



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 passed the first chamber, passed the second chamber, or were 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 January 29, 2016.

BILLS PASSING SECOND CHAMBER

There were no relevant workers compensation-related bills that passed the second chamber within the one-week period ending January 29, 2016.

BILLS PASSING FIRST CHAMBER

The following workers compensation-related bills passed the first chamber within the one-week period ending January 29, 2016.

Florida

HB 509 amends various provisions of the Florida Statutes relating to transportation network companies including, but not limited to, the following:

316.680 Transportation network companies.—

(1) Definitions.—As used in this section, the term:

...

(10) Drivers as Independent Contractors.—

(a) A driver is an independent contractor and not an employee of the company if all of the following conditions are met:

1. The company does not prescribe specific hours during which the driver must be logged into the company's digital network.

2. The company does not impose restrictions on the driver's ability to use digital networks from other companies.

3. The company does not assign the driver to a particular territory in which transportation network company services are authorized to be provided.

4. The company does not restrict the driver from engaging in any other occupation or business.

5. The company and the driver agree in writing that the driver is an independent contractor of the company.

(b) A company operating under this section is not required to provide workers' compensation coverage to a transportation network company driver who is classified as an independent contractor pursuant to this section.

...

Indiana

HB 1136, in part, amends *section 27-9-1-2. Definitions*, and adds *section 27-9-3-34.5* to the Indiana Code relating to large deductible workers compensation policies, as follows:

27-9-1-2. Definitions

...

(b) "Collateral", for purposes of IC 27-9-3-34.5, means cash, a letter of credit, a surety bond, or another form of security posted by an insured, a captive insurer, or reinsurer, to secure the insured's obligation to:

(1) pay deductible claims or to reimburse the insurer for deductible claim payments under a large deductible policy; or

(2) reimburse or pay the insurer as required for other secured obligations.

(c) “Commercially reasonable” means:

- (1) acting in good faith according to prevailing industry practices; and
- (2) making all reasonable efforts considering the facts and circumstances of a matter.

...

(f) “Deductible claim” means a claim under a large deductible policy that does not exceed the deductible. The term includes a claim for loss, defense, and (unless excluded) cost containment expense.

...

(g) “Large deductible policy” means a combination of worker’s compensation policies or endorsements, or both, issued to an insured and contracts or security agreements entered into between the insured and insurer in which the insured has agreed to pay directly, or reimburse the insurer for the insurer’s payment of, the:

- (1) initial part of a claim under the policy; or
- (2) expenses related to a claim;

up to a specified dollar amount. The term includes a policy that contains, in addition to a per claim limit, an aggregate limit on the insured’s liability for all deductible claims. The term also includes a policy with a deductible of at least fifty thousand dollars (\$50,000). The term does not include a policy, an endorsement, or an agreement under which the initial part of a claim is self-insured and the insurer is not obligated to pay any part of the self-insured retention. The term also does not include a policy that provides for retrospectively rated premium payments or a reinsurance agreement, except to the extent that a reinsurance agreement assumes, secures, or pays the insured’s large deductible obligations.

(r) “Other secured obligations”, for purposes of IC 27-9-3-34.5, means obligations of an insured to an insurer other than obligations under a large deductible policy. The term includes obligations under a reinsurance agreement or another agreement that involves retrospective premium obligations the performance of which is secured by collateral that also secures an insured’s obligations under a large deductible policy.

...

27-9-3-34.5

Sec. 34.5. (a) This section:

- (1) applies to a worker’s compensation large deductible policy issued by an insurer that is subject to this chapter; and
- (2) does not apply to first party claims or claims funded by the guaranty association net of the deductible.

(b) To the extent that the terms of a large deductible policy conflict with this section, the policy must be administered in accordance with this section.

(c) Unless otherwise agreed by the guaranty association, all deductible claims that are covered claims (as defined in IC 27-6-8-4), including claims funded by an insured before liquidation, must be referred to the guaranty association for processing. To the extent an insured funds or pays a deductible claim under an agreement with the guaranty association or otherwise, the insured’s funding or payment of the deductible claim extinguishes any obligation of the receiver or the guaranty association to pay the claim. A charge may not be made against the receiver or the guaranty association on the basis of an insured’s funding or payment of a deductible claim.

(d) The following apply when the guaranty association pays a deductible claim:

(1) If the guaranty association pays a deductible claim for which the insurer would have been entitled to reimbursement from the insured, the guaranty association is entitled to the full amount of the reimbursement and available collateral to the extent necessary to reimburse the guaranty association. Reimbursements paid to the guaranty association under this subsection are not early access payments under section 32 of this chapter or distributions under section 40 of this chapter.

(2) If the guaranty association pays:

(A) a deductible claim that is not reimbursed:

- (i) from collateral; or
- (ii) by payment by the insured; or

(B) an incurred expense in connection with a large deductible policy that is not reimbursed; the guaranty association is entitled to assert a claim for the payments in the delinquency proceeding.

(e) Subsection (d) does not limit the receiver’s or guaranty association’s rights under other applicable law to obtain reimbursement from an insured for claim payments made by the guaranty association:

- (1) under the policies of the insurer; or
- (2) for the guaranty association’s related expenses; including payments described in IC 27-6-8-11.5 or under another state’s similar law.

(f) A receiver shall do the following:

(1) Upon receipt by the receiver of notice from the guaranty association of reimbursable payments for which the guaranty association has not been reimbursed, bill an insured for reimbursement of deductible claims:

(A) paid by the insurer before the commencement of delinquency proceedings;

(B) paid by the guaranty association; or

(C) paid or allowed by the receiver.

(2) If an insured that is billed under subdivision (1) does not make payment within:

(A) the time specified in the large deductible policy; or

(B) if no time is specified in the large deductible policy, sixty (60) days after the date of billing;

the receiver shall pursue all commercially reasonable actions to collect the payment.

(g) The following do not relieve an insured from the insured's reimbursement obligation under a large deductible policy and this chapter:

(1) An insurer's insolvency.

(2) An insurer's inability to perform the insurer's obligations.

(3) An allegation of improper processing or payment of a deductible claim, except for gross negligence, by the:

(A) insurer;

(B) receiver; or

(C) guaranty association.

(h) With respect to collateral, the following apply:

(1) A receiver shall use available collateral to secure:

(A) an insured's obligation to fund or reimburse deductible claims; and

(B) other secured obligations or payment obligations.

The guaranty association is entitled to collateral to the extent needed to reimburse the guaranty association for the guaranty association's payment of a deductible claim. A distribution to the guaranty association under this subdivision is not an early access payment under section 32 of this chapter or a distribution under section 40 of this chapter.

(2) A receiver shall pay all claims against collateral in the order received, and a claim of the receiver, including claims described in this subsection, does not supersede any other claim against the collateral as described in subdivision (4).

(3) A receiver shall draw down collateral to the extent necessary if the insured fails to do any of the following:

(A) Perform the insured's funding or payment obligations under the large deductible policy.

(B) Pay a deductible claim reimbursement within the time specified in subsection (f)(2).

(C) Pay amounts due to the insurer estate for pre-liquidation obligations.

(D) Fund any other secured obligation within:

(i) the time specified in the large deductible policy; or

(ii) another reasonable period.

(E) Pay expenses within the time specified in subsection (f)(2).

(4) A receiver shall pay all claims that are validly asserted against the collateral in the order in which the claims are received by the receiver.

(5) A receiver shall return to an insured any excess collateral, as determined by the receiver after a periodic review of claims paid, outstanding case reserves, and a factor for incurred but not reported claims.

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	The second session of the 114th Congress convened in early January. Lawmakers' attention will turn to discussions on several significant public policy issues including tax reform, criminal justice reform, and national security issues. Past history indicates that congressional action on significant issues in an election year is extremely challenging.
TRIPRA of 2015 Implementation	<p>The Federal Insurance Office (FIO) continues to develop guidance on how it intends to collect terrorism insurance information as required by Section 111 of the Terrorism Risk Insurance Program Reauthorization Act (TRIPRA) of 2015. The FIO has conducted three meetings with stakeholders, including NCCI, to receive input on what type of terrorism data is currently available for all lines of insurance covered under TRIPRA. 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. The FIO is expected to promulgate rules in the near future on the data collection mechanism it will use for all TRIPRA-covered insurance lines, including workers compensation.</p> <p>The National Association of Insurance Commissioners (NAIC) also plans to collect terrorism insurance data. Eleven states (CA, CT, DC, FL, IL, LA, MO, NY, PA, RI, and TX) have agreed to participate in the first terrorism insurance data call, with New York taking a coordinating role. The NAIC indicated that, given the changes to TRIPRA made during the reauthorization in 2015, it is necessary that terrorism insurance data be collected for purposes of solvency regulation and general market oversight. NCCI is actively engaged with the NAIC on the availability of workers compensation terrorism insurance data and through its participation in the data call.</p>

STATE COMMITTEE ACTIVITY

State	Update
Alaska	The Workers Compensation Board met on January 15 to review the permanent adoption of the medical fee schedule. The Board continues to refine the fee schedule and expects that a final certified rule will be promulgated by March 1, 2016.
Arizona	A revised statute requires the Industrial Commission to develop and implement a process for the use of evidence-based medical treatment guidelines for treatment of injured workers. These guidelines are intended to improve the quality of medical care outcomes and the efficiency and effectiveness of that medical care. The Industrial Commission is creating these rules to comply with the directive; the effective date will be established once the rulemaking process comes to a close. The guidelines are not expected to be implemented before July 2016.
Oklahoma	On January 15, the Workers Compensation Commission proposed changes to the Medical Fee Schedule, which was last amended in 2012. <i>NCCI is analyzing this measure for system cost impact.</i>

The bills included in the following section have been filed, but have not yet passed the first chamber.

STATE LEGISLATIVE ACTIVITY

State	Update
Florida	<p>SB 828/HB 467 revise the structure by which assessments are levied on and collected from insurers and self-insurance funds by removing the assessment recovery from a component of the workers compensation rate approved by the Office of Insurance Regulation; the bills create two methods for the Florida Workers' Compensation Insurance Guaranty Association (FWCIGA) to collect assessments.</p> <p>HB 613/SB 986 include a provision removing the requirement for nonconstruction limited liability companies to file a notice of election with the Division of Workers' Compensation to be exempt from workers compensation coverage, allowing them to opt in to workers compensation coverage.</p> <p>SB 1402/HB 7073 ratify the 2015 <i>Florida Workers' Compensation Reimbursement Manual for Health Care Providers</i> as approved by the Workers' Compensation Three-Member Panel in January 2015. <i>NCCI estimates an overall Florida workers compensation system cost impact of +1.8% (+\$64.0M).</i></p>
Hawaii	<p>HB 2161/SB 2215 appropriate funds for additional hearing officers and support staff in the Department of Labor and Industrial Relations.</p> <p>HB 2017 allows physicians to submit treatment plans by fax or email and requires employers to accept plans submitted electronically.</p> <p>HB 1815/SB 2342 repeal HRS Section 386-21, eliminating the statutory authority of the Department of Labor and Industrial Relations to adopt treatment guidelines and updated medical fee schedules.</p> <p>HB 2715 repeals HRS Section 431-14A (the enabling statute for the Hawaii Employers' Mutual Insurance Company) and creates a monopolistic state fund to provide workers compensation insurance. Employers would be required to purchase insurance from this state fund or qualify to self-insure.</p>
Maine	LD 1553 transfers the predetermination of independent contractor status process to the Bureau of Insurance. The measure also modifies the law after the court's decision in <i>Workers' Compensation Board Abuse Investigation Unit v. Nate Holyoke Builders, Inc., et al.</i> and ensures that employers that misclassify employees as independent contractors are subject to penalties under the Workers Compensation Act.
Missouri	<p>HB 1763 adds definitions and administration of large deductible policies when subject to delinquency proceedings including reimbursement provisions.</p> <p>HB 1867 specifies that beginning January 1, 2017, certain shareholders of S corporations may elect to reject workers compensation insurance coverage.</p>
Nebraska	<p>LB 743 excludes shoulder as being considered part of loss of arm for determining indemnity compensation. <i>NCCI is analyzing this measure for system cost impact.</i></p> <p>LB 1005 includes provisions for the adoption of an Official Disability Guidelines-based Drug Formulary. <i>NCCI is analyzing this measure for system cost impact.</i></p>
New Hampshire	SB 407 requires temporary staffing companies to provide temporary workers with certain information and provides that a temporary staffing company's premiums shall be determined and paid based on the experience rating of the work site employer for which the temporary worker performs services.

Vermont	SB 213 establishes a private insurance system for the provision of up to five weeks of paid leave for the birth or adoption of a child. Provisions include creating additional parental leave benefits that would be considered workers compensation coverage.
Virginia	<p>HB 378 directs the Workers' Compensation Commission to adopt regulations establishing workers compensation fee schedules. The fee schedule applies in the absence of a contract under which the provider has agreed to accept a specified amount for medical service. The initial fee schedules will set amounts based on a reimbursement objective, which is the average of all amounts paid to providers in the same category of providers for the medical service in the same medical community. Regulations implementing the fee schedules will become effective on January 1, 2018.</p> <p>HB 1108 amends the Virginia Public Procurement Act (VPPA) to prohibit the use of any experience modification factor as a condition of any bidder's or offeror's eligibility to participate in a solicitation for construction services for any contract or offer to contract not covered by the VPPA. In addition, the bill provides that this provision applies to any offer to contract as defined in the bill, Invitation to Bid, or Request for Proposal for construction services issued on or after July 1, 2016. The bill also defines "experience modification factor."</p>
West Virginia	<p>SB 71 makes the weighing of workers compensation evidence a liberal interpretation. It also:</p> <ul style="list-style-type: none"> • Allows parties to submit evidence after the Permanent Total Reviewing body has made its initial determination • Changes the application standard to file for a permanent total disability to 40% • Extends permanent total disability benefits to be paid until death • Permits carpal tunnel and occupational disease to be included in the aggregation of permanent disability • Requires that reviews of permanent total disability stop after the age of 60 • Limits the range of vocational rehabilitation job searches to 30 miles

OTHER ITEMS OF INTEREST

State	Update
Florida	In the case <i>Stahl vs. Hialeah Hospital</i> , after being denied permanent partial disability (PPD) by the Office of the Judges of Compensation Claims (JCC), Stahl appealed the decision to the First District Court of Appeals (1st DCA), asserting that the statutory addition of a \$10 post-Maximum Medical Improvement co-payment and statutory deletion of PPD benefits have rendered the law an inadequate exclusive remedy. The 1st DCA upheld the JCC's decision and said that eliminating permanent partial benefits was constitutional and the (2003) reform was an adequate replacement for the prior common law. In April, Stahl asked the Florida Supreme Court (FSC) to invoke discretionary jurisdiction in this case and, in October, the FSC accepted the case for review. Oral arguments have been scheduled for April 6.

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
HI	Carolyn Pearl	808-524-6239
IN, NC, SC, TN	Amy Quinn	803-356-0851
AR, IL, KS, TX	Terri Robinson	501-333-2835
AK, ID, MT, OR	Jessica Epley	503-892-8919
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Federal Issues	Tim Tucker	202-403-8526

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