



Legislative Activity Report

National Council on Compensation Insurance

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

Regulatory Services

September 2, 2016

RLA-2016-31

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 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 August 26, 2016.

BILLS PASSING SECOND CHAMBER

There were no relevant workers compensation-related bills that passed the second chamber within the one-week period ending August 26, 2016.

BILLS PASSING FIRST CHAMBER

There were no relevant workers compensation-related bills that passed the first chamber within the one-week period ending August 26, 2016.

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	Congress will return from recess after Labor Day to address several key issues, most notably consideration of a mechanism to keep the government funded beyond the end of the federal fiscal year on September 30. There are several other pieces of legislation that could be considered that would impact workers compensation, including Medicare reform and Longshore coverage.
TRIPRA of 2015 Implementation	The National Association of Insurance Commissioners is working on implementing Phase Two of its data call on terrorism insurance coverage. NCCI provided the workers compensation data set for the initial 11 states (except California) in April. It is now coordinating the provision of aggregate workers compensation data by carrier to comply with the data call with all remaining NCCI and independent bureau states.
USL&H (Longshore) Recreation Vessel Legislation	Provisions clarifying the federal Longshore and Harbor Workers' Compensation Act (Act) requirements for certain activities related to work on recreational vessels have been amended to the National Defense Authorization Act (NDAA). The US Department of Labor's interpretations of earlier statutory amendments to the Act were inconsistent with congressional intent and, as such, marine employers were not able to benefit from the exemption. Rep. Debbie Wasserman-Schultz (D-FL) introduced legislation earlier in the current congress that would clarify that employers building, repairing, or dismantling recreational vessels for repair of any length would be exempted from the Act's workers compensation requirements (provided appropriate state act coverage was obtained). The amendments to the NDAA mirror that legislation.

STATE COMMITTEE ACTIVITY

State	Update
Alaska	The Alaska Division of Workers' Compensation's Medical Services Review Committee met to discuss and plan the implementation guidelines associated with the Resource-Based Relative Value Scale fee schedule regulations. The Division is reviewing the Committee's findings and evaluating future rulemaking needs.
Kentucky	The Workers' Compensation Task Force was created by the state legislature with the passage of House Concurrent Resolution 185 to study and develop consensus recommendations concerning possible procedural and substantive changes to the workers compensation system in the state. The focus is on enhancing the system of delivering income and medical and vocational benefits to injured workers, and improving the administration of the system. The group comprises state lawmakers along with representatives from labor, private business, public sector employers, and insurers, and is staffed by the Legislative Research Commission. The group first met on August 19 and will be meeting monthly thereafter, with its report due to the legislature on December 1.
Oklahoma	The Workers' Compensation Commission has formed a committee to review the Workers' Compensation Physician Fee Schedule for potential amendments. The next meeting of the committee is scheduled for September 9.
Oregon	<p>The Workers' Compensation Management-Labor Advisory Committee will meet on September 28, followed by a meeting of the Independent Medical Examination subcommittee. The Medical Advisory subcommittee will meet on November 4. The detailed agendas for these meetings are not yet available.</p> <p>The Workers' Compensation Board met on August 2 and approved the Workers' Compensation Advisory Committee recommendations for formal rulemaking. The Board will hold a formal public hearing on September 30 to consider the following changes:</p> <ul style="list-style-type: none"> • Increase the cap on attorney fees from settlement proceeds from \$17,500 to \$50,000 • Eliminate the fee cap on Permanent Partial Disability awards • Increase caps for Permanent Total Disability from \$12,500 to \$20,000 on cases decided by an administrative judge and from \$16,300 to \$30,000 for cases decided by the Workers Compensation Board • Eliminate the cap for attorney fees payable from "Own Motion" temporary disability awards • Allow consideration of the "contingent nature of the practice" of workers compensation in the "risk of going uncompensated" factor for determining a reasonable attorney fee • Allow consideration for services performed by legal staff when determining a "reasonable" attorney fee • Accelerate required payment of attorney fees from 30 days to 14 days from the final order <p><i>NCCI has completed an analysis of these proposals and determined that they may increase the workers compensation system costs, but the magnitude of such an increase cannot be determined at this time.</i></p>
Rhode Island	The Department of Labor and Training is proposing to add massage therapy guidelines and a compound drug reimbursement provision to its medical fee schedule. A public hearing on these items will be held on September 21.
South Carolina	The Workers' Compensation Commission adopted an updated fee schedule as recommended at the Commission's July meeting, with the exception of the Independent Medical Examination (IME) maximum. There will be no change to the current IME maximum amount payable, and it will remain classified as Individual Consideration. These changes took effect September 1. <i>The changes are expected to have a negligible impact on workers compensation system costs.</i>
Utah	The Utah Workers' Compensation Advisory Council (Council) discussed the Utah Supreme Court decision in <i>Injured Workers Assoc. of Utah v. State of Utah</i> holding the Labor Commission's attorney fee schedule unconstitutional.
Virginia	<p>The Workers' Compensation Commission has recently selected Oliver Wyman Actuarial Consulting as the vendor to develop and implement a medical fee schedule. Oliver Wyman must craft the following fee schedules for six different geographic communities by January 1, 2018:</p> <ul style="list-style-type: none"> • Surgeons • Nonsurgeons • Type One teaching hospitals • Other hospitals • Ambulatory surgical centers • Outpatient centers • Providers of miscellaneous services <p>The fee schedules will be based on what doctors and hospitals received on average for each procedure or treatment in 2015.</p>

OTHER ITEMS OF INTEREST

State	Update
Florida	<p>As a result of recent Florida Supreme Court rulings (in <i>Castellanos</i> and <i>Westphal</i>), the Associated Industries of Florida and the Florida Chamber of Commerce have created task forces to seek legislative solutions.</p> <p>On August 16, the Office of Insurance Regulation (OIR) held a public hearing on NCCI's law-only rate filing. This filing seeks an overall average rate increase of 19.6%, effective October 1, 2016, to address the impacts of the state supreme court's decisions in <i>Castellanos</i> (+15% first-year impact) and <i>Westphal</i> (+2.2% impact) and updates to the reimbursement manual for health care providers (+1.8% impact). The OIR kept the record open for additional comments until August 23, and it is anticipated that the OIR's rate order will be issued in September.</p> <p>In recently affirming the Florida Judges of Compensation Claim's denial of benefits for the claimant's total right knee replacement, the Florida 1st District Court of Appeal in <i>Gearhart v. Securitas Security Services</i> did not reach the constitutional issue advanced by the claimant that the presumption of correctness afforded to the appointed expert medical adviser's opinion under the Florida Workers' Compensation Act is unconstitutional.</p> <p>In <i>Stahl v. Hialeah Hospital</i>, a petition was recently filed asking the US Supreme Court to find that the Florida Workers' Compensation Act violates constitutional guarantee of due process for having inadequate benefits.</p>
Illinois	<p>In <i>Scott Moran v. The Illinois Workers' Compensation Commission, et al.</i>, the appellate court reversed the judgment of the Circuit Court of Cook County, confirming the decision of the Illinois Workers' Compensation Commission (IWCC) in its July 29 opinion finding that Moran, the claimant, should receive workers compensation benefits for post-traumatic stress disorder (PTSD). Moran was in charge of a fire scene where a flashover caused the death of a firefighter under his command and found it necessary to see a psychiatrist to return to work. Following his return to work, he sought additional psychiatric treatment and was diagnosed with PTSD. The IWCC and Cook County Circuit Court had earlier ruled that Moran was not entitled to workers compensation benefits because he did not prove he sustained accidental injuries that arose out of and in the course of his employment.</p>
North Carolina	<p>On August 9, a Wake County Superior Court ruled that the North Carolina workers compensation medical facility fee schedules did not apply to Ambulatory Surgical Centers (ASCs). The fee schedule pertaining to this ruling went into effect on April 1, 2015, and set the reimbursement rate for ASCs at 220% of the Medicare ASC facility-specific amount. This court decision, by invalidating the April 1, 2015 ASC fee schedule changes, would set the reimbursement rates for ASCs back to the pre-April 1, 2015 rate of 67.15% of billed charges. It is expected that the North Carolina Industrial Commission will appeal this decision and request a stay of the Court's decision.</p>
Oklahoma	<p>On August 18, in the ongoing case <i>Vasquez v. Dillard's, Inc.</i> (a constitutional challenge of provisions in the state's opt-out law), Dillard's filed a request to the state supreme court requesting a hearing for oral arguments. The Oklahoma Supreme Court denied the request for oral argument on August 29.</p>
Texas	<p>The Texas Department of Insurance, Division of Workers' Compensation (TDI-DWC), will hold a public hearing on September 13 on proposed rules addressing fees for legal services provided to carriers and claimants. The proposed rules, in part, would set the maximum hourly rate for attorneys at \$200 and legal assistants at \$65. The proposal reflects changes in the industry since the rules were last addressed in 1991. A copy of the proposal is available on the TDI website at www.tdi.texas.gov/wc/rules/2016rules.html, and written public comments will be accepted until September 19.</p> <p>The Texas 11th Court of Appeals, in <i>Unique Staff Leasing v. Cates</i>, found the claimant entitled to benefits. Both expert and lay witness testimony rebutted the presumption of intoxication by showing that the employee was not in a state of intoxication when the injury occurred, although the lineman was not wearing a safety harness while working (as required by both the employer and federal law) and both his blood and urinalysis results showed the presence of a marijuana metabolite following the work injury.</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.