

Report of the
Department of Human Resource Management
Workers' Compensation Program
Settlements in Fiscal Year 2016
Pursuant to
2015 Virginia Acts of Assembly
Chapter 665, Item 81.F.5.a

October 30, 2016

Workers' Compensation Settlements in Fiscal 2016

The Workers' Compensation Program completed preliminary work in Fiscal Year 2016 to identify claims eligible for settlement under the accelerated closure project authorized in the 2015 Acts of Assembly Chapter 665, Item 81.F.5.a.

Prior to the approval of all settlements, the Workers' Compensation Program staff must:

- obtain the most current medical information
- obtain a current rehabilitation report indicating the employee's inability to return to any type of gainful employment
- determine if the employee has taken disability or service retirement through the Virginia Retirement System
- determine if the employee is receiving social security disability benefits
- confirm that the employee does not have health insurance through Department of Human Resource Management
- conduct an analysis of the benefit to the Commonwealth of Virginia when comparing the amount of settlement to the estimated future exposure that would be created for the Virginia Retirement System
- obtain approval from the Director of Workers' Compensation

After it has been determined that it is in both the claimant's and the Commonwealth of Virginia's best interest to settle the claim, it is submitted to the Office of the Attorney General for approval. If the Office of the Attorney General concurs with the recommendation, the proposed compromise settlement is submitted to the Virginia Workers' Compensation Commission for their approval.

Status of the Workers' Compensation Claims Settlement Program

Objective

The report provides an update on the status of the Workers' Compensation Claims Settlement Program to the Governor, the General Assembly and the Director of the Department of Planning and Budget.

Status

The Department of Human Resource Management received funding access effective July 1, 2015 to a working capital advance of up to \$20,000,000 to identify and potentially settle certain workers' compensation claims open for more than one year but less than 10 years. Since then, the program has

- Requested and received an updated list of 1, 275 potential claims for settlement from Marsh Risk Services, building on the previous list of 1,274 candidates identified in the study titled "Risk Management and Occupational Safety and Health Programs to Reduce Injury and Illness Incidence Rates and Claim Inventory Workout: An Accelerated Claim Closure Initiative" provided to the Governor and General Assembly in the 2014 Reports to the General Assembly, item [RD290](#);
- Determined that claims where the injured worker remains a participant in a health insurance plan administered by the Department's Office of Health Benefits will be excluded from the settlement program to avoid cost shifting to another state program;
- Worked with the Office of Health Benefits to obtain a suitable release of information form for the injured worker's signature so as to determine which claims should be excluded without violating HIPAA privacy provisions;
- Worked with the current workers' compensation claim service provider to develop a form letter and mail merge to facilitate the distribution of over 1,200 letters with releases to injured workers;
- Mailed letters to each of the identified injured workers or their attorney seeking a release of information for the Office of Health Benefits.
- As the releases were received, worked with the Office of Health Benefits to determine which injured workers no longer had state health insurance coverage.
- Determined that of the 1,275 claims identified, 348 are eligible for full and final settlement. The remainder may be eligible for settlement of the indemnity portion of the claim if lost wage reimbursement continues.
- Attempted to engage Marsh Risk Services as planned to assist with the triage and evaluation of the claims for settlement; however, Marsh appeared to have no interest in the business.
- Utilized internal resources from the Office of the Attorney General Workers' Compensation Unit and Workers' Compensation Services to begin the evaluation of those eligible claims where either the injured worker or the injured workers' attorney had submitted a settlement demand.
- Developed a process for the submission and approval of Decision Briefs to the Secretaries of Administration and Finance, authorizing the drawdown of funds.

- Developed a process with the Department of Accounts for the drawdown of funds from the Working Capital Advance to the program’s trust fund.
- Implemented a field within the claim service provider’s claim system to identify the settlements associated with the Working Capital Advance.

Next steps

- Work is concluding on those claims where a demand has been received.
- Triage of the remaining claims is underway to prioritize the approach to achieve the best cost avoidance results for the Commonwealth’s available funds.
- Work is beginning to identify the next set of claims for which we will determine eligibility. These claims will be, as of June 30, 2016, older than one year and less than two years old. We will follow the same process as that used for the first group of claims that were older than one year and less than ten years old as of June 30, 2015.
- Work will be done with the program’s actuary to develop a method to forecast the future effect on premiums as a result of the cost avoidance realized through the accelerated closure of these certain claims.
- Since July 1, 2016, the program has settled nine claims and seventeen additional claims are working their way through the process following successful negotiation of an agreeable settlement figure. Please see chart below for cost to settle these claims and the approximate associated cost avoidance. The claim detail and cost avoidance will be reported in our results for Fiscal 2017; results of efforts since the beginning of FY 2017 are shown here to demonstrate the cost avoidance potential for this project.

	Settlement Amount	Future Exposure	Cost Avoidance due to Settlement	
through 71916	\$ 285,750.00	\$ 1,180,939.34	\$ 895,189.34	
072016-081516	\$ 387,000.00	\$ 1,527,340.84	\$ 1,140,340.84	
081516-090616	\$ 435,000.00	\$ 1,749,927.60	\$ 1,314,927.60	
090716-092816	\$ 526,999.00	\$ 1,648,073.42	\$ 1,121,074.42	
092916-10	\$ 133,000.00	\$ 482,542.71	\$ 349,542.71	
	\$ 1,767,749.00	\$ 6,588,823.91	\$ 4,821,074.91	\$ 20,000,000.00 WCA
				\$ 1,767,749.00 Settlement Amount
				\$ 18,232,251.00 Remaining in WCA

Background

Marsh Risk Consulting conducted an analysis to examine the impact of settling appropriate claims, including an estimate of the potential cost avoidance opportunity associated with an accelerated claim closure initiative. The study was promulgated by language included in Item 81, F.2 of Chapter 2, 2014 Special Session 1, which requires the Department of Human Resource Management to conduct a study with results due no later than October 1, 2014.

“The Department of Human Resource Management shall conduct a study, with the cooperation of all executive, legislative, judicial, and independent agencies, to include, but not be limited to, the impact of settling appropriate claims, the potential need for a risk management position in the Department of Human Resource Management to further assist state agencies not staffed with a risk management position, and the need for a risk management position for state agencies with a high incidence of claims who are not staffed with a risk management position. The department shall report its findings and cost savings recommendations for the state employee's workers' compensation program to the Governor and Chairmen of the House Appropriations and Senate Finance Committees no later than October 1, 2014.”

That analysis was titled “Risk Management and Occupational Safety and Health Programs to Reduce Injury and Illness Incidence Rates and Claim Inventory Workout: An Accelerated Claim Closure Initiative” provided to the Governor and General Assembly in the 2014 Reports to the General Assembly, item [RD290](#). The study revealed considerable opportunity to reduce future liability for the program by accelerating claim closure on appropriate claims through settlement.

Based on the results, a budget package was submitted and approved, providing a working capital advance of up to \$20,000,000 to identify and potentially settle certain workers’ compensation claims open for more than one year but less than 10 years. The Department of Human Resource Management is responsible to pay back the working capital advance from annual premiums over a seven year period. The Department of Human Resource Management is also directed to provide this report to the Governor, Director, Department of Planning and Budget, and Chairmen of the House Appropriations and Senate Finance Committees on the status of the settlement program, the number of claims settled, and the estimated state costs avoided from the settlements no later than October 30 of each year.

The Secretary of Finance and Secretary of Administration are responsible to approve the drawdowns from this working capital advance prior to the expenditure of funds. The State Comptroller is responsible to notify the Governor and the Chairmen of the House Appropriations and Senate Finance Committees of any approved drawdowns.