



Legislative Activity Report

National Council on Compensation Insurance

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Regulatory Services

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State Issues Contacts: Please refer to the list of State Relations Executives at the end of this report.

LEGISLATIVE ACTIVITY—LEGISLATIVE SESSION UPDATES

This report contains descriptions and/or excerpts of relevant bills that have passed the first chamber, passed the second chamber, or have been enacted during the specific periods. In addition, a recap of significant legislative and judicial activity impacting the workers compensation system will be included in the first report published each month. This report is issued on a weekly basis throughout the legislative season, and it provides updates on the content of these bills if and when they progress through the legislative process. This report includes bills from states where NCCI provides ratemaking services (see state list under Contact Information) and the US Congress.

BILLS ENACTED

There were no bills that were enacted within the one-week period ending March 20, 2015.

BILLS PASSING SECOND CHAMBER

Idaho

SB 1075 was:

- Passed by the first chamber on March 6, 2015
- Included in NCCI's March 13, 2015 *Legislative Activity Report* (RLA-2015-10)
- Passed by the second chamber on March 17, 2015

SB 1075 amends *section 20-412. Compensation—amount—crediting account of prisoner—civil rights—prisoners not employees* of the Idaho Code as follows:

§ 20-412. Compensation—amount—crediting account of prisoner—civil rights—prisoners not employees

Each prisoner, who is engaged in productive work ~~in the institution under the jurisdiction of the board of correction as a part of the correctional industries work program~~ as authorized by this chapter, may receive for his work such compensation as the board shall determine, to be paid out of any funds available in the correctional industries betterment account. Such compensation, if any, shall be in accordance with a graduated schedule based on quantity and quality of work performed and skill required for its performance. Compensation shall be credited to the account of the prisoner, and paid from the correctional industries betterment account. Nothing in this section or in this act is intended to restore, in whole or in part, the civil rights of any inmate. No inmate who is compensated under this act shall be considered to be an employee of or employed by the state or the board of correction, nor shall any or any private agricultural employer that is a party to a contract for inmate labor pursuant to section 20-413A, Idaho Code. No inmate come within any of the provisions of the workmen's engaged in productive work as authorized by this chapter shall be entitled to worker's compensation laws, or be entitled to any benefits thereunder or unemployment compensation under chapter 4 or chapter 13, title 72, Idaho Code, whether on behalf of himself or any other person.

Virginia

HB 1820 S1 was:

- Passed by the first chamber on February 10, 2015
- Included in NCCI's February 20, 2015 *Legislative Activity Report* (RLA-2015-07)
- Substituted and passed by the second chamber on February 25, 2015

HB 1820 S1 amends *section 65.2-605. Liability of employer for medical services ordered by Commission; malpractice; assistants-at-surgery; coding* of the Code of Virginia, in part, as follows:

Section 65.2-605. Liability of employer for medical services ordered by Commission; malpractice; assistants-at-surgery; coding.

A. The pecuniary liability of the employer for medical, surgical, and hospital service herein required when ordered by the

Commission shall be limited to such charges as prevail in the same community for similar treatment when such treatment is paid for by the injured person and the employer shall not be liable in damages for malpractice by a physician or surgeon furnished by him pursuant to the provisions of Section 65.2-603, but the consequences of any such malpractice shall be deemed part of the injury resulting from the accident and shall be compensated for as such.

B. The Commission shall determine the number and geographic area of communities across the Commonwealth. In establishing the communities, the Commission shall consider the ability to obtain relevant charge data based on geographic area and such other criteria as are consistent with the purposes of this title.

C. The pecuniary liability of the employer for treatment pursuant to subsection A that is rendered on or after July 1, 2014, by:

1. A nurse practitioner or physician assistant serving as an assistant-at-surgery shall be limited to no more than 20 percent of the reimbursement due under subsection A to the physician performing the surgery; and

2. An assistant surgeon in the same specialty as the primary surgeon shall be limited to no more than 50 percent of the reimbursement due under subsection A to the primary physician performing the surgery.

~~C. D.~~ Multiple procedures completed on a single surgical site associated with medical, surgical, and hospital services pursuant to subsection A and rendered on or after July 1, 2014, shall be coded and billed with appropriate Current Procedural Terminology (CPT) modifiers and paid according to the National Correct Coding Initiative (NCCI) rules and the CPT as in effect at the time the health care was provided to the claimant. The CPT and NCCI, as in effect at the time such health care was provided to the claimant, shall serve as the basis for processing a health care provider's billing form or itemization for such items as global and comprehensive billing and the unbundling of health care services. Hospital in-patient health care services shall be coded and billed through the International Statistical Classification of Diseases and Related Health Problems (ICD) as in effect at the time the health care was provided to the claimant.

...

HB 1820 S1 further states as follows:

2. That the Workers' Compensation Commission shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment and shall provide an opportunity for public comment on the regulations prior to adoption.

3. That the Workers' Compensation Commission shall convene a work group of stakeholder representatives of employers, health care service providers, claimants, and insurers to advise and assist the Commission in (i) reviewing, analyzing, and comparing information contained within and reports on all possible databases containing workers compensation or healthcare data for medical services rendered in Virginia, (ii) reviewing, analyzing, and comparing information contained within and reports on how similar databases are used for the establishment of the pecuniary liability of the employer in other states, and (iii) making findings or recommendations as to how the databases reviewed and the contents thereof may serve to enhance or replace Virginia's current mechanisms for establishing the pecuniary liability of the employer. The Workers' Compensation Commission shall report its findings and recommendations to the Chairmen of the House and Senate Commerce and Labor Committees by December 15, 2015.

BILLS PASSING FIRST CHAMBER

The following bills passed the first chamber within the one-week period ending March 20, 2015.

Maryland

SB 465 amends various sections of the Insurance Code of the Annotated Code of Maryland, in part, to:

- Subject the Chesapeake Employers' Insurance Company (Chesapeake) to Title 11 of the Insurance Article, which requires workers compensation insurers in the state to join a rating organization
- Require the rating organization to:
 - Provide annual reports to specified committees of the General Assembly concerning the status of Chesapeake joining the rating organization
 - Create a classification code for governmental occupations that are not already included in police, firefighter, and clerical classifications
- Authorize Chesapeake to own a subsidiary under specified conditions
- Alter the selection process for Chesapeake board members

New Hampshire

SB 45 adds new *section 281-A:23-c Opioid Treatment Agreement* to the New Hampshire Statutes as follows:

281-A:23-c Opioid Treatment Agreement.

I. Benefits under this chapter shall not be paid for the use of opioids for more than 90 days within any 6-month period unless the treating health care provider and patient enter into an opioid treatment agreement. The agreement shall include, but not be limited to:

(a) The medical basis for the use of opioids.

(b) A statement of the risks and potential side effects of long-term use of opioids.

(c) The employee's agreement to seek opioids only from the health care provider with whom the agreement is made and to not share the medication with others.

(d) The name of the single pharmacy at which the prescription will be filled.

(e) The employee's agreement to forego controlled substances not included in the pain management agreement.

(f) Permission for the health care provider to conduct random drug tests to verify the proper use of the prescription.

(g) A statement of the consequences of violating the agreement, including that if the patient breaches the agreement, the physician may stop prescribing the pain-control medicines or terminate the physician-patient relationship.

(h) Any other provisions to which the employee and the health care provider agree.

II. In this section, “opioid” means a medication prescribed by a health care provider for the relief of pain, including but not limited to hydrocodone, oxycodone, morphine, and codeine.

III. The employer or the employer’s insurance carrier shall pay the cost of any drug testing necessary under the provisions of the opioid treatment agreement.

IV. The commissioner shall adopt an opioid treatment agreement form pursuant to RSA 281-A:60, I(a).

New Mexico

SB 233 amends various sections of the New Mexico Statutes Annotated, in part, as follows:

52-1-41. Compensation Benefits—Total Disability.—

A. For total disability, the worker shall receive, during the period of that disability, sixty-six and two-thirds percent of ~~his~~ the worker’s average weekly wage, and not to exceed a maximum compensation of eighty-five percent of the average weekly wage in the state, a week, effective July 1, 1987 through December 31, 1999, and thereafter not to exceed a maximum compensation of one hundred percent of the average weekly wage in the state, a week; and to be not less than a minimum compensation of thirty-six dollars (\$36.00) a week. ~~Except as provided in Subsections B and C of this section, the worker shall receive compensation benefits for the remainder of his life.~~

B. ~~For permanent total disability as set forth in Section 52-1-25 NMSA 1978, the worker shall receive compensation benefits for the remainder of the worker’s life. For temporary disability as set forth in Section 52-1-25.1 NMSA 1978, the maximum period of compensation is subject to the maximum duration and limitation on compensation benefits set forth in Section 52-1-47 NMSA 1978.~~

C. For disability resulting from primary mental impairment, the maximum period of compensation is ~~one hundred weeks~~ the maximum period allowable for a physical injury, as set forth in Sections 52-1-26 and 52-1-42 NMSA 1978, and subject to the maximum duration and limitations on compensation benefits set forth in Section 52-1-47 NMSA 1978. For disability resulting in secondary mental impairment, the maximum period of compensation is the maximum period allowable for the disability produced by the physical impairment, ~~or one hundred weeks, whichever is greater.~~ C. as set forth in Section 52-1-26 or 52-1-43 NMSA 1978 and Section 52-1-42 NMSA 1978, and subject to the maximum duration and limitations on compensation benefits set forth in Section 52-1-47 NMSA 1978.

D. For the purpose of paying compensation benefits for death, pursuant to Section 52-1-46 NMSA 1978, the worker’s maximum disability recovery shall be deemed to be seven hundred weeks.

~~D. E.~~ E. Where the worker’s average weekly wage is less than thirty-six dollars (\$36.00) a week, the compensation to be paid the worker shall be ~~his~~ the worker’s full weekly wage.

~~E. F.~~ F. For the purpose of the Workers’ Compensation Act, the average weekly wage in the state shall be determined by the ~~employment security division of the labor~~ workforce solutions department on or before June 30 of each year and shall be computed from all wages reported to the ~~employment security division~~ workforce solutions department from employing units, including reimbursable employers, in accordance with the ~~regulations rules~~ of the division department for the preceding calendar year, divided by the total number of covered employees divided by fifty-two.

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52-1-42. Compensation Benefits—Permanent Partial Disability—Maximum Duration Of Benefits.—

A. For permanent partial disability, the workers’ compensation benefits not specifically provided for in Section 52-1-43 NMSA 1978 shall be a percentage of the weekly benefit payable for total disability as provided in Section 52-1-41 NMSA 1978. The percentage of permanent partial disability shall be determined pursuant to the provisions of Sections 52-1-26 through 52-1-26.4 NMSA 1978.

The duration of partial disability benefits shall depend upon the extent and nature of the partial disability, subject to the following:

(1) where the worker’s percentage of disability is equal to or greater than eighty, the maximum period is seven hundred weeks;

(2) where the worker’s percentage of disability is less than eighty, the maximum period is five hundred weeks;

(3) where the partial disability results from a primary mental impairment, the maximum period is ~~one hundred weeks~~ the maximum period allowable for a physical injury, as set forth in Section 52-1-26 NMSA 1978, and subject to the maximum duration and limitations on compensation benefits set forth in Section 52-1-47 NMSA 1978; and

(4) where the partial disability results from a secondary mental impairment, the maximum period is the maximum period allowable for the disability produced by the physical impairment, ~~or one hundred weeks, whichever is greater~~ as set forth in Section 52-1-26 or 52-1-43 NMSA 1978, and subject to the maximum duration and limitations on compensation benefits set forth in Section 52-1-47 NMSA 1978.

B. If an injured worker receives temporary ~~total~~ disability benefits prior to an award of permanent partial disability benefits, the maximum period for permanent partial disability benefits shall be reduced by the number of weeks the worker actually receives temporary ~~total~~ disability benefits.

52-1-47. Limitations On Compensation Benefits.—

Subject to the limitation of compensation payable under Subsection G of Section 52-1-46 NMSA 1978 and except for provision of lifetime benefits for permanent total disability awarded pursuant to Section 52-1-41 NMSA 1978:

A. compensation benefits for any combination of disabilities, whether temporary or permanent, or any combination of disabilities

and death shall not be payable for a period in excess of seven hundred weeks;

B. compensation benefits for any combination of disabilities or any combination of disabilities and death shall not exceed an amount equal to seven hundred multiplied by the maximum weekly compensation payable at the time of the accidental injury resulting in the disability or death under Section 52-1-41 NMSA 1978, exclusive of increased compensation that may be awarded under Sections 52-1-10, 52-1-28.1 and 52-1-46 NMSA 1978 and exclusive of any attorney fees awarded under Section 52-1-54 NMSA 1978;

52-3-14. Compensation—Limitations.—

A. The compensation to which ~~an employee~~ a worker who has suffered disablement, or ~~his~~ the worker's dependents, shall be entitled under the New Mexico Occupational Disease Disablement Law is limited to the provisions of that law. No compensation shall be due or payable under the New Mexico Occupational Disease Disablement Law for any disablement ~~which that~~ does not result in either the temporary disablement of the ~~employee~~ worker lasting for more than seven days or in ~~his~~ the worker's permanent disablement as herein described or in death; provided, however, that if the period of temporary disablement of the ~~employee~~ worker lasts for more than four weeks from the date of the disablement, compensation under the New Mexico Occupational Disease Disablement Law shall be payable in addition to the amount hereinafter stated in a like amount for the first seven days after the date of disablement. But for any such disablement for which compensation is payable under the New Mexico Occupational Disease Disablement Law, the employer shall in all proper cases, as herein provided, pay to the disabled ~~employee~~ worker or to some person authorized by the director to receive the same, for the use and benefit of the beneficiaries entitled thereto, compensation at regular intervals of no more than sixteen days apart, in accordance with ~~the following~~ this section, less proper deductions on account of default in failure to give notice of such disablement as required in Section 52-3-19 NMSA 1978.

B. For total disablement, the ~~employee~~ worker shall receive sixty-six and two-thirds percent of ~~his~~ the worker's average weekly wage, not to exceed a maximum compensation of eighty-five percent of the average weekly wage in the state, a week, effective July 1, 1987, continuing through December 31, 1999, and thereafter not to exceed a maximum of one hundred percent of the average weekly wage in the state, a week, but not to be less than a minimum compensation of thirty-six dollars (\$36.00) a week, during the period of such disablement, but in no event to exceed a period of seven hundred weeks; provided, however, that ~~where his~~ when the workers's wages are less than thirty-six dollars (\$36.00) a week, then the compensation to be paid such ~~employee~~ worker shall be the full amount of such weekly wages; provided further that the benefits paid or payable during a ~~employee's~~ worker's entire period of disablement shall be based on and limited to the benefits in effect on the date of the occurrence of the disablement.

C. For partial disablement, the benefits shall be a percentage of the benefits payable for total disablement calculated under Subsection B of this section as that percentage is determined pursuant to the provisions of Section 52-3-4 NMSA 1978. In no event shall the duration of partial benefits extend longer than five hundred weeks.

D. In no event shall the duration of any combination of disablements, whether temporary or partial disablements, and death be payable for a period in excess of seven hundred weeks.

~~D. E.~~ E. For the purpose of the New Mexico Occupational Disease Disablement Law, the average weekly wage in the state shall be determined by the ~~employment security division of the labor~~ workforce solutions department on or before June 30 of each year and shall be computed from all wages reported to the ~~employment security division~~ department from employing units, including reimbursable employers, in accordance with the ~~regulations~~ rules of the ~~employment security division~~ department for the preceding calendar year, divided by the total number of covered employees divided by fifty-two. The first such determination by the employment security division of the average weekly wage in the state shall be made on or before June 30, 1975 from reported wages and covered employees for the calendar year ending December 31, 1974.

~~E. F.~~ F. The average weekly wage in the state, determined as provided in Subsection ~~D E~~ E of this section, shall be applicable for the full period during which compensation is payable when the date of the occurrence of the disablement falls within the calendar year commencing January 1 following the June 30 determination.

~~F. G.~~ G. Unless the computation provided for in Subsection ~~D E~~ E of this section results in an increase or decrease of two dollars (\$2.00) or more, raised to the next whole dollar, the statewide average weekly wage determination shall not be changed for any calendar year.

~~G. H.~~ H. In case death proximately results from the disablement within the period of two years, compensation benefits to be paid such ~~employee~~ worker shall be in the amounts and to the persons as follows:

(1) if there are no dependents, the compensation shall be limited to the funeral expenses not to exceed seven thousand five hundred dollars (\$7,500) and the expenses provided for medical and hospital services for the deceased, together with such other sums as the deceased may have been paid for disablement; or

(2) if there are dependents at the time of death, the payment shall consist of a sum not to exceed seven thousand five hundred dollars (\$7,500) for funeral expenses and expenses provided for medical and hospital services for the deceased, together with such other sums as the deceased may have been paid for disability, and a percentage specified in this paragraph for average weekly wages subject to the limitations of the New Mexico Occupational Disease Disablement Law to continue for the period of seven hundred weeks from the date of death of such ~~employee~~ worker; provided that the total death compensation, unless otherwise specified, payable in any of the cases mentioned in this section shall not be less than the minimum weekly compensation provided in Subsection B of this section or more than the maximum weekly compensation provided in Subsection B of this section and shall be based on and limited to the benefits in effect on the date of the occurrence of the disablement. If there are dependents entitled thereto, compensation shall be paid to the dependents or to the person authorized by the director or the court to receive the same for the benefit of the dependents in such portions and amounts as the director or the court, bearing in mind the necessities of the case and the

best interests of the dependents and of the public, may determine, to be computed on the following basis and distributed to the following persons:

- (a) to the child or children, if there is no widow or widower entitled to compensation, sixty-six and two-thirds percent of the average weekly wage of the deceased;
- (b) to the widow or widower, if there are no children, sixty-six and two-thirds percent of the average weekly wage of the deceased, until remarriage;
- (c) to the widow or widower, if there is a child or children living with the widow or widower, forty-five percent of the ~~average weekly wage~~ compensation rate, as provided in Subsection B of this section, of the deceased, or forty percent, if such child is not or all such children are not living with a widow or widower, and in addition thereto, compensation benefits for the child or children, which shall make the total benefits for the widow or widower and child or children sixty-six and two-thirds percent of the average weekly wage of the deceased. When there are two or more children, the compensation benefits payable on account of such children shall be divided among such children, share and share alike;
- (d) two years' compensation benefits in one lump sum shall be payable to a widow or widower upon remarriage; however, the total benefits shall not exceed the maximum compensation benefits as provided in Paragraph (2) of this subsection;
- (e) if there is neither widow, widower nor children, then to the father and mother or the survivor of them if dependent to any extent upon the ~~employee~~ worker for support at the time of ~~his~~ the worker's death, twenty-five percent of the average weekly wage of the deceased; provided that if such father and mother, or the survivor of them, was totally dependent upon such ~~employee~~ worker for support at the time of ~~his~~ the worker's death, ~~he or~~ they shall be entitled to fifty percent of the average weekly wage of the deceased, subject to the maximum weekly compensation provided for in Subsection B of this section;
- (f) no disablement benefits payable by reason of ~~an employee's~~ a worker's death shall exceed the maximum weekly compensation provided for in Subsection B of this section, and no dependent or any class thereof other than a widow or widower or children shall in any event be paid total benefits in excess of seven thousand five hundred dollars (\$7,500) exclusive of funeral expenses and the expenses provided for medical and hospital services for the deceased paid for by the employer. If there is neither widow, widower nor children nor dependent parent, then to the brothers and sisters, if actually dependent to any extent upon the deceased for support at the time of ~~his~~ the deceased's death, thirty-five percent of the average weekly wage of the deceased, with fifteen percent additional for brothers or sisters in excess of two, with a maximum of sixty-six and two-thirds percent to be paid to their guardian; provided that the maximum compensation to partial dependents shall not exceed the respective amounts therefor contributed by the deceased employee or the maximum weekly compensation provided for in Subsection B of this section; and

...

Oregon

HB 2644 allows claims for wrongful death against the state that are typically barred by ORS 30.265(6)(a) in a narrow set of circumstances. The claim for wrongful death is only allowable against the state and not against local public bodies. The death must have occurred in the scope and course of the decedent's employment, it must have occurred as a result of the conduct of another person who is subsequently convicted of murder or found guilty except for insanity of murder, and the decedent was not employed by a public body at the time of death. The measure would only apply to wrongful death claims based on a crime of murder committed on or after May 1, 2012 and is repealed on January 2, 2017. If the measure revives a claim that was barred under ORS 30.265(6)(a) before the effective date of HB 2644, the claimant must begin the action within one year after the effective date of HB 2644.

Tennessee

SB 80 amends *Title 56* of the Tennessee Code Annotated, relative to captive insurance companies, in part, to authorize the Commissioner of Commerce and Insurance to:

- Approve a rating service plan submitted by a licensed captive insurance company for the purpose of providing workers compensation coverage
- Waive certain self-insurance requirements of captives offering workers compensation coverage

Contact Information

If you have any questions about the legislation or proposals mentioned, please contact the appropriate NCCI state relations executive (listed below) or a representative of your local insurance trade association.

State	State Relations Executive	Phone Number
CT, ME, NH, RI, VT	Laura Backus Hall	802-454-1800
FL, IA	Chris Bailey	850-322-4047
AL, GA, KY, LA, MS	Cathy Booth	205-655-2699
AZ, CO, NM, NV, UT	Maggie Karpuk	818-707-8374
DC, MD, VA, WV	David Benedict	804-380-3005
AK, HI	Carolyn Pearl	808-524-6239
IN, NC, SC, TN	Amy Quinn	803-356-0851
AR, IL, KS, TX	Terri Robinson	501-333-2835

ID, MT, OR	Mike Taylor	503-892-1858
MO, NE, OK, SD	Carla Townsend	314-843-4001
Federal Issues	Tim Tucker	202-403-8526

This report is informational and is not intended to provide an interpretation of state and federal legislation.