



# 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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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 November 25, 2016.

### BILLS PASSING SECOND CHAMBER

There were no relevant workers compensation-related bills that passed the second chamber within the one-week period ending November 25, 2016.

### BILLS PASSING FIRST CHAMBER

There were no relevant workers compensation-related bills that passed the first chamber within the one-week period ending November 25, 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
<b>Congress</b>	Congress is in session until mid-December. The primary focus will be to adopt a funding mechanism to keep the government running past December 9. Congress will return in January to convene the 115th session.
<b>Social Security Disability Insurance Offset</b>	The Social Security Administration (SSA) is undertaking an audit initiative to determine if the current requirement that Social Security Disability Insurance (SSDI) claimants who are also receiving workers compensation indemnity benefits should have their SSDI benefits offset. Currently, SSA is permitted to offset SSDI benefits in 37 states (14 states have a reverse offset). Initially, SSA will work with several states to develop the audit and determine the availability of the data elements it needs to determine offset compliance. It is expected that the audit will be implemented in all eligible states. Enhanced coordination between state workers compensation systems and federal benefit programs (e.g., Medicare and SSDI) was highlighted as an area for examination in the recent US Department of Labor report on the state-based workers compensation system.

*The bill included in the following section has been filed, but has not yet passed the first chamber.*

## STATE LEGISLATIVE ACTIVITY

State	Update
<b>Illinois</b>	<b>HB 4248</b> was the subject of a House Labor & Commerce Committee hearing on November 28. This measure was initially introduced in 2015 and, in part, will: <ul style="list-style-type: none"> <li>• Tighten the compensability standard placing the burden of proof of compensability on the employee</li> </ul>

	<ul style="list-style-type: none"> <li>Require that accidental injuries arising out of and in the course of employment are the major contributing cause of the medical condition or injury for which compensation is being sought</li> <li>Define “major contributing cause”</li> <li>Require that resulting manifestations or disability must be established to a reasonable degree of medical certainty, based on objective relevant medical finding</li> <li>Provide for a reduction of an award by amounts an injured worker has previously received for prior injuries that resulted in permanency awards</li> <li>Reduce certain payments under fee schedules</li> <li>Provide that the Illinois Workers’ Compensation Commission, rather than the Director of Insurance, shall adopt rules regarding electronic claims</li> <li>Provide that the Commission shall establish the Workers’ Compensation Ombudsman Program within the Commission and set forth the Program’s responsibilities</li> <li>Create the Workers’ Compensation Edit, Alignment, and Reform Commission to develop a proposed recodification of the Workers’ Compensation Act</li> </ul> <p>This measure could potentially end the deadlock between Gov. Vincent Rauner and the legislature over workers compensation reform.</p>
<b>Montana</b>	<p>Kalispell Regional Hospital has proposed a bill that will modify the workers compensation code, barring an injured worker from collecting workers compensation benefits if all three of the following have occurred:</p> <ol style="list-style-type: none"> <li>The injured worker gave a purposeful false representation of their physical condition prior to employment in an employment application or questionnaire</li> <li>The employer’s reliance on the false representation was “a contributing factor in the hiring of the employee”</li> <li>There is a “causal connection between the false representation and the injury for which benefits are claimed”</li> </ol> <p><i>NCCI has completed its analysis of the proposal and expects that, if enacted in its current form, this measure will result in a decrease in workers compensation system costs as a result of lower benefit costs. That decrease may be mitigated to some extent, however, by an increase in litigation. Therefore, the magnitude of any potential savings is uncertain and any changes in system costs would be realized in future experience reflected in subsequent NCCI loss cost filings in the state.</i></p>

## STATE COMMITTEE ACTIVITY

State	Update
<b>Hawaii</b>	At the November 9 meeting of the Workers’ Compensation Working Group, discussion focused on vocational rehabilitation processes and benefits. The group’s final report and recommendations are due to the legislature by the end of 2016.
<b>Idaho</b>	The Industrial Commission Advisory Committee met on November 9 to review possible changes to payment regulations and receive an update on implementation of a new Electronic Data Interchange system (which is expected to coincide with the July 1, 2017 new claim reporting rules). The Committee also announced its 2017 meeting dates as February 8, May 10, August 9, and November 8.
<b>Kentucky</b>	The Workers’ Compensation Task Force (initiated by passage of House Concurrent Resolution [HCR] 185) held its final meeting on November 18. <b>HCR 185</b> directs the task force to develop recommendations for changes that will enhance the delivery of income, medical, and vocational benefits to injured workers and improve the administration of the workers compensation system in the state. The Task Force’s final report is expected to be delivered to the Kentucky General Assembly by the end of December 2016.
<b>New Hampshire</b>	The Joint Committee to Study Soft Tissue Injuries Under Workers’ Compensation, created by <b>SB 409</b> , met November 1. The Committee is recommending: <ul style="list-style-type: none"> <li>Continuing critical injury benefits until soft tissue injury legislation passes</li> <li>Enacting legislation to extend the list of impairment awards to include certain organs</li> <li>Considering whether the maximum time period of 350 weeks for impairment award is adequate</li> </ul>
<b>Oregon</b>	The Management-Labor Advisory Committee held a meeting on November 14 to consider several legislative concepts (LC) being brought forth by the Workers Compensation Division, including: <ul style="list-style-type: none"> <li><b>LC 697</b>, which amends permanent disability benefits as follows: <ul style="list-style-type: none"> <li>Increases the basis for determining Permanent Partial Disability benefit from 100% of the State Average Weekly Wage (SAWW) to 133% of the SAWW</li> <li>Increases the minimum Permanent Total Disability (PTD) weekly benefit from the lesser of \$50 or 90% of the workers’ wage to 33% of the SAWW</li> <li>Increases the maximum PTD weekly benefits from 100% of the SAWW to 133% of the SAWW</li> </ul> </li> </ul> <p><i>NCCI has completed its analysis of the proposal. If enacted in its current form, NCCI expects an increase in state workers compensation system costs of +2.5%.</i></p> <ul style="list-style-type: none"> <li><b>LC 698</b>, which addresses fatality benefits by:</li> </ul>

	<ul style="list-style-type: none"> <li>○ Creating a uniform monthly benefit rate of 4.35 times 25% of the SAWW for each dependent child, excluding orphaned children attending secondary education who receive monthly benefits at a rate of 4.35 times 25% of the SAWW.</li> <li>○ Restructuring the existing cap on total monthly benefits, such that the cap of 4.35 times 133 1/3% of the SAWW applies to total dependent child benefits, excluding orphaned children attending secondary education. The monthly cap would not include surviving spousal benefits.</li> </ul> <p><i>NCCI has completed its analysis of the proposal. If enacted in its current form, NCCI expects an increase in Oregon workers compensation system costs of +0.1%. In addition, several provisions of LC 698 are unquantifiable but are not expected to have a material impact.</i></p> <p>Both proposals and NCCI's analysis can be found at <a href="https://www.oregon.gov/DCBS/mlac/Pages/2016.aspx">https://www.oregon.gov/DCBS/mlac/Pages/2016.aspx</a>.</p>
<b>South Dakota</b>	<p>The Workers Compensation Advisory Council met on October 11, and it was noted that a Rapid City attorney has brought a challenge of constitutionality in the passage of <b>HB 1084</b> in order to abrogate the state's Supreme Court decision in <i>Wheeler v. Cinnabaker, LLC</i>.</p> <p>Additionally, a proposal was submitted suggesting that the Department of Revenue not issue a sales tax license to any employer that does not have proof of workers compensation coverage in the state. Following discussion of enforcement mechanisms in various other states, the chair pended the matter until the next Council meeting.</p>

## OTHER ITEMS OF INTEREST

<b>State</b>	<b>Update</b>
<b>Florida</b>	<p>On November 9, in <i>Jones v. Food Lion, Inc.</i>, the 1st District Court of Appeals applied the Florida Supreme Court's decision in <i>Westphal</i> to invalidate the 104-week cap for temporary partial disability (TPD) benefits and extend the period of TPD eligibility to 260 weeks.</p> <p><i>NCCI's estimate of the impact of Westphal that was included in the Florida workers compensation rates to take effect on December 1, 2016, included the assumption that the maximum duration for both TPD and temporary total disability, applied either together or separately, would be extended to 260 weeks.</i></p>
<b>Maine</b>	<p>The Workers Compensation Board Appellate Division has recently acted in two workers compensation cases:</p> <ul style="list-style-type: none"> <li>• In <i>Torrey v. Island Nursing Home</i>, the Division affirmed an award of benefits, finding a compensable work injury occurred due to an adverse reaction to a hepatitis B vaccination because the employee receiving the vaccination promoted the employer's interest; was within the terms and conditions of employment and was acquiesced to by the employer.</li> <li>• In <i>Urrutia v. Interstate Brands International</i>, the Division reversed a decision permitting an insurer to stop benefit payments until it exhausted a credit for Social Security retirement benefits previously received for which the employer had not concurrently taken the applicable statutory offset. The Division found that the order allowing a discontinuance of incapacity benefit payments impermissibly facilitated the recovery of a unilateral overpayment of benefits, reasoning that section 221 requires that the offset be taken only "with respect to the same period" for which the employee is receiving or has received benefits.</li> </ul>
<b>Nebraska</b>	<p>A public hearing will be held on December 14 on changes recently proposed by the Workers' Compensation Court to:</p> <ul style="list-style-type: none"> <li>• Amend Rule 26, Schedules of Fees for Medical, Surgical, and Hospital Services, to adopt a new Schedule of Fees for Medical Services with an effective date of January 1, 2017. The new schedule will include 2017 Current Procedural Terminology codes and relative value units established by Centers for Medicare &amp; Medicaid Services for Calendar Year 2017 and conversion factors for the schedule will be determined in accordance with Rule 26, B, 2, e, ii. In addition, Rule 26 would be amended to establish Medicare Diagnostic Related Groups to be included in the Diagnostic Related Group inpatient hospital fee schedule effective January 1, 2017.</li> <li>• Amend Rule 63, Independent Medical Examiner Selection, to provide that once an independent medical examiner has been assigned, submission of additional questions by either party shall not be allowed without prior approval of the court.</li> </ul>
<b>Nevada</b>	<p>The Division of Industrial Relations held a public hearing on November 16 to consider public testimony on changes to the Administrative Code in accordance with the 2015 passage of <b>SB 232</b>. The proposed rule allows that for all injuries occurring after January 1, 2016, and resulting in permanent partial disability classification, workers whose disability rating does not exceed 30% can collect their compensation as a lump sum. Workers whose disability rating exceeds 30% can collect a portion of their compensation as a lump sum, but that portion cannot exceed the lump sum payment for a 30% disability rating. The final disposition of the rule has not been released at this time. The current proposal under consideration can be found at <a href="http://dir.nv.gov/uploadedFiles/dirnvgov/content/WCS/HearingDocs/Notice%20of%20Hearing%20(2)%2011-16-16.pdf">http://dir.nv.gov/uploadedFiles/dirnvgov/content/WCS/HearingDocs/Notice%20of%20Hearing%20(2)%2011-16-16.pdf</a></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	Laura Bryan	225-618-8168
AK, AZ, CO, NM, 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
ID, MT, NV, 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.