



Legislative Activity Report

National Council on Compensation Insurance

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Regulatory Services

July 1, 2016

RLA-2016-25

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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

The following workers compensation-related bills were enacted within the one-week period ending June 24, 2016.

Missouri

HB 2194 was:

- Passed by the first chamber on March 29, 2016
- Substituted and passed by the second chamber on May 10, 2016
- Included in NCCI's May 20, 2016 *Legislative Activity Report* (RLA-2016-19)
- Enacted on June 23, 2016, with an effective date of August 28, 2016

HB 2194, in part, amends *section 287.955. Insurers to adhere to uniform classification system, plan—director to designate advisory organization, purpose, duties—risk premium modification plan, requirements* of the Missouri Annotated Statutes as follows:

287.955. Insurers to adhere to uniform classification system, plan—director to designate advisory organization, purpose, duties—risk premium modification plan, requirements.

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6. (1) A workers' compensation insurer may develop an individual risk premium modification rating plan which prospectively modifies premium based upon individual risk characteristics which are predictive of future loss. Such rating plan shall be filed thirty days prior to use and may be subject to disapproval by the director.

(2) Premium modifications under this subsection may be determined by an underwriter assessing the individual risk characteristics and applying premium credits and debits as specified under a schedule rating plan. Alternatively, an insurer may utilize software or a computer risk modeling system designed to identify and assess individual risk characteristics and which systematically and uniformly applies premium modifications to similarly situated employers. The rating plan shall establish objective standards for measuring variations in individual risks for hazards or expense or both. ~~The rating plan shall be actuarially justified and shall not result in premiums which are excessive, inadequate, or unfairly discriminatory.~~ The rating plan shall not utilize factors which are duplicative of factors otherwise utilized in the development of rates or premiums, including the uniform classification system and the uniform experience rating plan. ~~The premium modification factors utilized under the rating plan shall be applied on a statewide basis, with no premium modifications~~ No premium modification factors shall be based solely upon the geographic location of the employer.

(a) Premium modifications resulting from a schedule rating plan, with an underwriter determining individual risk characteristics, shall be limited to plus or minus twenty-five percent. Up to an additional ten percent credit may be given for a reduction in the insurer's expenses.

(b) Premium modifications resulting from a risk modeling system shall be limited to plus or minus fifty percent. Premium modifications resulting from a risk modeling system shall be reported separately under the uniform statistical plan from premium modifications resulting from a schedule rating plan.

(c) Changes in premium modification factors may occur if there is a change in the insurer, the insurer amends or withdraws the rating plan, or if there is a change in the insured employer's operations or risk characteristics underlying the premium modification factor.

(3) Within thirty days of a request, the insurer shall clearly disclose to the employer the individual risk characteristics which result in premium modifications. However, this disclosure shall not in any way require the release to the insured employer of any trade secret or proprietary information or data used to derive the premium modification and that meets the definitions of, and is protected by, the provisions of chapter 417.

~~(4) (a) Premium modifications under this subsection may be determined by an underwriter assessing the individual risk characteristics and applying premium credits and debits as specified under a schedule rating plan. Alternatively, an insurer may utilize software or a computer risk modeling system designed to identify and assess individual risk characteristics and which systematically and uniformly applies premium modifications to similarly situated employers.~~

~~(b) Premium modifications resulting from a schedule rating plan, with an underwriter determining individual risk characteristics, shall be limited to plus or minus twenty five percent. An additional ten percent credit may be given for a reduction in the insurer's expenses.~~

~~(c) Premium modifications resulting from a risk modeling system shall be limited to plus or minus fifty percent. Premium modifications resulting from a risk modeling system shall be reported separately under the uniform statistical plan from premium modifications resulting from a schedule rating plan.~~

~~(d) Premium credits or reductions shall not be removed or reduced unless there is a change in the insurer, the insurer amends or withdraws the rating plan, or unless there is a corresponding change in the insured employer's operations or risk characteristics underlying the credit or reduction.~~

New Hampshire

SB 203 was:

- Passed by first chamber on March 26, 2015
- Included in NCCI's April 3, 2015 *Legislative Activity Report* (RLA-2015-13)
- Amended and passed by the second chamber on January 7, 2016
- Included in NCCI's January 15, 2016 *Legislative Activity Report* (RLA-2016-02)
- Enacted on June 21, 2016, with an effective date of September 19, 2016

SB 203 amends *section 281-A:48. Review of Eligibility for Compensation* of the New Hampshire Statutes as follows:

I. Any party at interest with regard to an injury occurring after July 1, 1965, may petition the commissioner to review a denial or an award of compensation made pursuant to RSA 281-A:40 by filing a petition with the commissioner not later than the fourth anniversary of the date of such denial or the last payment of compensation under such award or pursuant to RSA 281-A:40, as the case may be, upon the ground of a change in conditions, mistake as to the nature or extent of the injury or disability, fraud, undue influence, or coercion. This section shall not apply to requests for extensions of medical and hospital benefits, or other remedial care, which shall be governed solely by those sections of this chapter relating thereto. This section shall not apply to lump sum agreements, except upon the grounds of fraud, undue influence, or coercion.

I-a. Any party at interest with regard to an injury occurring after January 1, 2016, where medical treatment for that injury is purposefully and intentionally postponed for medical reasons beyond the fourth anniversary of the date of denial or the last payment of compensation, may petition the commissioner to review such denial or award of compensation made pursuant to RSA 281-A:40 by filing a petition with the commissioner no later than 180 days after the date of the postponed treatment. A written acknowledgment by the employee and notification to the workers' compensation carrier shall be included in the worker's medical record including the medical reason for postponing the medical procedure. Any award or denial of indemnity payments made under this paragraph shall not extend the time frame under paragraph I.

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SB 409 was:

- Passed by the first chamber on January 21, 2016
- Included in NCCI's January 29, 2016 *Legislative Activity Report* (RLA-2016-03)
- Amended and passed by the second chamber on May 11, 2016
- Included in NCCI's May 20, 2016 *Legislative Activity Report* (RLA-2016-19)
- Amended by Conference Committee—amendments adopted by the House and Senate on June 1, 2016
- Enacted and effective on June 21, 2016

SB 409 amends *section 281-A:32-a First Responder's Critical Injury Benefit* of the New Hampshire Statutes as follows:
281-A:32-a First Responder's Critical Injury Benefit

I. In addition to other payments made under RSA 281-A, a group II retirement system member may request additional compensation under this section. If the impairment to a group II retirement system member resulting from an injury is partial, with a determination by the department of labor that the employee has reached maximum medical improvement and that such maximum medical improvement is less than 100 percent, the governor may draw a warrant, with approval by the executive council, from funds not otherwise appropriated for payments in addition to benefits payable under this chapter for an award to be paid to such employees in amounts provided by RSA 281-A:28 for the number of weeks set forth in this section for permanent bodily loss or impairment:

- (a) Permanent loss or impairment of heart, lung, or brain 208
- (b) Permanent loss or impairment of other internal organs 104
- (c) Permanent loss or impairment of speech, touch, taste, or smell 104

II. Payments awarded under this section shall be subject to all other provisions of RSA 281-A. Total compensation payments for all additional compensation claims paid under this section shall not exceed \$125,000 per claimant. No payments shall be made after July 1, ~~2016~~ 2018. Benefits paid under this section for all claimants shall not exceed \$500,000.

SB 409 also extends the prospective repeal of the first responder's critical injury benefit from June 30, 2016, to June 30, 2018.

Additionally, **SB 409** includes the following language:

I. There is established a committee to study soft tissue injuries for purposes of workers' compensation permanent impairment awards.

(a) The members of the committee shall be as follows:

(1) One member of the senate, appointed by the president of the senate.

(2) Three members of the house of representatives, appointed by the speaker of the house of representatives.

(b) Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

II. The committee shall study soft tissue injuries for purposes of workers' compensation permanent impairment awards.

III. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the senate member. The first meeting of the committee shall be held within 45 days of the effective date of this section.

IV. The committee shall report its findings and any recommendations for proposed legislation to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, 2016.

BILLS PASSING SECOND CHAMBER

The following workers compensation-related bills passed the second chamber within the one-week period ending June 24, 2016.

Rhode Island

SB 2945 Substitute A was:

- Passed by the first chamber on May 31, 2016
- Included in NCCI's June 10, 2016 *Legislative Activity Report* (RLA-2016-22)
- Passed by the second chamber on June 18, 2016

SB 2945 Substitute A amends *sections 28-30-22. Medical advisory board, 28-33-18.3 Continuation of benefits—Partial incapacity, 28-33-39. Transportation costs for medical examination, 28-33-41. Rehabilitation of injured persons, and 28-53-7. Payments to employees of uninsured employers*; and creates *section 42-16.1-19. Cost of legal and audit fees* of the Rhode Island General Laws as follows:

§ 28-30-22. Medical advisory board.

(a) The chief judge of the workers' compensation court, in consultation with the appropriate medical or professional association, shall appoint a medical advisory board that shall serve at the chief judge's pleasure and consist of eleven (11) members in the following specialties: one orthopedic surgeon; one neurologist; one physiatrist; one chiropractor; one physical therapist; one internist; one psychiatrist or psychologist; and four (4) ad hoc physician members appointed at the discretion of the chief judge. Members of the board shall be reimbursed ~~three hundred dollars (\$300)~~ five hundred dollars (\$500) per day served in the discharge of the board's duties, not to exceed six thousand dollars (\$6,000) per member in any year. The chief judge shall designate the chairperson of the board.

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§ 28-33-18.3. Continuation of benefits—Partial incapacity.

(a) (1) For all injuries occurring on or after September 1, 1990, in those cases where the employee has received a notice of intention to terminate partial incapacity benefits pursuant to § 28-33-18, the employee, or his or her duly authorized representative, may file with the workers' compensation court a petition for continuation of benefits on forms prescribed by the workers' compensation court. In any proceeding before the workers' compensation court on a petition for continuation of partial incapacity benefits, where the employee demonstrates by a fair preponderance of the evidence that his or her partial incapacity poses a material hindrance to obtaining employment suitable to his or her limitation, partial incapacity benefits shall continue. For injuries on and after July 1, ~~2021~~ 2023, "material hindrance" is defined to include only compensable injuries causing a greater than sixty-five percent (65%) degree of functional impairment and/or disability. Any period of time for which the employee has received benefits for total incapacity shall not be included in the calculation of the three hundred and twelve-week (312) period.

(2) The provisions of this subsection apply to all injuries from Sept. 1, 1990, to July 1, ~~2021~~ 2023.

(b) (1) Where any employee's incapacity is partial and has extended for more than three hundred and twelve (312) weeks and the employee has proved an entitlement to continued benefits under subsection (a) of this section, payments made to these incapacitated employees shall be increased annually on the tenth (10th) day of May thereafter so long as the employee remains incapacitated. The increase shall be by an amount equal to the total percentage increase in the annual Consumer Price Index, United States City Average for Urban Wage Earners and Clerical Workers, as formulated and computed by the Bureau of Labor Statistics of the United States Department of Labor for the period of March 1 to February 28 each year.

(2) "Index", as used in this section, refers to the Consumer Price Index, United States City Average for Urban Wage Earners and

Clerical Workers, as that index was formulated and computed by the Bureau of Labor Statistics of the United States Department of Labor.

(3) The annual increase shall be based upon the percentage increase, if any, in the Consumer Price Index for the month of a given year, over the index for February, the previous year. Thereafter, increases shall be made on May 10 annually, based upon the percentage increase, if any, in the Consumer Price Index for the period of March 1 to February 28.

(4) The computations in this section shall be made by the director of labor and training and promulgated to insurers and employers making payments required by this section. Increases shall be paid by insurers and employers without further order of the court. If payment payable under this section is not mailed within fourteen (14) days after the employer or insurer has been notified by publication in a newspaper of general circulation in the state it becomes due, there shall be added to the unpaid payment an amount equal to twenty percent (20%) of it, to be paid at the same time as, but in addition to, the payment.

(5) This section applies only to payment of weekly indemnity benefits to employees as described in subdivision (1) of this subsection and does not apply to specific compensation payments for loss of use or disfigurement or payment of dependency benefits or any other benefits payable under the workers' compensation act.

(c) No petitions for commutation shall be allowed or entertained in those cases where an employee is receiving benefits pursuant to this section.

§ 28-33-39. Transportation costs for medical examination.

The reasonable costs of transportation to and from the office of any examiner requested by the employer or of any impartial examiner appointed as provided in § 28-33-35 shall be charged to the employer and, if paid for by the employee, he or she shall be reimbursed in full for this expenditure by his or her employer, upon presentation of a receipt or other evidence of expenditure. The reasonable cost of transportation that occurs on or after July 1, 2016, is the rate equal to the per-mile rate allowed by the Internal Revenue Service for use of a privately owned automobile for business miles driven, as from time to time amended, for a private motor vehicle or the reasonable cost incurred for transportation, from the employee's point of departure, whether from the employee's home or place of employment, and return.

§ 28-33-41. Rehabilitation of injured persons.

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(d) The employer shall bear the expense of rehabilitative services agreed to or ordered pursuant to this section. If those rehabilitative services require residence at or near or travel to a rehabilitative facility, the employer shall pay the employee's reasonable expense for board, lodging, and/or travel. The reasonable cost of transportation on or after July 1, 2016, is the rate equal to the per-mile rate allowed by the Internal Revenue Service for use of a privately owned automobile for business miles driven, as from time to time amended, for a private motor vehicle or the reasonable cost incurred for transportation, from the employee's point of departure, whether from the employee's home or place of employment, and return.

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§ 28-53-7. Payments to employees of uninsured employers.

(a) Where it is determined that the employee was injured in the course of employment while working for an employer who fails to maintain a policy of workers' compensation insurance as required by § 28-36-1 et seq., the uninsured employers fund shall pay the benefits to which the injured employee would be entitled pursuant to chapters 29 to 38 of this title subject to the limitations set forth herein.

(b) The workers' compensation court shall hear all petitions for payment from the fund pursuant to § 28-30-1 et seq., provided, however, that the uninsured employers fund and the employer shall be named as parties to any petition seeking payment of benefits from the fund.

(c) Where an employee is deemed to be entitled to benefits from the uninsured employers fund, the fund shall pay benefits for disability and medical expenses as provided pursuant to chapters 29 to 38 of this title except that the employee shall not be entitled to receive benefits for loss of function and disfigurement pursuant to the provisions of § 28-33-19.

(d) The fund shall pay cost, counsel and witness fees, as provided in § 28-35-32, to any employee who successfully prosecutes any petitions for compensation; petitions for medical expenses; petitions to amend a pretrial order or memorandum of agreement; and all other employee petitions; and to employees who successfully defend, in whole or in part, proceedings seeking to reduce or terminate any and all workers' compensation benefits; provided, however, that the attorney's fees awarded to counsel who represent the employee in petitions for lump sum commutation filed pursuant to § 28-33-25, or in the settlement of disputed cases pursuant to § 28-33-25.1, shall be limited to the maximum amount paid to counsel who serve as court-appointed attorneys in workers' compensation proceedings as established by rule or order of the Rhode Island supreme court.

(e) In the event that the uninsured employer makes payment of any monies to the employee to compensate the employee for lost wages or medical expenses, the fund shall be entitled to a credit for all such monies received by or on behalf of the employee against any future benefits payable directly to the employee.

(f) This section shall apply to injuries that occur on or after ~~January~~ July 1, 2017.

SB 2945 Substitute A also adds new *section 42-16.1-19 Cost of legal and audit fees* to the State of Rhode Island General Laws to read:

§ 42-16.1-19. Cost of legal and audit fees.

The director is hereby authorized and may in their discretion recover the reasonable cost of legal services and audit fees for services provided by in-house attorneys and/or other personnel of the department of labor and training or outside auditors and incurred by the department in matters pertaining to fraud investigations and examinations. Nothing in this section shall limit the power of the director to retain legal counsel to recover the costs of such legal counsel and auditors pursuant to other provisions of the general laws.

Note: SB 2945 Substitute A is identical to **HB 8203 Substitute A**, which passed the first and second chamber on June 16, 2016.

SB 3012 Substitute A was:

- Passed by the first chamber on June 16, 2016
- Included in NCCI's June 24, 2016 *Legislative Activity Report* (RLA-2016-24)
- Passed by the second chamber on June 18, 2016

SB 3012 Substitute A amends section **44-17-1. Companies required to file—Payment of tax—Retaliatory rates** of the State of Rhode Island General Laws as follows:

§ 44-17-1 Companies required to file—Payment of tax—Retaliatory rates—(a) Every domestic, foreign, or alien insurance company, mutual association, organization, or other insurer, including any health maintenance organization, as defined in § 27-41-1, any medical malpractice insurance joint underwriters association as defined in § 42-14.1-1, any nonprofit dental service corporation as defined in § 27-20.1-2 and any nonprofit hospital or medical service corporation, as defined in chapters 27-19 and 27-20, except companies mentioned in § 44-17-6, and organizations defined in § 27-25-1, transacting business in this state, shall, on or before March 1 in each year, file with the tax administrator, in the form that he or she may prescribe, a return under oath or affirmation signed by a duly authorized officer or agent of the company, containing information that may be deemed necessary for the determination of the tax imposed by this chapter, and shall at the same time pay an annual tax to the tax administrator of two percent (2%) of the gross premiums on contracts of insurance, except for ocean marine insurance, as referred to in § 44-17-6, covering property and risks within the state, written during the calendar year ending December 31st next preceding.

(b) Qualifying insurers for purposes of this subsection means every domestic, foreign, or alien insurance company, mutual association, organization, or other insurer and excludes:

(1) Health maintenance organizations, as defined in §27-41-2;

(2) Nonprofit dental service corporations as defined in §27-20.1-2; and

(3) Nonprofit hospital or medical service corporations, as defined in §§27-19-1 and 27-20-1.

(c) For tax years 2018 and thereafter, the rate of taxation may be reduced as set forth below and, if so reduced, shall be fully applicable to qualifying insurers instead of the two percent (2%) rate listed in subsection (a) above. ~~but in~~ In the case of foreign or alien companies, except as provided in § 27-2-17(d), the tax ~~is~~ shall not be less in amount than is imposed by the laws of the state or country under which the companies are organized upon like companies incorporated in this state or upon its agents, if doing business to the same extent in the state or country. The tax rate shall not be reduced for gross premiums written on contracts of health insurance as defined in §42-14-5(c) but shall remain at two percent (2%) or the appropriate retaliatory tax rate, whichever is higher.

(d) For qualifying insurers the premium tax rate may be decreased based upon Rhode Island jobs added by the industry as detailed below:

(1) A committee shall be established for the purpose of implementing tax rates using the framework established herein. The committee shall be comprised of the following persons or their designees: the secretary of commerce, the director of the department of business regulation, the director of the department of revenue, and the director of the office of management and budget. No rule may be issued pursuant to this section without the prior, unanimous approval of the committee.

(2) On the timetable listed below the committee shall determine whether qualifying insurers have added new qualifying jobs in this state in the preceding calendar year. A qualifying job for purposes of this section is one in which a person is employed for consideration for at least thirty-five (35) hours a week earning no less than the median hourly wage as reported by the United States Bureau of Labor Statistics for the state of Rhode Island.

(3) If the committee determines that there has been a sufficient net increase in qualifying jobs in the preceding calendar year(s) to offset a material reduction in the premium tax, it shall calculate a reduced premium tax rate. Such rate shall be determined via a method selected by the committee and designed such that the estimated personal income tax generated by the increase in qualifying jobs is at least one-hundred and twenty-five percent (125%) of the anticipated reduction in premium tax receipts resulting from the new rate. For purposes of this calculation, the committee may consider personal income tax withholdings or receipts, but in no event may the committee include for the purposes of determining revenue neutrality income taxes that are subject to segregation pursuant to section 44-48.3-8(f) of the general laws or that are otherwise available to the general fund.

(4) Any reduced rate established pursuant to this section must be established in a rulemaking proceeding pursuant to chapter 35 of title 42, subject to the following conditions:

(i) Any net increase in qualifying jobs and the resultant premium tax reduction and revenue impact shall be determined in any rulemaking proceeding conducted under this section and shall be set forth in a report included in the rulemaking record, which report shall also include a description of the data sources and calculation methods used. The first such report shall also include a calculation of the baseline level of employment of qualifying insurers for the calendar year 2015.

(ii) Notwithstanding any provision of the law to the contrary, no rule changing the tax rate shall take effect until one hundred and twenty (120) days after notice of the rate change is provided to the speaker of the house, the president of the senate, the house and senate fiscal advisors, and the auditor general, which notice shall include the report required under the preceding provision.

(5) For each of the first three (3) rulemaking proceedings required under this section, the tax rate may remain unchanged or be decreased consistent with the requirements of this section, but may not be increased. These first three (3) rulemaking proceedings shall be conducted by the division of taxation and occur in the following manner:

(i) The first rulemaking proceeding shall take place in calendar year 2017. This proceeding shall establish a rule that sets forth (A) a new premium tax rate, if allowed under the requirements of this section, which rate shall take effect in 2018, and (B) a method for calculating the number of jobs at qualifying insurers.

(ii) The second rulemaking proceeding shall take place in calendar year 2018. This proceeding shall establish a rule that sets forth (A) a new premium tax rate, if allowed under the requirements of this section, which rate shall take effect in 2019, and (B) the changes, if any, to the method for calculating the number of jobs at qualifying insurers.

(iii) The third rulemaking proceeding shall take place in calendar year 2019. This proceeding shall establish a rule that sets forth (A) a new premium tax rate, if allowed under the requirements of this section, which rate shall take effect in 2020, and (B) the changes, if any, to the method for calculating the number of jobs at qualifying insurers.

(5) The tax rate established in the regulation following regulatory proceedings that take place in 2019 shall remain in effect through and including 2023. In calendar year 2023 the department of business regulation will conduct a rulemaking proceeding and issue a rule that sets forth (A) a new premium tax rate, if allowed under the requirements of this section, which rate shall take effect in 2024, and (B) the changes, if any, to the method for calculating the number of jobs at qualifying insurers. A rule issued by the department of business regulation may decrease the tax rate if the requirements for a rate reduction contained in this section are met, or it may increase the tax rate to the extent necessary to achieve the overall revenue level sought when the then existing tax rate was established. Any rate established shall be no lower than one percent (1%) and no higher than two percent (2%). This proceeding shall be repeated every three (3) calendar years thereafter, however, the base for determination of job increases or decreases shall remain the number of jobs existing during calendar year 2022.

(7) No reduction in the premium tax rate pursuant to this section shall be allowed absent a determination that qualifying insurers have added in this state at least three hundred fifty (350) new, full-time, qualifying jobs above the baseline level of employment of qualifying insurers for the calendar year 2015.

(8) Notwithstanding any provision of this section to the contrary, the premium tax rate shall never be set lower than one percent (1%).

(9) The division of taxation may adopt implementation guidelines, directives, criteria, rules and regulations pursuant to chapter 35 of title 42 as are necessary to implement this section.

(10) The calculation of revenue impacts under this section is at the sole discretion of the committee established under subsection (d)(1) of this section. Notwithstanding any provision of law to the contrary, any administrative action or rule setting a tax rate pursuant to this section or failing or declining to alter a tax rate pursuant to this section shall not be subject to judicial review under chapter 35 of title 42.

SB 3012 Substitute A also creates the following new sections:

§ 27-1-45. Determination of premium tax rate.—The department of business regulation may participate in proceedings under §44-17-1(d) to implement guidelines, directives, criteria, and may promulgate additional resulting rules and regulations pursuant to chapter 35 of title 42 as are necessary to implement §44-17-1(d).

§ 27-2-28. Determination of premium tax rate.—The department of business regulation may participate in proceedings under §44-17-1(d) to implement guidelines, directives, criteria, and may promulgate additional resulting rules and regulations pursuant to chapter 35 of title 42 as are necessary to implement §44-17-1(d).

Note: **SB 3012 Substitute A** is identical to **HB 8058 Substitute A**, which passed the first chamber on June 17, 2016.

BILLS PASSING FIRST CHAMBER

There were no relevant workers compensation-related bills that passed the first chamber within the one-week period ending June 24, 2016.

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

FEDERAL ISSUES

Issue	Update
TRIPRA of 2015 Implementation	The Federal Insurance Office (FIO) worked on completion of the report that was due to Congress by June 30. NCCI is continuing to work with FIO on data collection with respect to workers compensation. For the data sought by the National Association of Insurance Commissioners, Phase 1, which involves 11 states—CA, CT, DC, FL, IL, LA, MO, NY, PA, RI, and TX—has been completed. Phase 2 of the workers compensation piece—for the remaining states—is targeted for completion by the end of September.
Medicare Set-	HR 2649 is showing some movement. The coalition supporting the bill recently gave a briefing, with more

Issue	Update
Asides	than 60 congressional staffers in attendance. NCCI provided information to the coalition.

STATE COMMITTEE ACTIVITY

State	Update
Alaska	The state's Medical Services Review Committee will hold a meeting on medical fee schedule guidelines July 15.
Montana	The Department of Labor and Industries' Labor-Management Advisory Council met on June 15 and unanimously supported pursuit of a workers compensation drug formulary.
Oregon	<p>The Workers Compensation Board Advisory Committee met on May 20 to develop advice for the Board's biennial review of all attorney fee schedules to consider other concepts regarding the Board's administrative rules regarding attorney fees, such as:</p> <ul style="list-style-type: none"> • Including claimant's counsel's assistant's time in determination of reasonable assessed fee • Including "contingent nature of practice" in factors for determination of reasonable assessed fee • Establishing a voluntary procedure of bifurcating attorney fee determination from merits of case • Amending the rule that requires payment of the assessed fee award within 30 days after the final litigation order <p>The committee will continue to research options; however, the following recommendations are being forwarded to the Board for consideration:</p> <ul style="list-style-type: none"> • Permanent partial disability—remove fee cap • Permanent total disability—increase from \$16,300 to \$20,000 prior to hearing; increase cap to \$30,000 for cases that go through hearing • Time loss compensation—remove fee cap • Final payment of fees—decrease time frame from 30 days to 14 days • Statements of fees—allow the statement of fees to be provided after the hearing; no final recommendation has been made

OTHER ITEMS OF INTEREST

State	Update
Alaska	<p>Following a public hearing on April 11, the Workers Compensation Division adopted several proposed changes to the medical fee schedule and payment rules, which include:</p> <ul style="list-style-type: none"> • An update to the physician, ambulatory surgical center, and durable medical equipment fees • An update to the reimbursement amount for a hearing aid • Clarification of the reimbursement of compound drugs <p><i>NCCI estimates that the proposed changes will result in an overall impact of +0.5% on workers compensation system costs.</i></p>
Florida	<p>On June 9, the Florida Supreme Court issued its opinion in <i>Westphal v. City of St. Petersburg</i>, concluding that the 104-week limitation on temporary total disability benefits is unconstitutional because it results in a statutory gap in benefits, in violation of the constitutional right of access to courts. The decision revives the 260-week limitation on temporary total disability benefits that preceded the 1994 amendments to the statutes. <i>NCCI is currently evaluating the Westphal decision and will amend the pending rate filing as appropriate.</i></p> <p>Another constitutional challenge, <i>Gearheart v. Securitas Security Services</i>, is scheduled for oral argument August 23 before the 1st District Court of Appeals.</p>
Montana	The Montana Department of Labor and Industries released its annual medical fee schedule update for comment, and a public hearing was held on May 13. The final rule has not yet been adopted; however, there are no known amendments under consideration. <i>NCCI has analyzed the proposal and estimates the changes would result in a +0.7% impact on workers compensation system costs in the state.</i>
Oklahoma	On June 17 state Supreme Court Justice John F. Reif agreed to allow submission of amicus curiae briefs in the pending case of <i>Vasquez v. Dillard's</i> through June 27. Two briefs were filed on June 20—one brief was filed by three professors from the Massachusetts Institute of Technology, Northeastern University, and Rutgers University, and another brief by the Grove City, Ohio-based Workers' Injury Law & Advocacy Group. Both briefs request that the Court affirm the Workers' Compensation Commission's unconstitutionality ruling regarding opt-out. It is anticipated that other trade associations such as American Insurance Association and Property Casualty Insurers Association of America will also file briefs.
Rhode Island	The Department of Labor and Training has updated the medical fee schedule effective July 15, 2016, and the hospital fee schedule effective July 1, 2016.

	<i>NCCI estimates that the changes to the Medical Fee Schedule for Physician, Ambulance, and Healthcare Common Procedure Coding System (HCPCS) services would result in an impact of +0.2% on workers compensation system costs.</i>
Vermont	<p>The Department of Labor is proposing changes to the vocational rehabilitation (VR) fee schedule that would increase the hourly and total fee amount for an entitlement assessment from \$80 to \$95 and increase the maximum from \$1,000 to \$1,200, respectively. Further, the maximum hourly fee for any VR services is proposed to increase from \$80 to \$95 with all plan development fees in excess of \$2,500 requiring employer/insurer authorization (the current threshold is \$2,000). The public hearing on this proposal is scheduled for June 30, 2016.</p> <p><i>NCCI estimates that the changes would result in a minimal increase in overall workers compensation system costs in Vermont. The resulting cost impact would be realized in future experience and reflected in subsequent NCCI loss cost filings in Vermont.</i></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
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
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.