



# 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 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

There were no relevant workers compensation-related bills enacted within the one-week period ending December 30, 2016.

### BILLS PASSING SECOND CHAMBER

There were no relevant workers compensation-related bills that passed the second chamber within the one-week period ending December 30, 2016.

### BILLS PASSING FIRST CHAMBER

There were no relevant workers compensation-related bills that passed the first chamber within the one-week period ending December 30, 2016.

## FEDERAL ISSUES

Issue	Update
<b>Congress</b>	The 115th Congress convened on January 3. With the change in Administration, congressional and federal agencies' agendas are being developed. Any proposals that may impact the state-based system of workers compensation will come to light as the session progresses.
<b>TRIPRA Implementation—Private Sector Alternatives to TRIPRA</b>	<p>The Federal Insurance Office (FIO) Advisory Committee on Risk Sharing Mechanisms (ACRSM) continues its efforts to examine and possibly develop an alternative to the current federal backstop for insured losses from acts of terrorism. At its recent meeting, the ACRSM released a work plan and a potential outcome of its work. The ACRSM agreed on the creation of five subcommittees that will be charged with examining terrorism issues impacting various stakeholders. Those subcommittees are:</p> <ul style="list-style-type: none"> <li>• Direct Insurers</li> <li>• Reinsurance</li> <li>• Capital Markets</li> <li>• Other Country Approaches</li> <li>• Consumer/Insured Interests</li> </ul> <p>Over the next year, the ACRSM will work to resolve policy questions on the general need for an alternative to the current federal backstop approach. If the ACRSM determines that an alternative approach is warranted, it will work to coalesce around a singular alternative and work on key elements for consideration when transitioning from the backstop approach to such an alternative. It is expected that much of the work of the ACRSM will be undertaken at the subcommittee level. There was a strong desire by ACRSM members to leverage insights and expertise of NCCI, the insurance trades, and other stakeholders as it works through terrorism coverage issues.</p> <p>ACRSM members articulated the importance of a specific examination of the impact of the terrorism peril on</p>

	workers compensation in any alternative approach. The ACRSM work plan indicates that it will continue its work in 2018 with the expectation that a report will be issued by the end of that year.
<b>TRIPRA Implementation— Examination of Program Modifications</b>	The General Accountability Office (GAO) will release a report in early 2017 on federal government alternatives to the current federal backstop approach established under the Terrorism Risk Insurance Act (TRIA). The report, which is mandated under TRIPRA of 2015, will focus on possible alternative funding mechanisms that Congress could consider during the next reauthorization debate. The GAO report will examine the efficacy of the federal government charging carriers an upfront premium to participate in the program and the feasibility of creating a capital reserve fund, in addition to a review of terrorism risk funding approaches taken by other countries.
<b>FIO Consumer Report</b>	<p>The Federal Insurance Office (FIO) has released a report titled <i>Report on Protection of Insurance Consumers and Access to Insurance</i>. Included in the “Fairness in State Insurance Standards” portion of the report is a section on workers compensation. The section highlights many of the views articulated in the recent Department of Labor report and the 2015 Occupational Safety and Health Administration report on workers compensation system adequacy including:</p> <ul style="list-style-type: none"> <li>• Cost shift to federal programs</li> <li>• State opt-out efforts</li> <li>• Unequal worker protection in the states</li> <li>• Employer misconduct (i.e., worker misclassification)</li> </ul> <p>Although many FIO reports are required by statute, this report was not mandated. FIO determined that the critical issues regarding consumer protection warranted more focused attention than it had previously provided in its Annual Report on the Insurance Industry.</p>

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

## STATE LEGISLATIVE ACTIVITY

State	Update
<b>District of Columbia</b>	<b>B21-415</b> , the “Universal Paid Leave Act of 2015” passed Final Reading by a veto-proof vote of 9 to 4 on December 20. The measure provides private-sector employees, and self-employed individuals who opt in, with up to six weeks of family medical leave, eight weeks of parental leave, and two weeks of qualifying personal medical leave within a 52-work-week period. Mayor Bowser released a statement indicating that she would not sign the legislation. If the Mayor vetoes the legislation, the D.C. Council must reconsider the legislation and approve it by a two-thirds vote (which was achieved in the December 20 Council vote). If the bill is successful, it will be sent to Congress for final approval as are all District of Columbia laws.
<b>Kentucky</b>	Pre-filed measure <b>BR 92</b> provides an exemption from workers compensation coverage for lawn services and maintenance, repair, remodeling, or similar work for not more than 20 days on a private home or on the premises of a business that employs no other workers who are subject to workers compensation laws.
<b>Missouri</b>	<p>Pre-filing for the 2017 legislative session began on December 1. Several bills have been filed, some of which include concepts introduced in previous sessions.</p> <p><b>HB 81</b> removes the mandate for construction-related employers to obtain Workers Compensation Insurance for a minimum of one employee. With this change, construction-related employers would be required to obtain coverage when employing five or more individuals, as all other employers are currently required to do.</p> <p><b>HB 289</b> provides that beginning January 1, 2018, a shareholder of an S corporation, as defined in subsection 1 of section 143.471, with at least 40% or greater interest in the S corporation, may individually elect to reject coverage.</p> <p><b>SB 66</b> establishes that maximum medical improvement (MMI) would be the determining factor to cease temporary total disability (TTD) or temporary partial disability (TPD.) This is in response to the Missouri Supreme Court ruling in <i>Greer v. SYSCO Food Services</i>, which held that the claimant was eligible for TTD benefits throughout the rehabilitative process, and such benefits do not necessarily have to terminate on the date the claimant reaches MMI.</p> <p><b>SB 231</b> establishes a prescription drug monitoring act. Missouri is the only state that has not yet adopted a prescription drug monitoring program.</p> <p><b>SB 236</b> mandates that the Division of Workers’ Compensation (Division) develop and maintain a workers compensation claims database, accessible to potential employers through the Division’s website.</p>
<b>Montana</b>	There have been more than 35 legislative drafts relating to workers compensation requested for the 2017 legislative session. Several of these drafts propose general (unspecified) revisions of workers compensation,

	<p>while others address specific topics such as:</p> <ul style="list-style-type: none"> <li>• Emergency medical technician/firefighter presumptive illness (<b>D 52, D 416, D 460, D 952, and D 1310</b>)</li> <li>• Denying benefits if an employee provides a false statement regarding their medical condition on an employment application (<b>D 376</b>)</li> <li>• Choice of provider (<b>D 1304</b>)</li> </ul>
<b>Nevada</b>	In anticipation of the 2017 legislative session, there is a proposal modifying continuing education requirements for claims adjusters ( <b>AB 12</b> ).
<b>New Hampshire</b>	<p>Although specific language is unavailable at this time, a number of bill titles have been filed for the 2017 legislative session, including:</p> <ul style="list-style-type: none"> <li>• <b>LSR 0592</b> Title: Relative to the establishment of a publicly transparent interdepartmental health information and analysis program for New Hampshire and establishing a special fund</li> <li>• <b>LSR 0593</b> Title: Relative to form and rate filing fees</li> <li>• <b>LSR 0762</b> Title: Requiring workers compensation to cover prophylactic treatment for exposure</li> </ul>
<b>Oregon</b>	<p>In addition to previously reported legislative concepts being prepared by the Department of Consumer and Business Services, three additional legislative proposals have been filed:</p> <ul style="list-style-type: none"> <li>• <b>D 1285</b>: Requiring pharmaceutical manufacturers to reimburse payers for the cost of a prescription drug that exceeds a specified threshold. This proposal requires a pharmaceutical manufacturer to provide 60 days' advance notice of an increase that exceeds 3.4% over a 12-month period</li> <li>• <b>D 2806</b>: Providing that the Director of the Department of Consumer and Business Services may certify self-insurance programs created by intergovernmental agreement as a self-insured employer for purposes of workers compensation insurance</li> <li>• <b>D 2931</b>: Increasing the term of Workers' Compensation Management-Labor Advisory Committee members from two years to three years</li> </ul>

## STATE COMMITTEE ACTIVITY

<b>State</b>	<b>Update</b>
<b>Florida</b>	The Workers Compensation Three-Member Panel met on January 4, 2017, to review and adopt the Three-Member Panel 2017 Biennial Report and the Division's Annual Report on Reimbursement Disputes and Overutilization for 2016.
<b>Hawaii</b>	The Workers Compensation Working Group met on December 14 to consider a summary report on previous discussions, including such topics as reporting and claim filing, claim adjusting, dispute resolution and hearings processes, bill disputes, physician dispensing of medications, and vocational rehabilitation. The group's final report and recommendations were due to the legislature by the end of 2016.
<b>Maryland</b>	The Joint Committee on Workers Compensation Benefit and Insurance Oversight met in Annapolis on December 14, 2016. NCCI presented a brief overview of the report on Chesapeake Employers Insurance Company's transition to full NCCI affiliation. Two pre-filed bills were discussed. <b>SB 51</b> (Permanent Total Disability—Survival of Claim) and <b>SB 72</b> (Tiered Rating Plans and Merit Rating Plans).
<b>New Hampshire</b>	<p>The Joint Committee to Study Soft Tissue Injuries for Purposes of Workers' Compensation Permanent Impairment Awards, enacted by <b>SB 409</b>, met on November 1 and followed with its final report. The Committee is recommending:</p> <ul style="list-style-type: none"> <li>• Continuing critical injury benefits until soft-tissue injury legislation is passed</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>Tennessee</b>	The Medical Payment Committee is holding periodic meetings to discuss changes to the hospital fee schedule. The proposal is expected to be discussed again at the Committee's January 10, 2017 meeting.
<b>Virginia</b>	<p>On December 1, 2016, the Medical Fee Schedule Regulatory Advisory Panel's bimonthly meeting was held in Richmond. The Advisory Panel continued discussions with the actuarial consulting firm Oliver Wyman. The firm must craft seven different fee schedules for six different geographic communities. The seven fee schedules are for:</p> <ul style="list-style-type: none"> <li>• Surgeons</li> <li>• Nonsurgeons</li> <li>• Type One teaching hospitals</li> <li>• Other hospitals</li> <li>• Ambulatory surgical centers</li> <li>• Outpatient centers</li> <li>• Providers of miscellaneous services</li> </ul> <p>The 42 fee schedules are based on what doctors and hospitals received, on average, for each procedure or</p>

	treatment in 2015. The initial draft fee schedule was presented to the Advisory Panel for review and comment at its January 4, 2017 bimonthly meeting. The Virginia Workers Compensation Commission intends to post the draft fee schedule to its website by the end of January 2017, after incorporating comments from the stakeholders. The Virginia Workers Compensation Commission expects to have a completed fee schedule presented to the Advisory Panel for review before the end of the first quarter of 2017, with a final version presented during the third quarter of 2017. The next meeting is scheduled for March 9, 2017, in Richmond. The fee schedule is to go into effect January 1, 2018.
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## OTHER ITEMS OF INTEREST

State	Update
<b>Arkansas</b>	In <i>Hendrix v. Alcoa, Inc.</i> , the Arkansas Supreme Court has affirmed the Circuit Court decision to dismiss the claim against Alcoa based on the exclusive remedy doctrine. While the Court agreed that an employee may bring suit against the employer when there is no remedy available under the Workers Compensation Act, the question under consideration was whether Hendrix had a remedy pursuant to the Act.
<b>Hawaii</b>	Final decision remains pending on the Department of Labor and Industrial Relations' proposal allowing physicians and providers of service other than physicians to transmit treatment plans by mail or facsimile to an address or facsimile number provided by the employer. The proposal also includes several changes to the medical fee schedule and the supplemental medical fee schedule for workers compensation. <i>NCCI estimates that if adopted as proposed, the changes would result in an overall impact of -0.1% on overall workers compensation system costs.</i>
<b>Maine</b>	Changes to the Maine Medical Fee Schedule are being made in three stages: <ul style="list-style-type: none"> <li>• Changes for Hospital Inpatient services went into effect October 1, 2016. <i>NCCI estimates that these changes will result in a negligible increase in workers compensation system costs.</i></li> <li>• Changes for Physicians, Hospital Outpatient, and Ambulatory Surgical Center services were effective January 1, 2017. <i>NCCI estimates that these changes will result in an impact of +0.1% on workers compensation system costs.</i></li> <li>• Additional changes for Hospital Inpatient, Hospital Outpatient, and Ambulatory Surgical Center services will become effective April 1, 2017. <i>NCCI estimates that these changes will result in an impact of +0.5% on workers compensation system costs.</i></li> </ul>
<b>Nebraska</b>	On November 10, the Workers Compensation Court proposed certain rule changes, which included the following: <ul style="list-style-type: none"> <li>• 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 CPT codes and relative value units established by CMS for calendar year 2017; conversion factors for the schedule will be determined in accordance with Rule 26, B, 2, e, ii. Rule 26 would also 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>• 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> <p>A public hearing on the proposed changes was held on December 14, with no opposition to the proposed changes presented.</p>
<b>North Carolina</b>	The Industrial Commission has passed a temporary rule to address Ambulatory Surgical Center (ASC) fees while its appeal of the Wake County Superior Court's ruling in <i>Surgical Care Affiliates, LLC v. North Carolina Industrial Commission</i> is pending. Although the decision invalidating the applicability of the fee schedules to ASCs had been stayed, the Commission's stated purpose for the proposed temporary rule was so that "... the period of time subject to a potential retroactive invalidation of the ambulatory surgery center fee schedule provisions will be limited to April 1, 2015, to December 31, 2016, providing certainty regarding medical costs for 2017 and beyond."
<b>Oregon</b>	The Management-Labor Advisory Committee will next meet on January 17, 2017, to review 2017 legislation.

## 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 Hart 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.