



# 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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RLA-2015-37

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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 October 23, 2015.

#### North Carolina

**HB 765** was:

- Passed by the first chamber on April 23, 2015
- Passed by the second chamber on July 2, 2015
- Included in NCCI's July 10, 2015 *Legislative Activity Report* (RLA-2015-27)
- Enacted on October 22, 2015, with an effective date of October 22, 2015, for the amendments listed below

**HB 765**, in part, amends *section 97-2 Definitions*. of the North Carolina General Statutes as follows:

#### § 97-2. Definitions.

When used in this Article, unless the context otherwise requires:

...

(2) Employee. –

...

~~Every~~ Except as otherwise provided herein, every executive officer elected or appointed and empowered in accordance with the charter and bylaws of a corporation shall be considered as an employee of such corporation under this Article.

...

“Employee” shall not include any person elected or appointed and empowered as an executive officer, director, or committee member under the charter, articles, or bylaws of a nonprofit corporation subject to Chapter 47A, 47C, 47F, 55A, or 59B of the General Statutes, or any organization exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code, who performs only voluntary service for the nonprofit corporation, provided that the person receives no remuneration for the voluntary service other than reasonable reimbursement for expenses incurred in connection with the voluntary service. When a nonprofit corporation as described herein employs one or more persons who do receive remuneration other than reasonable reimbursement for expenses, then any volunteer officers, directors, or committee members excluded from the definition of “employee” by operation of this paragraph shall be counted as employees for the sole purpose of determining the number of persons regularly employed in the same business or establishment pursuant to G.S. 97-2(1). Other than for the limited purpose of determining the number of persons regularly employed in the same business or establishment, such volunteer nonprofit officers, directors, or committee members shall not be “employees” under the Act. Nothing herein shall prohibit a nonprofit corporation as described herein from voluntarily electing to provide for workers’ compensation benefits in the manner provided in G.S. 97-93 for volunteer officers, directors, or committee members excluded from the definition of “employee” by operation of this paragraph. This paragraph shall not apply to any volunteer firefighter, volunteer member of an organized rescue squad, an authorized pickup firefighter when that individual is engaged in emergency fire suppression activities for the North Carolina Forest Service, a duly appointed and sworn member of an auxiliary police department organized pursuant to G.S. 160A-282, or a senior member of the State Civil Air Patrol functioning under Subpart C of Part 5 of Article 13 of Chapter 143B of the General Statutes, even if such person is elected or appointed and empowered as an executive officer, director, or committee member under the charter, articles, or bylaws of a nonprofit corporation

as described herein.

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## BILLS PASSING SECOND CHAMBER

There were no relevant workers compensation-related bills that passed the second chamber within the one-week period ending October 23, 2015.

## BILLS PASSING FIRST CHAMBER

There were no relevant workers compensation-related bills that passed the first chamber within the one-week period ending October 23, 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
<b>Congress</b>	<p>Congress addressed many of the significant issues that were on its short-term agenda in October, including enacting a two-year budget, increasing the nation's debt limit, and continuing funding of transportation-related issues. With many of the significant and time sensitive issues addressed, there is an increased likelihood that Congress will turn its attention to more narrow issues, including those potentially impacting workers compensation.</p>
<b>TRIPRA of 2015 Implementation</b>	<p>Stakeholders including NCCI, insurance trade associations, and individual carriers are continuing to focus on the implementation of the data reporting requirement (Section 111) of the Terrorism Risk Insurance Program Reauthorization Act (TRIPRA) of 2015. Section 111 requires the Department of the Treasury to begin collecting information on terrorism risk insurance in January 2016. The Treasury will use the information it gathers to draft a report to Congress by June 30, 2016 (and annually thereafter), on 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. The Department of the Treasury's Federal Insurance Office (FIO) has convened a series of meetings with stakeholder groups to determine what terrorism insurance data is available and from what sources.</p> <p>In late October, the FIO held a meeting focused specifically on workers compensation issues related to terrorism insurance. Workers compensation is the only line of insurance covered by TRIPRA requiring evaluation in the FIO's annual report on the impact of TRIPRA on insurance markets. NCCI is providing insights to the FIO on the types of terrorism insurance that are currently available. The FIO is expected to promulgate rules later this year on the data collection mechanism it will use for all TRIPRA-covered insurance lines, including workers compensation.</p>
<b>Federal Focus on Workers Compensation</b>	<p>In its recently released 2015 annual report, the Federal Insurance Office (FIO) included a section on workers compensation for the first time. The section provides a high-level overview of the current workers compensation market and discusses the impact of state reforms. It also references the ProPublica/NPR report which highlighted, among other things, the variations in state benefit levels. The report also raises concerns with "guaranty fund benefit limits" and questions the efficacy of the state-based workers compensation system.</p> <p>Additionally, 10 influential democratic members of Congress were signatories to a letter sent to US Department of Labor Secretary Thomas Perez echoing many of the issues raised in the ProPublica/NPR series including concerns of the increased push at the state level for workers compensation opt-out mechanisms. The letter also referenced a report released earlier this year by the Occupational Safety and Health Administration that was critical of the state-based workers compensation system. Members of Congress requested that the secretary develop a plan to address their concerns and to respond to the need for greater federal statutory authority to oversee workers compensation.</p>
<b>Social Security Disability Insurance (SSDI) Reform</b>	<p>Congress has taken action to avoid the insolvency of the Social Security Disability Insurance (SSDI) Trust Fund. Provisions were included in the Bipartisan Budget Act of 2015 to ensure the solvency of the SSDI Trust Fund until 2022. The provisions also authorize new funding for Social Security Administration program integrity measures that will combat fraud and create new penalties for violations. Further, they establish new requirements for physician review of disability cases and create new demonstration projects within the disability insurance program intended to make it easier for recipients to return to work.</p>

## STATE COMMITTEE ACTIVITY

State	Update
<b>New Hampshire</b>	<p>The Department of Labor is proposing certain amendments to current rules that expired on November 1, 2015. Proposed Labor Rule 500 clarifies definitions of days, forms, and special officers used throughout the rules. It also:</p> <ul style="list-style-type: none"> <li>• Instructs carriers about what is necessary for medical authorization</li> <li>• Allows carriers to submit electronic wage information</li> <li>• Clarifies that the carrier has the responsibility of telling the injured worker what benefits are provided under the law</li> <li>• Adds a provision that carriers must notify an injured worker that they are entitled to medical care and mileage reimbursement costs to medical appointments</li> </ul> <p>The deadline for comments is November 13, 2015.</p> <p>Labor Rule 300 amends the rule clarifying provisions for electronic filings by carriers regarding proof of coverage (POC) and Owner Controlled Policies (OCIP)/Wrap-up coverage. Deadline for comments on this proposal is November 19, 2015.</p>
<b>South Dakota</b>	<p>Following a recent South Dakota Supreme Court ruling that permits aggregating of wages in indemnity benefits for multiple job holders (<i>Wheeler v. Cinna Bakers, LLC</i>), the Workers Compensation Advisory Council met on October 29. The Council considered drafts of proposed legislation that included abrogating the concurrent earnings rule in <i>Wheeler v. Cinna Bakers</i> and requiring certain employers to provide payroll records if demanded by the employers or insurers against whom an injured employee has made a workers compensation claim. The Council invited public comments on whether to abrogate <i>Wheeler</i> or propose legislation to codify the law on the issue of aggregating wages. While there was some interest by at least two parties to abrogate the case, four drafts of proposed legislation were introduced, reviewed, and compared during the meeting. Consensus was reached that any proposed change to the law should include clarifying the effective date of which aggregating wages is allowable, defining seasonal work and concurrent employment, and clarifying the party (employers or employees) responsible for producing records for multiple job holders. The group acknowledged that proposals need to be submitted by the next legislative session.</p>
<b>Virginia</b>	<p>As a result of <b>HB 1820</b>, a task force was created to consider all available databases for possible use in establishing a medical fee schedule in Virginia. Prior to the October 14, 2015 scheduled meeting, the task force members agreed to consider a fee schedule based on Medicare pricing. As a result, the task force meeting was postponed. The legislative language is currently being drafted.</p> <p><b>HB 1372</b> sought to establish a Secondary Modification Factor. The legislation did not pass. It would have required NCCI to create secondary experience modification factors in which no-fault auto losses were excluded. On March 10, 2015, the Virginia Senate Committee on Commerce and Labor requested that NCCI study the subject and report back to the committee chair and bill patron. The NCCI report discussed the two primary methods of evaluating a company's workers compensation risk profile (experience modification factor and loss run report). The report was delivered to the committee on October 28, 2015.</p>

## STATE LEGISLATIVE ACTIVITY

State	Update
<b>Missouri</b>	<p>The National Association of Professional Employers Organizations intends to propose legislation again in the 2016 legislative session and is hosting a meeting on November 9 for agent trade associations to provide input on the content of the proposal.</p>
<b>Nebraska</b>	<p>The business community is driving an effort to have the state adopt an open drug formulary specifically addressing opioids. Legislation establishing a formulary is expected in the 2016 legislative session.</p>

## OTHER ITEMS OF INTEREST

State	Update
<b>Alaska</b>	<p>The Workers Compensation Board held public meetings on October 29 and 30 to discuss the proposed medical fee schedule for workers compensation.</p>

<p><b>Colorado</b></p>	<p>A number of changes to the medical fee schedule (Rule 18) have been approved effective January 1, 2016. These changes include updating:</p> <ul style="list-style-type: none"> <li>• The physicians’ fee schedule to be based on the 2015 Medicare Resource Based Relative Value Scale (RBRVS), except as prescribed by rule</li> <li>• The state-specific conversion factors for all medical categories</li> <li>• The fee schedule for durable medical equipment, prosthetics, orthotics, and supplies</li> </ul> <p>In addition, clinical pathology laboratory tests are reimbursed at the total component dollar value listed under Rule 18, Exhibit 8, with certain exceptions as allowed in the rule. Previously, they were reimbursed based on a maximum calculation using the RVP Relative Value Unit x Pathology Conversion Factor.</p> <p>The ambulance fee schedule is also updated to 250% of the 2015 Medicare ambulance fee schedule.</p> <p><i>NCCI estimates that changes to the Colorado medical fee schedule (Rule 18), effective January 1, 2016, will result in an impact of +0.7% on Colorado workers compensation system costs.</i></p>
<p><b>Florida</b></p>	<p>The Florida Supreme Court has accepted jurisdiction in <i>Stahl v. Hialeah Hospital</i>. This case, on appeal from the 1st District Court of Appeal, challenges the constitutionality of the Florida Workers’ Compensation Act by asserting, in part, that the statutory addition of \$10 post-Maximum Medical Improvement co-payment and statutory deletion of permanent partial disability benefits have rendered the law an inadequate exclusive remedy.</p>
<p><b>Oklahoma</b></p>	<p>On September 30, a US District Court remanded <i>Vasquez v. Dillard’s, Inc.</i> back to the Oklahoma Workers Compensation Commission. In <i>Vasquez</i>, the employer argued, in part, that:</p> <ul style="list-style-type: none"> <li>• Its benefits plan under the Oklahoma Employee Injury Benefit Act (OEIBA) was an ERISA plan</li> <li>• The plaintiff’s action did not arise out of Oklahoma’s workers compensation laws</li> <li>• The action was preempted by ERISA</li> </ul> <p>Thus, removal to the district court was proper. The court disagreed and found that the OEIBA was part of Oklahoma’s statutory scheme governing occupational injuries and workplace liability and, as result, was a part of the state’s workers compensation laws. The court concluded, in part, that because the action arose under Oklahoma’s workers compensation laws, it could not be removed to federal court.</p> <p>On September 30, the Oklahoma Supreme Court heard oral arguments in <i>Smith v. Baze Investment Corporation</i>, a case challenging the use of the <i>American Medical Association Guide</i> (6th Edition) for determination of permanent partial disability assessments and Oklahoma’s 2014 Administrative Workers Compensation Act’s deferral of permanent partial disability benefits.</p> <p>The Oklahoma Court of Civil Appeals sustained the Workers Compensation Commission’s order in <i>Robinson Medical Resource Group v. True</i>. In <i>Robinson</i>, a traveling nurse was paid hourly wages and mileage by his employer to make client visits at certain hospitals. After completing his patient visits and while on his way home for the day, Robinson incurred injuries in a motor vehicle incident. The court held that the employer’s “payment towards Claimant’s travel expenses resulted in the accident falling within the definition of ‘course and scope of employment’ under the travel-compensation exception . . . , which considers compensated travel ‘to be a part of the service for which the employee was compensated.’”</p>
<p><b>Oregon</b></p>	<p>The Workers Compensation Division has released proposed rules, in part, to effectuate <b>HB 2764</b>. The rules:</p> <ul style="list-style-type: none"> <li>• Require that if a worker sends a written request for hearing or administrative review to an employer or insurer, and the request should have been sent to the division, the employer or insurer must promptly forward the request to the division</li> <li>• Provide that, when moneys are received in excess of the amounts due and payable to the director, or when moneys have been received to which the director has no legal interest, the director will refund or credit the excess amount; but for amounts less than \$20, when moneys are received for an assessment or a civil penalty, the director will refund the excess amount only upon receipt of a written request from the party entitled to the refund or credit</li> <li>• Explain that the director must consider the proportionate benefit to the worker when determining the amount of an attorney fee awarded under ORS 656.262(11)</li> <li>• Establish criteria for determining a reasonable attorney fee under ORS 656.277(1)</li> </ul> <p>A public hearing on the proposal is scheduled for November 24, 2015.</p>
<p><b>Tennessee</b></p>	<p>The Division of Workers Compensation hosted a forum on October 8—The Future of Workers Compensation. The main focus of the forum was the implementation and effectiveness of 2013 administrative reforms. There was also some discussion concerning alternatives to workers compensation, including the opt-out legislation introduced during the last legislative session.</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.

<b>State</b>	<b>State Relations Executive</b>	<b>Phone Number</b>
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	Jessica Epley	503-892-8919
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.