



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

The following workers compensation-related bills were enacted within the one-week period ending March 31, 2017.

Arkansas

HB 1813 was:

- Passed by the first chamber on March 8, 2017
- Included in NCCI's March 17, 2017 **Legislative Activity Report** (RLA-2017-10)
- Passed by the second chamber on March 21, 2017
- Included in NCCI's March 31, 2017 **Legislative Activity Report** (RLA-2017-12)
- Enacted on March 27, 2017, with a projected effective date of July 30, 2017

HB 1813 amends **section 11-9-508 Medical services and supplies—Liability of employer** of the Arkansas Code as follows:
11-9-508 Medical services and supplies—Liability of employer.

(a)(1) The employer shall promptly provide for an injured employee such medical, surgical, hospital, chiropractic, optometric, podiatric, and nursing services and medicine, crutches, ambulatory devices, artificial limbs, eyeglasses, contact lenses, hearing aids, and other apparatus as may be reasonably necessary in connection with the injury received by the employee.

(2)(A) Rabies is a highly contagious and potentially deadly infectious disease and exposure to rabies and the risk of infection is the direct result of an injury caused by the bite of a rabies-infected animal under this section.

(B)(i) An employer shall promptly provide reasonably necessary medical treatment to an injured employee who is exposed to rabies as described in subdivision (a)(2)(A) of this section.

(ii) As used in subdivision (a)(2)(B)(i) of this section, "reasonably necessary medical treatment" means without limitation any diagnostic and preventive measures prescribed for detection, diagnosis, and prevention of rabies.

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Iowa

HF 518 was:

- Passed by the first chamber on March 16, 2017
- Included in NCCI's March 24, 2017 **Legislative Activity Report** (RLA-2017-11)
- Passed by the second chamber on March 27, 2017
- Enacted on March 30, 2017, with an effective date of July 1, 2017

HF 518, as amended, amends various sections of the Code of Iowa as follows:

85.16 Willful injury—intoxication.

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2. a. By the employee's intoxication, which did not arise out of and in the course of employment but which was due to the effects of alcohol or another narcotic, depressant, stimulant, hallucinogenic, or hypnotic drug not prescribed by an authorized medical practitioner, if the intoxication was a substantial factor in causing the injury.

b. For the purpose of disallowing compensation under this subsection, both of the following apply:

(1) If the employer shows that, at the time of the injury or immediately following the injury, the employee had positive test results reflecting the presence of alcohol, or another narcotic, depressant, stimulant, hallucinogenic, or hypnotic drug which drug either was not prescribed by an authorized medical practitioner or was not used in accordance with the prescribed use of the drug, it shall be presumed that the employee was intoxicated at the time of the injury and that intoxication was a substantial factor in causing the injury.

(2) Once the employer has made a showing as provided in subparagraph (1), the burden of proof shall be on the employee to overcome the presumption by establishing that the employee was not intoxicated at the time of the injury, or that intoxication was not a substantial factor in causing the injury.

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85.18 Contract to relieve not operative.

No contract, rule, or device whatsoever shall operate to relieve the employer, in whole or in part, from any liability created by this chapter except as herein provided. This section does not create a private cause of action.

85.23 Notice of injury—failure to give.

Unless the employer or the employer's representative shall have actual knowledge of the occurrence of an injury received within ninety days from the date of the occurrence of the injury, or unless the employee or someone on the employee's behalf or a dependent or someone on the dependent's behalf shall give notice thereof to the employer within ninety days from the date of the occurrence of the injury, no compensation shall be allowed. For the purposes of this section, "date of the occurrence of the injury" means the date that the employee knew or should have known that the injury was work-related.

85.26 Limitation of actions—who may maintain action.

1. An original proceeding for benefits under this chapter or chapter 85A, 85B, or 86, shall not be maintained in any contested case unless the proceeding is commenced within two years from the date of the occurrence of the injury for which benefits are claimed or, if weekly compensation benefits are paid under section 86.13, within three years from the date of the last payment of weekly compensation benefits. For the purposes of this section, "date of the occurrence of the injury" means the date that the employee knew or should have known that the injury was work-related.

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85.33 Temporary total and temporary partial disability.

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3. a. If an employee is temporarily, partially disabled and the employer for whom the employee was working at the time of injury offers to the employee suitable work consistent with the employee's disability the employee shall accept the suitable work, and be compensated with temporary partial benefits. If the employer offers the employee suitable work and the employee refuses to accept the suitable work with the same offered by the employer, the employee shall not be compensated with temporary partial, temporary total, or healing period benefits during the period of the refusal. Work offered at the employer's principal place of business or established place of operation where the employee has previously worked is presumed to be geographically suitable for an employee whose duties involve travel away from the employer's principal place of business or established place of operation more than fifty percent of the time. If suitable work is not offered by the employer for whom the employee was working at the time of the injury and the employee who is temporarily partially disabled elects to perform work with a different employer, the employee shall be compensated with temporary partial benefits.

b. The employer shall communicate an offer of temporary work to the employee in writing, including details of lodging, meals, and transportation, and shall communicate to the employee that if the employee refuses the offer of temporary work, the employee shall communicate the refusal and the reason for the refusal to the employer in writing and that during the period of the refusal the employee will not be compensated with temporary partial, temporary total, or healing period benefits, unless the work refused is not suitable. If the employee refuses the offer of temporary work on the grounds that the work is not suitable, the employee shall communicate the refusal, along with the reason for the refusal, to the employer in writing at the time the offer of work is refused. Failure to communicate the reason for the refusal in this manner precludes the employee from raising suitability of the work as the reason for the refusal until such time as the reason for the refusal is communicated in writing to the employer.

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85.34 Permanent disabilities.

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Compensation for permanent partial disability shall begin ~~at the termination of the healing period provided in subsection 1~~ when it is medically indicated that maximum medical improvement from the injury has been reached and that the extent of loss or percentage of permanent impairment can be determined by use of the guides to the evaluation of permanent impairment, published by the American medical association, as adopted by the workers' compensation commissioner by rule pursuant to chapter 17A. The compensation shall be in addition to the benefits provided by sections 85.27 and 85.28. The compensation shall be based upon the extent of the disability and upon the basis of eighty percent per week of the employee's average spendable weekly earnings, but not more than a weekly benefit amount, rounded to the nearest dollar, equal to one hundred eighty-four percent of the statewide average weekly wage paid employees as determined by the department of workforce development under section 96.19, subsection 36, and in effect at the time of the injury. The minimum weekly benefit amount shall be equal to the weekly benefit amount of a person whose gross weekly earnings are thirty-five percent of the statewide average weekly wage. For all cases of permanent partial disability compensation shall be paid as follows:

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On. For the loss of a shoulder, weekly compensation during four hundred weeks.

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u. In all cases of permanent partial disability other than those hereinabove described or referred to in paragraphs "a" through "t" hereof, the compensation shall be paid during the number of weeks in relation to five hundred weeks as the reduction in the employee's earning capacity caused by the disability bears in relation to the earning capacity that the employee possessed when the injury occurred. A determination of the reduction in the employee's earning capacity caused by the disability shall take into account the permanent partial disability of the employee and the number of years in the future it was reasonably anticipated that the employee would work at the time of the injury. If an employee who is eligible for compensation under this paragraph returns to work or is offered work for which the employee receives or would receive the same or greater salary, wages, or earnings than the employee received at the time of the injury, the employee shall be compensated based only upon the employee's functional impairment resulting from the injury, and not in relation to the employee's earning capacity. Notwithstanding section 85.26, subsection 2, if an employee who is eligible for compensation under this paragraph returns to work with the same employer and is compensated based only upon the employee's functional impairment resulting from the injury as provided in this paragraph and is terminated from employment by that employer, the award or agreement for settlement for benefits under this chapter shall be reviewed upon commencement of reopening proceedings by the employee for a determination of any reduction in the employee's earning capacity caused by the employee's permanent partial disability.

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w. In all cases of permanent partial disability described in paragraphs "a" through "t", or paragraph "u" when determining functional disability and not loss of earning capacity, the extent of loss or percentage of permanent impairment shall be determined solely by utilizing the guides to the evaluation of permanent impairment, published by the American medical association, as adopted by the workers' compensation commissioner by rule pursuant to chapter 17A. Lay testimony or agency expertise shall not be utilized in determining loss or percentage of permanent impairment pursuant to paragraphs "a" through "t", or paragraph "u" when determining functional disability and not loss of earning capacity.

x. Compensation for permanent partial disability for an injury shall terminate on the date when compensation for permanent total disability for any injury begins. An employee shall not receive compensation for permanent partial disability if the employee is receiving compensation for permanent total disability.

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3. Permanent total disability.

a. Compensation for an injury causing permanent total disability shall be upon the basis of eighty percent per week of the employee's average spendable weekly earnings, but not more than a weekly benefit amount, rounded to the nearest dollar, equal to two hundred percent of the statewide average weekly wage paid employees as determined by the department of workforce development under section 96.19, subsection 36, and in effect at the time of the injury. The minimum weekly benefit amount is equal to the weekly benefit amount of a person whose gross weekly earnings are thirty-five percent of the statewide average weekly wage. The weekly compensation is payable ~~during the period of the employee's disability~~ until the employee is no longer permanently and totally disabled.

b. Such compensation shall be in addition to the benefits provided in sections 85.27 and 85.28. No compensation shall be payable under this subsection for any injury for which compensation is payable under subsection 2 of this section. In the event compensation has been paid to any person under any provision of this chapter, chapter 85A or chapter 85B for ~~the same an~~ an injury producing a ~~total~~ permanent disability, any such amounts so paid shall be deducted from the total amount of compensation payable for ~~such~~ permanent total disability. An employee shall not receive compensation for permanent partial disability if the employee is receiving compensation for permanent total disability.

c. An employee forfeits the employee's weekly compensation for a permanent total disability under this subsection for a week in which the employee is receiving a payment equal to or greater than fifty percent of the statewide average weekly wage from any of the following sources:

(1) Gross earnings from any employer.

(2) Payment for current services from any source.

d. An employee is not entitled to compensation for a permanent total disability under this subsection while the employee is receiving unemployment compensation under chapter 96.

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4. *Credits for excess payments.*

If an employee is paid weekly compensation benefits for temporary total disability under section 85.33, subsection 1, for a healing period under section 85.34, subsection 1, or for temporary partial disability under section 85.33, subsection 2, in excess of that required by this chapter and chapters 85A, 85B, and 86, the excess paid by the employer shall be credited against the liability of the employer for ~~permanent partial disability under section 85.34, subsection 2~~ any future weekly benefits due for an injury to that employee, provided that the employer or the employer's representative has acted in good faith in determining and notifying an employee when the temporary total disability, healing period, or temporary partial disability benefits are terminated.

5. *Recovery of employee overpayment.* If an employee is paid any weekly benefits in excess of that required by this chapter and chapters 85A, 85B, and 86, the excess paid by the employer shall be credited against the liability of the employer for any future weekly benefits due pursuant to subsection 2, for a any current or subsequent injury to the same employee. ~~An overpayment can be established only when the overpayment is recognized in a settlement agreement approved under section 86.13, pursuant to final agency action in a contested case which was commenced within three years from the date that weekly benefits were last paid for the claim for which the benefits were overpaid, or pursuant to final agency action in a contested case for a prior injury to the same employee.~~ The credit shall remain available for eight years after the date the overpayment was established. If an overpayment is established pursuant to this subsection, the employee and employer may enter into a written settlement agreement providing for the repayment by the employee of the overpayment. The agreement is subject to the approval of the workers' compensation commissioner. The employer shall not take any adverse action against the employee for failing to agree to such a written settlement agreement.

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7. *Successive disabilities.*

a. An employer is ~~fully~~ liable for compensating only that portion of an employee's disability that arises out of and in the course of the employee's employment with the employer and that relates to the injury that serves as the basis for the employee's claim for compensation under this chapter, or chapter 85A, 85B, or 86. An employer is not liable for compensating an employee's preexisting disability that arose out of and in the course of employment from a prior injury with the employer, to the extent that the employee's preexisting disability has already been compensated under this chapter, or chapter 85A, 85B, or 86. An employer is not liable for compensating an employee's preexisting disability that arose out of and in the course of employment with a different employer or from causes unrelated to employment.

b. ~~(1) If an injured employee has a preexisting disability that was caused by a prior injury arising out of and in the course of employment with the same employer, and the preexisting disability was compensable under the same paragraph of subsection 2 as the employee's present injury, the employer is liable for the combined disability that is caused by the injuries, measured in relation to the employee's condition immediately prior to the first injury. In this instance, the employer's liability for the combined disability shall be considered to be already partially satisfied to the extent of the percentage of disability for which the employee was previously compensated by the employer.~~

~~(2) If, however, an employer is liable to an employee for a combined disability that is payable under subsection 2, paragraph "u", and the employee has a preexisting disability that causes the employee's earnings to be less at the time of the present injury than if the prior injury had not occurred, the employer's liability for the combined disability shall be considered to be already partially satisfied to the extent of the percentage of disability for which the employee was previously compensated by the employer minus the percentage that the employee's earnings are less at the time of the present injury than if the prior injury had not occurred.~~

c. A successor employer shall be considered to be the same employer if the employee became part of the successor employer's workforce through a merger, purchase, or other transaction that assumes the employee into the successor employer's workforce without substantially changing the nature of the employee's employment.

85.39 Examination of injured employees.

1. After an injury, the employee, if requested by the employer, shall submit for examination at some reasonable time and place and as often as reasonably requested, to a physician or physicians authorized to practice under the laws of this state or another state, without cost to the employee; but if the employee requests, the employee, at the employee's own cost, is entitled to have a physician or physicians of the employee's own selection present to participate in the examination. If an employee is required to leave work for which the employee is being paid wages to attend the requested examination, the employee shall be compensated at the employee's regular rate for the time the employee is required to leave work, and the employee shall be furnished transportation to and from the place of examination, or the employer may elect to pay the employee the reasonable cost of the transportation. The refusal of the employee to submit to the examination shall ~~suspend~~ forfeit the employee's right to any compensation for the period of the refusal. Compensation shall not be payable for the period of ~~suspension~~ refusal.

2. If an evaluation of permanent disability has been made by a physician retained by the employer and the employee believes this evaluation to be too low, the employee shall, upon application to the commissioner and upon delivery of a copy of the application to the employer and its insurance carrier, be reimbursed by the employer the reasonable fee for a subsequent examination by a

physician of the employee's own choice, and reasonably necessary transportation expenses incurred for the examination. The physician chosen by the employee has the right to confer with and obtain from the employer-retained physician sufficient history of the injury to make a proper examination. An employer is only liable to reimburse an employee for the cost of an examination conducted pursuant to this subsection if the injury for which the employee is being examined is determined to be compensable under this chapter or chapter 85A or 85B. An employer is not liable for the cost of such an examination if the injury for which the employee is being examined is determined not to be a compensable injury. A determination of the reasonableness of a fee for an examination made pursuant to this subsection, shall be based on the typical fee charged by a medical provider to perform an impairment rating in the local area where the examination is conducted.

85.45 Commutation

1. Future payments of compensation may be commuted to a present worth lump sum payment only upon application of a party to the commissioner and upon written consent of all parties to the proposed commutation or partial commutation, and on the following conditions:

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3. The parties to any commutation or partial commutation of future payments agreed to and ordered pursuant to this section may agree that the employee has the right to benefits pursuant to section 85.27 under such terms and conditions as agreed to by the parties, for a specified period of time after the commutation or partial commutation agreement has been ordered by the workers' compensation commissioner. During that specified period of time, the commissioner shall have jurisdiction of the commutation or partial commutation agreement for the purpose of adjudicating the employee's entitlement to benefits provided for in section 85.27 as provided in the agreement.

85.70 Additional payment for attendance—rehabilitation and training—new career vocational training and education program.

1. An employee who has sustained an injury resulting in permanent partial or permanent total disability, for which compensation is payable under this chapter other than an injury to the shoulder compensable pursuant to section 85.34, subsection 2, paragraph "On", and who cannot return to gainful employment because of such disability, shall upon application to and approval by the workers' compensation commissioner be entitled to a one hundred dollar weekly payment from the employer in addition to any other benefit payments, during each full week in which the employee is actively participating in a vocational rehabilitation program recognized by the vocational rehabilitation services division of the department of education. The workers' compensation commissioner's approval of such application for payment may be given only after a careful evaluation of available facts, and after consultation with the employer or the employer's representative. Judicial review of the decision of the workers' compensation commissioner may be obtained in accordance with the terms of the Iowa administrative procedure Act, chapter 17A, and in section 86.26. Such additional benefit payment shall be paid for a period not to exceed thirteen consecutive weeks except that the workers' compensation commissioner may extend the period of payment not to exceed an additional thirteen weeks if the circumstances indicate that a continuation of training will in fact accomplish rehabilitation.

2. a. An employee who has sustained an injury to the shoulder resulting in permanent partial disability for which compensation is payable under section 85.34, subsection 2, paragraph "On", and who cannot return to gainful employment because of such disability, shall be evaluated by the department of workforce development regarding career opportunities in specific fields aligning with postsecondary career and technical education programs that provide instruction in the areas of agriculture, family and consumer sciences, health occupations, business, industrial technology, and marketing, that allow for accommodation of the employee's disability and to determine if the employee would benefit from participation in the new career vocational training and education program offered through an area community college, that will allow the employee to return to the workforce.

b. Upon completion of the evaluation and a determination by the department that the employee is a candidate for the new career vocational training and education program, the employee shall be referred by the department to the community college that is in the closest proximity to the employee's residence, or upon agreement of the department and the employee, to the community college that offers a vocational training and education program that best meets the employee's needs, for enrollment in the new career vocational training and education program at the community college for the purpose of providing the employee with occupational training that will result in, at a minimum, the awarding of an associate degree or completion of a certificate program and will enable the employee to return to the workforce. If an employee does not enroll in the new career vocational training and education program at the community college to which the employee has been referred by the department within six months after the referral, the employee is no longer eligible to participate in the program.

c. The employee shall be entitled to financial support from the employer or the employer's insurer for participation in the new career vocational and education training program in a total amount not to exceed fifteen thousand dollars to be used for the payment of tuition and fees and the purchase of required supplies. The community college in which an employee is enrolled pursuant to the program shall bill the employer or the employer's insurer for the employee's tuition and fees each semester, or the equivalent, that the employee is enrolled in the program. The employer or the employer's insurer shall also pay for the purchase of supplies required by the employee to participate in the program, upon receipt of documentation from the employee detailing the cost of the supplies and the necessity for purchasing the supplies. Such documentation may include written course requirements or

other documentation from the community college or the course instructor regarding the necessity for the purchase of certain supplies.

d. The employer or the employer's insurer may request a periodic status report each semester from the community college documenting the employee's attendance and participation in and completion of the education and training program. If an employee does not meet the attendance requirements of the community college at which the employee is enrolled or does not maintain a passing grade in each course in which the employee is enrolled each semester, or the equivalent, the employee's eligibility for continued participation in the program is terminated.

e. The community college shall also provide the employer or the employer's insurer with documentation detailing that the receipt of funds by the community college pursuant to this subsection is for the payment of tuition and fees and the purchase of required supplies.

f. Beginning on or before December 1, 2018, the department of workforce development, in cooperation with the department of education, the insurance division of the department of commerce, and all community colleges that are participating in the new career and vocational training and education program, shall prepare an annual report for submission to the general assembly that provides information about the status of the program including but not limited to the utilization of and participants in the program, program completion rates, employment rates after completion of the program and the types of employment obtained by the program participants, and the effects of the program on workers' compensation premium rates.

85.71 Injury outside of state

1. If an employee, while working outside the territorial limits of this state, suffers an injury on account of which the employee, or in the event of death, the employee's dependents, would have been entitled to the benefits provided by this chapter had such injury occurred within this state, such employee, or in the event of death resulting from such injury, the employee's dependents, shall be entitled to the benefits provided by this chapter, if at the time of such injury any of the following is applicable:

a. The employer has a place of business in this state and the employee regularly works at or from that place of business, ~~or the employer has a place of business in this state and the employee is domiciled in this state.~~

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86.26 Judicial review

1. Judicial review of decisions or orders of the workers' compensation commissioner may be sought in accordance with chapter 17A. Notwithstanding chapter 17A, the Iowa administrative procedure Act, petitions for judicial review may be filed in the district court of the county in which the hearing under section 86.17 was held, the workers' compensation commissioner shall transmit to the reviewing court the original or a certified copy of the entire record of the contested case which is the subject of the petition within thirty days after receiving written notice from the party filing the petition that a petition for judicial review has been filed, and an application for stay of agency action during the pendency of judicial review shall not be filed in the division of workers' compensation of the department of workforce development but shall be filed with the district court. Such a review proceeding shall be accorded priority over other matters pending before the district court.

2. Notwithstanding section 17A.19, subsection 5, a timely petition for judicial review filed pursuant to this section shall stay execution or enforcement of a decision or order of the workers' compensation commissioner if the party seeking judicial review posts a bond securing any compensation awarded pursuant to the decision or order with the district court within thirty days of filing the petition, in a reasonable amount as fixed and approved by the court. Unless either the party posting the bond files an objection with the court, within twenty days from the date that the bond is fixed and approved by the court, that the amount of the bond is not reasonable, or the party whose interests are protected by the bond files an objection with the court, within twenty days from the date that the amount of the bond is fixed and approved by the court, that the amount of the bond is not reasonable or adequate, the amount of the bond shall be deemed reasonable and adequate. If, upon objection, the district court orders the amount of the bond posted to be modified, the party seeking judicial review shall repost the bond in the amount ordered, within twenty days of the date of the order modifying the bond, in order to continue the stay of execution or enforcement of the decision or order of the workers' compensation commissioner.

86.39 Fees—approval.

1. All fees or claims for legal, medical, hospital, and burial services rendered under this chapter and chapters 85, 85A, 85B, and 87 are subject to the approval of the workers' compensation commissioner. For services rendered in the district court and appellate courts, the attorney fee is subject to the approval of a judge of the district court.

2. An attorney shall not recover fees for legal services based on the amount of compensation voluntarily paid or agreed to be paid to an employee for temporary or permanent disability under this chapter, or chapter 85, 85A, 85B, or 87. An attorney shall only recover a fee based on the amount of compensation that the attorney demonstrates would not have been paid to the employee but for the efforts of the attorney. Any disputes over the recovery of attorney fees under this subsection shall be resolved by the workers' compensation commissioner.

86.42 Judgment by district court on award.

Any party in interest may present a file-stamped copy of an order or decision of the commissioner, from which a timely petition for judicial review has not been filed or if judicial review has been filed, which has not had execution or enforcement stayed as provided in section 17A.19, subsection 5, or section 86.26, subsection 2, or an order or decision of a deputy commissioner from which a timely appeal has not been taken within the agency and which has become final by the passage of time as provided by rule and section 17A.15, or an agreement for settlement approved by the commissioner, and all papers in connection therewith, to the district court where judicial review of the agency action may be commenced. The court shall render a decree or judgment and cause the clerk to notify the parties. The decree or judgment, in the absence of a petition for judicial review or if judicial review has been commenced, in the absence of a stay of execution or enforcement of the decision or order of the workers' compensation commissioner as provided in section 17A.19, subsection 5, or section 86.26, subsection 2, or in the absence of an act of any party which prevents a decision of a deputy workers' compensation commissioner from becoming final, has the same effect and in all proceedings in relation thereto is the same as though rendered in a suit duly heard and determined by the court.

535.3 Interest on judgments and decrees.

- 1. a. Interest shall be allowed on all money due on judgments and decrees of courts at a rate calculated according to section 668.13, except for interest due pursuant to section 85.30 for which the rate shall be ten percent per year.
- b. Notwithstanding paragraph "a", interest due pursuant to section 85.30 shall accrue from the date each compensation payment is due at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent.

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In addition, **HF 518** includes the following clauses:

- 1. The sections of this Act amending sections 85.16, 85.18, 85.23, 85.26, 85.33, 85.34, 85.39, 85.71, 86.26, 86.39, and 86.42 apply to injuries occurring on or after the effective date of this Act.
- 2. The sections of this Act amending section 85.45 apply to commutations for which applications are filed on or after the effective date of this Act.

BILLS PASSING SECOND CHAMBER

The following workers compensation-related bills passed the second chamber within the one-week period ending March 31, 2017.

Arkansas

SB 760 was:

- Passed by the first chamber on March 29, 2017
- Passed by the second chamber on March 31, 2017

SB 760 amends *section 11-9-805. Joint petition for final settlement* of the Arkansas Code as follows:

11-9-805. Joint petition for final settlement.

- (a)(1) Upon ~~Except as provided in subdivision (a)(2) of this section, upon~~ petition filed by the employer or carrier and the injured employee requesting that a final settlement be had between the parties, the Workers' Compensation Commission shall hear the petition and take testimony and make investigations as may be necessary to determine whether a final settlement should be had.
- (2)(A) If a claimant has been determined to be eligible for Medicare, the parties may petition the commission for a partial settlement of all issues other than future medical treatment.
- (B) A partial settlement under subdivision (a)(2) of this section is final concerning all issues except future medical treatment.
- ~~(b)(1)(A) If the commission decides it is for that a final settlement award is in the best interests of the claimant that a final award be made, it parties, the commission~~ may order an award that shall be is final as to concerning the rights of all the parties to the joint petition.
- (B) After the commission enters an order with regard to any full settlement, the commission does not have jurisdiction over any claim for the same injury or any results arising from it.
- ~~(2)(A) Thereafter, the commission shall not have jurisdiction over any claim for the same injury or any results arising from it~~ If the commission decides that a partial settlement award is in the best interests of the parties, the commission may order an award that is final concerning the partial settlement of the rights of all the parties to the joint petition.
- (B) After the commission enters an order with regard to any partial settlement, the commission does not have jurisdiction over any claim for the same injury or any results arising from it other than claims for future medical expenses.
- (c) If an employee has returned to work or agreed to return to work, the commission shall not approve a joint petition which has allotted moneys for vocational rehabilitation or any indemnity benefits in excess of that payable as an anatomical impairment as established by objective and measurable findings.
- (d) If the commission denies the petition, the denial shall be without prejudice to either party.
- ~~(e) An appeal shall not lie from an order or award denying or approving a joint petition.~~

Kentucky

HB 377 was:

- Passed by the first chamber on February 28, 2017
- Amended and passed by the second chamber on March 30, 2017
- First chamber concurred in amended bill on March 30, 2017

HB 377, as amended:

- Creates a new section of KRS Chapter 342 for the General Assembly to declare its intent regarding the issues surrounding the Kentucky coal workers' pneumoconiosis fund
- Creates a new section of KRS Chapter 342 to:
 - Close the coal workers' pneumoconiosis fund on July 1, 2017, to all new claims
 - Transfer liabilities and assets to the Kentucky Employers' Mutual Insurance Authority
 - Set forth assessment requirements for 2017 and 2018
- Amends KRS 342.1242, 342.316, 342.320, 342.732, 342.792, 342.794, and 342.120 to bring the statutes into conformity with closing the coal workers' pneumoconiosis fund and transfer to the Kentucky Employers' Mutual Insurance Authority
- Repeals KRS 342.1241

Maryland

HB 1315 was:

- Passed by the first chamber on March 14, 2017
- Included in NCCI's March 24, 2017 *Legislative Activity Report* (RLA-2017-11)
- Passed by the second chamber on March 31, 2017

HB 1315 amends *section 11-329. Workers' compensation insurers* of the Annotated Insurance Code of Maryland as follows:

§ 11-329. Workers' compensation insurers

(a) Each workers' compensation insurer shall:

- (1) be a member of a workers' compensation rating organization; and
- (2) adhere to the policy forms filed by the rating organization.

...

(3) (i) An insurer may develop a tiered rating plan containing two or more risk tiers to be applied to the insurer's acceptance of risks under the uniform classification system on which a rate may be made.

(ii) A tiered rating plan under subparagraph (i) of this paragraph shall:

1. establish discrete tiers for the acceptance of risks based on defined risk attributes that:

A. are not arbitrary, capricious, or unfairly discriminatory; and

B. are reasonably related to the insurer's business and economic purposes; and

2. require that each insured be placed in the highest quality tier for which that insured qualifies.

(iii) An insurer shall file a tiered rating plan developed under subparagraph (i) of this paragraph with the commissioner at least 30 days before the tiered rating plan's use.

(iv) If an insurer fails to demonstrate that the data produced under a tiered rating plan can be reported in a manner consistent with the uniform classification system and the uniform statistical plan, the commissioner shall disapprove the tiered rating plan.

...

~~(f) (1)~~ Except as provided in paragraphs (2) ~~and (3)~~, and (4) of this subsection, the uniform experience rating plan shall be the exclusive means of providing prospective premium adjustment based on measurement of the loss-producing characteristics of an individual insured.

...

(3) An insurer may file a rating plan with the commissioner that provides for prospective premium adjustments based on merit for an insured that does not meet minimum premium requirements to qualify for a uniform experience rating plan.

(4) (i) Except as provided in subparagraph (ii) of this paragraph, in addition to any premium adjustment allowed under paragraphs (1) ~~and (2)~~, and (3) of this subsection and pursuant to a filing made by a rating organization and approved by the Commissioner, an insurer may file a rating plan with the Commissioner that provides for a premium discount for appropriate classifications or subclassifications of a risk of up to 4% to an insured that has an alcohol- and drug-free workplace policy that may include one or more of the following programs:

...

~~(4) (5)~~ (5) An insurer may file a rating plan that provides for retrospective premium adjustments based on an insured's past experience.

Note: HB 1315 is identical to SB 72.

HB 1484 was:

- Passed by the first chamber on March 14, 2017
- Included in NCCI's March 24, 2017 *Legislative Activity Report* (RLA-2017-11)
- Passed by the second chamber on March 31, 2017

HB 1484 amends *section 9-660. Provision of medical services and treatment* of the Annotated Labor and Employment Code of Maryland as follows:

§ 9-660. Provision of medical services and treatment

...

(d) (1) A provider who provides medical service or treatment to a covered employee under subsection (a) of this section shall submit to the employer or the employer's insurer a bill for providing medical service or treatment within 12 months from the later of the date:

(i) medical service or treatment was provided to a covered employee;

(ii) the claim for compensation was accepted by the employer or the employer's insurer; or

(iii) the claim for compensation was determined by the commission to be compensable.

(2) The employer or the employer's insurer may not be required to pay a bill submitted after the time period required under paragraph (1) of this subsection unless:

(i) the provider files an application for payment with the commission within 3 years from the later of the date:

1. medical service or treatment was provided to the covered employee;

2. the claim for compensation was accepted by the employer or the employer's insurer; or

3. the claim for compensation was determined by the commission to be compensable; and

(ii) the commission excuses the untimely submission for good cause.

Note: HB 1484 is identical to SB 194.

SB 72 was:

- Passed by the first chamber on March 7, 2017
- Included in NCCI's March 17, 2017 *Legislative Activity Report* (RLA-2017-10)
- Passed by the second chamber on March 28, 2017

SB 72 amends *section 11-329. Workers' compensation insurers* of the Annotated Insurance Code of Maryland as follows:

§ 11-329. Workers' compensation insurers

(a) Each workers' compensation insurer shall:

(1) be a member of a workers' compensation rating organization; and

(2) adhere to the policy forms filed by the rating organization.

...

(3) (l) An insurer may develop a tiered rating plan containing two or more risk tiers to be applied to the insurer's acceptance of risks under the uniform classification system on which a rate may be made.

(ii) A tiered rating plan under subparagraph (i) of this paragraph shall:

1. establish discrete tiers for the acceptance of risks based on defined risk attributes that:

A. are not arbitrary, capricious, or unfairly discriminatory; and

B. are reasonably related to the insurer's business and economic purposes; and

2. require that each insured be placed in the highest quality tier for which that insured qualifies.

(iii) An insurer shall file a tiered rating plan developed under subparagraph (i) of this paragraph with the commissioner at least 30 days before the tiered rating plan's use.

(iv) If an insurer fails to demonstrate that the data produced under a tiered rating plan can be reported in a manner consistent with the uniform classification system and the uniform statistical plan, the commissioner shall disapprove the tiered rating plan.

...

(f) (1) Except as provided in paragraphs (2) ~~and~~ (3), and (4) of this subsection, the uniform experience rating plan shall be the exclusive means of providing prospective premium adjustment based on measurement of the loss-producing characteristics of an individual insured.

...

(3) An insurer may file a rating plan with the commissioner that provides for prospective premium adjustments based on merit for an insured that does not meet minimum premium requirements to qualify for a uniform experience rating plan.

(4) (i) Except as provided in subparagraph (ii) of this paragraph, in addition to any premium adjustment allowed under paragraphs (1) ~~and~~ (2), and (3) of this subsection and pursuant to a filing made by a rating organization and approved by the Commissioner, an insurer may file a rating plan with the Commissioner that provides for a premium discount for appropriate classifications or

subclassifications of a risk of up to 4% to an insured that has an alcohol- and drug-free workplace policy that may include one or more of the following programs:

...

~~(4)~~ (5) An insurer may file a rating plan that provides for retrospective premium adjustments based on an insured's past experience.

Note: SB 72 is identical to HB 1315.

SB 194 was:

- Passed by the first chamber on March 7, 2017
- Included in NCCI's March 17, 2017 *Legislative Activity Report* (RLA-2017-10)
- Passed by the second chamber on March 28, 2017

SB 194 amends *section 9-660. Provision of medical services and treatment* of the Annotated Labor and Employment Code of Maryland as follows:

§ 9-660. Provision of medical services and treatment

(a) In addition to the compensation provided under this subtitle, if a covered employee has suffered an accidental personal injury, compensable hernia, or occupational disease the employer or its insurer promptly shall provide to the covered employee, as the Commission may require:

- (1) medical, surgical, or other attendance or treatment;
- (2) hospital and nursing services;
- (3) medicine;
- (4) crutches and other apparatus; and
- (5) artificial arms, feet, hands, and legs and other prosthetic appliances.

(b) The employer or its insurer shall provide the medical services and treatment required under subsection (a) of this section for the period required by the nature of the accidental personal injury, compensable hernia, or occupational disease.

(c) Except as provided in § 9-736(b) and (c) of this title, any award or order of the Commission under this section may not be construed to:

- (1) reopen any case; or
- (2) allow any previous award to be changed.

(D) (1) A provider who provides medical service or treatment to a covered employee under subsection (a) of this section shall submit to the employer or the employer's insurer a bill for providing medical service or treatment within 12 months from the later of the date:

- (i) medical service or treatment was provided to a covered employee;
- (ii) the claim for compensation was accepted by the employer or the employer's insurer; or
- (iii) the claim for compensation was determined by the commission to be compensable.

(2) The employer or the employer's insurer may not be required to pay a bill submitted after the time period required under paragraph (1) of this subsection unless:

- (i) the provider files an application for payment with the commission within 3 years from the later of the date:
 1. medical service or treatment was provided to the covered employee;
 2. the claim for compensation was accepted by the employer or the employer's insurer; or
 3. the claim for compensation was determined by the commission to be compensable; and
- (ii) the commission excuses the untimely submission for good cause.

Note: SB 194 is identical to HB 1484.

SB 426 was:

- Passed by the first chamber on March 20, 2017
- Included in NCCI's March 31, 2017 *Legislative Activity Report* (RLA-2017-12)
- Passed by the second chamber on March 28, 2017

SB 426 amends *section 9-640. Survival of compensation* of the Annotated Labor and Employment Code of Maryland, related to permanent total disability benefits, as follows:

§ 9-640. Survival of compensation

(a) Scope of section.—This section does not apply to compensation paid under Title 10, Subtitle 2 of this article.

(b) In general.—If a covered employee dies from a cause that is not compensable under this title, the right to compensation that is payable under this Part V of this subtitle and unpaid on the date of death survives in accordance with this section to the extent of ~~\$45,000~~ \$65,000, as increased by the cost of living adjustments under § 9-638 of this Part V of this subtitle.

...

SB 426 also includes the following clause:

That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any claim arising from events occurring before the effective date of this Act.

SB 426, if enacted in its current form, may result in a negligible increase in overall workers compensation system costs in Maryland.

SB 867 was:

- Passed by the first chamber on March 20, 2017
- Included in NCCI's March 31, 2017 **Legislative Activity Report** (RLA-2017-12)
- Passed by the second chamber on March 30, 2017

SB 867 amends **section 9-1102. Failure to report accident** of the Annotated Labor and Employment Code of Maryland as follows:
§ 9-1102. Failure to report accident

An employer who knowingly fails to report an accidental personal injury within the time required under § 9-707(a) of this title is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$500 ~~§ 50~~.

Montana

SB 275 was:

- Passed by the first chamber on February 24, 2017
- Included in NCCI's March 3, 2017 **Legislative Activity Report** (RLA-2017-08)
- Passed by the second chamber on March 28, 2017

SB 275 amends section **39-71-2211. Premium rates for construction industry—filing required** of the Montana Code Annotated 2015 as follows:

39-71-2211. Premium rates for construction industry—filing required.

- (1) With respect to each classification of risk in the construction industry under plan No. 2, the advisory organization designated under 33-16-1023 shall file with the commissioner of insurance a method of computing premiums that does not impose a higher insurance premium solely because of an employer's higher rate of wages paid.
- (2) The commissioner shall accept a filing under subsection (1) that includes a reasonable method of recognizing differences in rates of pay. This method must use a credit scale with the starting point set at 1.168 times the state's average weekly wage as reported by the department.
- (3) The advisory organization shall file a revenue neutral plan for new and renewed policies for prompt and orderly transition to a method of computing premiums that is in compliance with the requirements of this section.
- (4) The state compensation insurance fund, plan No. 3, shall ~~adopt~~ use the plan filed by the designated advisory organization or ~~adopt~~ use a credit scale plan that meets the requirements of this section.
- (5) For the purposes of this section, "construction industry" means the construction group of code classifications filed with and approved by the commissioner to be used by the advisory organization to comply with this section.

SB 275 also includes the following clause:

Applicability. [This act] applies to policies issued or renewed on or after July 1, 2017.

BILLS PASSING FIRST CHAMBER

Alaska

SB 14, in part, amends **section 23.30.230. Persons not covered** of the Alaska Workers' Compensation Act as follows:

Sec. 23.30.230. Persons not covered.

(a) The following persons are not covered by this chapter:

...

(11) a transportation network company driver who provides a prearranged ride or is otherwise logged onto the digital network of a transportation network company as a driver.

...

(c)

...

(4) "digital network" has the meaning given in AS 28.23.180;

(5) "prearranged ride" has the meaning given in AS 28.23.180;

(6) "transportation network company" has the meaning given in 2 AS 28.23.180;

(7) "transportation network company driver" has the meaning given in 4 AS 28.23.180.

Colorado

HB 1229 amends *section 8-41-301. Conditions of recovery* of the Colorado Revised Statutes as follows:

8-41-301. Conditions of recovery

...

(2) (a) A claim of mental impairment must be proven by evidence supported by the testimony of a licensed ~~physician~~ psychiatrist or psychologist. ~~For purposes of this subsection (2), "mental impairment" means a recognized, permanent disability arising from an accidental injury arising out of and in the course of employment when the accidental injury involves no physical injury and consists of a psychologically traumatic event that is generally outside of a worker's usual experience and would evoke significant symptoms of distress in a worker in similar circumstances.~~ A mental impairment shall not be considered to arise out of and in the course of employment if it results from a disciplinary action, work evaluation, job transfer, lay-off, demotion, promotion, termination, retirement, or similar action taken in good faith by the employer. The mental impairment that is the basis of the claim ~~shall~~ must have arisen primarily from the claimant's then occupation and place of employment in order to be compensable. ~~For purposes of this subsection (2), "mental impairment" also includes a disability arising from an accidental physical injury that leads to a recognized permanent psychological disability.~~

...

(3) For the purposes of this section:

(a) "Mental impairment" means a recognized, permanent disability arising from an accidental injury arising out of and in the course of employment when the accidental injury involves no physical injury and consists of a psychologically traumatic event. "Mental impairment" also includes a disability arising from an accidental physical injury that leads to a recognized permanent psychological disability.

(b) (i) "Psychologically traumatic event" means an event that is generally outside of a worker's usual experience and would evoke significant symptoms of distress in a worker in similar circumstances.

(ii) "Psychologically traumatic event" also includes an event that is within a worker's usual experience only when the worker is diagnosed with post-traumatic stress disorder by a licensed psychiatrist or psychologist after the worker experienced exposure to one or more of the following events:

(a) the worker is the subject of an attempt by another person to cause the worker serious bodily injury or death through the use of deadly force, and the worker reasonably believes the worker is the subject of the attempt;

(b) the worker visually witnesses a death, or the immediate aftermath of the death, of one or more people as the result of a violent event; or

(c) the worker repeatedly visually witnesses the serious bodily injury, or the immediate aftermath of the serious bodily injury, of one or more people as the result of intentional act of another person or an accident.

(c) "Serious bodily injury" means bodily injury that, either at the time of the actual injury or a later time, involves a substantial risk of death, a substantial risk of serious permanent disfigurement, or a substantial risk of protracted loss or impairment of the function of any part or organ of the body.

HB 1229 also includes the following language:

Act subject to petition—effective date—applicability.

(1) This act takes effect July 1, 2018; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2018 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) This act applies to injuries sustained on or after the applicable effective date of this act.

Maine

LD 592 amends *Title 24-A, Chapter 52, section 3714. Accounting; assessments* of the Maine Revised Statutes as follows:

§ 3714. Accounting; assessments

...

7. High risk program. The company shall maintain a high risk program subject to the following provisions.

A. An employer must be placed in the high risk program if the employer has at least 2 lost time claims, each greater than \$10,000 of incurred loss, and a loss ratio greater than 1.0 during the previous 3-year experience rating period. Notwithstanding paragraph C, an employer may also be placed in the high risk program during the term of a policy for noncompliance with reasonable safety standards. [2001, c. 350, §10 (NEW).]

B. The board, with the approval of the superintendent, may modify the eligibility standards for the high risk program if those standards limit those in the program to employers who have measurably adverse loss experience, have a relatively high claim frequency record or have demonstrated an attitude or practice of noncompliance with reasonable safety requirements or claims management standards. [2001, c. 350, §10 (NEW).]

C. Eligibility requirements must be applied annually at the policy renewal date or, if the necessary claim history is not available at that time, 30 days after notice to the insured. [2001, c. 350, §10 (NEW).]

D. Deductibles in the high-risk program are subject to this paragraph.

(1) A deductible applies to all coverage for policyholders in the high-risk program that meet the following qualifications:

(a) A net annual premium of \$20,000 or more, subject to adjustment pursuant to this paragraph, in the State;

(b) A premium not subject to retrospective rating; and

(c) The policyholder's threshold loss ratio is 1.0 or greater.

The deductible is \$1,000 a claim but applies only to wage loss benefits paid on injuries occurring during the year of coverage. The sum of all deductibles in one year of coverage may not exceed the lesser of 15% of net annual payment for coverage or \$25,000. Each loss to which a deductible applies must be paid in full by the company. After the year of coverage has expired, the policyholder shall reimburse the company the amount of the deductibles. This reimbursement is considered as payment for coverage for purposes of cancellation or nonrenewal.

The board shall adjust annually the \$20,000 payment of coverage level established in this subparagraph to reflect any change in rates for the high-risk program and any change in wage levels in the preceding calendar year. Changes in wage levels are determined by reference to changes in the state average weekly wage, as computed by the Department of Labor. Any adjustment is rounded off to the nearest \$1,000 increment.

(2) The board may modify, with the approval of the superintendent, the mandatory deductible elements. Any modification or elimination of this rating feature must consider the incentive impact on an employer, the reasonableness of the retained cost relative to the claim history, safety record or claims management practices of affected employers and the ability of all employers to absorb these costs. [2001, c. 350, §10 (NEW).]

E. The board may file with the superintendent retrospective rating plans that, after hearing, may be imposed on an employer with a demonstrated record of repeated serious violations of workplace health and safety rules and regulations such as those adopted under Title 26, chapter 6 or 29 United States Code, Chapter 15, whichever is applicable. [2001, c. 350, §10 (NEW).]

F. The board shall develop and file with the superintendent and, if not disapproved by the superintendent, make available to policyholders on a voluntary basis retrospective rating plans. [2001, c. 350, §10 (NEW).]

G. Not more than 30 days after assignment to the high-risk program, a policyholder may appeal the assignment in writing to the bureau. [2001, c. 350, §10 (NEW).]

H. The board, with the approval of the superintendent, shall implement a plan for surcharges for policyholders in the high-risk program based on the policyholder's specific loss experience beyond the uniform experience rating plan approved by the superintendent. Any plan of surcharges must consider the actual claims experience of the employer and must provide for rate adjustments reasonably related to the employer's risk of loss.

8. Filing of retrospective rating plans. The board may file with the superintendent retrospective rating plans that, after hearing, may be imposed on an employer with a demonstrated record of repeated serious violations of workplace health and safety rules and regulations such as those adopted under Title 26, chapter 6 or 29 United States Code, Chapter 15, whichever is applicable.

9. Availability of retrospective rating plans. The board shall develop and file with the superintendent and, if not disapproved by the superintendent, make available to policyholders on a voluntary basis retrospective rating plans.

Montana

HB 612, in part, amends *sections 7-33-4510. Workers' compensation for volunteer firefighters—definitions* and *39-71-118. Employee, worker, volunteer, volunteer firefighter, and volunteer emergency medical technician defined* of the Montana Code Annotated 2015 as follows:

7-33-4510. Workers' compensation for volunteer firefighters—definitions.

...

(4) For the purposes of this section, the following definitions apply:

...

(c) (i) "Volunteer firefighter" means a volunteer who is on the employer's roster of service. A volunteer firefighter includes a volunteer emergency ~~medical technician~~ care provider as defined in ~~50-6-202~~ [section 1] who is on the roster of service. A volunteer firefighter is not required to be an active member as defined in 19-17-102.

...

39-71-118. Employee, worker, volunteer, volunteer firefighter, and volunteer emergency ~~medical technician~~ care provider defined

...

(10) (a) An ambulance service not otherwise covered by subsection (1)(g) or a paid or volunteer nontransporting medical unit, as defined in 50-6-302, in service to a town, city, or county may elect to include as an employee within the provisions of this chapter a volunteer emergency ~~medical technician~~ care provider, as defined in [section 1], who serves public safety through the ambulance service not otherwise covered by subsection (1)(g) or the paid or volunteer nontransporting medical unit. The ambulance service or nontransporting medical unit may purchase workers' compensation coverage from any entity authorized to provide workers' compensation coverage under plan No. 1, 2, or 3 as provided in this chapter.

(b) If there is an election under subsection (10)(a), the employer shall report payroll for all volunteer emergency ~~medical technicians~~ care providers for premium and weekly benefit purposes based on the number of volunteer hours of each emergency ~~medical technician~~ care provider, but no more than 60 hours, times the state's average weekly wage divided by 40 hours.

(c) An ambulance service not otherwise covered by subsection (1)(g) or a paid or volunteer nontransporting medical unit, as defined in 50-6-302, may make a separate election to provide benefits as described in this subsection (10) to a member who is either a self-employed sole proprietor or partner who has elected not to be covered under this chapter, but who is covered as a volunteer emergency ~~medical technician~~ care provider pursuant to subsection (10)(a). When injured in the course and scope of employment as a volunteer emergency ~~medical technician~~ care provider, a member may instead of the benefits described in subsection (10)(b) be eligible for benefits at an assumed wage of the minimum wage established under Title 39, chapter 3, part 4, for 2,080 hours a year. If the separate election is made as provided in this subsection (10), payroll information for those self-employed sole proprietors or partners must be reported and premiums must be assessed on the assumed weekly wage.

(d) A volunteer emergency ~~medical technician~~ care provider who receives workers' compensation coverage under this section may not receive disability benefits under Title 19, chapter 17, if the individual is also eligible as a volunteer firefighter.

(e) (i) The term "volunteer emergency ~~medical technician~~ care provider" means a ~~person~~ volunteer who has received ~~a certificate~~ an emergency care provider license issued by the board of medical examiners as provided in ~~Title 50, chapter 6, part 2 [sections 1 through 6]~~, and who serves the public through an ambulance service not otherwise covered by subsection (1)(g) or a paid or volunteer nontransporting medical unit, as defined in 50-6-302, in service to a town, city, or county.

(ii) The term does not include a volunteer emergency ~~medical technician~~ care provider who serves an employer as defined in 7-33-4510.

(f) The term "volunteer hours" means the time spent by a volunteer emergency ~~medical technician~~ care provider in the service of an employer or as a volunteer for a town, city, or county, including but not limited to training time, response time, and time spent at the employer's premises.

...

Vermont

HB 515, in part, amends **Title 21, Chapter 009, section 711. Workers' Compensation Administration Fund** of the Vermont Statutes Annotated as follows:

§ 711. Workers' Compensation Administration Fund

(a) A Workers' Compensation Administration Fund is created pursuant to 32 V.S.A. chapter 7, subchapter 5 to be expended by the Commissioner for the administration of the workers' compensation and occupational disease programs. The Fund shall consist of contributions from employers made at a rate of ~~1.75~~ 1.4 percent of the direct calendar year premium for workers' compensation insurance, one percent of self-insured workers' compensation losses, and one percent of workers' compensation losses of corporations approved under this chapter. Disbursements from the Fund shall be on warrants drawn by the Commissioner of Finance and Management in anticipation of receipts authorized by this section.

...

FEDERAL ISSUES

Issue	Update
Congress	Congress will be in session the first and last week of April, taking a two-week recess in between. With Congress moving on from consideration of changes to the Affordable Care Act, focus will turn to other significant public policy issues including tax reform and infrastructure proposals.
TRIPRA Data Collection— Federal Insurance Office (FIO)	FIO released regulations in late 2016 implementing sections of the TRIPRA 2015, including data reporting requirements in § 111. Beginning in 2017, FIO requires carriers to report terrorism insurance coverage data through their designated portals. FIO released draft templates in 2016 that carriers must use for the required data reporting, and the 2017 templates are currently under review by the Office of Management and Budget. The templates are available online at www.treasury.gov/resource-center/fin-mkts/Pages/program.aspx .
Occupational Safety and Health Administration (OSHA) Injury and Accident Reporting Rule	Both the House and Senate have passed resolutions blocking the OSHA's federal workplace injury and accident reporting rule. The rule, proposed by the Obama Administration, would have expanded employer exposure to fines for failure to keep records on workplace accidents from six months to five years and included new standards for post-injury drug testing, which some observers indicated could have served to limit the use of such programs by employers. The president is expected to sign the measure.

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

STATE LEGISLATIVE ACTIVITY

State	Update
Idaho	SB 1058 , providing coverage for the cost of telehealth services, has failed for the session. The Industrial Commission will convene an Advisory Committee Subcommittee to study the potential relevance of telehealth to workers compensation.
Maine	<p>LD 848 establishes a rebuttable presumption for law enforcement officers and first responders diagnosed with post-traumatic stress disorder.</p> <p>LD 913 requires the Superintendent of Insurance to develop a modification factor to reduce workers compensation insurance rates for small business employers.</p> <p>LD 1056 requires an insurer that is authorized to provide basic property and casualty insurance to also provide, in connection with that insurance, workers compensation insurance covering any domestic worker of the insured.</p>
Missouri	<p>In response to <i>Templemire v. W&M Welding</i>, HB 1100 (mirroring SB 113), in part, bars discharge of, or discrimination against, employees for exercising any of their rights under the workers compensation statute when the exercising of such rights is the exclusive cause of the discharge or discrimination, giving cause for civil action for damages against his or her employer.</p> <p>Three bills—HB 1154, HB 1196, and HB 1198—mandating professional employer organization registration and responsibilities have been introduced. All three measures are similar to SB 266.</p>
Montana	<p>SB 72, creating coverage for presumptive illness for firefighters under specific circumstances, was passed by the Senate but has been tabled for this session in the House.</p> <p>SB 371, a measure to reform the Montana workers compensation market, provides for privatization of the residual market and modifications to the state fund.</p> <p>SB 369 provides for a study to explore alternative options for the state fund operations.</p>
Nevada	<p>AB 267 limits the waiting period requirement for temporary total disability benefits, except for the occupational diseases of cancer, heart disease, or lung disease. It also mandates payment of claimant attorney fees for claims denied but later accepted.</p> <p>AB 300, in part, increases time limits for application or extension of vocational rehabilitation benefits for injured workers who do not have existing marketable skills.</p>
New Hampshire	<p>SB 84 authorizes payment of compensation under the workers compensation law to be made to the injured worker by direct deposit.</p> <p>HB 649 extends the line-of-duty death benefit for police and firefighters to emergency medical technicians and rescue squad members. This would result in the payment of \$100,000 to the family of an emergency medical technician or rescue squad member who is killed in the line of duty.</p>
New Mexico	SB 401 , the proposal to cap premium rates at 4% of payroll, has failed.
Rhode Island	HB 5934 repeals the excess profit reporting requirement.
Texas	<p>HB 2054 establishes an annual adjustment to death benefits equal to the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). <i>NCCI estimates that this measure would result in an increase in overall workers compensation system costs in the state of between +4.5% and +8.1% (\$123M to \$222M).</i></p> <p>HB 2055 proposes that an eligible spouse would be entitled to receive death benefits for life, regardless of remarriage, thus eliminating the current remarriage award of 104 weeks. <i>NCCI estimates that this measure would result in an increase in overall workers compensation system costs in the state of +1.3% (\$36M).</i></p>
Vermont	HB 461 requires workers compensation insurance carriers to offer short-term and seasonal policies. The measure also requires the Commissioner of Financial Regulation to study measures to make workers compensation more affordable for seasonal employers, as well as mechanisms to reduce the cost of providing workers compensation through the assigned risk pool.

	SB 93 provides workers compensation coverage for mental health conditions that result from workplace conditions that are a characteristic of or peculiar to a particular occupation and creates a presumption that post-traumatic stress disorder suffered by a police officer, rescue or ambulance worker, or firefighter was incurred in the line of duty.
West Virginia	HB 2498 provides a rebuttable presumption that a professional or volunteer firefighter who develops leukemia, lymphoma, or multiple myeloma had such cancer arise out of and in the course of employment as a firefighter, if that firefighter: <ul style="list-style-type: none"> • Completed certain cancer screening • Worked in West Virginia as a firefighter for at least five years • Has not used tobacco products for ten years • Was diagnosed with the disease or died no later than 10 years after the person’s last active date of employment as a firefighter • Is not over 65 years old

STATE COMMITTEE ACTIVITY

State	Update
Idaho	The Idaho Industrial Commission (IIC) is moving the Mandatory Period Start Date from July 1, 2017, to November 4, 2017, for electronic reporting of IIC EDI Claims Release 3.0 for First Report of Injury and Subsequent Report of Injury.
Oregon	The Management-Labor Advisory Committee met March 24. The agenda included legislative review of SB 607 (sick leave in “payroll” definition), SB 780 (selection of independent medical examination provider), and SB 901 (amateur athletes as subject workers). The next meeting is scheduled for April 7, 2017, and legislative review of SB 780 and SB 901 are on the agenda for that meeting.
Virginia	The Medical Fee Schedule Advisory Panel met on March 23, to discuss the draft fee schedule as presented by actuarial consulting firm Oliver Wyman. Based on feedback provided during the meeting, a final draft fee schedule is to be presented to the panel on April 10, when the Commission will meet to review and approve the medical fee schedule. A comment period and possible hearing will follow that meeting. The medical fee schedule will be implemented on January 1, 2018.

OTHER ITEMS OF INTEREST

State	Update
Georgia	HB 146 requires fire departments to purchase insurance coverage on firefighters to pay claims for certain diagnoses of enumerated types of cancer. The minimum requirements of the coverage are to provide: <ol style="list-style-type: none"> (1) A lump sum payment of \$25,000 or \$6,250 depending on the type of cancer diagnosed (2) A disability benefit for up to 36 months that is equal to 60% of the monthly salary or \$5,000, whichever is less, or \$1,500 in the case of a volunteer firefighter The benefits are subject to a lifetime limit of \$50,000. This coverage falls outside of the workers compensation system.
Illinois	Due to concerns regarding access to care, the Medical Fee Schedule Advisory Board has recommended a 30% increase to six codes that fall under the area of Professional Services Evaluation and Management. The recommendation will go to the Commissioners for a final decision. <i>NCCI is evaluating the estimated impact of the proposal.</i>
Louisiana	In the case <i>Barber, et al., v. LWC, et al.</i> , the 19th Judicial District Court recently rendered a decision related to the utilization review process contained in the state’s medical treatment guidelines, enjoining the use of certain statutes and regulations related to determinations by medical director of the Office of Workers’ Compensation Administration (OWCA) following receipt of claims forms seeking approval of medical benefits denied by carriers or employers. The OWCA’s request for a suspensive appeal was granted on March 9, 2017, so the utilization review process under the statutes and regulations at issue resumed on March 10, 2017. Further appellate court review is expected in this matter.
Oregon	The Workers’ Compensation Division has adopted its proposed revisions to rules governing medical services, medical billing, and payment that will increase the conversion factor for anesthesia services and payment for certified interpreters effective April 1, 2017. <i>NCCI has analyzed the proposed changes and determined that they will result in an estimated 0.1% increase in the state’s workers compensation benefit costs.</i>

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	Peter Burton	610-964-8852
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
IA, 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.