2012 Election Results

In 2012, there were 11 governorships up for election and more than 6,000 legislative seats in play across 43 states. The net outcome of these races was a subtle shift in party dominance, with the Republicans picking up one additional governor’s office and solidifying or seizing legislative control in three additional states.

Republicans hold control in 23 states, with a net gain of 1, and there are now 12 states in which party control is divided. (Nebraska’s legislature is both unicameral and nonpartisan, with a Republican governor.)

Perhaps the most pleasant surprise for Republicans was in Arkansas, where the Republicans gained both chambers of that state’s legislature for the first time since Reconstruction. While there was no change in party control of either the legislature (R) or the governorship (D) in Missouri, Republicans were able to win enough additional seats in the House to make it veto-proof. The Republicans also gained veto-proof majorities in both chambers in Tennessee.

Democrats posted a net increase of almost 200 legislative seats across the country, gaining control of both legislative chambers in five additional states. Overall, Democrats now control both the legislature and the governorship in 14 states—a net increase of 3 states.

Of the 11 gubernatorial races held in 2012, there were six governors running for reelection: Jack Markell (D-DE), Jay Nixon (D-MO), Jack Dalrymple (R-ND), Gary Herbert (R-UT), Peter Shumlin (D-VT), and Earl Ray Tomblin (D-WV). All were successful in securing their posts for four more years. This will be the first full term of office for Governor Herbert and Governor Tomblin, since both men had been filling out the partial terms of their predecessors.

In the five open governors’ races, Mike Pence (R-IN), Steve Bullock (D-MT), Margaret Wood Hassan (D-NH), Pat McCrory (R-NC), and Jay Inslee (D-WA) have each succeeded in their pursuit of the governorship. The only state that saw a shift in party control of the governor’s office was North Carolina, with McCrory’s victory.

In 2013, NCCI anticipates that lawmakers in several states will again be taking a look at workers compensation legislation. This is due to the continuing number of states experiencing loss cost increases, the sluggish economy, and the findings contained in the 2012 Oregon Workers’ Compensation Premium Rate Ranking Summary.
Regulatory Changes
In 5 of the 11 states that elected governors in 2012, the insurance regulator is appointed by that office and, with the incumbents being reelected in four of them, those commissioners will likely remain in office. In the fifth state—Indiana—a new commissioner is possible; however, since Republicans maintained their hold on the governor's seat, the new governor may choose to retain the incumbent.

There were also five states in which the insurance regulator's position was up for election. The incumbents prevailed in all of those races, with Karen Weldin Stewart (D-DE), Monica Lindeen (D-MT), Wayne Goodwin (D-NC), Adam Hamm (R-ND), and Mike Kreidler (D-WA) all securing another term in office.

There was only one ballot initiative that directly impacts workers compensation insurance—New Mexico's Constitutional Amendment 4, HJR 17. This measure amends the state constitution to place the regulation of insurance companies under an appointed Superintendent of Insurance. Oversight had previously been the responsibility of the Public Regulation Commission.

States to Watch in 2013
• Connecticut—Due to the Sandy Hook school shootings, the Public Safety and Security Committee is examining the expansion of the presumption of post-traumatic stress syndrome beyond benefits for police officers to include first responders and volunteers who witness the use of deadly force in the line of duty.

• Delaware—Following the Delaware Compensation Rating Bureau’s proposal to increase loss costs by 38%, the Delaware House of Representatives has passed a resolution calling for an appointment of a 19-member task force, chaired by Lieutenant Governor Matt Denn, to study the state’s workers compensation system.

• Florida—With the Sunshine State experiencing its third consecutive rate increase, Florida's Three-Member Panel, which is charged with setting workers compensation medical reimbursements, has called for a series of changes to both inpatient and outpatient hospital fees and caps on physician-dispensed repackaged drugs.

In addition, the Florida Workers’ Compensation Insurance Guaranty Association and the Consumer Advocate are calling for a requirement of full collateral for the deductible portion of a large deductible policy and limitations on the size of such large deductibles.

• Georgia—HB 154 has been introduced, calling for the capping of workers compensation medical benefits at 400 weeks for all but catastrophic injuries.

• Hawaii—Business and insurance trades are once again pursuing a cap on physician-dispensed repackaged drugs, similar to failed efforts attempted in last year’s legislative session.

• Illinois—The Illinois Chamber of Commerce is calling for a change in the causation standard to ensure that compensation is paid only for work-related injuries and not for general health conditions.

• Indiana—The Interim Study Committee on Insurance, composed of four members from both legislative chambers, has been looking into cost controls and is studying the introduction of a hospital fee schedule based on Medicare rates. Insurers are also considering legislation to use workers compensation healthcare networks similar to those operating in California and Texas.

• Kansas—The Senate Committee on Commerce has recommended passage of a measure to use the Sixth Edition of the American Medical Association (AMA) Guides to the Evaluation of Permanent Impairment.

• Maryland—Following the Maryland Insurance Administration’s (MIA) study of whether Chesapeake Employer’s Insurance Company (formerly IWIF—the state’s competitive state fund) should be subject to the same authority and regulation as other property/casualty insurers, the Maryland legislature is taking up the MIA recommendation to require the insurer to be an affiliate of the state’s rating organization (NCCI).

In addition, the Maryland General Assembly is taking a second look at capping the price on physician-dispensed repackaged drugs. A similar attempt at capping by the Workers’ Compensation Commission, through rule, was unsuccessful last year.

• Missouri—Once again, lawmakers are expected to tackle the underfunding or closure of the Second Injury Fund and moving occupational injuries back into the compensation system. Senate Bill 1 has been introduced in order to generate more revenue for the fund and to limit injuries it will cover. Senate Bill 115 has been introduced to provide for the dissolution of the state’s competitive state fund—Missouri Employers Mutual (MEM)—citing the need for the state to get out of the workers compensation business.
• **Montana**—Senate Bill 54 is requiring counties to provide workers compensation coverage for volunteer firefighters beginning July 1, 2015.

• **New Hampshire**—Measures have been introduced to increase maximum weekly workers compensation benefits and allow employers to choose a treating physician for an injured worker during the first 10 days after an injury.

• **New Jersey**—The Labor Committee has voted out a measure to create a rebuttable presumption for all safety workers who contract a communicable disease or a cancer as compensable job-related injuries. In addition, the Committee approved a bill to provide lifetime benefits to surviving spouses of firefighters and police officers who die in the line of duty.

• **New Mexico**—The Advisory Council on Workers’ Compensation is calling for workers compensation judges to have greater discretion when deciding claims involving intoxication and drug abuse. The Council is also calling for increases in attorney fee caps.

• **New York**—New York has moved up to 5th from 13th as the most expensive workers compensation state, according to the *Oregon Workers Compensation Premium Rate Ranking Study*. This new ranking has fueled the New York Workers’ Compensation Alliance and the Business Council of the State of New York to duel over reports of the condition of the state’s workers compensation system. This is setting the stage for a significant workers compensation debate in the 2013 legislative session.

In addition, Governor Andrew Cuomo is proposing legislation to address the costs of claims associated with failed group self-insured trusts and the cost of assessments associated with the state’s several workers compensation funds.

• **Oklahoma**—With Senate Bill 1062 being introduced, the Sooner State is considering scrapping its court-based system for an administrative process. This is being fueled by the perception of excessive attorney involvement in the current workers compensation adjudication process. In addition, the Oklahoma Injury Benefit Coalition, a proponent of nonsubscription from the traditional workers compensation coverage process, is once again mounting a legislative effort. A similar proposal in 2012 to allow employers to opt out of workers compensation lost in a close vote. And there have been several bills introduced to privatize CompSource, the state’s competitive state fund.

• **Tennessee**—Following a state-commissioned study, HB 194 and SB 200 have been introduced, calling for moving the Volunteer State’s court-based system to more of an administrative model. This initiative may have garnered additional support when Republicans gained super majorities in both chambers following the November elections.

• **Texas**—Texas Mutual was created in 1991 as the state’s competitive state fund. It has indicated a desire to cut its ties with state government, privatize, and relinquish its role as the sole source of providing assigned risk coverage.

• **Vermont**—The state’s Department of Labor, the Department of Health Access, and the Department of Financial Regulation have issued their report regarding the feasibility of integrating workers compensation medical benefits into the Green Mountain State’s new single payer system—Green Mountain Care. The report calls for delaying the integration of workers compensation medical benefits until such time as a thorough analysis can be conducted and until after the new system is in place.

• **Washington**—Citing the need for an improvement in the state’s economy, a Republican measure has been introduced to allow for the privatization of the state’s workers compensation monopoly. A similar measure was defeated by the voters two years ago.

In summary, while broad-based workers compensation reform is again unlikely in 2013, we nonetheless anticipate a number of states to engage in meaningful workers compensation legislation.

As always, NCCI will continue to provide actuarial and technical support to assist all system stakeholders as they debate these public policy issues.

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**Please note:** The country’s regulatory and legislative environment changes quickly at both the federal and state levels. This article provides a snapshot of issues at the time of publication, March 2013.