



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

The following bill was enacted within the one-week period ending June 26, 2015.

Oregon

HB 2764 was:

- Passed by the first chamber on May 5, 2015
- Included in NCCI's May 15, 2015 *Legislative Activity Report* (RLA-2015-19)
- Amended and passed by the second chamber on June 8, 2015
- Included in NCCI's June 19, 2015 *Legislative Activity Report* (RLA-2015-24)
- Enacted on June 22, 2015, with an effective date of January 1, 2016

HB 2764 amends various sections of the Oregon Revised Statutes related to workers compensation attorney fees, as follows:

Section 1.

656.012 Findings and policy.

...

(2) In consequence of these findings, the objectives of the Workers' Compensation Law are declared to be as follows:

...

(b) To provide a fair and just administrative system for delivery of medical and financial benefits to injured workers that reduces litigation and eliminates the adversary nature of the compensation proceedings, to the greatest extent practicable, while providing for access to adequate representation for injured workers;

...

Section 2.

656.262 Processing of claims and payment of compensation; payment by employer; acceptance and denial of claim; penalties and attorney fees; cooperation by worker and attorney in claim investigation; rules.

...

(11)(a) If the insurer or self-insured employer unreasonably delays or unreasonably refuses to pay compensation, attorney fees or costs, or unreasonably delays acceptance or denial of a claim, the insurer or self-insured employer shall be liable for an additional amount up to 25 percent of the amounts then due plus any attorney fees assessed under this section. The fees assessed by the director, an Administrative Law Judge, the board or the court under this section shall be ~~proportionate to the benefit to the injured worker~~ reasonable attorney fees. In assessing fees, the director, an Administrative Law Judge, the board or the court shall consider the proportionate benefit to the injured worker. The board shall adopt rules for establishing the amount of the attorney fee, giving primary consideration to the results achieved and to the time devoted to the case. An attorney fee awarded pursuant to this subsection may not exceed ~~\$3,000~~ \$4,000 absent a showing of extraordinary circumstances. The maximum attorney fee awarded under this paragraph shall be adjusted annually on July 1 by the same percentage increase as made to the average weekly wage defined in ORS 656.211, if any. Notwithstanding any other provision of this chapter, the director shall have exclusive jurisdiction over proceedings regarding solely the assessment and payment of the additional amount and attorney fees described in this subsection. The action of

the director and the review of the action taken by the director shall be subject to review under ORS 656.704.

...

(14)(a) Injured workers have the duty to cooperate and assist the insurer or self-insured employer in the investigation of claims for compensation. Injured workers shall submit to and shall fully cooperate with personal and telephonic interviews and other formal or informal information gathering techniques. Injured workers who are represented by an attorney shall have the right to have the attorney present during any personal or telephonic interview or deposition. If the injured worker is represented by an attorney, the insurer or self-insured employer shall pay the attorney a reasonable attorney fee based upon an hourly rate for actual time spent during the personal or telephonic interview or deposition. After consultation with the Board of Governors of the Oregon State Bar, the Workers' Compensation Board shall adopt rules for the establishment, assessment and enforcement of an hourly attorney fee rate specified in this subsection.

(b) ~~However,~~ If the attorney is not willing or available to participate in an interview at a time reasonably chosen by the insurer or self-insured employer within 14 days of the request for interview and the insurer or self-insured employer has cause to believe that the attorney's unwillingness or unavailability is unreasonable and is preventing the worker from complying within 14 days of the request for interview, the insurer or self-insured employer shall notify the director. If the director determines that the attorney's unwillingness or unavailability is unreasonable, the director shall assess a civil penalty against the attorney of not more than \$1,000.

...

Section 3.

656.277 Request for reclassification of nondisabling claim; nondisabling claim procedure.

(1)(a) A request for reclassification by the worker of an accepted nondisabling injury that the worker believes was or has become disabling must be submitted to the insurer or self-insured employer. The insurer or self-insured employer shall classify the claim as disabling or nondisabling within 14 days of the request. A notice of such classification shall be mailed to the worker and the worker's attorney if the worker is represented. The worker may ask the Director of the Department of Consumer and Business Services to review the classification by the insurer or self-insured employer by submitting a request for review within 60 days of the mailing of the classification notice by the insurer or self-insured employer. If any party objects to the classification of the director, the party may request a hearing under ORS 656.283 within 30 days from the date of the director's order.

(b) If the worker is represented by an attorney and the attorney is instrumental in obtaining an order from the director that reclassifies the claim from nondisabling to disabling, the director may award the attorney a reasonable assessed attorney fee.

...

Section 4.

656.313 Stay of compensation pending request for hearing or review; procedure for denial of claim for medical services; reimbursement.

...

(1)(b) If ultimately found payable under a final order, benefits withheld under this subsection, and attorney fees and costs, shall accrue interest at the rate provided in ORS 82.010 from the date of the order appealed from through the date of payment. The board shall expedite review of appeals in which payment of compensation has been stayed under this section.

...

Section 5.

656.382 Penalties and attorney fees payable by insurer or employer in processing claim.

(1) If an insurer or self-insured employer refuses to pay compensation, costs or attorney fees due under an order of an Administrative Law Judge, the board or the court, or otherwise unreasonably resists the payment of compensation, costs or attorney fees, except as provided in ORS 656.385, the employer or insurer shall pay to the attorney of the claimant a reasonable attorney fee as provided in subsection (2) of this section. To the extent an employer has caused the insurer to be charged such fees, such employer may be charged with those fees.

(2) If a request for hearing, request for review, appeal or cross-appeal to the Court of Appeals or petition for review to the Supreme Court is initiated by an employer or insurer, and the Administrative Law Judge, board or court finds that all or part of the compensation awarded to a claimant should not be disallowed or reduced, or, through the assistance of an attorney, that an order rescinding a notice of closure should not be reversed or all or part of the compensation awarded by a reconsideration order issued under ORS 656.268 should not be reduced or disallowed, the employer or insurer shall be required to pay to the attorney of the claimant a reasonable attorney fee in an amount set by the Administrative Law Judge, board or ~~the~~ court for legal representation by an attorney for the claimant at and prior to the hearing, review on appeal or cross-appeal.

(3) If an employer or insurer raises attorney fees, penalties or costs as a separate issue in a request for hearing, request for review, appeal or cross-appeal to the Court of Appeals or petition for review to the Supreme Court initiated by the employer or insurer under this section, and the Administrative Law Judge, board or court finds that the attorney fees, penalties or costs awarded to the claimant should not be disallowed or reduced, the Administrative Law Judge, board or court shall award reasonable additional attorney fees to the attorney for the claimant for efforts in defending the fee, penalty or costs.

(4) If an employer or insurer initiates an appeal to the board or Court of Appeals and the matter is briefed, but the employer or insurer withdraws the appeal prior to a decision by the board or court, resulting in the claimant's prevailing in the matter, the claimant's attorney is entitled to a reasonable attorney fee for efforts in briefing the matter to the board or court.

~~(3)~~ (5) If upon reaching a decision on a request for hearing initiated by an employer it is found by the Administrative Law Judge that the employer initiated the hearing for the purpose of delay or other vexatious reason or without reasonable ground, the Administrative Law Judge may order the employer to pay to the claimant such penalty not exceeding \$750 and not less than \$100 as may be reasonable in the circumstances.

Section 6.

656.385 Attorney fees in cases regarding certain medical service or vocational rehabilitation matters; rules; limitation; penalties.

(1) In all cases involving a dispute over compensation benefits pursuant to ORS 656.245, 656.247, 656.260, 656.327 or 656.340, where a claimant finally prevails after a proceeding has commenced, the Director of the Department of Consumer and Business Services, ~~or the Administrative Law Judge or the court~~ shall require the insurer or self-insured employer to pay a reasonable attorney fee to the claimant's attorney. In such cases, where an attorney is instrumental in obtaining a settlement of the dispute prior to a decision by the director, ~~or an Administrative Law Judge or the court~~, the director, ~~or Administrative Law Judge or court~~ shall require the insurer or self-insured employer to pay a reasonable attorney fee to the claimant's attorney. The attorney fee must be based on all work the claimant's attorney has done relative to the proceeding at all levels before the department ~~or court~~. The attorney fee assessed under this section must be proportionate to the benefit to the injured worker. The director shall adopt rules for establishing the amount of the attorney fee, giving primary consideration to the results achieved and to the time devoted to the case. An attorney fee awarded pursuant to this subsection may not exceed ~~\$3,000~~ \$4,000 absent a showing of extraordinary circumstances. The maximum attorney fee awarded under this subsection shall be adjusted annually on July 1 by the same percentage increase as made to the average weekly wage defined in ORS 656.211, if any.

(2) If an insurer or self-insured employer refuses to pay compensation due under, or attorney fees related to, ORS 656.245, 656.247, 656.260, 656.327 or 656.340 pursuant to an order of the director, an Administrative Law Judge or the court or otherwise unreasonably resists the payment of such compensation or attorney fees, the insurer or self-insured employer shall pay to the attorney of the claimant a reasonable attorney fee as provided in subsection (3) of this section. To the extent an employer has caused the insurer to be charged such fees, such employer may be charged with those fees.

(3) If a request for a contested case hearing, review on appeal or cross-appeal to the Court of Appeals or petition for review to the Supreme Court is initiated by an insurer or self-insured employer, and the director, Administrative Law Judge or court finds that all or part of the compensation awarded under ORS 656.245, 656.247, 656.260, 656.327 or 656.340 to a claimant, or attorney fees under this section, should not be disallowed or reduced, the insurer or self-insured employer shall be required to pay to the attorney of the claimant a reasonable attorney fee in an amount set by the director, ~~the~~ Administrative Law Judge or ~~the~~ court for legal representation by an attorney for the claimant at the contested case hearing, review on appeal or cross-appeal.

(4) If upon reaching a final contested case decision where such contested case was initiated by an insurer or self-insured employer it is found that the insurer or self-insured employer initiated the contested case hearing for the purpose of delay or other vexatious reason or without reasonable ground, the director, ~~or~~ Administrative Law Judge or court may order the insurer or self-insured employer to pay to the claimant such penalty not exceeding \$750 and not less than \$100 as may be reasonable in the circumstances.

...

Section 7.

656.386 Recovery of attorney fees, expenses and costs in appeal on denied claim; attorney fees in other cases.

...

(3) If a claimant requests claim reclassification as provided in ORS 656.277 and the insurer or self-insured employer does not respond within 14 days of the request, or if the claimant, insurer or self-insured employer requests a hearing, review, appeal or cross-appeal to the Court of Appeals or petition for review to the Supreme Court and the Director of the Department of Consumer and Business Services, Administrative Law Judge, board or ~~the~~ court finally determines that the claim should be classified as disabling, the director, Administrative Law Judge, board or ~~the~~ court may assess a reasonable attorney fee.

(4) In disputes involving a claim for costs, if the claimant prevails on the claim for any increase of costs, the Administrative Law Judge, board, Court of Appeals or Supreme Court shall award a reasonable assessed attorney fee to the claimant's attorney.

~~(4)~~ (5) In all other cases, attorney fees shall be paid from the increase in the claimant's compensation, if any, except as otherwise expressly provided in this chapter.

Section 8.

656.388 Approval of attorney fees required; lien for fees; fee schedule; report of legal service costs.

(1) No claim or payment for legal services by an attorney representing the worker or for any other services rendered before an Administrative Law Judge or the Workers' Compensation Board, as the case may be, in respect to any claim or award for compensation to or on account of any person, shall be valid unless approved by the Administrative Law Judge or board, or if proceedings on appeal from the order of the board with respect to such claim or award are had before any court, unless approved by such court. In cases in which a claimant finally prevails after remand from the Supreme Court, Court of Appeals or board, then the Administrative Law Judge, board or appellate court shall approve or allow a reasonable attorney fee for services before every prior forum as authorized under ORS 656.307 (5), 656.308 (2), 656.382 or 656.386. No attorney fees shall be approved or allowed for representation of the claimant before the managed care organization ~~or Director of the Department of Consumer and Business Services except for representation at the contested case hearing.~~

...

(4) The board shall, after consultation with the Board of Governors of the Oregon State Bar, establish a schedule of fees for attorneys representing a worker and representing an insurer or self-insured employer, under this chapter. The Workers' Compensation Board shall review all attorney fee schedules biennially for adjustment.

(5) The board shall, in establishing the schedule of attorney fees awarded under this chapter, consider the contingent nature of the practice of workers' compensation law and the necessity of allowing the broadest access to attorneys by injured workers and shall give consideration to fees earned by attorneys for insurers and self-insured employers.

~~(5)~~ (6) The board shall approve no claim for legal services by an attorney representing a claimant to be paid by the claimant if fees have been awarded to the claimant or the attorney of the claimant in connection with the same proceeding under ORS 656.268.

~~(6)~~ (7) Insurers and self-insured employers shall make an annual report to the Director of the Department of Consumer and Business Services reporting attorney salaries and other costs of legal services incurred pursuant to this chapter. The report shall be in such form and shall contain such information as the director prescribes.

HB 2764 also includes the following clauses:

Section 9. Section 10 of this 2015 Act is added to and made a part of ORS chapter 656.

Section 10. The claimant's attorney shall be allowed a reasonable assessed attorney fee if:

(1) The claimant's attorney is instrumental in obtaining temporary disability compensation benefits pursuant to ORS 656.210, 656.212, 656.262, 656.268 or 656.325 prior to a decision by an Administrative Law Judge; or

(2) The claimant finally prevails in a dispute over temporary disability compensation benefits pursuant to ORS 656.210, 656.212, 656.262, 656.268 or 656.325 after a request for hearing has been filed.

Section 11. Section 10 of this 2015 Act and the amendments to ORS 656.012, 656.262, 656.277, 656.313, 656.382, 656.385, 656.386 and 656.388 by sections 1 to 8 of this 2015 Act apply to orders issued and attorney fees incurred on or after the effective date of this 2015 Act, regardless of the date on which the claim was filed.

BILLS PASSING SECOND CHAMBER

There were no bills that passed the second chamber within the one-week period ending June 26, 2015.

BILLS PASSING FIRST CHAMBER

There were no bills that passed the first chamber within the one-week period ending June 26, 2015.

The following section contains monthly updates on significant legislative activity, judicial decisions, and regulatory committee activity that may impact the workers compensation system and will be included in the report the first week of every month throughout the year.

FEDERAL ISSUES

Issue	Update
Congress	When Congress returns from the Fourth of July holiday, it is expected to focus on several critical issues including international trade, cyber security, and highway infrastructure funding.
TRIPRA Implementation	<p>Efforts are well underway to implement a key provision of the Terrorism Risk Insurance Program Reauthorization Act (TRIPRA) of 2015. <i>Section 111, Reporting of Terrorism Insurance Data</i>, requires the US Department of the Treasury (Treasury) to begin collecting terrorism insurance information on January 1, 2016. This information will be used by the Treasury to provide an initial report to Congress on the impact of TRIPRA on covered insurance lines by June 30, 2016, and to submit annual reports thereafter.</p> <p>Key stakeholders, including the insurance industry, the National Association of Insurance Commissioners, and the Federal Insurance Office, have discussed <i>Section 111</i> data reporting requirements. The expectation is that a mechanism will be designed to create a method that is workable and not burdensome. The advance coordination provision of <i>Section 111</i> requires the Treasury to seek required information from state regulatory authorities, other government agencies, or publically available sources, prior to requesting information directly from insurance carriers.</p>
Medicare Set-Aside (MSA)	<p>Legislation has been introduced in both chambers of Congress that would bring about long sought-after reforms to the Medicare Set-Aside (MSA) process. In the House, HR 2649 was introduced by Rep. Dave Reichert (R-WA). In the Senate, SB 1514 was introduced by Sen. Rob Portman (R-OH). The bills have bipartisan support in both chambers.</p> <p>Key provisions of the MSA reform legislation include:</p> <ul style="list-style-type: none">• Permitting injured workers who receive settlements to remit MSA directly to the Centers for Medicare & Medicaid Services (CMS) rather than self-administer• Creating both a time frame (60 days) for the CMS to make MSA determinations and an appeal process

Issue	Update
	<ul style="list-style-type: none"> Requiring the CMS to apply workers compensation laws in determining future medical amounts to be included in MSAs Setting a statutory threshold in cases of total settlements of \$25,000 or less and exempting future medical amounts in lower dollar cases <p>These MSA bills are substantially similar to those introduced in the past that were determined to generate a modest savings to the CMS (\$150 million over 10 years).</p> <p>MSA reform legislation has been introduced in the last several Congresses and has broad support of many workers compensation stakeholder groups. Legislation similar to the current bills has come close to enactment several times in the last year. It is anticipated that Congress will take up this new legislation along with several other Medicare-related bills in the coming months.</p>
Social Security Disability Insurance Reform	<p>The House Ways and Means Subcommittee on Social Security recently held a hearing on administrative issues related to the Social Security Disability Insurance (SSDI) Trust Fund. The focus of that hearing was to highlight several administrative challenges related to the program. Absent Congressional action, the SSDI Trust Fund will become insolvent in 2016.</p> <p>The Administration has proposed allowing a portion of tax receipts from the Old Age and Survivors Insurance (commonly referred to as OASI or Social Security) fund be transferred to the SSDI Trust Fund. It is anticipated that this approach would allow for the solvency of both trust funds for more than a decade. However, some in Congress have raised concerns. If Congress cannot reach agreement on a permanent solution to SSDI solvency, it is possible that a short-term fix will be enacted.</p> <p>In addition, there does not appear to be any momentum to remove the grandfathered status of states that still have a reverse workers compensation offset as part of the SSDI reforms.</p>

STATE LEGISLATIVE ACTIVITY

State	Update
New Hampshire	HB 330 establishes an oversight commission for medical cost transparency to monitor and provide assistance in further developing the state's HealthCost Internet website. The bill was amended by adding two workers compensation stakeholder representatives to the commission. It is currently awaiting signature by the governor.
Texas	Governor Greg Abbott has vetoed HB 2466 , a bill creating a safety reimbursement program to be run by the state. In his veto message, the governor said that the measure created an unnecessary expansion of government.

STATE COMMITTEE ACTIVITY

State	Update
Maine	The Workers Compensation Board has proposed a revision to its medical fee schedule in accordance with a recent statutory review. Most of the changes are to Chapter 5 of the workers compensation rules dealing with payment of services. A public hearing was held June 29, with written comments due by July 9.

OTHER ITEMS OF INTEREST

State	Update
Florida	On June 24, 2015, Florida's Third District Court of Appeal (3rd DCA) reversed a trial court's order, issued last summer, that declared Florida's workers compensation law unconstitutional. In the case commonly referred to as <i>Padgett</i> , the 3rd DCA held that due to mootness and lack of standing, the trial court's ruling must be reversed. The court did not address the constitutionality of Florida's workers compensation system.
Virginia	HB 1820 asks the Workers' Compensation Commission to convene a working group to study all possible databases that contain workers compensation or healthcare data. The purpose is to provide findings on how that information may be used to establish fees in Virginia. The Stakeholder Work Group meeting was held on July 1, 2015.

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
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Federal Issues	Tim Tucker	202-403-8526

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