

# Virginia Workers' Compensation Update (3)

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## House Bill 1985 | COVID-19 Presumption for Health Care Providers

This executive summary for the recent amendments to Virginia Code 65.2-402.1 aims to provide an in-depth look at who qualifies for the presumption, what triggers the presumption and the various distinctions in the legislative text which could impact the application of the statute.

### What did House Bill 1985 accomplish?

Amends §65.2-402.1, the statutory provision which establishes a presumption of compensability for certain classes of employees which contract specific infectious diseases. The bill amended the statute to include a presumption for COVID-19.

### What is a presumption statute?

If the requirements are met, the burden of proof shifts from the injured worker to the Employer/Carrier. It is not a rule of automatic compensability. Rather, the presumption of compensation can be overcome by a preponderance of competent evidence. Typically, the injured worker is required to prove their disability arose from a preponderance of the evidence, here, it is the Employer/Carrier's obligation to prove the disability arose from outside the workplace.

### Who qualifies for the presumption?

1. Any healthcare provider
  - A person licensed by this Commonwealth to provide health care or professional services;
  - A person who holds a multistate privilege to practice such nursing under the Nurse Licensure Compact;
  - A nursing home provider. Nursing home = any facility where primary function is the provision, on a continuing basis, of nursing services and health-related services for the treatment and inpatient care of two or more nonrelated individuals;
  - A director, officer, employee, independent contractor or agent of the persons or entities referenced herein.
2. Who, as part of the provider's employment, was directly involved in diagnosing or treating persons known to have or suspected to have COVID-19.

### When does this new law apply?

The amended statute has retroactive application. The presumption applies to any qualified health care provider whose COVID-19 related death or disability occurred on or after March 12, 2020.

### Is the presumption indefinite?

No. the current legislation only provides the presumption to disabilities which arises from COVID-19 prior to December 31, 2021.

### What are the requirements to qualify for the presumption?

1. For disability occurring between March 12, 2020 and June 30, 2020:
  - Qualified health care provider who received a positive COVID-19 diagnosis from a licensed physician, nurse practitioner or physician assistant after either:
    - A presumptive positive test or laboratory confirmed tested and the person presents with signs and symptoms of COVID-19 that require medical treatment; or
    - Presenting with signs and symptoms of COVID-19 that required medical treatment absent a presumptive positive test or laboratory-confirmed test.
2. For disability occurring between July 1, 2020 and December 31, 2021:
  - Qualified health care provider who received a positive diagnosis of COVID-19 from a licensed physician, nurse practitioner or physician assistant after a presumptive positive test or laboratory-confirmed test for COVID-19 and presented with signs and symptoms of COVID-19 that required medical treatment.

### What exclusions apply?

1. 65.2-402.1(E)(2) provides an exclusion to coverage if the person's Employer offers a vaccine for the prevention of COVID-19 and the person fails or refuses to undergo the immunization. This exclusion does not apply if the individual is already immunized or the individual's physician determines the immunization would pose a significant risk to the person's health and provides this opinion in writing.
2. The failure to "present with signs or symptoms of COVID-19 which require medical treatment" may also disqualify an otherwise qualified health care provider from the presumption statute. A strict reading of the new legislation suggests that employees who tested positive and were required to self-isolate but did not require medical treatment or demonstrate any symptoms of COVID-19 may not be covered under this presumption statement.

Click [here](#) to view the breakdown in the full executive summary.

**Questions?** Please contact [Brian Frame](#) or [RJ Williams](#) in our MGC Richmond office.

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### ABOUT THE AUTHOR

[Brian Frame](#) joined MGC's Richmond office in 2019 with a focus on workers' compensation matters. He is a member of the Virginia Bar Association, and regularly speaks on Virginia workers' compensation topics for [MGC Webinar Wednesday](#). Brian can be contacted by [email](#) or phone at 804.944.2993.