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SENATE BILL NO. 904

Offered January 11, 2023

Prefiled January 5, 2023

A BILL to amend and reenact §§ 65.2-101, 65.2-107, 65.2-603, 65.2-605, 65.2-606, and 65.2-607 of the Code of Virginia, relating to workers' compensation; post-traumatic stress disorder, anxiety disorder, or depressive disorder; law-enforcement officers, public safety telecommunicators, and firefighters.

Patrons—DeSteph, Boysko and Cosgrove

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 65.2-101, 65.2-107, 65.2-603, 65.2-605, 65.2-606, and 65.2-607 of the Code of Virginia are amended and reenacted as follows:

§ 65.2-101. Definitions.

As used in this title, unless the context requires a different meaning:

"Average weekly wage" means:

1. a. The earnings of the injured employee in the employment in which he was working at the time of the injury during the period of 52 weeks immediately preceding the date of the injury, divided by 52; but if the injured employee lost more than seven consecutive calendar days during such period, although not in the same week, then the earnings for the remainder of the 52 weeks shall be divided by the number of weeks remaining after the time so lost has been deducted. When the employment prior to the injury extended over a period of less than 52 weeks, the method of dividing the earnings during that period by the number of weeks and parts thereof during which the employee earned wages shall be followed, provided that results fair and just to both parties will be thereby obtained. When, by reason of a shortness of time during which the employee has been in the employment of his employer or the casual nature or terms of his employment, it is impractical to compute the average weekly wages as above defined, regard shall be had to the average weekly amount which during the 52 weeks previous to the injury was being earned by a person of the same grade and character employed in the same class of employment in the same locality or community.

b. When for exceptional reasons the foregoing would be unfair either to the employer or employee, such other method of computing average weekly wages may be resorted to as will most nearly approximate the amount which the injured employee would be earning were it not for the injury.

2. Whenever allowances of any character made to an employee in lieu of wages are a specified part of the wage contract, they shall be deemed a part of his earnings. For the purpose of this title, the average weekly wage of the members of the Virginia National Guard and the Virginia Defense Force, registered members on duty or in training of the United States Civil Defense Corps of the Commonwealth, volunteer firefighters engaged in firefighting activities under the supervision and control of the Department of Forestry, and forest wardens shall be deemed to be such amount as will entitle them to the maximum compensation payable under this title; however, any award entered under the provisions of this title on behalf of members of the National Guard or their dependents, or registered members on duty or in training of the United States Civil Defense Corps of the Commonwealth or their dependents, shall be subject to credit for benefits paid them under existing or future federal law on account of injury or occupational disease covered by the provisions of this title.

3. Whenever volunteer firefighters, volunteer emergency medical services personnel, volunteer law-enforcement chaplains, auxiliary or reserve police, auxiliary or reserve deputy sheriffs, members of volunteer search and rescue organizations, volunteer members of community emergency response teams, and volunteer members of medical reserve corps are deemed employees under this title, their average weekly wage shall be deemed sufficient to produce the minimum compensation provided by this title for injured workers or their dependents. For the purposes of workers' compensation insurance premium calculations, the monthly payroll for each volunteer firefighter or volunteer who is an individual who meets the definition of "emergency medical services personnel" in § 32.1-111.1 shall be deemed to be \$300.

4. The average weekly wage of persons, other than those covered in subdivision 3 of this definition, who respond to a hazardous materials incident at the request of the Department of Emergency Management shall be based upon the earnings of such persons from their primary employers.

"Award" means the grant or denial of benefits or other relief under this title or any rule adopted pursuant thereto.

"Change in condition" means a change in physical condition of the employee as well as any change

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59 in the conditions under which compensation was awarded, suspended, or terminated which would affect
60 the right to, amount of, or duration of compensation.

61 "Client company" means any person that enters into an agreement for professional employer services
62 with a professional employer organization.

63 "Coemployee" means an employee performing services pursuant to an agreement for professional
64 employer services between a client company and a professional employer organization.

65 "Commission" means the Virginia Workers' Compensation Commission as well as its former
66 designation as the Virginia Industrial Commission.

67 "Employee" means:

68 1. a. Every person, including aliens and minors, in the service of another under any contract of hire
69 or apprenticeship, written or implied, whether lawfully or unlawfully employed, except (i) one whose
70 employment is not in the usual course of the trade, business, occupation or profession of the employer
71 or (ii) as otherwise provided in subdivision 2 of this definition.

72 b. Any apprentice, trainee, or retrainee who is regularly employed while receiving training or
73 instruction outside of regular working hours and off the job, so long as the training or instruction is
74 related to his employment and is authorized by his employer.

75 c. Members of the Virginia National Guard, whether on duty in a paid or unpaid status or when
76 performing voluntary service to their unit in a nonduty status at the request of their commander.

77 Income benefits for members of the National Guard shall be terminated when they are able to return
78 to their customary civilian employment or self-employment. If they are neither employed nor
79 self-employed, those benefits shall terminate when they are able to return to their military duties. If a
80 member of the National Guard who is fit to return to his customary civilian employment or
81 self-employment remains unable to perform his military duties and thereby suffers loss of military pay
82 which he would otherwise have earned, he shall be entitled to one day of income benefits for each unit
83 training assembly or day of paid training which he is unable to attend.

84 d. Members of the Virginia Defense Force.

85 e. Registered members of the United States Civil Defense Corps of the Commonwealth, whether on
86 duty or in training.

87 f. Except as provided in subdivision 2 of this definition, all officers and employees of the
88 Commonwealth, including (i) forest wardens; (ii) judges, clerks, deputy clerks and employees of juvenile
89 and domestic relations district courts and general district courts; and (iii) secretaries and administrative
90 assistants for officers and members of the General Assembly employed pursuant to § 30-19.4 and
91 compensated as provided in the general appropriation act, who shall be deemed employees of the
92 Commonwealth.

93 g. Except as provided in subdivision 2 of this definition, all officers and employees of a municipal
94 corporation or political subdivision of the Commonwealth.

95 h. Except as provided in subdivision 2 of this definition, (i) every executive officer, including
96 president, vice-president, secretary, treasurer or other officer, elected or appointed in accordance with the
97 charter and bylaws of a corporation, municipal or otherwise and (ii) every manager of a limited liability
98 company elected or appointed in accordance with the articles of organization or operating agreement of
99 the limited liability company.

100 i. Policemen and firefighters, sheriffs and their deputies, town sergeants and their deputies, county
101 and city commissioners of the revenue, county and city treasurers, attorneys for the Commonwealth,
102 clerks of circuit courts and their deputies, officers and employees, and electoral board members
103 appointed in accordance with § 24.2-106, who shall be deemed employees of the respective cities,
104 counties and towns in which their services are employed and by whom their salaries are paid or in
105 which their compensation is earnable. However, notwithstanding the foregoing provision of this
106 subdivision, such individuals who would otherwise be deemed to be employees of the city, county, or
107 town in which their services are employed and by whom their salaries are paid or in which their
108 compensation is earnable shall be deemed to be employees of the Commonwealth while rendering aid
109 outside of the Commonwealth pursuant to a request, approved by the Commonwealth, under the
110 Emergency Management Assistance Compact enacted pursuant to § 44-146.28:1.

111 j. Members of the governing body of any county, city, or town in the Commonwealth, whenever
112 coverage under this title is extended to such members by resolution or ordinance duly adopted.

113 k. Volunteers, officers and employees of any commission or board of any authority created or
114 controlled by a local governing body, or any local agency or public service corporation owned, operated
115 or controlled by such local governing body, whenever coverage under this title is authorized by
116 resolution or ordinance duly adopted by the governing board of any county, city, town, or any political
117 subdivision thereof.

118 l. Except as provided in subdivision 2 of this definition, volunteer firefighters, volunteer emergency
119 medical services agency personnel, volunteer law-enforcement chaplains, auxiliary or reserve police,
120 auxiliary or reserve deputy sheriffs, members of volunteer search and rescue organizations, volunteer

121 members of regional hazardous materials emergency response teams, volunteer members of community
 122 emergency response teams, and volunteer members of medical reserve corps, who shall be deemed
 123 employees of (i) the political subdivision or public institution of higher education in which the principal
 124 office of such volunteer fire company, volunteer emergency medical services agency personnel,
 125 volunteer law-enforcement chaplains, auxiliary or reserve police force, auxiliary or reserve deputy sheriff
 126 force, volunteer search and rescue organization, regional hazardous materials emergency response team,
 127 community emergency response team, or medical reserve corps is located if the governing body of such
 128 political subdivision or public institution of higher education has adopted a resolution acknowledging
 129 those persons as employees for the purposes of this title or (ii) in the case of volunteer firefighters or
 130 volunteer emergency medical services personnel, the fire companies or emergency medical services
 131 agencies for which volunteer services are provided whenever such companies or squads elect to be
 132 included as an employer under this title.

133 m. (1) Volunteer firefighters, volunteer emergency medical services agency personnel, volunteer
 134 law-enforcement chaplains, auxiliary or reserve police, auxiliary or reserve deputy sheriffs, members of
 135 volunteer search and rescue organizations and any other persons who respond to an incident upon
 136 request of the Department of Emergency Management, who shall be deemed employees of the
 137 Department of Emergency Management for the purposes of this title.

138 (2) Volunteer firefighters when engaged in firefighting activities under the supervision and control of
 139 the Department of Forestry, who shall be deemed employees of the Department of Forestry for the
 140 purposes of this title.

141 n. Any sole proprietor, shareholder of a stock corporation having only one shareholder, member of a
 142 limited liability company having only one member, or all partners of a business electing to be included
 143 as an employee under the workers' compensation coverage of such business if the insurer is notified of
 144 this election. Any sole proprietor, shareholder or member or the partners shall, upon such election, be
 145 entitled to employee benefits and be subject to employee responsibilities prescribed in this title.

146 When any partner or sole shareholder, member or proprietor is entitled to receive coverage under this
 147 title, such person shall be subject to all provisions of this title as if he were an employee; however, the
 148 notices required under §§ 65.2-405 and 65.2-600 shall be given to the insurance carrier, and the panel of
 149 physicians required under § 65.2-603 shall be selected by the insurance carrier.

150 o. The independent contractor of any employer subject to this title at the election of such employer
 151 provided (i) the independent contractor agrees to such inclusion and (ii) unless the employer is
 152 self-insured, the employer's insurer agrees in writing to such inclusion. All or part of the cost of the
 153 insurance coverage of the independent contractor may be borne by the independent contractor.

154 When any independent contractor is entitled to receive coverage under this section, such person shall
 155 be subject to all provisions of this title as if he were an employee, provided that the notices required
 156 under §§ 65.2-405 and 65.2-600 are given either to the employer or its insurance carrier.

157 However, nothing in this title shall be construed to make the employees of any independent
 158 contractor the employees of the person or corporation employing or contracting with such independent
 159 contractor.

160 p. The legal representative, dependents and any other persons to whom compensation may be payable
 161 when any person covered as an employee under this title shall be deceased.

162 q. Jail officers and jail superintendents employed by regional jails or jail farm boards or authorities,
 163 whether created pursuant to Article 3.1 (§ 53.1-95.2 et seq.) or Article 5 (§ 53.1-105 et seq.) of Chapter
 164 3 of Title 53.1, or an act of assembly.

165 r. AmeriCorps members who receive stipends in return for volunteering in local, state and nonprofit
 166 agencies in the Commonwealth, who shall be deemed employees of the Commonwealth for the purposes
 167 of this title.

168 s. Food Stamp recipients participating in the work experience component of the Food Stamp
 169 Employment and Training Program, who shall be deemed employees of the Commonwealth for the
 170 purposes of this title.

171 t. Temporary Assistance for Needy Families recipients not eligible for Medicaid participating in the
 172 work experience component of the Virginia Initiative for Education and Work, who shall be deemed
 173 employees of the Commonwealth for the purposes of this title.

174 2. "Employee" shall not mean:

175 a. Officers and employees of the Commonwealth who are elected by the General Assembly, or
 176 appointed by the Governor, either with or without the confirmation of the Senate. This exception shall
 177 not apply to any "state employee" as defined in § 51.1-124.3 nor to Supreme Court Justices, judges of
 178 the Court of Appeals, judges of the circuit or district courts, members of the Workers' Compensation
 179 Commission and the State Corporation Commission, or the Superintendent of State Police.

180 b. Officers and employees of municipal corporations and political subdivisions of the Commonwealth
 181 who are elected by the people or by the governing bodies, and who act in purely administrative

182 capacities and are to serve for a definite term of office.

183 c. Any person who is a licensed real estate salesperson, or a licensed real estate broker associated
184 with a real estate broker, if (i) substantially all of the salesperson's or associated broker's remuneration is
185 derived from real estate commissions, (ii) the services of the salesperson or associated broker are
186 performed under a written contract specifying that the salesperson is an independent contractor, and (iii)
187 such contract includes a provision that the salesperson or associated broker will not be treated as an
188 employee for federal income tax purposes.

189 d. Any taxicab or executive sedan driver, provided the Commission is furnished evidence that such
190 individual is excluded from taxation by the Federal Unemployment Tax Act.

191 e. Casual employees.

192 f. Domestic servants.

193 g. Farm and horticultural laborers, unless the employer regularly has in service more than three
194 full-time employees.

195 h. Employees of any person, firm or private corporation, including any public service corporation,
196 that has regularly in service less than three employees in the same business within this Commonwealth,
197 unless such employees and their employers voluntarily elect to be bound by this title. However, this
198 exemption shall not apply to the operators of underground coal mines or their employees. An executive
199 officer who is not paid salary or wages on a regular basis at an agreed upon amount and who rejects
200 coverage under this title pursuant to § 65.2-300 shall not be included as an employee for purposes of
201 this subdivision.

202 i. Employees of any common carrier by railroad engaging in commerce between any of the several
203 states or territories or between the District of Columbia and any of the states or territories and any
204 foreign nation or nations, and any person suffering injury or death while he is employed by such carrier
205 in such commerce. This title shall not be construed to lessen the liability of any such common carrier or
206 to diminish or take away in any respect any right that any person so employed, or the personal
207 representative, kindred or relation, or dependent of such person, may have under the act of Congress
208 relating to the liability of common carriers by railroad to their employees in certain cases, approved
209 April 22, 1908, or under §§ 8.01-57 through 8.01-62 or § 56-441.

210 j. Employees of common carriers by railroad who are engaged in intrastate trade or commerce.
211 However, this title shall not be construed to lessen the liability of such common carriers or take away or
212 diminish any right that any employee or, in case of his death, the personal representative of such
213 employee of such common carrier may have under §§ 8.01-57 through 8.01-61 or § 56-441.

214 k. Except as provided in subdivision 1 of this definition, a member of a volunteer fire department or
215 volunteer emergency medical services agency when engaged in activities related principally to
216 participation as an individual who meets the definition of "emergency medical services personnel" in
217 § 32.1-111.1 or a member of such fire department whether or not the volunteer continues to receive
218 compensation from his employer for time away from the job.

219 l. Except as otherwise provided in this title, noncompensated employees and noncompensated
220 directors of (i) corporations exempt from taxation pursuant to § 501(c)(3) of Title 26 of the United
221 States Code (Internal Revenue Code of 1954) or (ii) property owners' associations as defined in
222 § 55.1-1800.

223 m. Any person performing services as a sports official for an entity sponsoring an interscholastic or
224 intercollegiate sports event or any person performing services as a sports official for a public entity or a
225 private, nonprofit organization which sponsors an amateur sports event. For the purposes of this
226 subdivision, "sports official" includes an umpire, referee, judge, scorekeeper, timekeeper or other person
227 who is a neutral participant in a sports event. This shall not include any person, otherwise employed by
228 an organization or entity sponsoring a sports event, who performs services as a sports official as part of
229 his regular employment.

230 n. Any person who suffers an injury on or after July 1, 2012, for which there is jurisdiction under
231 either the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. § 901 et seq., and its
232 extensions, or the Merchant Marine Act of 1920, 46 U.S.C. § 30104 et seq. However, this title shall not
233 be construed to eliminate or diminish any right that any person or, in the case of the person's death, his
234 personal representative, may have under either the Longshore and Harbor Workers' Compensation Act,
235 33 U.S.C. § 901 et seq., and its extensions, or the Merchant Marine Act of 1920, 46 U.S.C. § 30104 et
236 seq.

237 o. An owner-operator of a motor vehicle that is leased with or to a common or contract carrier in the
238 trucking industry if (i) the owner-operator performs services for the carrier pursuant to a contract that
239 provides that the owner-operator is an independent contractor and shall not be treated as an employee
240 for purposes of the Federal Insurance Contributions Act, 26 U.S.C. § 3101 et seq., Social Security Act
241 of 1935, P.L. 74-271, federal unemployment tax laws, and federal income tax laws and (ii) each of the
242 following factors is present:

243 (1) The owner-operator is responsible for the maintenance of the vehicle;

244 (2) The owner-operator bears the principal burden of the vehicle's operating costs;
 245 (3) The owner-operator is the driver;
 246 (4) The owner-operator's compensation is based on factors related to the work performed and not on
 247 the basis of hours or time expended; and
 248 (5) The owner-operator determines the method and means of performing the service.

249 "Employer" includes (i) any person, the Commonwealth or any political subdivision thereof and any
 250 individual, firm, association or corporation, or the receiver or trustee of the same, or the legal
 251 representative of a deceased employer, using the service of another for pay and (ii) any volunteer fire
 252 company or volunteer emergency medical services agency electing to be included and maintaining
 253 coverage as an employer under this title. If the employer is insured, it includes his insurer so far as
 254 applicable.

255 "Executive officer" means (i) the president, vice-president, secretary, treasurer or other officer elected
 256 or appointed in accordance with the charter and bylaws of a corporation and (ii) the managers elected or
 257 appointed in accordance with the articles of organization or operating agreement of a limited liability
 258 company. However, "executive officer" does not include (a) noncompensated officers of corporations
 259 exempt from taxation pursuant to § 501(c)(3) of Title 26 of the United States Code (Internal Revenue
 260 Code of 1954) or (b) noncompensated officers of a property owners' association as such term is defined
 261 in § 55.1-1800.

262 "Filed" means hand delivered to the Commission's office in Richmond or any regional office
 263 maintained by the Commission; sent by means of electronic transmission approved by the Commission;
 264 sent by facsimile transmission; or posted at any post office of the United States Postal Service by
 265 certified or registered mail. Filing by first-class mail, electronic transmission, or facsimile transmission
 266 shall be deemed completed only when the document or other material transmitted reaches the
 267 Commission or its designated agent.

268 "Injury" means only injury by accident arising out of and in the course of the employment or
 269 occupational disease as defined in Chapter 4 (§ 65.2-400 et seq.) and does not include a disease in any
 270 form, except when it results naturally and unavoidably from either of the foregoing causes. Such term
 271 shall not include any injury, disease or condition resulting from an employee's voluntary:

272 1. Participation in employer-sponsored off-duty recreational activities which are not part of the
 273 employee's duties; or
 274 2. Use of a motor vehicle that was provided to the employee by a motor vehicle dealer as defined by
 275 § 46.2-1500 and bears a dealer's license plate as defined by § 46.2-1550 for (i) commuting to or from
 276 work or (ii) any other nonwork activity.

277 Such term shall include any injury, disease or condition:

278 1. Arising out of and in the course of the employment of (a) an employee of a hospital as defined in
 279 § 32.1-123; (b) an employee of a health care provider as defined in § 8.01-581.1; (c) an employee of the
 280 Department of Health or a local department of health; (d) a member of a search and rescue organization;
 281 or (e) any person described in clauses (i) through (iv), (vi), and (ix) of subsection A of § 65.2-402.1
 282 otherwise subject to the provisions of this title; and

283 2. Resulting from (a) the administration of vaccinia (smallpox) vaccine, Cidofivir and derivatives
 284 thereof, or Vaccinia Immune Globulin as part of federally initiated smallpox countermeasures, or (b)
 285 transmission of vaccinia in the course of employment from an employee participating in such
 286 countermeasures to a coemployee of the same employer.

287 "*Mental health professional*" means a board-certified psychiatrist or a psychologist licensed pursuant
 288 to Title 54.1 who has experience diagnosing and treating post-traumatic stress disorder, anxiety
 289 disorder, or depressive disorder.

290 "*Physician*" means a person licensed to practice medicine or osteopathy in the Commonwealth
 291 pursuant to Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1.

292 "Professional employer organization" means any person that enters into a written agreement with a
 293 client company to provide professional employer services.

294 "Professional employer services" means services provided to a client company pursuant to a written
 295 agreement with a professional employer organization whereby the professional employer organization
 296 initially employs all or a majority of a client company's workforce and assumes responsibilities as an
 297 employer for all coemployees that are assigned, allocated, or shared by the agreement between the
 298 professional employer organization and the client company.

299 "Staffing service" means any person, other than a professional employer organization, that hires its
 300 own employees and assigns them to a client to support or supplement the client's workforce. It includes
 301 temporary staffing services that supply employees to clients in special work situations such as employee
 302 absences, temporary skill shortages, seasonal workloads, and special assignments and projects.

303 **§ 65.2-107. Post-traumatic stress disorder, anxiety disorder, or depressive disorder incurred by**
 304 **law-enforcement officers, public safety telecommunicators, and firefighters.**

305 A. As used in this section:

306 "*Anxiety disorder*" means a disorder that meets the diagnostic criteria for one or more of the anxiety
307 disorders specified in the most recent edition of the *Diagnostic and Statistical Manual of Mental*
308 *Disorders published by the American Psychiatric Association.*

309 "*Depressive disorder*" means a disorder that meets the diagnostic criteria for one or more of the
310 depressive disorders specified in the most recent edition of the *Diagnostic and Statistical Manual of*
311 *Mental Disorders published by the American Psychiatric Association.*

312 "Firefighter" means any (i) salaried firefighter, including special forest wardens designated pursuant
313 to § 10.1-1135, emergency medical services personnel, and local or state fire scene investigator and (ii)
314 volunteer firefighter and volunteer emergency medical services personnel.

315 "In the line of duty" means any action that a law-enforcement officer, *public safety*
316 *telecommunicator*, or firefighter was obligated or authorized to perform by rule, regulation, written
317 condition of employment service, or law.

318 "Law-enforcement officer" means any (i) member of the State Police Officers' Retirement System;
319 (ii) member of a county, city, or town police department; (iii) sheriff or deputy sheriff; (iv) Department
320 of Emergency Management hazardous materials officer; (v) city sergeant or deputy city sergeant of the
321 City of Richmond; (vi) Virginia Marine Police officer; (vii) conservation police officer who is a
322 full-time sworn member of the enforcement division of the Department of Wildlife Resources; (viii)
323 Capitol Police officer; (ix) special agent of the Virginia Alcoholic Beverage Control Authority appointed
324 under the provisions of Chapter 1 (§ 4.1-100 et seq.) of Title 4.1; (x) for such period that the
325 Metropolitan Washington Airports Authority voluntarily subjects itself to the provisions of this chapter
326 as provided in § 65.2-305, officer of the police force established and maintained by the Metropolitan
327 Washington Airports Authority; (xi) officer of the police force established and maintained by the
328 Norfolk Airport Authority; (xii) sworn officer of the police force established and maintained by the
329 Virginia Port Authority; or (xiii) campus police officer appointed under Article 3 (§ 23.1-809 et seq.) of
330 Chapter 8 of Title 23.1 and employed by any public institution of higher education; *or (xiv) correctional*
331 *officer as defined in § 53.1-1.*

332 "*Mental health professional*" means a board-certified psychiatrist or a psychologist licensed pursuant
333 to Title 54.1 who has experience diagnosing and treating post-traumatic stress disorder.

334 "Post-traumatic stress disorder" means a disorder that meets the diagnostic criteria for post-traumatic
335 stress disorder as specified in the most recent edition of the *American Psychiatric Association's*
336 *Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric*
337 *Association.*

338 "*Public safety telecommunicator*" means *an individual employed by a public safety answering point,*
339 *an emergency medical dispatch service provider, or both, who is qualified to operate communication*
340 *systems to receive requests for emergency assistance and provide for the appropriate emergency*
341 *response either directly or through communication with the appropriate public safety office or*
342 *emergency medical services provider.*

343 "Qualifying event" means an incident or exposure occurring in the line of duty on or after July 1,
344 2020, for post-traumatic stress disorder and on or after July 1, 2023, for anxiety disorder or depressive
345 disorder:

- 346 1. Resulting in serious bodily injury or death to any person or persons;
- 347 2. Involving a minor who has been injured, killed, abused, or exploited;
- 348 3. Involving an immediate threat to life of the claimant or another individual;
- 349 4. Involving mass casualties; or
- 350 5. Responding to crime scenes for investigation.

351 B. Post-traumatic stress disorder, *anxiety disorder*, or *depressive disorder* incurred by a
352 law-enforcement officer, *public safety telecommunicator*, or firefighter is compensable under this title if:

353 1. A mental health professional examines a law-enforcement officer or firefighter and diagnoses the
354 law-enforcement officer, *public safety telecommunicator*, or firefighter as suffering from post-traumatic
355 stress disorder, *anxiety disorder*, or *depressive disorder* as a result of the individual's undergoing a
356 qualifying event;

357 2. The post-traumatic stress disorder, *anxiety disorder*, or *depressive disorder* resulted from the
358 law-enforcement officer's, *public safety telecommunicator's*, or firefighter's acting in the line of duty and,
359 in the case of a firefighter, such firefighter complied with federal Occupational Safety and Health Act
360 standards adopted pursuant to 29 C.F.R. 1910.134 and 29 C.F.R. 1910.156;

361 3. The law-enforcement officer's, *public safety telecommunicator's* or firefighter's undergoing a
362 qualifying event was a substantial factor in causing his post-traumatic stress disorder, *anxiety disorder*,
363 *or depressive disorder*;

364 4. Such qualifying event, and not another event or source of stress, was the primary cause of the
365 post-traumatic stress disorder, *anxiety disorder*, or *depressive disorder*; and

366 5. The post-traumatic stress disorder, *anxiety disorder*, or *depressive disorder* did not result from any

367 disciplinary action, work evaluation, job transfer, layoff, demotion, promotion, termination, retirement, or
368 similar action of the law-enforcement officer or firefighter.

369 Any such mental health professional shall comply with any workers' compensation guidelines for
370 approved medical providers, including guidelines on release of past or contemporaneous medical records.

371 C. Notwithstanding any provision of this title, workers' compensation benefits for any
372 law-enforcement officer, *public safety telecommunicator*, or firefighter payable pursuant to this section
373 shall (i) include any combination of medical treatment prescribed by a board-certified psychiatrist or a
374 licensed psychologist, temporary total incapacity benefits under § 65.2-500, and temporary partial
375 incapacity benefits under § 65.2-502 and (ii) be provided for a maximum of 52 weeks from the date of
376 diagnosis. No medical treatment, temporary total incapacity benefits under § 65.2-500, or temporary
377 partial incapacity benefits under § 65.2-502 shall be awarded beyond four years from the date of the
378 qualifying event that formed the basis for the claim for benefits under this section. The weekly benefits
379 received by a law-enforcement officer, *public safety telecommunicator*, or a firefighter pursuant to
380 § 65.2-500 or 65.2-502, when combined with other benefits, including contributory and noncontributory
381 retirement benefits, Social Security benefits, and benefits under a long-term or short-term disability plan,
382 but not including payments for medical care, shall not exceed the average weekly wage paid to such
383 law-enforcement officer, *public safety telecommunicator*, or firefighter.

384 D. ~~No later than January 1, 2021, each~~ Each employer of law-enforcement officers, *public safety*
385 *telecommunicators* or firefighters shall (i) make peer support available to such ~~law-enforcement officers~~
386 ~~and firefighters individuals~~ and (ii) refer a ~~law-enforcement officer or firefighter~~ such individuals seeking
387 mental health care services to a mental health professional.

388 E. Each fire basic training program conducted or administered by the Department of Fire Programs
389 or a municipal fire department in the Commonwealth shall provide, in consultation with the Department
390 of Behavioral Health and Developmental Services, resilience and self-care technique training for any
391 individual who begins basic training as a firefighter on or after July 1, 2021. *Each (i) law-enforcement*
392 *recruit training program conducted or administered by a county, city, or town police department,*
393 *sheriff's office, state agency, or other employer of law-enforcement officers and (ii) public safety*
394 *telecommunicator training program conducted or administered by a public safety answering point or an*
395 *emergency medical dispatch service provider shall provide, in consultation with the Department of*
396 *Behavioral Health and Developmental Services, resilience and self-care technique training for any*
397 *individual who begins basic training as a law-enforcement officer or public safety telecommunicator on*
398 *or after July 1, 2023.*

399 **§ 65.2-603. Duty to furnish medical attention, etc., and vocational rehabilitation; effect of**
400 **refusal of employee to accept.**

401 A. Pursuant to this section:

402 1. As long as necessary after an accident, the employer shall furnish or cause to be furnished, free of
403 charge to the injured employee, a physician *or, for disorders listed under § 65.2-107, a mental health*
404 *professional* chosen by the injured employee from a panel of at least three physicians *or, for disorders*
405 *listed under § 65.2-107, mental health professionals* selected by the employer and such other necessary
406 medical attention. Where such accident results in the amputation or loss of use of an arm, hand, leg, or
407 foot or the enucleation of an eye or the loss of any natural teeth or loss of hearing, the employer shall
408 furnish prosthetic or orthotic appliances, as well as wheelchairs, scooters, walkers, canes, or crutches,
409 proper fitting and maintenance thereof, and training in the use thereof, as the nature of the injury may
410 require.

411 In awards entered for incapacity for work, under this title, upon determination by the treating
412 physician *or mental health professional* and the Commission that the same is medically necessary, the
413 Commission may:

414 a. Require that the employer either (i) furnish and maintain modifications to or equipment for the
415 employee's automobile or (ii) if there is a loss of function to either or both feet, legs, hands, or arms
416 and if the Commission determines that modifications to or equipment for the employee's automobile
417 pursuant to clause (i) are not technically feasible, will not render the automobile operable by the
418 employee, or will cost more than is available for such purpose after payment for any items provided
419 under subdivision b, order that the balance of funds available under the aggregate cap of \$55,000 be
420 applied towards the purchase by the employee of a suitable automobile or to furnish or maintain
421 modifications to such automobile; and

422 b. Require that the employer furnish and maintain bedside lifts, adjustable beds, and modification of
423 the employee's principal home consisting of ramps, handrails, doorway alterations, or any appliances
424 prescribed by the treating physician, except for appliances or medical equipment required to be furnished
425 by the employer pursuant to subdivision A 1.

426 The aggregate cost of all such items and modifications required to be furnished pursuant to
427 subdivisions a and b on account of any one accident shall not exceed \$55,000. This limit shall be

428 increased on an annual basis at the same rate as provided in subsection C of § 65.2-709.

429 The employee shall accept the attending physician *or mental health professional*, unless otherwise
 430 ordered by the Commission, and in addition, such surgical and hospital service and supplies as may be
 431 deemed necessary by the attending physician, *mental health professional*, or the Commission.

432 2. The employer shall repair, if repairable, or replace dentures, artificial limbs, or other prosthetic or
 433 orthotic devices damaged in an accident otherwise compensable under workers' compensation, and
 434 furnish proper fitting thereof.

435 3. The employer shall also furnish or cause to be furnished, at the direction of the Commission,
 436 reasonable and necessary vocational rehabilitation services; however, the employer shall not be required
 437 to furnish, or cause to be furnished, services under this subdivision to any injured employee not eligible
 438 for lawful employment.

439 Vocational rehabilitation services may include vocational evaluation, counseling, job coaching, job
 440 development, job placement, on-the-job training, education, and retraining. Those vocational
 441 rehabilitation services that involve the exercise of professional judgment as defined in § 54.1-3510 shall
 442 be provided by a certified rehabilitation provider pursuant to Article 2 (§ 54.1-3510 et seq.) of Chapter
 443 35 of Title 54.1 or by a person licensed by the Boards of Counseling; Medicine; Nursing; Optometry;
 444 Psychology; or Social Work or, in accordance with subsection B of § 54.1-3513, by a person certified
 445 by the Commission on Rehabilitation Counselor Certification (CRCC) as a certified rehabilitation
 446 counselor (CRC) or a person certified by the Commission on Certification of Work Adjustment and
 447 Vocational Evaluation Specialists (CCWAVES) as a Certified Vocational Evaluation Specialist (CVE).

448 In the event a dispute arises, any party may request a hearing and seek the approval of the
 449 Commission for the proposed services. Such services shall take into account the employee's preinjury
 450 job and wage classifications; his age, aptitude, and level of education; the likelihood of success in the
 451 new vocation; and the relative costs and benefits to be derived from such services.

452 B. The unjustified refusal of the employee to accept such medical service or vocational rehabilitation
 453 services when provided by the employer shall bar the employee from further compensation until such
 454 refusal ceases and no compensation shall at any time be paid for the period of suspension unless, in the
 455 opinion of the Commission, the circumstances justified the refusal. In any such case the Commission
 456 may order a change in the medical or hospital service or vocational rehabilitation services.

457 C. If in an emergency or on account of the employer's failure to provide the medical care during the
 458 period herein specified, or for other good reasons, a physician *or, for disorders listed under § 65.2-107,*
 459 *a mental health professional* other than provided by the employer is called to treat the injured employee,
 460 during such period, the reasonable cost of such service shall be paid by the employer if ordered so to do
 461 by the Commission.

462 D. As used in this section and in § 65.2-604, the terms "medical attention," "medical service,"
 463 "medical care," and "medical report" shall be deemed to include *mental health services or treatment,*
 464 *chiropractic service services or treatment,* and, where appropriate, a chiropractic treatment report *or*
 465 *mental health treatment report.*

466 E. Whenever an employer furnishes an employee the names of three physicians pursuant to this
 467 section, and the employer also assumes all or part of the cost of providing health care coverage for the
 468 employee as a self-insured or under a group health insurance policy, health services plan or health care
 469 plan, upon the request of an employee, the employer shall also inform the employee whether each
 470 physician named is eligible to receive payment under the employee's health care coverage provided by
 471 the employer.

472 F. If the injured employee has an injury which may be treated within the scope of practice for a
 473 chiropractor, then the employer or insurer may include chiropractors on the panel provided the injured
 474 employee.

475 **§ 65.2-605. Liability of employer for medical services ordered by Commission; fee schedules for**
 476 **medical services; malpractice; assistants-at-surgery; coding.**

477 A. As used in this section, ~~unless the context requires a different meaning:~~

478 "Burn center" means a treatment facility designated as a burn center pursuant to the verification
 479 program jointly administered by the American Burn Association and the American College of Surgeons
 480 and verified by the Commonwealth.

481 "Categories of providers of fee scheduled medical services" means:

- 482 1. Physicians exclusive of surgeons;
- 483 2. Surgeons;
- 484 3. Type One teaching hospitals;
- 485 4. Hospitals, exclusive of Type One teaching hospitals;
- 486 5. Ambulatory surgical centers;
- 487 6. Providers of outpatient medical services not covered by subdivision 1, 2, or 5; and
- 488 7. *Mental health professionals; and*
- 489 8. Purveyors of miscellaneous items and any other providers not described in subdivisions 1 through

490 6 7, as established by the Commission in regulations adopted pursuant to subsection C.
 491 "Codes" means, as applicable, CPT codes, HCPCS codes, DRG classifications, or revenue codes.
 492 "CPT codes" means the medical and surgical identifying codes using the Physicians' Current
 493 Procedural Terminology published by the American Medical Association.
 494 "Diagnosis related group" or "DRG" means the system of classifying in-patient hospital stays adopted
 495 for use with the Inpatient Prospective Payment System.
 496 "Fee scheduled medical service" means a medical service exclusive of a medical service provided in
 497 the treatment of a traumatic injury or serious burn.
 498 "Health Care Common Procedure Coding System codes" or "HCPCS codes" means the medical
 499 coding system, including all subsets of codes by alphabetical letter, used to report hospital outpatient
 500 and certain physician services as published by the National Uniform Billing Committee, including
 501 Temporary National Code (Non-Medicare) S0000-S-9999.
 502 "Level I or Level II trauma center" means a hospital in the Commonwealth designated by the Board
 503 of Health as a Level I trauma center or a Level II trauma center pursuant to the Statewide Emergency
 504 Medical Services Plan developed in accordance with § 32.1-111.3.
 505 "Medical community" means one of the following six regions of the Commonwealth:
 506 1. Northern region, consisting of the area for which three-digit ZIP code prefixes 201 and 220
 507 through 223 have been assigned by the U.S. Postal Service.
 508 2. Northwest region, consisting of the area for which three-digit ZIP code prefixes 224 through 229
 509 have been assigned by the U.S. Postal Service.
 510 3. Central region, consisting of the area for which three-digit ZIP code prefixes 230, 231, 232, 238,
 511 and 239 have been assigned by the U.S. Postal Service.
 512 4. Eastern region, consisting of the area for which three-digit ZIP code prefixes 233 through 237
 513 have been assigned by the U.S. Postal Service.
 514 5. Near Southwest region, consisting of the area for which three-digit ZIP code prefixes 240, 241,
 515 244, and 245 have been assigned by the U.S. Postal Service.
 516 6. Far Southwest region, consisting of the area for which three-digit ZIP code prefixes 242, 243, and
 517 246 have been assigned by the U.S. Postal Service.
 518 The applicable community for providers of medical services rendered in the Commonwealth shall be
 519 determined by the zip code of the location where the services were rendered. The applicable community
 520 for providers of medical services rendered outside of the Commonwealth shall be determined by the zip
 521 code of the principal place of business of the employer if located in the Commonwealth or, if no such
 522 location exists, the zip code of the location where the Commission hearing regarding a dispute
 523 concerning the services would be conducted.
 524 "Medical service" means any medical, surgical, or hospital service required to be provided to an
 525 injured person pursuant to this title.
 526 "Medical service provided for the treatment of a serious burn" includes any professional service
 527 rendered during the dates of service of the admission or transfer to a burn center.
 528 "Medical service provided for the treatment of a traumatic injury" includes any professional service
 529 rendered during the dates of service of the admission or transfer to a Level I or Level II trauma center.
 530 "Miscellaneous items" means medical services provided under this title that are not included within
 531 subdivisions 1 through 6 of the definition of categories of providers of fee scheduled medical services.
 532 "Miscellaneous items" does not include (i) pharmaceuticals that are dispensed by providers, other than
 533 hospitals or Type One teaching hospitals as part of inpatient or outpatient medical services, or dispensed
 534 as part of fee scheduled medical services at an ambulatory surgical center or (ii) durable medical
 535 equipment dispensed at retail.
 536 "New type of technology" means an item resulting or derived from an advance in medical
 537 technology, including an implantable medical device or an item of medical equipment, that is supplied
 538 by a third party, provided that the item has been cleared or approved by the federal Food and Drug
 539 Administration (FDA) after the transition date and prior to the date of the provision of the medical
 540 service using the item.
 541 "Physician" means a person licensed to practice medicine or osteopathy in the Commonwealth
 542 pursuant to Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1.
 543 "Professional service" means any medical or surgical service required to be provided to an injured
 544 person pursuant to this title that is provided by a physician or any health care practitioner licensed,
 545 accredited, or certified to perform the service consistent with state law.
 546 "Provider" means a person licensed by the Commonwealth to provide a medical service to a claimant
 547 under this title.
 548 "Reimbursement objective" means the average of all reimbursements and other amounts paid to
 549 providers in the same category of providers of fee scheduled medical services in the same medical
 550 community for providing a fee scheduled medical service to a claimant under this title during the most

551 recent period preceding the transition date for which statistically reliable data is available as determined
552 by the Commission.

553 "Revenue codes" means a method of coding used by hospitals or health care systems to identify the
554 department in which medical service was rendered to the patient or the type of item or equipment used
555 in the delivery of medical services.

556 "Serious burn" means a burn for which admission or transfer to a burn center is medically necessary.

557 "Transition date" means the date the regulations of the Commission adopting initial Virginia fee
558 schedules for medical services pursuant to subsection C become effective.

559 "Traumatic injury" means an injury for which admission or transfer to a Level I or Level II trauma
560 center is medically necessary and that is assigned a DRG number of 003, 004, 011, 012, 013, 025
561 through 029, 082, 085, 453, 454, 455, 459, 460, 463, 464, 465, 474, 475, 483, 500, 507, 510, 515, 516,
562 570, 856, 857, 862, 901, 904, 907, 908, 955 through 959, 963, 998, or 999. Claimants who die in an
563 emergency room of trauma or burn before admission shall be deemed to be claimants who incurred a
564 traumatic injury.

565 "Type One teaching hospital" means a hospital that was a state-owned teaching hospital on January
566 1, 1996.

567 "Virginia fee schedule" means a schedule of maximum fees for fee scheduled medical services for
568 the medical community where the fee scheduled medical service is provided, as initially adopted by the
569 Commission pursuant to subsection C and as adjusted as provided in subsection D.

570 B. The pecuniary liability of the employer for a:

571 1. Medical, surgical, and hospital service herein required when ordered by the Commission that is
572 provided to an injured person prior to the transition date, regardless of the date of injury, shall be
573 limited absent a contract providing otherwise, to such charges as prevail in the same community for
574 similar treatment when such treatment is paid for by the injured person. As used in this subdivision,
575 "same community" for providers of medical services rendered outside of the Commonwealth shall be
576 deemed to be the principal place of business of the employer if located in the Commonwealth or, if no
577 such location exists, the location where the Commission hearing regarding the dispute is conducted;

578 2. Fee scheduled medical service provided on or after the transition date, regardless of the date of
579 injury, shall be limited to:

580 a. The amount provided for the payment for the fee scheduled medical service as set forth in a
581 contract under which the provider has agreed to accept a specified amount in payment for the service
582 provided, which amount may be less than or exceed the maximum amount for the service as set forth in
583 the applicable Virginia fee schedule;

584 b. In the absence of a contract described in subdivision 2 a, the lesser of the billing amount or the
585 amount for the fee scheduled medical service as set forth in the applicable Virginia fee schedule that is
586 in effect on the date the service is provided, subject to an increase approved by the Commission
587 pursuant to subsection H; or

588 c. In the absence of (i) a contract described in subdivision 2 a and (ii) a provision in a Virginia fee
589 schedule that sets forth a maximum amount for the medical service on the date it is provided, the
590 maximum amount determined by the Commission as provided in subsection E; and

591 3. Medical service provided on or after the transition date for the treatment of a traumatic injury or
592 serious burn, regardless of the date of injury, shall be limited to:

593 a. The amount provided for the payment for the medical service provided for the treatment of the
594 traumatic injury or serious burn as set forth in a contract under which the provider has agreed to accept
595 a specified amount in payment for the service provided, which amount may be less than or exceed the
596 maximum amount for the service calculated pursuant to subdivision 3 b; or

597 b. In the absence of a contract described in subdivision 3 a, an amount equal to 80 percent of the
598 provider's charge for the service based on the provider's charge master or schedule of fees; however, if
599 the compensability under this title of a claim for traumatic injury or serious burn is contested and after a
600 hearing on the claim on its merits or after abandonment of a defense by the employer or insurance
601 carrier, benefits for medical services are awarded and inure to the benefit of a third-party insurance
602 carrier or health care provider and the Commission awards to the claimant's attorney a fee pursuant to
603 subsection B of § 65.2-714, then the pecuniary liability of the employer for the service provided shall be
604 limited to 100 percent of the provider's charge for the service based on the provider's charge master or
605 schedule of fees.

606 C. The Commission shall adopt regulations establishing initial Virginia fee schedules for fee
607 scheduled medical services as follows:

608 1. The Commission's regulations that establish the initial Virginia fee schedules shall be effective on
609 January 1, 2018.

610 2. Separate initial Virginia fee schedules shall be established for fee scheduled medical services (i)
611 provided by each category of providers of fee scheduled medical services and (ii) within each of the
612 medical communities to reflect the variations among the medical communities as provided in subdivision

613 3, for each category of providers of fee scheduled medical services.
 614 3. The Virginia fee schedules for each medical community shall reflect variations among medical
 615 communities in (i) all reimbursements and other amounts paid to providers for fee scheduled medical
 616 services among the medical communities and (ii) the extent to which the number of providers within the
 617 various medical communities is adequate to meet the needs of injured workers.

618 4. In establishing the initial Virginia fee schedules for fee scheduled medical services, the
 619 Commission shall establish the maximum fee for each fee scheduled medical service at a level that
 620 approximates the reimbursement objective for each category of providers of fee scheduled medical
 621 services among the medical communities. The Commission shall retain a firm with nationwide
 622 experience and actuarial expertise in the development of workers' compensation fee schedules to assist
 623 the Commission in establishing the initial Virginia fee schedules. The Commission shall consult with the
 624 regulatory advisory panel established pursuant to subdivision F 2 prior to retaining such firm. Such firm
 625 shall be retained to assist the Commission in developing the Virginia fee schedules by recommending a
 626 methodology that will provide, at reasonable cost to the Commission, statistically valid estimates of the
 627 reimbursement objective for fee scheduled medical services within the medical communities, based on
 628 available data or, if the necessary data is not available, by recommending the optimal methodology for
 629 obtaining the necessary data. The Commission shall consult with the regulatory advisory panel prior to
 630 adopting any such methodology. Such methodology may, but is not required to, be based on applicable
 631 codes. The estimates of the reimbursement objective for fee scheduled medical services shall be derived
 632 from data on all reimbursements and other amounts paid to providers for fee scheduled medical services
 633 provided pursuant to this title during 2014 and 2015, to the extent available.

634 D. The Commission shall review Virginia fee schedules during the year that follows the transition
 635 date and biennially thereafter and, if necessary, adjust the Virginia fee schedules in order to address (i)
 636 inflation or deflation as reflected in the medical care component of the Consumer Price Index for All
 637 Urban Consumers (CPI-U) for the South as published by the Bureau of Labor Statistics of the U.S.
 638 Department of Labor; (ii) access to fee scheduled medical services; (iii) errors in calculations made in
 639 preparing the Virginia fee schedules; and (iv) incentives for providers. The Commission shall not adjust
 640 a Virginia fee schedule in a manner that reduces fees on an existing schedule unless such a reduction is
 641 based on deflation or a finding by the Commission that advances in technology or errors in calculations
 642 made in preparing the Virginia fee schedules justify a reduction in fees.

643 E. The maximum pecuniary liability of the employer for a fee scheduled medical service that is not
 644 included in a Virginia fee schedule when it is provided shall be determined by the Commission. The
 645 Commission's determination of the employer's maximum pecuniary liability for such fee scheduled
 646 medical service shall be effective until the Commission sets a maximum fee for the fee scheduled
 647 medical service and incorporates such maximum fee into an adjusted Virginia fee schedule adopted
 648 pursuant to subsection D. If the fee scheduled medical service is not included in a Virginia fee schedule
 649 because it is:

650 1. A new type of technology, the employer's maximum pecuniary liability shall not exceed 130
 651 percent of the provider's invoiced cost for such device, as evidenced by a copy of the invoice. If the
 652 new type of technology has not been cleared or approved by the FDA prior to such date, then the
 653 provider shall not be entitled to payment or reimbursement therefor unless the employer or its insurer
 654 agree; or

655 2. A new type of procedure that has not been assigned a billing code, the employer's maximum
 656 pecuniary liability shall not exceed 80 percent of the provider's charge for the service based on the
 657 provider's charge master or schedule of fees, provided the employer and the provider mutually agree to
 658 the provision of such procedure.

659 F. The Commission shall:

660 1. Provide public access to information regarding the Virginia fee schedules for medical services, by
 661 categories of providers of fee scheduled medical services and for each medical community, through the
 662 Commission's website. No information provided on the website shall be provider-specific or disclose or
 663 release the identity of any provider; and

664 2. Utilize a 10-member regulatory advisory panel to assist in the development of regulations adopting
 665 initial Virginia fee schedules pursuant to subsection C, in adjusting initial Virginia fee schedules
 666 pursuant to subsection D, and on all matters involving or related to the fee schedule as deemed
 667 necessary by the Commission. One member of the regulatory advisory panel shall be selected by the
 668 Commission from each of the following: (i) the American Insurance Association; (ii) the Property and
 669 Casualty Insurers Association of America; (iii) the Virginia Self-Insurers Association, Inc.; (iv) the
 670 Medical Society of Virginia; (v) the Virginia Hospital and Healthcare Association; (vi) a Type One
 671 teaching hospital; (vii) the Virginia Orthopaedic Society; (viii) the Virginia Trial Lawyers Association;
 672 (ix) a group self-insurance association representing employers; and (x) a local government group
 673 self-insurance pool formed under Chapter 27 (§ 15.2-2700 et seq.) of Title 15.2. The Commission shall

674 meet with the regulatory advisory panel and consider the recommendations of its members in its
675 development of the Virginia fee schedules pursuant to subsections C and D.

676 G. The Commission's retaining of a firm with nationwide experience and actuarial expertise in the
677 development of workers' compensation fee schedules to assist the Commission in developing the
678 Virginia fee schedules pursuant to subsections C and D shall be exempt from the provisions of the
679 Virginia Public Procurement Act (§ 2.2-4300 et seq.), provided the Commission shall issue a request for
680 proposals that requires submission by a bidder of evidence that it satisfies the conditions for eligibility
681 established in this subsection and in subdivision C 4. Records and information relating to payments or
682 reimbursements to providers that is obtained by or furnished to the Commission by such firm or any
683 other person shall (i) be for the exclusive use of the Commission in the course of the Commission's
684 development of fee schedules and related regulations and (ii) shall remain confidential and shall not be
685 subject to the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

686 H. When the total charges of a hospital or Type One teaching hospital, based on such provider's
687 charge master, for inpatient hospital services covered by a DRG code exceed the charge outlier
688 threshold, then the Commission shall establish the maximum fee for such scheduled inpatient hospital
689 services at an amount equal to the total of (i) the maximum fee for the service as set forth in the
690 applicable fee schedule and (ii) initially equal to 80 percent of the provider's total charges for the service
691 in excess of the charge outlier threshold. The charge outlier threshold for such services initially shall
692 equal 300 percent of the maximum fee for the service set forth in the applicable fee schedule; however,
693 the Commission, in consultation with the firm retained pursuant to subdivision C 4, is authorized on a
694 biennial basis to adjust such percentage if it finds that the number of such claims for which the total
695 charges of the hospital or Type One teaching hospital exceed the charge outlier threshold is less than
696 five percent or to increase such percentage if such number is greater than 10 percent of all such claims.

697 I. No provider shall use a different charge master or schedule of fees for any medical service
698 provided under this title than the provider uses for health care services provided to patients who are not
699 claimants under this title.

700 J. The employer shall not be liable in damages for malpractice by a *mental health professional*,
701 physician, or surgeon furnished by him pursuant to the provisions of § 65.2-603, but the consequences
702 of any such malpractice shall be deemed part of the injury resulting from the accident and shall be
703 compensated for as such.

704 K. The Commission shall determine the number and geographic area of communities across the
705 Commonwealth. In establishing the communities, the Commission shall consider the ability to obtain
706 relevant data based on geographic area and such other criteria as are consistent with the purposes of this
707 title. The Commission shall use the communities established pursuant to this subsection in determining
708 charges that prevail in the same community for treatment provided prior to the transition date.

709 L. The pecuniary liability of the employer for treatment of a medical service that is rendered on or
710 after July 1, 2014, by:

711 1. A nurse practitioner or physician assistant serving as an assistant-at-surgery shall be limited to no
712 more than 20 percent of the reimbursement due to the physician performing the surgery; and

713 2. An assistant surgeon in the same specialty as the primary surgeon shall be limited to no more than
714 50 percent of the reimbursement due to the primary physician performing the surgery.

715 M. Multiple procedures completed on a single surgical site associated with a medical service
716 rendered on or after July 1, 2014, shall be coded and billed with appropriate CPT codes and modifiers
717 and paid according to the National Correct Coding Initiative rules and the CPT codes as in effect at the
718 time the health care was provided to the claimant.

719 N. The CPT code and National Correct Coding Initiative rules, as in effect at the time a medical
720 service was provided to the claimant, shall serve as the basis for processing a health care provider's
721 billing form or itemization for such items as global and comprehensive billing and the unbundling of
722 medical services. Hospital in-patient medical services shall be coded and billed through the International
723 Statistical Classification of Diseases and Related Health Problems as in effect at the time the medical
724 service was provided to the claimant.

725 **§ 65.2-606. Mental health professionals, physicians, and surgeons for medical examination.**

726 The Commission or any member thereof may, upon the application of either party or upon its own
727 motion, appoint a disinterested and duly qualified *mental health professional*, physician, or surgeon to
728 make any necessary medical examination and to testify in respect thereto; however, the provisions of
729 this section shall not apply to determination of whether an employee died of pneumoconiosis or any
730 chronic occupational lung disease, which shall be governed by the provisions of § 65.2-513 and the
731 regulations promulgated thereunder. Such *mental health professional*, physician, or surgeon shall be
732 allowed travelling expenses and a reasonable fee to be fixed by the Commission.

733 The fees and expenses of such *mental health professional*, physician, or surgeon shall be paid by the
734 Commonwealth.

735 **§ 65.2-607. Medical examination; provider-patient privilege inapplicable; autopsy.**

736 A. After an injury and so long as he claims compensation, the employee, if so requested by his
737 employer or ordered by the Commission, shall submit himself to examination, at reasonable times and
738 places, by a duly qualified physician or surgeon, or for disorders listed under § 65.2-107, a mental
739 health professional designated and paid by the employer or the Commission. However, no employer
740 may obtain more than one examination per medical specialty without prior authorization from the
741 Commission, based upon a showing of good cause or necessity. The employee shall have the right to
742 have present at such examination any duly qualified *mental health professional*, physician, or surgeon
743 provided and paid by him. No fact communicated to, or otherwise learned by, any *mental health*
744 *professional*, physician, or surgeon who may have attended or examined the employee, or who may have
745 been present at any examination, shall be privileged, either in hearings provided for by this title, or any
746 action at law brought to recover damages against any employer subject to the provisions of this title.

747 B. If the employee refuses to submit himself to or in any way obstructs such examination requested
748 by and provided for by the employer, his right to compensation and his right to take or prosecute any
749 proceedings under this title shall be suspended until such refusal or objection ceases and no
750 compensation shall at any time be payable for the period of suspension unless in the opinion of the
751 Commission the circumstances justify the refusal or obstruction.

752 C. The employer or the Commission may in any case of death require an autopsy at the expense of
753 the party requesting the same. Such autopsy shall be performed upon order of the Commission, and
754 anyone obstructing or interfering with such autopsy shall be punished for contempt.