (LODA) costs that may result from the change is discussed below in Item 9.

The Virginia Retirement System (VRS) can implement this bill within the existing operating budget and does not require additional funding. The agency will review all legislation likely to be enacted prior to the passage by each chamber. Depending on the aggregate number of bills likely to pass, it is possible that the agency will require authorization to expend additional nongeneral fund resources. If so, VRS will identify the costs and request such resources at that time.

- 8. Fiscal Impact Estimates:** The fiscal impact cannot be determined at this time. Please see Item 9 for further discussion.
- 9. Fiscal Implications:** The third-party administrator that provides VRS with medical review board services has indicated that while the potential increase in costs to recruit additional medical personnel who are licensed in Virginia, the District of Columbia (D.C.), or contiguous states is unknown, it is possible that there will be additional costs related to obtaining additional physician and nurse reviewers in a specific regional area to provide medical review board services.
- 10. Specific Agency or Political Subdivisions Affected:** VRS and employers that have LODA covered employees.
- 11. Technical Amendment Necessary:** No.
- 12. Other Comments:** According to VRS, this bill would require that a LODA applicant's treating healthcare professionals' records be reviewed by a doctor, nurse or psychologist who is licensed in Virginia, D.C., or a state contiguous to Virginia. This would require the VRS current third-party administrator to recruit physicians, nurses and psychologists who are licensed in those states or D.C. in the appropriate specialties and willing to serve on the review panels for LODA benefit eligibility reviews. The current medical reviewers are from a pool of nationally accredited and board-certified physicians.

See below for a description of the credentialing requirements of the current medical review board.

As part of the eligibility determination process for the Virginia Line of Duty Act, § 9.1-400 et seq. of the Code of Virginia (Chapter 4 of Title 9.1), VRS is authorized to use a medical review board pursuant to § 51.1-124.23. That section defines "medical board" as being composed of "physicians or other health care professionals." Such individuals cannot be eligible to participate in the Virginia Retirement System. The duties of the medical review board include: 1) reviewing all reports of required medical examinations; 2) investigating all essential health and medical statements and certificates filed in connection with disability retirement; and 3) submitting to the VRS Board of Trustees a written report of its conclusions and recommendation on all matters referred to it.

The medical review board does not physically examine applicants. The medical review board, made up of licensed and credentialed healthcare professionals under contract to VRS' third-

party administrator, instead reviews the treatment records of applicants' personally selected medical professionals.

Occasionally, it is necessary to conduct a functional capacity evaluation<sup>1</sup> (FCE) or independent medical examination<sup>2</sup> (IME). These are the only two instances when a physical examination takes place. In the event of an FCE or and IME, the medical review board, in conjunction with the applicant, selects a physician or health care professional to conduct the examination. This means that in most, if not all cases, the healthcare professional who is performing the FCE or IME is licensed and practices in Virginia. In some areas of Virginia, however, it may be more convenient for an applicant to see a physician or other healthcare professional in an adjoining state. The applicant is consulted regarding the timing and location of the FCE or IME.

Applicants may submit all their medical records from their treating healthcare professional to ensure that all of the various providers that they have seen have input into the process. The medical review board is able to consider records from all healthcare professionals—not just doctors.

Applicants whose LODA claims are denied have the ability to appeal the denial under the Virginia Administrative Process Act (APA), §§ 2.2-4000 through 2.2-4032 of the Code of Virginia. This allows them to have the decision reviewed by an independent fact finder, who reviews all of the records and meets in person with the applicant (and any witnesses of the applicant's choosing) at a mutually agreed upon date, time and location. The applicant may submit additional medical documentation from his personally chosen providers or other information in support of his claim throughout this process. Following the independent fact finder's review, should VRS deny the application, the applicant may appeal the denial in circuit court. The APA allows a process for a robust independent review of the medical records that come from the applicant's personally chosen medical providers.

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<sup>1</sup> **Functional Capacity Evaluation** — a functional capacity evaluation evaluates an individual's capacity to perform work activities related to his or her participation in employment (Soer et al., 2008). The FCE process compares the individual's health status, and body functions and structures to the demands of the job and the work environment. In essence, an FCE's primary purpose is to evaluate a person's ability to participate in work, although other instrumental activities of daily living that support work performance may also be evaluated. Similar types of testing may also be called a functional capacity assessment (FCA), physical capacity assessment or evaluation (PCA or PCE), or work capacity assessment or evaluation (WCA or WCE). A well-designed FCE should consist of a battery of standardized assessments that offers results in performance-based measures and demonstrates predictive value about the individual's return to work (Kuijer et al., 2011; Soer, et al., 2008). Traditionally, FCEs measured an individual's ability to perform the physical demands of a job, but over the last decade many FCE batteries have begun to include evaluation of cognitive demands if such testing is warranted. The FCE must be administered with care for the client's safety and well-being. <https://www.aota.org/About-Occupational-Therapy/Professionals/WI/Capacity-Eval.aspx>

<sup>2</sup> **Independent Medical Examination** — a medical or psychiatric evaluation to determine the current status of an employee's medical condition or to determine whether the condition is related to employment. <https://www.irmi.com/term/insurance-definitions/independent-medical-examination>

Managed Medical Review Organization (MMRO) is VRS' current third-party administrator providing medical review board services, including those used for LODA claims. MMRO is accredited by Utilization Review Accreditation Commission (URAC), a nationally recognized accreditation, identified as providing the highest quality standards in healthcare delivery and clinical claims practices. As a URAC-accredited organization, quality monitoring and improvement are integral components to all Disability Claim Management and Vocational Assessment Services provided by MMRO.

The URAC accreditation requires a continuum of quality improvement policies and procedures. As an accredited organization, MMRO is subject to compliance audits/investigations by accreditation authorities to ensure that quality, credible and objective standards are consistently being met.

MMRO Credentialing Policy, below, provides that medical review board panel physicians must meet the following requirements:

- A. *A current, non-restricted license or certification required for clinical practice from a state in the United States.*
- B. *Board Certification(s):*
  - 1. *If the Reviewer is a medical doctor (M.D.) or an osteopathic doctor (D.O.), the Reviewer must maintain board certification by a medical specialty board approved by the American Board of Medical Specialties (ABMS) or the American Osteopathic Association (AOA).*
  - 2. *If the Reviewer is a doctor of podiatric medicine (D.P.M.), the Reviewer must have board certification by the American Board of Podiatric Surgery (ABPS) or the American Board of Podiatric Orthopedics and Primary Podiatric Medicine (ABPOPPM).*
  - 3. *If the Reviewer is a dentist (D.D.S. or D.M.D.), the Reviewer must have board certification by the American Dental Association (ADA) specialty boards or the American Board of General Dentistry (ABGD).*
  - 4. *If the Reviewer is an Allied Healthcare Professional, the Reviewer must maintain a non-restricted license, registration, or certification from a nationally-recognized board or licensing body.*
- C. *No history of sanctions or disciplinary actions.*
- D. *Professional Experience: (i) at least five (5) years full-time equivalent experience (37.5-40 hours or more per week) providing direct clinical care to patients 37.5-40 hours or more per week; and (ii) current clinical experience within the past three (3) years.*

E. *The Reviewer must be located within the U.S. or one of its territories when conducting a review.*

*Additionally, when placing a case with a reviewing physician, MMRO acts consistent with URAC standards, as defined below:*

*“A physician or other health professional who holds an unrestricted license and is in the same or similar specialty as typically manages the medical condition, procedures, or treatment under review. Generally, as a peer in a similar specialty, the individual must be in the same profession, i.e., the same licensure category as the ordering provider.”*

### Background on Medical Licensure

Medical licensure in the United States is based on a uniform national exam. In order to practice medicine legally in the U.S., students must take and receive a passing score on the United States Medical Licensing Examination (USMLE), a three-part examination taken during and after medical school. USMLE was created in response to the need for one path to medical licensure for allopathic physicians in the United States. Before USMLE, multiple examinations (the NBME Parts examination and the Federation Licensing Examination [FLEX]) offered paths to medical licensure. It was desirable to create one examination system accepted in every state, to ensure that all licensed MDs had passed the same assessment standards – no matter in which school or which country they had trained. Today all state medical boards utilize a national examination – USMLE for allopathic physicians, COMLEX-USA for osteopathic physicians.<sup>3</sup>

Medical students must pass the first part of the examination, which covers basic medical principles, before entering their third year of studies. During their fourth year, students must pass the second part of the exam, which covers clinical diagnosis and disease development. **This test is uniform across all states and the District of Columbia.** Medical students then move on to a residency.

Following a residency, the final step of the process is to complete the third part of the USMLE. This examination covers clinical management and assesses the doctor’s ability to practice medicine safely and effectively. Once their medical educations are complete, doctors may obtain certification in their chosen field. Specialty boards certify physicians in hundreds of specialties and subspecialties. Board certifications require a written and, in some cases, an oral examination.

Medical licensure is governed at the state level by state boards of medicine, and each sets its own licensing requirements and procedures. Trained and board-certified doctors must apply for state medical licenses before they enter the field. Finally, it is important to note that medical licenses are generally transferable from state to state. For example, the Virginia

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<sup>3</sup> <https://www.usmle.org/about/>

Board of Medicine has promulgated regulations governing the conditions under which it may issue a Virginia medical license to an applicant upon endorsement by the board or other appropriate authority of another state, territory or DC.