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November 16, 2021

The Honorable Luke E. Torian, Chair, House Appropriations Committee
The Honorable Janet D. Howell, Chair, Senate Finance & Appropriations Committee
The Honorable Grindly Johnson, Secretary of Administration

Subject: Recommended Workers' Compensation Premiums for FY 2023-24, Status and Recommendations of the Loss Control Program, and Number, Amount and Impact on Reserves of Settlements in FY 2021

The attached report is pursuant to Items 83, F.1, F.2 and F.3 of Chapter 552, 2021 Virginia Acts of Assembly, Special Session I.

Please contact me if there are any questions.

Sincerely,

A handwritten signature in cursive script that reads "Emily S. Elliott".

Emily S. Elliott



VIRGINIA DEPARTMENT OF HUMAN RESOURCE MANAGEMENT

**Chapter 552, 2021 Virginia Acts of Assembly, Special Session I,
Items 83, F.1, F.2 and F.3**

Report on

**Recommended Workers' Compensation Premiums for FY 23 - FY 24;
Status and Recommendations of the Loss Control Program;**

and

Number, Amount and Impact on Reserves of Settlements in FY 21

October 28, 2021

Executive Summary

WORKERS' COMPENSATION PREMIUMS – SECTION 1

The Department of Human Resource Management (DHRM) recommends workers' compensation premiums equal to the cash flow needs of the program. Actual FY 2021 and FY 2022 premiums shown for comparison.

<u>Actual FY 2021 Premium</u>	<u>Actual FY 2022 Premium</u>
\$78,905,496	\$77,121,714
<u>Actual FY 2021 Premium Plus WCA Repayment</u>	<u>Actual FY 2022 Premium Plus WCA Repayment</u>
\$80,624,887	\$79,432,604
<u>Recommended FY 2023 Premium</u>	<u>Recommended FY 2024 Premium</u>
\$74,182,847	\$74,543,941
<u>Recommended FY 2023 Premium Plus WCA Repayment</u>	<u>Recommended FY 2024 Premium Plus WCA Repayment</u>
\$77,050,309	\$77,411,403

- The statewide experience modification factor dropped from .94 to .89.
- The required statewide premium calculated for FY 2023 decreased 3.8% from FY 2022 premiums (approximately \$2,938,867 before settlement repayment).
- The updated estimated undiscounted reserve is calculated to be \$132.3 million lower than last year's calculation.
- The Working Capital Advance settlement program is proving to be a contributor to the lower than expected incurred loss development during the fiscal year and the reduction

in the undiscounted reserve can be at least partially attributed to these settlements. Other contributing factors to the lower than expected incurred loss development are the increased engagement of OWC's loss control team with the agencies in our program, and the early assignment of field nurse case management on lost time claims. In addition, our new Agency Relation Representatives are working more closely with our agencies to ensure that claims are filed timely, and investigated thoroughly. They are also working to ensure that agencies have up to date return-to-work plans, and effective medical panels, while keeping the agencies updated on their loss trends.

SETTLEMENTS – SECTION 2

Third Party Settlements

Five Workers' Compensation claims involved in third party suits settled during Fiscal 2021, avoiding \$275,006.33 in expected future costs. Exhibit C provides a list of all settlements reached during the course of third party settlements¹. Cost avoidance is calculated as follows:

Total Case Reserves (Future Exposure)	\$ 376,657.78
Total Settlement Amounts	\$ 101,651.45
Cost Avoidance due to Settlements	\$275,006.33

Working Capital Advance Settlements

In FY 2021, the Department of Human Resource Management

- Completed settlements on **45 workers' compensation claims** under the Working Capital Advance authorized in Chapter 552, 2021 Virginia Acts of Assembly, Item 83, F.3.a;
- Produced **\$11.22 million in cost avoidance** due to accelerated closure of the claims; and
- Continued to evaluate claims for accelerated closure.

Recommendation

The Department of Human Resource Management recommends continuing a budget provision for the Working Capital Advance to support accelerated closure of certain claims. The Working Capital Advance settlement program has proved to be a significant contributor to the lower than expected incurred loss development during the fiscal year and the reduction in the undiscounted reserve can be at least partially attributed to these settlements.

The joint effort by the Department of Human Resource Management staff who suggested cost containment through settlements and the Department of Planning and Budget staff who developed the Working Capital Advance vehicle to make the idea possible has produced positive results for the program:

- Actual results achieved by settling 237 claims have already produced documented cost avoidance of \$61.95 million. The required statewide premium calculated for FY 2023 decreased 3.8% from FY 2021 premiums (approximately \$2,938,867) before settlement repayment).

¹ The settlements contained in this section do not include the settlements made under the Working Capital Advance authorized in Chapter 552, 2021 Virginia Acts of Assembly, Item 83, and F.3.a; to settle certain workers' compensation claims in FY 2021. Those settlements are reported in Section 2, Working Capital Advance Settlements.

- The updated estimated undiscounted reserve is calculated to be **\$132.3 million** lower than last year's calculation.

LOSS CONTROL PROGRAM – SECTION 3

The program's actuary, Oliver Wyman produced an updated actuarial report entitled *2021 Workers' Compensation Experience Statistics by Agency* based on reported losses as of June 30, 2021 (Exhibit E).

Agencies with the most adverse loss history identified in the 2021 report are:

- Department of Motor Vehicles
- Virginia State Police
- James Madison University
- Department of Wildlife Resources
- Department of Juvenile Justice
- Department of Behavioral Health and Developmental Services
 - Mental Health Treatment Centers
 - Intellectual Disabilities Training Centers
 - Virginia Center for Behavioral Rehabilitation
- Department of Veterans Services
- Virginia Alcoholic Beverage Control Authority

James Madison University is a new addition to the list; the Department of Corrections was removed from the list for 2021.

Recommendation

The Department of Human Resource Management recommendation is:

- Continue development of agency-specific action plans and consulting work to reduce the frequency and severity of workers' compensation claims;
- Continue the loss control consulting work initiated in FY 2021 with the previously identified agencies; and
- Reward high performing agencies with premium discounts.

Section 1:

Experience-based Premium Recommendations

Objective

The study provides recommendations to the Governor and the General Assembly of the agency-by-agency cost of experience-based premiums for the Department of Human Resource Management State Employee Workers' Compensation Program for FY 2023 and FY 2024 using the latest actuarial data.

Recommendation

The Department of Human Resource Management recommends workers' compensation premiums equal to the cash flow needs of the program. Actual FY 2021 and FY 2022 premiums shown for comparison.

<u>Actual FY 2021 Premium</u>	<u>Actual FY 2022 Premium</u>
\$78,905,496	\$77,121,714
<u>Actual FY 2021 Premium Plus WCA Repayment</u>	<u>Actual FY 2022 Premium Plus WCA Repayment</u>
\$80,624,887	\$79,432,604
<u>Recommended FY 2023 Premium</u>	<u>Recommended FY 2024 Premium</u>
\$74,182,847	\$74,543,941
<u>Recommended FY 2023 Premium Plus WCA Repayment</u>	<u>Recommended FY 2024 Premium Plus WCA Repayment</u>
\$77,050,309	\$77,411,403

Background

Experience-based premiums are based on the marketplace premise that the higher the cost of claims, the higher the premiums. The policyholder's claim history, the number and dollar amount of previous claims, projected payroll, as well as other risk factors determine premiums. With experience-based premiums, the policyholder absorbs any increase in premium costs, and retains savings if premiums decrease. This gives the policyholder a monetary incentive to prevent accidents and control costs.

The Department of Planning and Budget conducted an evaluation study of the State Employee Workers' Compensation Program and in December of 1998 issued a report *Experience-Based Premiums for the Commonwealth's Self-Insurance Programs*. They recommended that the Workers' Compensation Program should adopt experience-based premiums. Because of the increased cost of premiums and the cost shifting between agencies, experience-based premiums were phased in over a two-year period. Premiums for FY 2000 were capped at no more than a 50 percent increase or decrease, compared to FY 1998 premiums. Premiums for FY 2001 were experience-based with no cap. Premiums for FY 2002 were identical to FY 2001 and did not reflect loss or payroll trends or exposure (payroll) growth between 2000 and 2002. Premiums for FY 2003-FY 2021 were also experience-based.

Since FY 1998, total premiums collected equaled the actuarial projection of the expected cash flow needs of the program. There is no requirement that the workers' compensation program be actuarially sound. The workers' compensation program has consistently been in a deficit fund position since 1987; however, the program has settled select claims under a Working Capital Advance since FY 2017. The Working Capital Advance settlement project is proving to be a significant contributor to the lower than expected incurred loss development during the fiscal year and the reduction in the undiscounted reserve can be at least partially attributed to these settlements.

- The statewide experience modification factor dropped from .94 to .89.
- The required statewide premium calculated for FY 2023 decreased 3.8% from FY 2022 premiums (approximately \$2,938,867.00 before settlement repayment).
- The updated estimated undiscounted reserve is calculated to be \$132.3million lower than last year's calculation.
- The Working Capital Advance settlement program is proving to be a contributor to the lower than expected incurred loss development during the fiscal year and the reduction in the undiscounted reserve can be at least partially attributed to these settlements.

Benefits of Experience-based Premiums

With so many competing goals existing in the work environment today, claims and loss control receive little attention by agency management when there are no consequences. Experience-

based premiums have created agency management awareness of the cost of their claims. It has also provided a financial incentive for agencies to control costs. When an agency has an effective loss control program, premiums typically will be reduced due to improved experience (unless the agency has a significant increase in projected payroll).

Since 1999, Executive branch agencies have been required to analyze their workplace accidents, develop goals and strategies to reduce or eliminate them, and to create opportunities, whenever possible, to return employees to work. Since implementing experience-based premiums, agencies have made significant headway in controlling workplace injuries. Creating experience-based premiums has increased agency attention to their safety and loss control needs.

The Workers' Compensation Program has created an extensive training and inspection program that assists agencies with their initiatives to:

- Eliminate or reduce premises hazards;
- Reduce or control exposures;
- Create training programs to increase control of risk;
- Improve workplace safety;
- Reduce program costs;
- Reduce the frequency and severity of claims; and
- Return employees to work in a transitional or modified duty capacity.

Methodology

Oliver Wyman Actuarial Consulting, Inc. (Oliver Wyman) was asked to provide an allocation of the projected FY 2023 and FY 2024 costs of the workers' compensation self-insurance program to the Commonwealth's agencies. The allocation was to reflect the historical experience of the individual agencies. It was also requested that they rely on their annual analysis of the overall reserve requirements of the self-insurance program.

The Department of Planning and Budget provided payroll information. Actual premiums charged to each agency and their claims history was provided by Department of Human Resource Management State Employee Workers' Compensation Services.

The actuary provides three premium options based upon their reserve analysis. The figures represent the total of the projected program and administrative expenses and projected losses for FY 2023 and FY 2024 under three scenarios:

1. Indicated Undiscounted Actuarial Premium (cashflow) – the premium required to pay the ultimate cost of claims anticipated to occur during FY 2023 plus the FY 2023 program and administrative expenses.

2. Pay As You Go – projection of loss and expense payments (net of anticipated investment income) to be made during FY 2023 on all accident years.
3. Pay As You Go Plus One Year’s Cashflow – projection of loss and expense payments (net of anticipated investment income) to be made during FY 2023 plus the amount required so that the FY 2023 ending fund balance is equal to the FY 2024 cash flow.

The Department of Human Resource Management recommends that the program continue to allocate premiums on the Pay As You Go basis. This scenario represents a 3.8 percent **decrease** in overall premiums for FY 2023 as compared to FY 2022 and a .49 percent overall increase in premiums for FY 2024 as compared to FY 2023².

Total premiums recommended are \$74,182,847 for FY 2023 and \$74,543,941 for FY 2024, exclusive of the Working Capital Advance settlement reimbursements. Exhibit A provides recommended workers’ compensation premiums by agency on a Pay as You Go (cash flow) basis for FY 2023 and FY 2024. The complete actuarial study, titled *FY 2023 and 2024 Workers’ Compensation Premium Allocation* is attached (Exhibit B) which provides details of the individual calculations that were performed to arrive at the final premium recommendations. Please refer to Exhibits 1C and 1D in the actuarial study for detail on the Working Capital Advance reimbursement amounts per agency.

² The premium amounts shown here do not include the Working Capital Advance settlement required reimbursements authorized in Chapter 552, 2021 Virginia Acts of Assembly, Item 83, F.3.a;.

Section 2:

Workers' Compensation Settlements

Objective

The report provides an update on the status of the Workers' Compensation Claims Settlements to the Governor and Chairmen of the House Appropriations and Senate Finance and Appropriations Committees. Settlements may be reached through negotiations during third party suits, or may be reached under the Working Capital Advance for the settlement of certain claims.

All settlements have been approved by the Virginia Workers' Compensation Commission as being in the best interest of the claimant or the dependents as required by Rule 1.7 of the Rules of the Commission.

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;
- Conduct an analysis of the benefit to the Commonwealth of Virginia when comparing the amount of settlement to the estimated future exposure;
- Obtain approval from the Director of Office 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 Third Party Settlements

The Department of Human Resource Management settled six workers' compensation claims as a result of third party suits during Fiscal 2021, avoiding \$275,006.33 in expected future costs.

Exhibit C provides a list of all settlements reached during the course of third party settlements³. Cost avoidance is calculated as follows:

Total Case Reserves (Future Exposure)	\$376,657.78
Total Settlement Amounts	\$101,651.45
Cost Avoidance due to Settlements	\$275,006.33

Status of Working Capital Advance Settlements

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.

In FY 2021, the Department of Human Resource Management

- Completed settlements on **45 workers' compensation claims** under the Working Capital Advance authorized in Chapter 552, 2021 Virginia Acts of Assembly, Item 83, F.3.a;
- Produced **\$11.22 million in cost avoidance** due to accelerated closure of the claims; and
- Continued to evaluate claims for accelerated closure.

The following table illustrates results of the first five years of settlements under the WCA:

Settlement Year	# of Claims	Total \$ Settlements	Cost Avoidance
FY 2017	62	\$ 4,889,899	\$ 14,726,445
FY 2018	42	\$ 3,569,370	\$ 8,794,562
FY 2019	39	\$ 3,576,463	\$ 13,363,769
FY 2020	49	\$ 4,140,500	\$ 13,840,065
FY 2021	45	\$ 3,896,000	\$ 11,224,660
Total	237	\$ 20,072,232	\$ 61,949,501

Recommendation

DHRM recommends continuing a budget provision for the Working Capital Advance to support accelerated closure of certain workers' compensation claims.

- Actual results achieved by settling 237 claims have already produced documented cost avoidance of \$61.95 million. Based on these results, it would appear that the potential for even deeper cost avoidance is probable;
- The required statewide premium calculated for FY 2023 decreased approximately \$2.9 million compared to the figure projected in last year's study (before settlement repayments);

³ The settlements contained in this section do not include the settlements made under the Working Capital Advance authorized in Chapter 552, 2021 Virginia Acts of Assembly, Item 83, and F.3.a; to settle certain workers' compensation claims in FY 2018. Those settlements are reported in Section 2, Working Capital Advance Settlements.

- The updated estimated undiscounted reserve is calculated to be \$132.3 million lower than last year's calculation; and
- The Working Capital Advance settlement program is proving to be a contributor to the lower than expected incurred loss development during the fiscal year and the reduction in the undiscounted reserve can be at least partially attributed to these settlements.

Please see Exhibit D for a list of all settlements under the Working Capital Advance in FY 2021.

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 and Chairmen of the House Appropriations and Senate Finance and Appropriations 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 and Appropriations Committees of any approved drawdowns.

Section 3:

Loss Control Program

Objective

The report provides an update on the status and recommendations to the Governor and the General Assembly of the loss control program based on the annual review of each state agency's loss control history, including the severity of workers' compensation claims, experience modification factor, and frequency normalized by payroll.

Status

The Department of Human Resource Management received authority effective July 1, 2015 to establish a loss control unit within the Department's Workers' Compensation Program. Since then, the program has

- Worked with the Program's actuary to identify agencies with the most adverse loss history; agencies included in each of the three studies completed in FYs 15, 16, 17, 18, 19, 20 and 21 are:
 - Virginia State Police
 - Department of Juvenile Justice
 - Mental Health Treatment Centers
 - Department of Veterans Services
 - Virginia Alcoholic Beverage Control Authority
- Completed an updated actuarial report entitled *Workers' Compensation Experience Statistics by Agency* based on reported losses as of June 30, 2021 (Exhibit E) The agencies identified with the most adverse loss history in the updated report are:
 - Department of Motor Vehicles
 - Virginia State Police
 - James Madison University
 - Department of Wildlife Resources
 - Department of Juvenile Justice
 - Department of Behavioral Health and Developmental Services
 - Mental Health Treatment Centers
 - Intellectual Disabilities Training Centers
 - Virginia Center for Behavioral Rehabilitation
 - Department of Veterans Services
 - Virginia Alcoholic Beverage Control Authority
- Demonstrated a reduction in premiums for several agencies in the service plans:
 - Department of Behavioral Health and Developmental Services, Intellectual Development Training Centers: -50.2%

- Virginia Alcoholic Beverage Control Authority: -10.7%
- Mental Health Treatment Centers : -18.5%
- Virginia Institute of Marine Science: -20%
- Department for Aging and Rehabilitative Services: -26.2%

Recommendation

The recommendation is to continue development of agency-specific action plans and consulting work to reduce the frequency and severity of workers' compensation claims.

Background

DHRM is the state agency authorized to administer the state employee workers' compensation services program for the Commonwealth in accordance with Code of Virginia. As part of this responsibility, DHRM is responsible for the management of the workers' compensation insurance plan trust fund.

- The Governor's Executive Order 109 (10) requires Executive Branch agencies to implement initiatives to reduce work-related injuries and improve services to injured employees. EO 109 (10) requires DHRM to provide training, consultation and support for agency initiatives;
- The September 30, 2014 Report 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" concluded the Commonwealth of Virginia would benefit from Loss Control position(s) and by promoting certain activities in agencies with high frequency and severity of claims and correspondingly high experience modification factors. Consolidating contractual and state loss control services in DHRM-OWC staffing benefits the overall safety mission of the Commonwealth and supports agency compliance with EO 109(10). These positions support select larger agencies to help focus safety and loss control efforts to reduce frequency and severity of claims. Doing so has positively impacted the experience modification factor for most of these agencies and ultimately may drive down the cost of their workers' compensation premiums.

Both the September 30, 2014 Report 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" and a special study conducted in successive years by the OWC program's actuary have identified a number of agencies who may benefit from the assistance of the OWC Loss Control Unit. The two September 30, 2014 reports are available in the 2014 Reports to the General Assembly, item [RD290](#). A copy of the actuarial report entitled *2021 Workers' Compensation Experience Statistics by Agency* is attached to this report.

It is the Commonwealth's objective to promote the management of public resources efficiently and effectively in challenging economic times and it is the Commonwealth's objective to promote the recruitment, development and maintenance of a competent and stable workforce.

It is also the Commonwealth's objective to ensure the long-term viability of the state employee workers' compensation trust fund by employing best practice approaches to manage the long-term costs for the program. The dedicated Loss Control Unit, a combination of state employee and contract staffing, for the OWC program will be a tool for meeting these challenges.

DHRM employs innovation and best practices in managing the state employee workers' compensation program in order to meet these important objectives. The program employs many loss control strategies utilizing contract staff including:

- **Consultative Services –**
 - Safety problem-solving
 - Technical resource
 - Consultation on OSHA programs
 - Personalized “Peer Mentoring” with agency safety & loss control committee or safety officer
 - Consultation on VOSH/OSHA Standards and the temporary Emergency COVID-19 Standard

- **Special Services –**
 - Hazard Audits
 - Snapshot Hazard Surveys
 - Benchmark Analysis Reviews
 - Loss Control Articles
 - Toolbox Topic Publications
 - Safety Roundtable Meetings and Networking Events
 - Follow up assistance on items found during these audits

- **Event Investigation and Analysis –**
 - Fatality/Catastrophic Events
 - Medical/Chronic Events
 - Problematic Events

- **Loss Control Training –** 10 hours per month of short topic safety training plus one OSHA 30 Hour for General Industry course and two OSHA 10 Hour for General Industry courses annually in addition to specialized FOCUS (Fundamental Opportunities Centered around Understanding Safety) Training

- **Resource Development –** Assist in developing agency safety & health system and resources:
 - Review safety policies for OSHA compliance
 - Assist with the development of agency safety committees
 - Research questions and write general articles on important agency safety topics
 - Management consulting, coaching & training on safety issues

In addition to the contractual services the program provides, the DHRM Loss Control Unit enhances potential for the reduction of claims by:

- Providing a resource for deeper data analysis for:
 - Identification of locations in need of consultative services;
 - Identification of training topics to assist agency loss control efforts;
 - Better EO 109 (10) compliance oversight;
 - More focused contractor efforts;
- Providing a resource for strategically focused, intense consulting with those high frequency and severity agencies with the most potential for cost savings through injury prevention and other loss control tools;
- Providing a resource to assist the safety and loss control efforts of small agencies with no dedicated loss control staff.
- Provide additional backup to key program positions and add to succession planning resources.