



State or Federal 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 February 10, 2017.

BILLS PASSING SECOND CHAMBER

The following relevant workers compensation-related bills passed the second chamber within the one-week period ending February 10, 2017.

Arkansas

HB 1262 was:

- Passed by the first chamber on January 31, 2017
- Included in NCCI's February 10, 2017 **Legislative Activity Report** (RLA-2017-05)
- Passed by the second chamber on February 9, 2017

HB 1262 amends **section 11-14-101(b)**. **Legislative intent** of the Arkansas Code as follows:

§ 11-14-101. Legislative intent.

...

~~(b)(1)~~ If an employer implements a drug-free workplace program ~~in accordance with~~ under this chapter that includes notice, education, and procedural requirements for testing for drugs and alcohol ~~pursuant to~~ under rules developed by the Workers' Health and Safety Division of the Workers' Compensation Commission, the covered employer may require the employee to submit to a test for the presence of drugs or alcohol, and if a drug or alcohol is found to be present in the employee's system at a level prescribed by statute or by rule adopted ~~pursuant to~~ under this chapter as excessive, the employee may be terminated and may be precluded from workers' compensation medical and indemnity benefits.

~~(2)~~ However, a drug-free workplace program ~~must~~ shall require the covered employer to notify all employees that it is a condition of employment for an employee to refrain from reporting to work or working with the presence of drugs or alcohol in the employee's body, and if an injured employee refuses to submit to a test for drugs or alcohol, the employee may be precluded from workers' compensation medical and indemnity benefits. ~~In the event of termination, an employee shall be entitled to contest the test results before the Department of Labor.~~

Utah

SB 57 was:

- Passed by the first chamber on January 30, 2017
- Included in NCCI's February 10, 2017 **Legislative Activity Report** (RLA-2017-05)
- Passed by the second chamber on February 6, 2017

SB 57, in part, amends **section 59-9-101**. **Tax basis—Rates—Exemptions—Rate reductions** of the Utah Code Annotated as follows:

59-9-101. Tax basis—Rates—Exemptions—Rate reductions

...

(2) (a) An admitted insurer writing workers' compensation insurance in this state, including the Workers' Compensation Fund created under Title 31A, Chapter 33, Workers' Compensation Fund, shall pay to the tax commission, on or before March 31 in each year, a premium assessment on the basis of the total workers' compensation premium income received by the insurer from workers' compensation insurance in this state during the preceding calendar year as follows:

(i) on or before December 31, 2010, an amount of equal to or greater than 1%, but equal to or less than 5.75% of the total workers' compensation premium income described in this Subsection (2);

(ii) on and after January 1, 2011, but on or before December 31, ~~2017~~ 2022, an amount of equal to or greater than 1%, but equal to or less than 4.25% of the total workers' compensation premium income described in this Subsection (2); and

(iii) on and after January 1, ~~2018~~ 2023, an amount equal to 1.25% of the total workers' compensation premium income described in this Subsection (2).

(b) Total workers' compensation premium income means the net written premium as calculated before any premium reduction for any insured employer's deductible, retention, or reimbursement amounts and also those amounts equivalent to premiums as provided in Section 34A-2-202.

(c) The percentage of premium assessment applicable for a calendar year shall be determined by the Labor Commission under Subsection (2)(d). The total premium income shall be reduced in the same manner as provided in Subsections (1)(c)(i) and (1)(c)(ii), but not as provided in Subsection (1)(c)(iii). The commission shall promptly remit from the premium assessment collected under this Subsection (2):

(i) income to the state treasurer for credit to the Employers' Reinsurance Fund created under Subsection 34A-2-702(1) as follows:

(A) on or before December 31, 2009, an amount of up to 5% of the total workers' compensation premium income;

(B) on and after January 1, 2010, but on or before December 31, 2010, an amount of up to 4.5% of the total workers' compensation premium income;

(C) on and after January 1, 2011, but on or before December 31, ~~2017~~ 2022, an amount of up to 3% of the total workers' compensation premium income; and

(D) on and after January 1, ~~2018~~ 2023, 0% of the total workers' compensation premium income;

(ii) an amount equal to ~~0.25%~~ .25% of the total workers' compensation premium income to the state treasurer for credit to the Workplace Safety Account created by Section 34A-2-701;

(iii) an amount of up to ~~0.5%~~ .5% and any remaining assessed percentage of the total workers' compensation premium income to the state treasurer for credit to the Uninsured Employers' Fund created under Section 34A-2-704; and

(iv) beginning on January 1, 2010, ~~0.5%~~ .5% of the total workers' compensation premium income to the state treasurer for credit to the Industrial Accident Restricted Account created in Section 34A-2-705.

...

SB 62 Substitute was:

- Passed by the first chamber on January 31, 2017
- Included in NCCI's February 10, 2017 *Legislative Activity Report* (RLA-2017-05)
- Passed by the second chamber on February 8, 2017

SB 62 Substitute amends *sections 34A-2-104. "Employee," "worker," and "operative" defined—Specific circumstances—Exemptions, 34A-2-1003. Issuance of a waiver, and 34A-2-1004. Information required to obtain a waiver* of the Utah Code Annotated as follows:

34A-2-104. "Employee," "worker," and "operative" defined—Specific circumstances—Exemptions.

...

(3) (a) ~~(i) A~~ Except as provided in Subsection (3)(b), a partnership or sole proprietorship may elect to include any partner of the partnership or owner of the sole proprietorship as an employee of the partnership or sole proprietorship under this chapter and Chapter 3, Utah Occupational Disease Act.

~~(b)~~ (ii) If a partnership or sole proprietorship makes an election under Subsection (3)(a), the partnership or sole proprietorship shall serve written notice upon its insurance carrier naming the persons to be covered.

~~(c)~~ (iii) A partner of a partnership or owner of a sole proprietorship may not be considered an employee of the partner's partnership or the owner's sole proprietorship under this chapter or Chapter 3, Utah Occupational Disease Act, until the notice described in Subsection (3)(b) is given.

~~(d)~~ (iv) For premium rate making, the insurance carrier shall assume the salary or wage of the partner or sole proprietor electing coverage under Subsection (3)(a) to be 100% of the state's average weekly wage.

(b) A partner of a partnership or an owner of a sole proprietorship is an employee of the partnership or sole proprietorship under this chapter and Chapter 3, Utah Occupational Disease Act, if:

(i) the partnership or sole proprietorship:

(A) is a motor carrier; and

(B) employs at least one individual who is not a partner or an owner; and

(ii) the partner or owner personally operates a motor vehicle for the motor carrier.

(4) (a) Except as provided in Subsection (4)(g), a corporation may elect not to include any director or officer of the corporation as an employee under this chapter and Chapter 3, Utah Occupational Disease Act.

...

(g) Subsection (4)(a) does not apply to a director or an officer of a motor carrier if the director or officer personally operates a motor vehicle for the motor carrier.

...

(7) ~~For purposes of Subsection (5)(d)~~ As used in this section:

(a) "Motor carrier" means a person engaged in the business of transporting freight, merchandise, or other property by a commercial vehicle on a highway within this state.

(b) "Motor vehicle" means a self-propelled vehicle intended primarily for use and operation on the highways, including a trailer or semitrailer designed for use with another motorized vehicle.

(c) "Occupational accident related insurance" means insurance that provides the following coverage at a minimum aggregate policy limit of \$1,000,000 for all benefits paid, including medical expense benefits, for an injury sustained in the course of working under a written agreement described in Subsection (5)(d)(iii):

(i) disability benefits;

(ii) death benefits; and

(iii) medical expense benefits, which include:

(A) hospital coverage;

(B) surgical coverage;

(C) prescription drug coverage; and

(D) dental coverage.

(8) For an individual described in Subsection (5)(d); :

(a) if the individual is not covered by a workers' compensation policy, the individual shall obtain:

(i) occupational accident related insurance; and

(ii) a waiver in accordance with Part 10, Workers' Compensation Coverage Waivers Act; and

(b) the commission shall verify the existence of occupational accident insurance coverage with the coverage and benefit limits listed in Subsection (7)(c) before the commission may issue a workers' compensation coverage waiver to the individual pursuant to Part 10, Workers' Compensation Coverage Waivers Act.

34A-2-1003. Issuance of a waiver.

(1) The commission shall issue a workers' compensation coverage waiver to a business entity that:

(a) elects not to include an owner, partner, or corporate officer or director as an employee under a workers' compensation policy in accordance with Section 34A-2-103 and Subsection 34A-2-104(3) or (4);

...

34A-2-1004. Information required to obtain a waiver.

To obtain or renew a waiver, a business entity shall submit to the commission:

...

(2) a copy of one item listed in Subsection (1) and a copy of two or more of the following:

...

(c) an advertisement of services showing the business entity's name and contact information:

(i) in a newspaper of general circulation or ;

(ii) in a telephone directory showing the business entity's: (i) name; and (ii) contact information. ;

(iii) on a website or social media; or

(iv) in a trade magazine.

Virginia

SB 1175 was:

- Passed by the first chamber on January 27, 2017
- Included in NCCI's February 3, 2017 *Legislative Activity Report* (RLA-2017-04)
- Passed by the second chamber on February 10, 2017

SB 1175 amends *section 65.2-309. Lien against settlement proceeds or verdict in third party suit; subrogation of employer to employee's rights against third parties; evidence; recovery; compromise* of the Code of Virginia as follows:

§ 65.2-309. Lien against settlement proceeds or verdict in third party suit; subrogation of employer to employee's rights against third parties; evidence; recovery; compromise

....

E. Any arbitration held by the employer in the exercise of such right of subrogation (i) shall be limited solely to arbitrating the amount and validity of the employer's lien, (ii) shall not affect the employee's rights in any way, and (iii) shall not be held unless:

1. Prior to the commencement of such arbitration the employer has provided the injured employee and his attorney, if any, with an itemization of the expenses associated with the lien that is the subject of the arbitration;
2. Upon receipt of the itemization of the lien, the employee shall have 21 days to provide a written objection to any expenses included in the lien to the employer, and if the employee does not do so any objections to the lien to be arbitrated shall be deemed waived;
3. The employer shall have 14 days after receipt of the written objection to notify the employee of any contested expenses that the employer does not agree to remove from the lien, and if the employer does not do so any itemized expense objected to by the employee shall be deemed withdrawn and not included in the arbitration; and
4. Any contested expenses remaining shall have been submitted to the Commission for a determination of their validity and the Commission has made such determination of validity prior to the commencement of the arbitration.

BILLS PASSING FIRST CHAMBER

The following relevant workers compensation-related bills passed the first chamber within the one-week period ending February 10, 2017.

Montana

SB 116 creates new section ***False statement on employment questionnaire—definition*** to ***Title 39, Chapter 71, Part 1*** of the Montana Code Annotated 2015 as follows:

False statement on employment questionnaire—definition.

(1) A false statement made by an employee in an employer-provided written questionnaire calling for the disclosure of an employee's medical condition that is relevant to the essential functions of the job following a conditional offer of employment bars all wage-loss or medical benefits under this chapter if all of the following conditions are met:

- (a) the employee knowingly or willfully, by omission or commission, makes a false representation regarding the employee's physical condition that is relevant to the essential functions of the job;
- (b) the employer relies on the false representation and that reliance is a contributing factor in the hiring of the employee; and
- (c) there is a causal connection between the falsely represented condition and the injury or occupational disease for which wage-loss or medical benefits are claimed.

(2) The employee has the right to petition the workers' compensation court after satisfying the mediation requirements of this chapter if the employee disagrees with a decision to terminate benefits or bar benefits as provided under subsection (1).

Utah

HB 90 Substitute, in part, creates ***sections 31A-22-615. Insurance coverage for opioids—Policies—Reports*** and ***34A-2-424. Prescribing policies for certain opioid prescriptions*** of the Utah Code Annotated as follows:

31A-22-615. Insurance coverage for opioids—Policies—Reports.

(1) For purposes of this section:

- (a) "Health care provider" means an individual, other than a veterinarian, who:
 - (i) is licensed to prescribe a controlled substance under Title 58, Chapter 37, Utah Controlled Substances Act; and
 - (ii) possesses the authority, in accordance with the individual's scope of practice, to prescribe Schedule II controlled substances and Schedule III controlled substances that are applicable to opioids and benzodiazapines.

(b) "Health insurer" means:

- (i) an insurer who offers health care insurance as that term is defined in Section 31A-1-301;
- (ii) health benefits offered to state employees under Section 49-20-202; and (iii) a workers' compensation insurer:
 - (A) authorized to provide workers' compensation insurance in the state; or
 - (B) that is a self-insured employer as defined in Section 34A-2-201.

(c) "Opioid" has the same meaning as "opiate," as that term is defined in Section 58-37-2.

(d) "Prescribing policy" means a policy developed by a health insurer that includes evidence based guidelines for prescribing opioids, and may include the 2016 Center for Disease Control Guidelines for Prescribing Opioids for Chronic Pain, or the Utah Clinical Guidelines on Prescribing Opioids for the treatment of pain.

(2) A health insurer that provides prescription drug coverage may enact a policy to minimize the risk of opioid addiction and overdose from:

- (a) chronic co-prescription of opioids with benzodiazapines and other sedating substances;
- (b) prescription of very high dose opioids in the primary care setting; and
- (c) the inadvertent transition of short-term opioids for an acute injury into long-term opioid dependence.

(3) A health insurer that provides prescription drug coverage may enact policies to facilitate:

- (a) non-narcotic treatment alternatives for patients who have chronic pain; and
- (b) medication-assisted treatment for patients who have opioid dependence disorder.

- (4) The requirements of this section apply to insurance plans entered into or renewed on or after July 1, 2017.
- (5) (a) A health insurer subject to this section shall on or before September 1, 2017, and before each September 1 thereafter, submit a written report to the Utah Insurance Department regarding whether the insurer has adopted a policy and a general description of the policy.
- (b) The Utah Insurance Department shall, on or before October 1, 2017, and before each October 1 thereafter, submit a written summary of the information under Subsection (5)(a) to the Health and Human Services Interim Committee.
- (6) A health insurer subject to this section may share the policies developed under this section with other health insurers and the public.
- (7) This section sunsets in accordance with Section 63I-1-231.

34A-2-424. Prescribing policies for certain opioid prescriptions.

- (1) This section applies to a person regulated by this chapter or Chapter 3, Utah Occupational Disease Act.
- (2) A self-insured employer, as that term is defined in Section 34A-2-201.5, an insurance carrier, and a managed health care program under Section 34A-2-111 may implement a prescribing policy for certain opioid prescriptions in accordance with Section 31A-22-615.

49-20-414. Prescribing policies for certain opioid prescriptions.

A plan offered to state employees under this chapter may implement a prescribing policy for certain opioid prescriptions in accordance with Section 31A-22-615.

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	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.