Legislative state activity related to workers compensation was fairly moderate across the country in 2016, which is to be expected in a national election year. It also may be reflective of the continuing decline in loss costs for most states, as interest in reform tends to follow decreasing loss costs.

While more than 700 bills addressing workers compensation issues were introduced, only about 10% of these measures were enacted and none of the enacted laws made significant system changes. It is of note that legislatures in MT, ND, NV, and TX do not convene in even numbered years.

Opt-out proposals in both South Carolina and Tennessee failed to gain traction in 2016; however, there was increased activity around the gig economy, with the introduction of legislation dealing with “qualified market contractors” popping up in several states. Three states (HI, KY, and UT) have enacted measures calling for a study of different aspects of their workers compensation systems.

While it is possible to identify potential areas of activity and interest for the 2017 legislative sessions, the outcomes are likely to be heavily influenced by the results of the 2016 elections. (For a review of election results, check the Legislative Activity section of ncci.com after November 8.)

Going into these elections, Republicans hold their strongest state presence ever, with a majority in roughly 70% of state legislative chambers and full legislative dominance (holding the majority in both chambers) in 30 states. In addition, a Republican occupies the governor’s mansion in 31 states, 23 of which have a Republican sweep—the party holds sway in both chambers of the legislature and the governor’s office. There are only seven states where Democrats hold that coveted trifecta.

Come November 8, however, those numbers are likely to change.

State Legislatures
There are a total of 7,383 state legislative seats, and 80% of the seats are up for election during this presidential election year—61% of the state senate seats and 87% of the house seats. The potential down-ballot impact of the presidential campaign could have a significant effect on the balance of power in a number of these states, especially in the handful of states (CO, IA, NV, NY, VA, WA, and WV) where the majority is presently secured by only one or two seats.

Governors
While most gubernatorial contests are held during the midterm election cycle, this year there will be elections for 12 governors’ seats currently held by eight Democrats and four Republicans. Seven of these are open races—with six of the seats due to term limits or voluntary departures (DE-D, MO-D, NH-D, ND-R, VT-D, WV-D). An additional contest opened up when Donald Trump selected Governor Mike Pence
While more than 700 bills addressing workers compensation issues were introduced, only about 10% of these measures were enacted and none of the enacted laws made significant system changes.
(R-IN) as his running mate in the presidential election.

In the five contested races, there are three Democrats (Steve Bullock–MT, Kate Brown–OR, Jay Inslee–WA) and two Republicans (Pat McCrory–NC, Gary Herbert–UT) defending their position as governor. Oregon is holding a special election in 2016, with Governor Kate Brown seeking election in her own right after filling the final two years of John Kitzhaber’s term, following his resignation.

Insurance Commissioners
The election cycle inevitably results in some turnover in regulatory ranks as well, with five states electing an insurance commissioner in 2016. Two of those races—Montana and North Dakota—are open, as Monica Lindeen is term-limited and Adam Hamm is not seeking re-election. Incumbents seeking reelection include Wayne Goodwin (NC) and Mike Kreidler (WA). Karen Weldin Stewart (DE) lost her primary bid for re-election. There are seven states where the gubernatorial election may have an impact as well, since insurance commissioners in those states are appointed by the governor.

Ballot Initiatives
Of the ballot initiatives under consideration in 2016, the one generating the most significant interest from a workers compensation perspective is Colorado’s Amendment 69, which would establish ColoradoCare. ColoradoCare is a governmental entity that would administer a single-payer healthcare system, including responsibility for providing medical care covered under workers compensation insurance.

There are also several states considering marijuana initiatives. Florida (Constitutional Amendment 2) and Arkansas (Ballot Issues 6 and 7) are voting on the legalization of medical marijuana, while Massachusetts (Question 4) and Nevada (Question 2) are seeking to regulate and tax its use.

Voters in Arkansas will also be considering a constitutional amendment (Ballot Issue 4) limiting lawyer contingency fees in medical injury cases.

States to Watch in 2017
Arkansas—Organized labor is expected to propose a number of legislative initiatives in the upcoming session to increase injured worker benefits and expand injury compensability standards.

Colorado—Pinnacol Assurance, with organized labor now pulling out of the project unable to find common ground, is leading a study of the state’s workers compensation system. They have hired a consulting firm to lead the research.

Florida—As a result of recent Florida Supreme Court rulings, the Associated Industries of Florida and the Florida Chamber of Commerce have created task forces to seek legislative fixes, with elevated legislative
interest following approval of a double-digit rate increase.

**Hawaii**—A number of legislative or regulatory measures may come from the recommendations of the Workers’ Compensation Working Group, which was charged (HCR 168) with streamlining the workers compensation claim process. Other measures may be deferred until the completion of the closed claim study of the workers compensation system, called for in HB 2715, which is due to be completed by November 30, 2017.

**Illinois**—Governor Bruce Rauner is continuing to include workers compensation reforms with budget negotiations.

**Kentucky**—HCR 185 creates a task force to study the state’s workers compensation system and develop recommendations for enhancement.

**Maryland**—As a result of HB 468 (2015), which removed the exemption to Title 11 for Chesapeake Employers’ Insurance Company, NCCI and Chesapeake have begun the process of transitioning the company to fully participating in NCCI’s workers compensation infrastructure by January 1, 2023. The legislation requires NCCI to complete an annual status report, the first of which was presented on October 1, 2016.

**Oklahoma**—While the Oklahoma Supreme Court ruled the opt-out law was unconstitutional due to unequal and disparate treatment of a selected group of injured workers (Vasquez v. Dillard’s), proponents of the option vow to fight on despite that the decision is likely to slow down momentum in other states. The Oklahoma Supreme Court is developing steps to mandate employers to be compliant with its opt-out unconstitutional ruling.

**Oregon**—The Oregon Workers’ Compensation Board has adopted rules to implement increases in claimant attorney fees.

**Rhode Island**—The Department of Labor and Training is developing a proposed rule to add massage therapy guidelines and compound drug reimbursement to its medical fee schedule.

**South Carolina**—Citing the recent deaths of police officers in Dallas, TX, and Baton Rouge, LA, lawmakers are expected to again take up the issue of providing Post-Traumatic Stress Disorder (PTSD) benefits for police officers.

**Texas**—The Texas Division of Workers’ Compensation—for the first time in 25 years—is proposing an increase in the claimant attorney fees. The Division is projecting that its proposed changes will increase annual legal costs by $20–50 million.

**Utah**—Senate Bill 216 requires a study of hospital costs.

**Virginia**—Being one of a few states not currently having a medical fee schedule, the Virginia Workers’ Compensation Commission has selected a vendor to assist in implementing a medical fee schedule, by six state geographic regions, effective January 1, 2018.

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, October 2016.

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