



Legislative Activity Report

National Council on Compensation Insurance

The nation's most experienced provider of workers compensation information, tools, and services

Regulatory Services

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Report Contact: Legislative_Activity@ncci.com

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 relevant workers compensation-related bills enacted within the one-week period ending September 25, 2015.

BILLS PASSING SECOND CHAMBER

The following bill passed the second chamber within the one-week period ending September 25, 2015.

District of Columbia*

DC B21-0030 amends the District of Columbia Government Comprehensive Merit Personnel Act of 1978 to require that Public Workers' Compensation Program participants receive an increase in compensation whenever District workers receive an increase in compensation.

* District of Columbia bills only need to pass one chamber (the Council) before going to the mayor for signature.

Also note that **B21-0030** was not included in any previous version of NCCI's *Legislative Activity Report*.

BILLS PASSING FIRST CHAMBER

There were no relevant workers compensation-related bills that passed the first chamber within the one-week period ending September 25, 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	With a federal government shutdown averted by the enactment of a 10-week Continuing Resolution, congressional attention now turns to other pressing issues. Long-term transportation funding and national security issues will receive significant attention for the balance of this year.
TRIPRA of 2015 Implementation	Key stakeholders including NCCI, the insurance trade associations, and individual carriers continue to work on implementation of the data reporting requirement* of the Terrorism Risk Insurance Program Reauthorization Act (TRIPRA) of 2015. The National Association of Insurance Commissioners (NAIC) initially proposed capturing terrorism insurance data through a supplement to the Annual Statement Blank. However, the stakeholders suggested an alternative approach in the form of a data call template that could hopefully capture the information the Department of the Treasury is required to collect under Section 111 of TRIPRA of 2015. The NAIC decided at its summer meeting that it would delay adoption of the Annual Statement Blank

Issue	Update
	<p>Supplement for Terrorism Insurance and work to develop the data call template for the states. NCCI and other stakeholders are working with the NAIC and Federal Insurance Office to develop a data reporting mechanism that meets both organizations' objectives.</p> <p><i>*Section 111 of TRIPRA requires the Treasury to begin collecting information on terrorism risk insurance beginning in January 2016. This information will be used in the drafting of a report to Congress by June 30, 2016 (and annually thereafter), regarding the impact of TRIPRA on terrorism insurance markets. Prior to requesting information from individual carriers, the Treasury must first endeavor to obtain the information from state insurance regulators or through other publicly available sources.</i></p>
Social Security Disability Insurance (SSDI) Reform	<p>The House of Representatives Committee on Ways and Means held a hearing about the pending insolvency of the Social Security Disability Insurance (SSDI) Trust Fund. Without congressional action, the Trust Fund will become insolvent in 2016. The public policy debate around the future of the SSDI program has included assertions by some academics that a driver of increased SSDI beneficiaries and related costs is a shift from the state-based workers compensation system to the program. Those assertions have not been supported by empirical data. Nonetheless, it is likely that issues regarding the state-based workers compensation program will arise as Congress searches for public policy solutions to SSDI's pending insolvency.</p>

STATE LEGISLATIVE ACTIVITY

State	Update
New Hampshire	<p>The House Labor Committee met on September 24 for a work session on three bills that were retained in committee during the 2015 session:</p> <ul style="list-style-type: none"> • HB 465 amends the definition of domestic labor for the purpose of workers compensation coverage. • HB 477 changes the weekly compensation for temporary total disability, permanent total disability, temporary partial disability, and permanent partial disability from 60% to 66 2/3%. The bill also requires the labor commissioner to establish medical payment schedules based on 150% of the Medicare reimbursement rate. <i>NCCI estimates that the impact of the measure on overall workers compensation system costs would be a decrease of -10.0%.</i> • SB 203 allows the Commissioner of Labor to review eligibility for workers compensation benefits not later than the fourth anniversary of the last date of medical treatment for an injury. <i>NCCI estimates that system costs may increase by an unknown amount due to additional indemnity benefits awarded through petitions requested beyond the current four-year limit.</i> <p>The Senate met on September 29 for an executive session on rereferred bills during the 2015 session, including SB 3. This bill requires the insurance department to set rates for payment for medical services necessary for the treatment of injured workers under workers compensation.</p>

OTHER ITEMS OF INTEREST

State	Update
Alaska	<p>The proposed Medical Fee Schedule developed by the Medical Services Review Committee in compliance with 2014's HB 316 (and 2015's HB 178) has recently been amended. A hearing on the revised proposal is scheduled for October 29, with an October 23 deadline for submitting written comment. <i>NCCI is currently evaluating the system cost impact of the amended proposal.</i></p>
Florida	<p>On August 26, the Florida Division of Workers' Compensation (DWC) held a public meeting to solicit input from stakeholders regarding the Uniform Permanent Impairment Rating Schedule, treatment guidelines, and the DWC's role in overutilization.</p>
Missouri	<p>On September 17, Director John Huff of the Department of Insurance, Financial Institutions & Professional Registration issued a bulletin requiring disclosure of policy and policy holder details in the event that a deductible in the amount of \$100,000 or more is a policy provision.</p>
Nevada	<p>The Nevada Division of Industrial Relations will hold a hearing on October 6 about proposed changes to the Medical Fee Schedule. Proposed changes include, but are not limited to:</p> <ul style="list-style-type: none"> • Increasing existing payments for hospitals by an average of 57.1%. • Adding new payment categories for observational care and ICU "step-down units." • Changing reimbursement for supplies used by hospital emergency departments to provider's cost, excluding tax and shipping, plus 20%. • Requiring a carrier to reimburse pharmaceuticals at the average wholesale price or the provider's usual and customary price, whichever is less.

State	Update
	<ul style="list-style-type: none"> • Increasing reimbursement rates for ambulatory surgical centers by an average of 28.5%. • Adding new codes for independent medical evaluation reimbursement that would pay \$500 for a review of records of up to 50 pages, testing, evaluation of up to two body parts, and report writing. Each additional 100 pages of records reviewed would be reimbursed at \$250. • Authorizing additional reimbursement of \$100 for evaluation of each additional body part. • Authorizing payment of \$42.50 for organizing medical records in chronological order. • Establishing a no-show reimbursement rate of \$252.02 if the worker skips a scheduled appointment. • Creating a fee schedule for dental reimbursement.
Oklahoma	<p>In <i>Gibby v. Hobby Lobby Stores</i>, a case pending before the Oklahoma Supreme Court, the petitioner argues that the section of the workers compensation law that renders an injured worker ineligible for benefits if the worker misses more than one medical appointment (Section 85A-57) violates principles of equal protection, since a worker with one missed medical appointment is treated differently than a worker with the exact same injury who misses two or more medical appointments. The state’s attorney general has responded that the statute is a practical solution for getting workers to their appointments, which furthers the state’s interest in getting them the treatment they need as soon as possible.</p> <p>In <i>Damien Smith v. Baze Corp. Investments</i>, a case pending before the Oklahoma Supreme Court where oral arguments were heard on September 30, the claimant is challenging the constitutionality of the Oklahoma Administrative Workers’ Compensation Act (AWCA) requirements mandating physician usage of the current edition of the <i>American Medical Association’s Guides to the Evaluation of Permanent Impairment (AMA Guides)</i> to evaluate an injured worker’s permanent disability. In response, the state of Oklahoma argues, in part, that the <i>AMA Guides</i> mandate is constitutional in that it is merely an evidentiary rule within the Oklahoma legislature’s authority to pass. Smith also alleges that the AWCA requirement that permanent partial disability (PPD) benefits be deferred is unconstitutional and further asserts that the numerous benefits of the AWCA are so inadequate that they render the exclusive remedy provision of the AWCA dead.</p>
Oregon	<p>Governor Kate Brown signed into law HB 2764 allowing claimant attorneys to be awarded reasonable fees for successfully arguing that a carrier unreasonably delayed or denied care, and for obtaining an order to reclassify a claim as disabling.</p> <p>The bill also allows interest to accrue on attorney fees and costs in certain instances. The measure further requires employers to pay claimants’ attorneys a reasonable hourly fee for actual time spent attending injured workers’ depositions.</p> <p>The advisory committee has tendered a recommendation of an hourly fee of \$275 for attorneys who attend depositions. The committee’s report noted that two appellate court cases support an hourly fee of \$410. But defense attorneys noted that they were paid \$175 or less for representing employers and carriers.</p> <p>The Workers’ Compensation Board reviewed the advisory committee recommendations during a public meeting on September 29.</p>
Tennessee	<p>The Tennessee Bureau of Workers’ Compensation is hosting a forum, <i>The Future of Workers’ Compensation in Tennessee: The Road to Better Outcomes</i>, on October 8.</p>
Texas	<p>The staff of the Texas Department of Insurance (TDI) filed Petition No. W-0915-04-I on August 25. The petition requests that the commissioner repeal the rules, factors, values, endorsements, and forms in the <i>Texas Retrospective Rating Plan Manual</i> for new and renewal workers compensation policies written on a retrospectively rated basis with effective dates on and after 12:01 a.m., January 1, 2017. NCCI’s <i>Retrospective Rating Plan Manual for Workers Compensation and Employers Liability Insurance</i> will remain available for insurers who choose to adopt it. Alternatively, insurers may file their own retrospective rating plan with the TDI. A hearing is scheduled for 9:30 a.m. on October 22 to take action on the petition.</p>
Virginia	<p>The HB 1820 Stakeholder Work Group met on September 18 in Richmond. During the meeting, representatives from medical providers and employers presented proposals suggesting potential fee schedule structures. Medical providers proposed using healthcare data, and employers proposed a Medicare-based system. The next meeting is scheduled for October 14.</p> <p>The Virginia Workers’ Compensation Commission proposes to repeal and reenact Commission Rule 14. This is in accordance with the provisions of HB 1820, signed into law on March 23. The proposal consists of the establishment of a new definition of “community” for the purposes of determining “prevailing community” rates. Twenty-eight geographic areas are grouped by three-digit zip codes into five communities. Currently, there are 19 districts divided into 15 communities. A public hearing is scheduled for October 15.</p>

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.