



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 April 21, 2017.

### Maryland

**HB 1315** and **SB 72** are identical bills.

**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
- Included in NCCI's April 7, 2017 **Legislative Activity Report** (RLA-2017-13)
- Enacted on April 18, 2017, with an effective date of October 1, 2017

**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
- Included in NCCI's April 7, 2017 **Legislative Activity Report** (RLA-2017-13)
- Enacted on April 18, 2017, with an effective date of October 1, 2017

**HB 1315/SB 72** amend **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.

(b) (1) Each workers' compensation insurer shall adhere to a uniform classification system and uniform experience rating plan filed with the Commissioner by a rating organization designated by and subject to disapproval by the Commissioner.

...

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

## West Virginia

**SB 398** was:

- Passed by the first chamber on March 22, 2017
- Included in NCCI's March 31, 2017 **Legislative Activity Report** (RLA-2017-12)
- Passed by the second chamber on April 4, 2017 with title amendment
- Included in NCCI's April 14, 2017 **Legislative Activity Report** (RLA-2017-14)
- Enacted on April 18, 2017, with a projected effective date of July 4, 2017

**SB 398** creates several new sections in the Code of West Virginia, including, but not limited to, the following:

### § 29-30-11. Rulemaking

The Secretary of the Department of Health and Human Resources may promulgate rules pursuant to article three, chapter twenty-nine-a of this code to implement the provisions of this article. These rules shall include measures to facilitate the receipt of benefits for injury or death pursuant to the workers' compensation laws of this state by volunteer health practitioners who reside in other states.

## BILLS PASSING SECOND CHAMBER

The following workers compensation-related bills passed the second chamber within the one-week period ending April 21, 2017.

## Arizona

**SB 1331** was:

- Passed by the first chamber on February 16, 2017
- Included in NCCI's February 24, 2017 **Legislative Activity Report** (RLA-2017-07)
- Amended and passed by the second chamber on April 17, 2017

**SB 1331** amends **section 20-359. Deviations from filed workers' compensation rates** of the Arizona Revised Statutes as follows:  
**20-359. Deviations from filed workers' compensation rates**

A. Every insurer shall adhere to the filings made by the rating organization of which it is a member, except that any member insurer may file with the director:

1. A Up to six uniform percentage deviations that decrease or increase to be applied to the statewide rate portion of the rating organization's rate filing. If more than one deviation is filed by an insurer, each deviation must be established consistent with the underwriting rules that are based on criteria that would lead to a logical distinction of potential risk.

...

C. A rating organization shall notify the director if the organization disapproves any deviation relating to workers' compensation insurance. The director shall notify the industrial commission of the disapproval within ten days ~~of~~ after receipt of the disapproval from the rating organization.

**SB 1332** was:

- Passed by the first chamber on February 23, 2017
- Included in NCCI's March 3, 2017 **Legislative Activity Report** (RLA-2017-08)

- Amended and passed by the second chamber on April 17, 2017

**SB 1332**, in part, adds **section 23-941.01 Settlement of accepted claims; exception; definitions** and amends **section 23-1062. Medical, surgical, hospital benefits; translation services; travel expenses; commencement of compensation; method of compensation** of the Arizona Revised Statutes as follows:

**23-941.01. Settlement of accepted claims; exception; definitions**

A. The interested parties to a claim may:

1. Settle and release all or any part of an accepted claim for compensation, benefits, penalties or interest.
2. If the period of disability is terminated by the carrier, special fund or self-insured employer, negotiate a full and final settlement.

B. Any full and final settlement shall:

1. Be in writing.
2. Be signed by the carrier, special fund or self-insured employer and the employee or the employee's authorized representative.
3. Acknowledge that the employee had the opportunity to seek legal advice and be represented by counsel.
4. Include a description of the employee's medical conditions that have been identified and contemplated at the time of the settlement agreement.

C. If the employee is represented by counsel, the full and final settlement shall include the following attestations:

1. The employee understands the rights settled and released by the agreement and was represented by counsel certified as a specialist in workers' compensation.
2. The employee has been provided information from the carrier, special fund or self-insured employer that outlines any reasonable anticipated future medical, surgical and hospital benefits relating to the claim and the projected cost of those benefits and that provides an explanation of how those projected costs were determined.
3. The employee understands that monies received for future medical treatment associated with the industrial injury should be set aside to ensure that the costs of such treatment will be paid.
4. The parties have considered and taken reasonable steps to protect any interests of Medicare, Medicaid, the Indian Health Service and the United States Department of Veterans Affairs, including establishing a medicare savings account if necessary.
5. The parties have conducted a search for and taken reasonable steps to satisfy any identified medical liens.

D. If the employee is not represented by counsel, the employee shall appear before an administrative law judge and the administrative law judge shall make specific factual findings regarding whether the requirements of subsection B and subsection C, paragraphs 2, 3, 4 and 5 of this section are satisfied. The administrative law judge may not approve the settlement if the requirements of subsection B of this section are not met or if the settlement is not deemed fair and reasonable to the employee.

E. A full and final settlement is not valid and enforceable unless the full and final settlement is approved by the commission. When determining whether to approve a settlement, the commission shall consider whether the settlement is in the best interests of the employee based on the following criteria:

1. Whether the employee's injuries are stabilized.
2. The permanency of the employee's injuries.

F. A lump sum settlement payment shall be made to the employee within fifteen days after the award approving the settlement becomes final.

G. The carrier, special fund or self-insured employer shall notify the attending physician of the approval of a full and final settlement if the full and final settlement terminates the employee's entitlement to medical benefits. Unless medical benefits rendered before the approval date of the full and final settlement are subject to a dispute or payment for the treatment was included in the full and final settlement agreement, the carrier, special fund or self-insured employer remains responsible for payment for the treatment not covered by the full and final settlement agreement as provided by this chapter.

H. Notwithstanding subsection A of this section, a full and final settlement may not be negotiated to settle issues resulting in total and permanent disability pursuant to section 23-1045, subsections C and D.

I. A full and final settlement agreement may not include the settlement of claims unrelated to the claim for compensation, benefits, penalties and interest.

J. This section does not apply to the settlement of claims that have been denied.

K. For the purposes of this section:

1. "Full and final settlement" means a settlement in which the injured employee or, if the injured employee is deceased, the employee's estate, surviving spouse or dependent waives any future entitlement to benefits on the claim and any future right to change the claim pursuant to section 23-1044, subsection F or reopen the claim pursuant to section 23-1061, subsection H.
2. "Special fund" means the special fund established by section 23-1065.

**23-1062. Medical, surgical, hospital benefits; translation services; travel expenses; commencement of compensation; method of compensation**

A. Promptly, on notice to the employer, every injured employee shall receive medical, surgical and hospital benefits or other treatment, nursing, medicine, surgical supplies, crutches and other apparatus, including artificial members, reasonably required at the time of the injury, and during the period of disability. Such benefits shall be termed "medical, surgical and hospital benefits". "

B. Medical, surgical and hospital benefits include translation services, if needed. A carrier, self-insurance pool or employer that does not direct care pursuant to section 23-1070 may choose the translator if the translator is certified by an outside agency and is not an employee of the carrier, self-insurance pool or employer. If the carrier, self-insurance pool or employer is unable to locate a certified translator for the particular language or dialect needed, the parties may agree on a translator who is not a certified translator.

C. Compensation for medical, surgical and hospital benefits shall include reimbursement for reasonable travel expenses if the employee must travel more than twenty-five miles from the employee's place of residence to obtain medical care for the injury.

~~C. D.~~ D. The first installment of compensation is to be paid no later than the twenty-first day after written notification by the commission to the carrier of the filing of a claim unless the right to compensation is denied. Thereafter, compensation shall be paid at least once each two weeks during the period of temporary total disability and at least monthly thereafter. Compensation shall not be paid for the first seven days after the injury. If the incapacity extends beyond the period of seven days, compensation shall begin on the eighth day after the injury, but if the disability continues for one week beyond such seven days, compensation shall be computed from the date of the injury.

~~D. E.~~ E. Compensation shall be made by negotiable instrument, payable immediately on demand or, at the election of the employee and if offered by the employer or carrier, by another commonly accepted method for transferring money by banking institutions, including electronic fund transfers to the employee's account or a prepaid debit card account that is established for the purpose of making direct electronic payment to the employee.

SB 1332 also includes the following language:

**Industrial commission of Arizona; review of authorization process; delayed repeal**

A. On or before December 31, 2017, the industrial commission of Arizona shall review and determine a process for streamlining the authorization process for treatment that is within the evidence-based medical treatment guidelines.

B. This section is repealed from and after June 30, 2018.

## Colorado

HB 1229 was:

- Passed by the first chamber on March 27, 2017
- Included in NCCI's April 7, 2017 **Legislative Activity Report** (RLA-2017-13)
- Passed by the second chamber on April 19, 2017

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

**8-41-301. Conditions of recovery—definitions.**

...

~~(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.~~

~~(a.5) 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.

## Missouri

**SB 66** was:

- Passed by the first chamber on March 9, 2017
- Included in NCCI's March 17, 2017 *Legislative Activity Report* (RLA-2017-10)
- Amended and passed by the second chamber on April 20, 2017

**SB 66** amends numerous sections of the Missouri Workers' Compensation Law, in part, as follows:

**287.020. Definitions—intent to abrogate earlier case law.**

...

12. For the purposes of this chapter, "maximum medical improvement" shall mean the point at which the injured employee's medical condition has stabilized and can no longer reasonably improve with additional medical care, as determined within a reasonable degree of medical certainty.

**287.037. Member of limited liability company to receive coverage, rejection of coverage, rescission of rejection.**

1.

...

2. Notwithstanding any other provision of law to the contrary, beginning January 1, 2018, a shareholder of an S corporation, as defined in subsection 1 of section 143.471, with at least forty percent or greater interest in the S corporation, may individually elect to reject coverage under this chapter by providing a written notice of such rejection to the S corporation and its insurer. Failure to provide notice to the S corporation shall not be grounds for any shareholder to claim that the rejection of such coverage is not legally effective. A shareholder who elects to reject such coverage shall not thereafter be entitled to workers' compensation benefits under the policy, even if serving or working in the capacity of an employee of the S corporation, at least until such time as such shareholder provides the S corporation and its insurer with a written notice that rescinds the prior rejection of such coverage. Any rescission shall be prospective in nature and shall entitle the shareholder only to such benefits that accrue on or after the date the notice of rescission is received by the insurance company.

**287.120. Liability of employer set out—compensation increased or reduced, when—use of alcohol or controlled substances or voluntary recreational activities, injury from—effect on compensation—mental injuries, requirements, firefighter stress not affected.**

...

2. The rights and remedies herein granted to an employee shall exclude all other rights and remedies of the employee, ~~his wife, her husband and the employee's spouse~~, parents, personal representatives, dependents, heirs or next kin, at common law or otherwise, on account of such injury or death by accident or occupational disease, except such rights and remedies as are not provided for by this chapter.

...

6.

...

(4) Any positive test result for a nonprescribed controlled drug or the metabolites of such drug from an employee shall give rise to a rebuttable presumption, which may be rebutted by a preponderance of evidence, that the tested nonprescribed controlled drug was in the employee's system at the time of the accident or injury and that the injury was sustained in conjunction with the use of the tested nonprescribed controlled drug if:

(a) The initial testing was administered within twenty-four hours of the accident or injury;

(b) Notice was given to the employee of the test results within fourteen calendar days of the insurer or group self-insurer receiving actual notice of the confirmatory test results;

(c) The employee was given an opportunity to perform a second test upon the original sample; and

(d) The initial or any subsequent testing that forms the basis of the presumption was confirmed by mass spectrometry using generally accepted medical or forensic testing procedures.

...

11. The provisions of subsections 1 and 2 of this section govern all civil lawsuits or legal causes of action filed on or after January 1, 2014.

**287.149. Benefits to be paid, when—reduction of benefits, when.**

1. Temporary total disability or temporary partial disability benefits shall be paid throughout the rehabilitative process until the employee reaches maximum medical improvement, unless such benefits are terminated by the employee's return to work or are terminated as otherwise specified in this chapter.

...

**287.170. Temporary total disability, amount to be paid—method of payment—disqualification, when—post injury misconduct defined.**

...

5. If an employee voluntarily separates from employment with an employer at a time when the employer had work available for the employee that was in compliance with any medical restriction imposed upon the employee within a reasonable degree of medical certainty as a result of the injury that is the subject of a claim for benefits under this chapter, neither temporary total disability nor temporary partial disability benefits available under this section or section 287.180 shall be payable.

**287.200. Permanent total disability, amount to be paid—suspension of payments, when—toxic exposure, treatment of claims.**

1. Compensation for permanent total disability shall be paid during the continuance of such disability from the date of maximum medical improvement for the lifetime of the employee at the weekly rate of compensation in effect under this subsection on the date of the injury for which compensation is being made. The word "employee" as used in this section shall not include the injured worker's dependents, estate, or other persons to whom compensation may be payable as provided in subsection 1 of section 287.020. The amount of such compensation shall be computed as follows:

...

3. All claims for permanent total disability shall be determined in accordance with the facts. When an injured employee receives an award for permanent total disability but by the use of glasses, prosthetic appliances, or physical rehabilitation the employee is restored to his or her regular work or its equivalent, the life payment mentioned in subsection 1 of this section shall be suspended during the time in which the employee is restored to his or her regular work or its equivalent. The employer and the division shall keep the file open in the case during the lifetime of any injured employee who has received an award of permanent total disability. In any case where the life payment is suspended under this subsection, the commission may at reasonable times review the case and either the employee or the employer may request an informal conference with the commission relative to the resumption of the employee's weekly life payment in the case.

...

**287.203. Termination of compensation by employer, employee right to hearing—assessment of costs.**

Whenever the employer has provided compensation under section 287.170, 287.180 or 287.200, and terminates such compensation, the employer shall notify the employee of such termination and shall advise the employee of the reason for such termination. If the employee disputes the termination of such benefits, the employee may request a hearing before the division and the division shall set the matter for hearing within ~~sixty~~ thirty days of such request and the division shall hear the matter on the date of hearing and no continuances or delays may be granted except upon a showing of good cause or by consent of the parties. The division shall render a decision within thirty days of the date of hearing. If the division or the commission determines that any proceedings have been brought, prosecuted, or defended without reasonable grounds, the division may assess the whole cost of the proceedings upon the party who brought, prosecuted, or defended them.

**287.240. Death benefits and burial expenses, amount, to whom paid and when paid—dependent defined—death benefits, how distributed—record of dependents, employer to keep—dependents to report to division, procedure.**

If the injury causes death, either with or without disability, the compensation therefor shall be as provided in this section:

(1) In all cases the employer shall pay direct to the persons furnishing the same the reasonable expense of the burial of the deceased employee not exceeding five thousand dollars. But no person shall be entitled to compensation for the burial expenses of a deceased employee unless he or she has furnished the same by authority of the widow or widower, the nearest relative of the

deceased employee in the county of his or her death, his or her personal representative, or the employer, who shall have the right to give the authority in the order named. All fees and charges under this section shall be fair and reasonable, shall be subject to regulation by the division or the commission and shall be limited to such as are fair and reasonable for similar service to persons of a like standard of living. The division or the commission shall also have jurisdiction to hear and determine all disputes as to the charges. If the deceased employee leaves no dependents, the death benefit in this subdivision provided shall be the limit of the liability of the employer under this chapter on account of the death, except as herein provided for burial expenses and except as provided in section 287.140; provided that in all cases when the employer admits or does not deny liability for the burial expense, it shall be paid within thirty days after written notice, that the service has been rendered, has been delivered to the employer. The notice may be sent by registered mail, return receipt requested, or may be made by personal delivery;

(2) The employer shall also pay to the ~~total~~ dependents of the employee a death benefit based on the employee's average weekly earnings during the year immediately preceding the injury that results in the death of the employee, as provided in section 287.250. The amount of compensation for death, which shall be paid in installments in the same manner that compensation is required to be paid under this chapter, shall be computed as follows:

(a) If the injury which caused the death occurred on or after September 28, 1983, but before September 28, 1986, the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of the employee's average weekly earnings during the year immediately preceding the injury; provided that the weekly compensation paid under this paragraph shall not exceed an amount equal to seventy percent of the state average weekly wage, as such wage is determined by the division of employment security, as of the July first immediately preceding the date of injury. ~~If there is a total dependent, no death benefits shall be payable to partial dependents or any other persons except as provided in subdivision (1) of this section;~~

(b) If the injury which caused the death occurred on or after September 28, 1986, but before August 28, 1990, the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of the employee's average weekly earnings during the year immediately preceding the injury; provided that the weekly compensation paid under this paragraph shall not exceed an amount equal to seventy-five percent of the state average weekly wage, as such wage is determined by the division of employment security, as of the July first immediately preceding the date of injury. ~~If there is a total dependent, no death benefit shall be payable to partial dependents or any other persons except as provided in subdivision (1) of this section;~~

...

~~(3) If there are partial dependents, and no total dependents, a part of the death benefit herein provided in the case of total dependents, determined by the proportion of his contributions to all partial dependents by the employee at the time of the injury, shall be paid by the employer to each of the dependents proportionately;~~

~~(4) The word "dependent" as used in this chapter shall be construed to mean a relative by blood or marriage of a deceased employee, who is actually dependent for support, in whole or in part, upon his or her wages at the time of the injury. The following persons shall be conclusively presumed to be totally dependent for support upon a deceased employee, and any death benefit shall be payable to them to the exclusion of other total dependents:~~

(a) A wife upon a husband with whom she lives or who is legally liable for her support, and a husband upon a wife with whom he lives or who is legally liable for his support; provided that on the death or remarriage of a widow or widower, the death benefit shall cease unless there be other total dependents entitled to any death benefits under this chapter. In the event of remarriage, a lump sum payment equal in amount to the benefits due for a period of two years shall be paid to the widow or widower. Thereupon the periodic death benefits shall cease unless there are other ~~total~~ dependents entitled to any death benefit under this chapter, in which event the periodic benefits to which such widow or widower would have been entitled had he or she not died or remarried shall be divided among such other ~~total~~ dependents and paid to them during their period of entitlement under this chapter; or

(b) A natural, posthumous, or adopted child or children, whether legitimate or illegitimate, including any stepchild claimable by the deceased on his or her federal tax return at the time of injury, under the age of eighteen years, or over that age if physically or mentally incapacitated from wage earning, upon the parent legally liable for the support or with whom he, she, or they are living at the time of the death of the parent. In case there is a wife or a husband mentally or physically incapacitated from wage earning, dependent upon a wife or husband, and a child or more than one child thus dependent, the death benefit shall be divided among them in such proportion as may be determined by the commission after considering their ages and other facts bearing on the dependency. In all other cases questions of ~~total or partial~~ the degree of dependency shall be determined in accordance with the facts at the time of the injury, and in such other cases if there is more than one person wholly dependent the death benefit shall be divided equally among them. The payment of death benefits to a child or other dependent as provided in this paragraph shall cease when the dependent dies, attains the age of eighteen years, or becomes physically and mentally capable of wage earning over that age, or until twenty-two years of age if the child of the deceased is in attendance and remains as a full-time student in any accredited educational institution, or if at eighteen years of age the dependent child is a member of the Armed Forces of the United States on active duty; provided, however, that such dependent child shall be entitled to compensation during four years of full-time attendance at a fully accredited educational institution to commence prior to twenty-three years of age and immediately upon cessation of his or her active duty in the Armed Forces, unless there are other ~~total~~ dependents entitled to the death benefit under this chapter

...

**287.243. Line of duty compensation—definitions—claim procedure—no subrogation rights for employers or insurers—grievance procedures—sunset date—fund created, use of moneys—rulemaking authority.**

...

(3) “Child”, any natural, illegitimate, adopted, or posthumous child or stepchild of a deceased law enforcement officer, emergency medical technician, air ambulance pilot, air ambulance registered professional nurse, or firefighter who, at the time of the law enforcement officer’s, emergency medical technician’s, air ambulance pilot’s, air ambulance registered professional nurse’s, or firefighter’s fatality is:

- (a) Eighteen years of age or under;
- (b) Over eighteen years of age and a student, as defined in 5 U.S.C. Section 8101; or
- (c) Over eighteen years of age and incapable of self-support because of physical or mental disability;

(4) “Emergency medical technician”, a person licensed in emergency medical care in accordance with standards prescribed by sections 190.001 to 190.245 and by rules adopted by the department of health and senior services under sections 190.001 to 190.245;

...

3. (1) A claim for compensation under this section shall be filed by ~~the estate of~~ survivors of the deceased with the division of workers’ compensation not later than one year from the date of death of a law enforcement officer, emergency medical technician, air ambulance pilot, air ambulance registered professional nurse, or firefighter. If a claim is made within one year of the date of death of a law enforcement officer, emergency medical technician, air ambulance pilot, air ambulance registered professional nurse, or firefighter killed in the line of duty, compensation shall be paid, if the division finds that the claimant is entitled to compensation under this section.

...

4. Any compensation awarded under the provisions of this section shall be distributed as follows:

- (1) To the surviving spouse of the law enforcement officer, emergency medical technician, air ambulance pilot, air ambulance registered professional nurse, or firefighter if there is no child who survived the law enforcement officer, emergency medical technician, air ambulance pilot, air ambulance registered professional nurse, or firefighter;
- (2) Fifty percent to the surviving child, or children, in equal shares, and fifty percent to the surviving spouse if there is at least one child who survived the law enforcement officer, emergency medical technician, air ambulance pilot, air ambulance registered professional nurse, or firefighter, and a surviving spouse of the law enforcement officer, emergency medical technician, air ambulance pilot, air ambulance registered professional nurse, or firefighter;
- (3) To the surviving child, or children, in equal shares, if there is no surviving spouse of the law enforcement officer, emergency medical technician, air ambulance pilot, air ambulance registered professional nurse, or firefighter;
- (4) If there is no surviving spouse of the law enforcement officer, emergency medical technician, air ambulance pilot, air ambulance registered professional nurse, or firefighter and no surviving child:
  - (a) To the surviving individual, or individuals, in shares per the designation or, otherwise, in equal shares, designated by the law enforcement officer, emergency medical technician, air ambulance pilot, air ambulance registered professional nurse, or firefighter to receive benefits under this subsection in the most recently executed designation of beneficiary of the law enforcement officer, emergency medical technician, air ambulance pilot, air ambulance registered professional nurse, or firefighter on file at the time of death with the public safety agency, organization, or unit; or
  - (b) To the surviving individual, or individuals, in equal shares, designated by the law enforcement officer, emergency medical technician, air ambulance pilot, air ambulance registered professional nurse, or firefighter to receive benefits under the most recently executed life insurance policy of the law enforcement officer, emergency medical technician, air ambulance pilot, air ambulance registered professional nurse, or firefighter on file at the time of death with the public safety agency, organization, or unit if there is no individual qualifying under paragraph (a);
- (5) To the surviving parent, or parents, in equal shares, of the law enforcement officer, emergency medical technician, air ambulance pilot, air ambulance registered professional nurse, or firefighter if there is no individual qualifying under subdivisions (1), (2), (3) or (4) of this subsection; or
- (6) To the surviving individual, or individuals, in equal shares, who would qualify under the definition of the term “child” but for age if there is no individual qualifying under subdivision (1), (2), (3), (4) or (5) of this subsection.

...

**287.280. Employer’s entire liability to be covered, self-insurer or approved carrier—exception—group of employers may qualify as self-insurers—uniform experience rating plan—failure to insure, effect—rules—confidential records.**

...

5. When considering applications for new trust self-insurers, as described under 8 CSR 50-3.010, the division shall require proof of payment by each member of not less than twenty-five percent of the estimated annual premium; except that, for new members who wish to join an existing trust self-insurer during the policy year rather than at the beginning of the policy year, the division

shall require proof of payment of the lesser of the estimated premium of three months or the estimated premium for the balance of the policy year.

6. Self-insured trusts, as described under 8 CSR 50-3.010, may invest surplus moneys from a prior trust year not needed for current obligations. Notwithstanding any provision of law to the contrary, upon approval by the division, a self-insured trust may invest up to one hundred percent of surplus moneys in securities designated by the state treasurer as acceptable collateral to secure state deposits under section 30.270.

...

**287.390. Compromise settlements, how made—validity, effect, settlement with minor dependents—employee entitled to one hundred percent of offer, when.**

...

7. (1) In the case of compromise settlements offered after a claimant has reached maximum medical improvement, upon receipt of a permanent disability rating from the employer's physician, a claimant shall have a period of twelve months from such date to acquire a rating from a second physician of his or her own choosing.

(2) Absent a finding of extenuating circumstances by an administrative law judge or the commission, if after twelve months a claimant has not acquired a rating from a second physician, any compromise settlement entered into under this section shall be based upon the initial rating.

(3) A finding of extenuating circumstances by an administrative law judge or the commission shall require more than failure of the claimant to timely obtain a rating from a second physician.

(4) The provisions of this subsection may be waived by the employer with or without stating a cause.

**287.780. Discrimination because of exercising compensation rights prohibited—civil action for damages.**

No employer or agent shall discharge or in any way discriminate against any employee for exercising any of his or her rights under this chapter when the exercising of such rights is the motivating factor in the discharge or discrimination. Any employee who has been discharged or discriminated against in such manner shall have a civil action for damages against his or her employer. For purposes of this section, "motivating factor" shall mean that the employee's exercise of his or her rights under this chapter actually played a role in the discharge or discrimination and had a determinative influence on the discharge or discrimination.

## Maine

LD 612 was:

- Passed by the first chamber on April 18, 2017
- Amended and passed by the second chamber on April 20, 2017

LD 612 amends ***Title 39-A, Chapter 5, section 217. Employment rehabilitation*** as follows:

### § 217. Employment rehabilitation

...

~~**8. Presumption.** If an employee is participating in a rehabilitation plan ordered pursuant to subsection 2, there is a presumption that work is unavailable to the employee for as long as the employee continues to participate in employment rehabilitation.~~

**9. Reduction of benefits.** If an employee is actively participating in a rehabilitation plan ordered pursuant to subsection 2, benefits may not be reduced except:

A. Under section 205, subsection 9, paragraph A, upon the employee's return to work with or an increase in pay from an employer who is paying the employee compensation under this Act;

B. Under section 205, subsection 9, paragraph B, based on the amount of actual documented earnings paid to the employee; or

C. When the employee reaches the durational limit of benefits paid under section 213.

## Montana

SB 312 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 April 21, 2017

SB 312, in part, amends ***section 39-71-704. Payment of medical, hospital, and related services—fee schedules and hospital rates—fee limitation*** of the Montana Code Annotated 2015 as follows:

**39-71-704. Payment of medical, hospital, and related services—fee schedules and hospital rates—fee limitation.**

...

(3) (a) The department shall establish by rule evidence-based utilization and treatment guidelines for primary and secondary medical services. There is a rebuttable presumption that the adopted utilization and treatment guidelines establish compensable medical treatment for an injured worker.

(b) (i) The department may adopt a drug formulary as part of its utilization and treatment guidelines. To implement this section, the department may annually adopt by rule an evidence-based commercial or other evidence-based drug formulary as part of its utilization and treatment guidelines.

(ii) If the department adopts a commercial drug formulary, the formulary automatically includes all of the changes and updates furnished by the commercial vendor that are made during the year. This process is independent of the provisions of 2-4-307.

(iii) If the department adopts a drug formulary, the department shall, by rule, provide for:

(A) an appropriate transition of treatment, if the treatment began prior to the adoption of a drug formulary, to treatment that is consistent with the application of the formulary; and

(B) a timely and responsive dispute resolution process for disputes related to use of the formulary.

~~(b) (c) An insurer is not responsible for treatment or services that do not fall within the utilization and treatment guidelines adopted by the department unless the provider obtains prior authorization from the insurer. If prior authorization is not requested or obtained from the insurer, an injured worker is not responsible for payment of the medical treatment or services.~~

~~(c) The department shall hire a medical director. The department may establish by rule an independent medical review process for treatment or services denied by an insurer pursuant to this subsection (3) prior to mediation under 39-71-2401.~~

(d) The department, in consultation with health care providers with relevant experience and education, shall provide for an annual review of the evidence-based utilization and treatment guidelines to consider amendments or changes to the guidelines.

(4) The department shall hire a medical director. The department may establish by rule an independent medical review process for treatment or services denied by an insurer pursuant to subsection (3) prior to mediation under 39-71-2401.

...

## New Hampshire

HB 150 was:

- Passed by the first chamber on February 2, 2017
- Included in NCCI's February 10, 2017 *Legislative Activity Report* (RLA-2017-05)
- Passed by the second chamber on April 20, 2017

HB 150, in part, amends **sections 412:5 Approval of Form** and **412:15 Rate Standards** of the New Hampshire Statutes as follows:

### Section 412:5 Approval of Form.

I. Every insurer and advisory organization shall file policy forms, endorsements, and other contract language covered by this chapter and RSA 264, for a waiting period of 30 days before it becomes effective, which period may be extended by the commissioner for an additional period not to exceed 30 days if written notice or electronic notice is given within the initial 30-day waiting period to the insurer or advisory organization which made the filing that additional time is needed for the consideration of the filing. Upon written application by the insurer or advisory organization, the commissioner may authorize a filing which has been reviewed to become effective before the expiration of the waiting period or extension thereof. The commissioner may disapprove such form if it contains a provision that does not comply with the requirements of law, is not in the public interest, is contrary to public policy, is inequitable, misleading, deceptive, or encourages misrepresentation of such policy. An approved filing and any supporting information that is not exempt from disclosure by law or rule shall be open to public inspection on or after the ~~effective date of the filing~~ that the filing is approved or the effective date, whichever is later. A filing shall be deemed to meet the requirements of this chapter unless disapproved by the commissioner within the waiting period or extension thereof. Every policy issued by an insurer on an unapproved form shall constitute a separate violation under RSA 412:40.

...

### Section 412:15 Rate Standards.

Rates shall be made in accordance with the following provisions:

I. Rates shall not be excessive, inadequate, or unfairly discriminatory.

(a) A rate in a competitive market ~~is not excessive~~ shall not be disapproved for being excessive.

...

## BILLS PASSING FIRST CHAMBER

The following workers compensation-related bills passed the first chamber within the one-week period ending April 21, 2017.

## Florida

HB 1107 creates **section 440.1851 Personal identifying information of an injured or deceased employee; public records exemption** of the Florida Statutes as follows:

### 440.1851 Personal identifying information of an injured or deceased employee; public records exemption.

(1) Personal identifying information of an injured or deceased employee held by the department, the agency, or the Division of Administrative Hearings pursuant to this chapter is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(a) As used in this section, the term “personal identifying information” means:

1. The injured or deceased employee’s name;
2. The injured or deceased employee’s date of birth;
3. The injured or deceased employee’s home address or mailing address;
4. The injured or deceased employee’s e-mail address; or
5. The injured or deceased employee’s telephone number.

(b) Information made confidential and exempt under this section may be disclosed only:

1. To the injured employee or the surviving spouse or dependents of the deceased employee;
2. In an aggregate reporting format that does not reveal the personal identifying information of any employee, if the aggregation includes the records of at least 10 employees and does not include records related to a date of accident occurring in the 90 days before a public records request;
3. To a party litigant, or his or her authorized representative, in matters pending before the Office of the Judges of Compensation Claims;
4. Pursuant to a court order or subpoena;
5. To an agency for administering its anti-fraud investigative function or otherwise in the furtherance of the agency’s official duties and responsibilities;
6. To an insurer’s anti-fraud investigative unit established and maintained pursuant to s. 626.9891 for the purpose of fulfilling its responsibilities; or
7. To a state or federal governmental entity in the furtherance of the entity’s official duties and responsibilities. An entity receiving such information shall maintain the confidentiality of the information as provided in this section.

(c) This exemption applies to personal identifying information held by the department, the agency, or the division before, on, or after the effective date of this exemption.

(2) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and is repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

**HB 1107** also includes the following language:

The Legislature finds that it is a public necessity to make confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution the personal identifying information of an injured or deceased employee held by the Department of Financial Services, the Agency for Health Care Administration, or the Division of Administrative Hearings. Such information is of a sensitive, personal nature, and disclosure of such information about an injured or deceased employee is an invasion of that employee’s privacy or the privacy of his or her family. Further, the release of such information could lead to discrimination against the employee by coworkers, potential employers, and others. The harm caused to such an employee or his or her family by the release of this information outweighs any public benefit derived from its release.

**HB 7085** amends various provisions of the workers compensation law and insurance code to:

- Permit direct payment of attorneys by or for claimants
- Increase total combined temporary total disability (TTD) and temporary partial disability (TPD) wage replacement benefits from 104 weeks to 260 weeks
- Fill a benefit gap that happens when TTD/TPD ends, but the injured worker is not at overall maximum medical improvement and/or no overall permanent impairment rating
- Allow a Judge of Compensation Claims (JCC) to award an hourly fee that departs from the statutory percentage-based attorney fee schedule
  - This is only permitted if the statutory fee is less than 40% or greater than 125% of the hourly rate customarily charged in the local community by defense attorneys, with the JCC determining the relevant facts
  - If the departure fee is allowed, the JCC determines the hourly rate, not to exceed \$150 per hour, using statutory factors and the number of necessary attorney hours
- Make the injured worker responsible for any remaining attorney fees if required by their retainer agreement; the retainer agreements must be filed with the JCCs, but are not subject to JCC approval
- Allow insurers to uniformly reduce premiums by no more than 5%, if they file an informational-only notice within 30 days, subject to regulatory oversight
- Create a mechanism to fill vacancies on the Three-Member Panel; grant the Panel authority to fill gaps in statutory reimbursement when adopting schedules of maximum reimbursement allowances for medical care
- Require a good faith effort by the claimant and their attorney to resolve disputes prior to filing a petition for benefits; mandate a specified notice regarding attorney fees be signed by the claimant; increase the requirements applicable to petitions for benefits; eliminate carrier-paid attorney fees for services occurring before the filing of a petition; attach attorney fees 45 days, rather than 30 days, following the filing of a petition; requires a JCC to dismiss a petition for lack of specificity, without prejudice, within 10 days or 20 days, depending upon whether a hearing is required

- Eliminate the charge-based reimbursement of health care facility outpatient medical care in favor of reimbursing them at 200% (unscheduled care) and 160% (scheduled surgery) of Medicare; if no Medicare fee exists, then current reimbursement standards apply, which are incorporated into statute
- Require the authorization or denial of medical care authorization requests, unless there is a material deficiency
- Provide for collecting additional information on attorney fees

*NCCI estimates that the combination of the proposed changes to **HB 7085** would result in a sizable to significant decrease in Florida's overall workers compensation system costs.*

**SB 404** states the following:

(1) The following rules are ratified for the sole and exclusive purpose of satisfying any condition on effectiveness imposed under s. 120.541(3), Florida Statutes: rule 69L-7.501, Florida Administrative Code, titled "Florida Workers' Compensation Reimbursement Manual for Hospitals," and rule 69L-7.100, Florida Administrative Code, titled "Florida Workers' Compensation Reimbursement Manual for Ambulatory Surgical Centers," as filed for adoption with the Department of State pursuant to the certification package dated December 19, 2016.

(2) This act serves no other purpose and shall not be codified in the Florida Statutes. After this act becomes law, its enactment and effective dates shall be noted in the Florida Administrative Code, the Florida Administrative Register, or both, as appropriate. This act does not alter rulemaking authority delegated by prior law, does not constitute legislative preemption of or exception to any provision of law governing adoption or enforcement of the rule cited, and is intended to preserve the status of any cited rule as a rule under chapter 120, Florida Statutes. This act does not cure any rulemaking defect or preempt any challenge based on a lack of authority or a violation of the legal requirements governing the adoption of any rule cited.

## Tennessee

**SB 1214** makes various changes to the Tennessee Workers' Compensation Law as follows:

- Renames the Second Injury Fund the Subsequent Injury and Vocational Recovery Fund.
- Authorizes a sole proprietor, a partner, and members of a Limited Liability Company (LLC) who devote full time to the company to elect to be a covered employee for workers compensation purposes by filing written notice of the election with the partnership, proprietorship, or LLC; and requires that the election be filed with the insurer. Such a sole proprietor, a partner, or member of an LLC may at any time withdraw the election by giving notice of the withdrawal to the partnership, proprietorship, or LLC.
- Specifies, with regard to an officer of a corporation electing to be exempt from the Workers' Compensation Law, that notice of such election will not be effective until filed with the corporation; and adds provisions regarding the revocation of the exemption.
- Requires that only the employer must be provided the notice and affidavit. Present law authorizes corporate officers, other than corporate officers engaged in the construction industry, to elect exemption from the Workers' Compensation Law by providing notice of the election to the bureau and the officer's employer along with an affidavit affirming that the election was not advised, counseled, or encouraged by the employer.
- Requires that an employer with less than five regular employees who wants to opt into the law must purchase a workers compensation insurance policy rather than provide notice to the bureau. Present law generally exempts nonconstruction services employers who have less than five regular employees from the Workers' Compensation Law; and any such exempt employer may opt into the law by filing a notice with the bureau.
- Authorizes any employee who has exhausted eligibility for permanent partial disability benefits and, following a workers compensation injury, has not returned to work with any employer or has returned to work and is receiving wages or a salary that is less than 100% of the wages or salary the employee received from the employee's pre-injury employer on the date of injury, to request vocational recovery assistance from the subsequent injury and vocational recovery fund. Vocational recovery assistance may include, but is not limited to, vocational assessment, employment training, job analysis, vocational testing, GED classes and testing, and education through a public Tennessee higher education institution, including books and materials required for courses. All vocational recovery assistance is subject to the maximum limit of \$5,000 per eligible employee in a fiscal year, not to exceed a total sum of \$20,000 per employee who participates in the program for all years. The total aggregate amount to be paid from the subsequent injury and vocational recovery fund as to all eligible employees will be limited to a total of \$500,000 in a calendar year. The administrator of the bureau will determine whether to grant requests for vocational recovery assistance. Sets financial parameters for use of the monies in the subsequent injury and vocational recovery fund for vocational recovery assistance. Deletes the present law requirement that the administrator cause the bureau of workers' compensation to refer all feasible cases for vocational rehabilitation to the department of education. The provisions described here are limited to injuries that occur on or after July 1, 2018, but before July 1, 2021
- Specifies that oral argument may be heard for appeals to the workers compensation appeals board; deletes from present law the authorization for the workers compensation appeals board to reverse or modify and remand the decision of a workers compensation judge when the rights of any party have been prejudiced because findings, inferences, conclusions, or decisions of a workers compensation judge:

- (A) Violate constitutional or statutory provisions;
  - (B) Exceed the statutory authority of the workers' compensation judge;
  - (C) Do not comply with lawful procedure;
  - (D) Are arbitrary, capricious, characterized by abuse of discretion, or clearly an unwarranted exercise of discretion; or
  - (E) Are not supported by evidence that is both substantial and material in the light of the entire record
- Requires that a statistical data form must be filed for a settlement for initial benefits, a settlement for increased benefits, and a settlement for closure of future medical benefits that remained open pursuant to a prior order, even if a statistical data form was filed at the time of submission of the prior order; removes present law language that prohibits entry of a settlement or trial order in a workers compensation claim if the statistical data form is not filed; authorizes the administrator to assess a civil penalty of \$100 to \$1,000 against an employer or employer's agent who fails to fully complete and timely file the statistical data form within 10 business days of the date of a compensation hearing order. Present law generally requires that a statistical data form be filed with the bureau for workers' compensation claims that are resolved by trial or settlement; if the administrator determines that an insurer or self-insured employer fails to complete substantially and file the statistical data more than five times, the administrator may assess a monetary penalty up to \$100 against the insurance company for the employer or against the employer, if self-insured. Under present law, a statistical data form is not required for reconsideration of a prior settlement or trial judgment order for which a statistical data form was filed at the time of submission of the prior order, or when the only issue resolved by an order is the closing of future medical benefits that remained open pursuant to a prior order for which a statistical data form was filed at the time of submission of the prior order.
  - Requires any employer of a construction services provider to, upon request by the bureau, provide proof of valid workers' compensation insurance coverage at the employer's place of business and at job sites where the employer is providing construction services; authorizes the administrator to assess a penalty of \$50 to \$5,000 per violation for failure to provide proof of valid workers' compensation insurance coverage, and the administrator may assess not less than \$50 nor more than \$5,000 per violation for subsequent violations.
  - Authorizes the administrator to assess a penalty of \$50 to \$5,000 per violation against any person or representative of an entity who knowingly enters or directs a party to enter false or unauthorized information on a construction services provider's application to the secretary of state. Present law generally requires all construction services providers to carry workers compensation insurance; provided, that a construction service provider who meets certain criteria may apply to the secretary of state for an exemption.
  - Requires insurers to advise policy holders who are construction services providers about the availability of electronic downloads of policy information to facilitate field inspection of proof of workers compensation coverage.

## Texas

**HB 451** adds *section 451.0025. Waiver of Immunity; Permission for First Responders to Sue* to the Texas Labor Code as follows:  
**Sec. 451.0025. Waiver of Immunity; Permission for First Responder to Sue.**

(a) In this section, "first responder" has the meaning assigned by Section 421.095, Government Code.

(b) A first responder who alleges a violation of Section 451.001 by a state or local governmental entity that employs the first responder may sue the governmental entity for the relief provided by this chapter. Sovereign or governmental immunity from suit is waived and abolished to the extent of liability created by this chapter.

(c) To the extent a person has official or individual immunity from a claim for damages, this section does not affect that immunity.

**HB 451** also amends *section 504.002. Application of General Workers' Compensation Laws; Limit on Actions and Damages* of the Texas Labor Code as follows:

**Sec. 504.002. Application of General Workers' Compensation Laws; Limit on Actions and Damages.**

(a) The following provisions of Subtitles A and B apply to and are included in this chapter except to the extent that they are inconsistent with this chapter:

(1) Chapter 401, other than Section 401.011(18) defining "employer" and Section 401.012 defining "employee";

(2) Chapter 402;

(3) Chapter 403, other than Sections 403.001–403.005;

(4) Chapters 404 and 405;

(5) Sections 406.006–406.009 and Subchapters B and D–G, Chapter 406, other than Sections 406.033, 406.034, 406.035, 406.091, and 406.096;

(6) Chapter 408, other than Sections 408.001(b) and (c);

(7) Chapters 409–412;

(8) Chapter 413, except as provided by Section 504.053;

(9) Chapters 414–417; and

(10) Chapter 451, subject to the limitations of Subsection (a-1).

(a-1) The liability of a political subdivision under Chapter 451 is limited to money damages in a maximum amount of \$100,000 for each person aggrieved by and \$300,000 for each single occurrence of a violation of that chapter. For purposes of this subsection, a

single occurrence is considered to be a single employment policy or employment action that results in discrimination against or discharge of one or more employees concurrently.

**HB 451** also states the following:

The change in law made by this Act applies only to a cause of action that accrues on or after the effective date of this Act. A cause of action that accrues before the effective date of this Act is governed by the law in effect on the date the cause of action accrued, and the former law is continued in effect for that purpose.

**HB 1456** amends **section 415.035. Judicial Review** of the Texas Labor Code as follows:

**415.035. Judicial Review.**

~~(a)~~ A decision under Section 415.034 is subject to judicial review in the manner provided for judicial review under Chapter 2001, Government Code.

~~(b)~~ If an administrative penalty is assessed, the person charged shall:

~~(1)~~ forward the amount of the penalty to the division for deposit in an escrow account; or

~~(2)~~ post with the division a bond for the amount of the penalty, effective until all judicial review of the determination is final.

~~(c)~~ Failure to comply with Subsection (b) results in a waiver of all legal rights to contest the violation or the amount of the penalty.

~~(d)~~ If the court determines that the penalty should not have been assessed or reduces the amount of the penalty, the division shall:

~~(1)~~ remit the appropriate amount, plus accrued interest, if the administrative penalty was paid; or

~~(2)~~ release the bond.

**HB 1456** also states the following:

Section 415.035, Labor Code, as amended by this Act, applies only to judicial review of a decision issued on or after the effective date of this Act. Judicial review of a decision issued before the effective date of this Act is governed by the law in effect on the date the decision was issued, and the former law is continued in effect for that purpose.

**HB 2053** amends **sections 414.005. Investigation Unit, 414.006. Referral to Other Authorities, 418.001. Penalty for Fraudulently Obtaining or Denying Benefits, and 418.002. Penalty for Fraudulently Obtaining Workers' Compensation Insurance Coverage** of the Texas Labor Code as follows:

**Sec. 414.005. Investigation Unit.**

(a) The division shall maintain an investigation unit to conduct investigations relating to:

(1) alleged violations of this subtitle, commissioner rules, or a commissioner order or decision, with particular emphasis on violations of Chapters 415 and 416; and

(2) alleged offenses under this subtitle, with particular emphasis on offenses under Chapter 418.

**Sec. 414.006. Referral to Other Authorities.**

(a) For further investigation or the institution of appropriate proceedings, the division may refer the persons involved in a case subject to an investigation to other appropriate authorities, including licensing agencies, district and county attorneys, or the attorney general.

(b) The division may provide technical or litigation assistance regarding the investigation referred under Subsection (a) to the appropriate authority.

**Sec. 418.001. Penalty for Fraudulently Obtaining or Denying Benefits.**

...

(b) An offense under Subsection (a) is:

(1) a Class A misdemeanor if the value of the benefits is less than \$2,500 ~~\$1,500~~; and

(2) a state jail felony if the value of the benefits is \$2,500 ~~\$1,500~~ or more.

**Sec. 418.002. Penalty for Fraudulently Obtaining Workers' Compensation Insurance Coverage.**

...

(b) An offense under Subsection (a) is:

(1) a Class A misdemeanor if the amount of premium avoided is less than \$2,500 ~~\$1,500~~; and

(2) a state jail felony if the amount of the premium avoided is \$2,500 ~~\$1,500~~ or more.

**HB 2053** also amends the heading to Chapter 418 to read:

**Chapter 418. Criminal Investigations and Penalties**

In addition, **HB 2053** adds **section 418.004. Subpoena Authority** to the Texas Labor Code as follows:

**Sec. 418.004. Subpoena Authority.**

(a) The commissioner may issue a subpoena to compel the attendance and testimony of a witness or the production of materials relevant to an investigation of an offense under this chapter.

(b) The commissioner may issue a subpoena under Subsection (a) regarding a witness or materials located in this state or in another state.

**HB 2053** also states the following:

Sections 418.001(b) and 418.002(b), Labor Code, as amended by this Act, apply only to an offense committed on or after September 1, 2017. An offense committed before September 1, 2017, is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before September 1, 2017, if any element of the offense occurred before that date.

Section 418.004, Labor Code, as added by this Act, applies to a subpoena issued on or after the effective date of this Act, regardless of whether the offense investigated was committed before, on, or after that date.

**HB 2061** amends *sections 410.253. Service; Notice* and *410.258. Notification of Division of Proposed Judgments and Settlements; Right to Intervene* of the Texas Labor Code as follows:

**Sec. 410.253. Service; Notice.**

(a) A party seeking judicial review shall simultaneously:

- (1) file a copy of the party's petition with the court;
- (2) serve any opposing party to the suit; and
- (3) provide a copy written notice of the party's petition suit or notice of appeal to the division.

(b) A party may not seek judicial review under Section 410.251 unless the party has provided the copy written notice of the petition suit to the division under Subsection (a)(3) as required by this section.

**Sec. 410.258. Notification of Division of Proposed Judgments and Settlements; Right to Intervene.**

(a) The party who initiated a proceeding under this subchapter or Subchapter G must file any proposed judgment or settlement ~~made by the parties to the proceeding,~~ including a proposed default judgment or proposed agreed judgment, with the division not later than the 30th day before the date on which the court is scheduled to enter the judgment or approve the settlement.

(a-1) If the terms of the proposed settlement or proposed agreed judgment, including all payments to be made, are not described in the proposed settlement or proposed agreed judgment, the party must also file with the division at the time of filing the proposed settlement or proposed agreed judgment a separate document that fully describes the terms of the proposed settlement or proposed agreed judgment.

(a-2) The proposed judgment or settlement or proposed agreed judgment and any separate document described by Subsection (a-1) must be mailed to the division by certified mail, return receipt requested.

(a-3) The separate document filed with the division under Subsection (a-1) is not subject to disclosure under Chapter 552, Government Code.

**HB 2061** also states the following:

Section 410.253, Labor Code, as amended by this Act, applies to a petition for judicial review filed on or after the effective date of this Act.

Section 410.258, Labor Code, as amended by this Act, applies to a proposed judgment or settlement related to a proceeding under Subchapter F or G, Chapter 410, Labor Code, initiated on or after the effective date of this Act.

**SB 1494** amends *section 413.014. Preauthorization Requirements; Concurrent Review and Certification of Health Care* of the Texas Labor Code as follows:

**Sec. 413.014. Preauthorization Requirements; Concurrent Review and Certification of Health Care.**

...

(c) The commissioner's rules adopted under this section must provide that preauthorization and concurrent review are required at a minimum for:

- (1) spinal surgery, as provided by Section 408.026;
- (2) work-hardening or work-conditioning services ~~provided by a health care facility that is not credentialed by an organization recognized by commissioner rules;~~
- (3) inpatient hospitalization, including any procedure and length of stay;
- (4) physical and occupational therapy;
- (5) outpatient or ambulatory surgical services, as defined by commissioner rule; and
- (6) any investigational or experimental services or devices.

(c-1) Notwithstanding Subsection (c)(2), the commissioner by rule may exempt from preauthorization and concurrent review work-hardening or work-conditioning services provided by a health care facility that is credentialed by an organization designated by commissioner rule.

...

**SB 1494** also states the following:

The change in law made by this Act applies only to health care services provided on or after the effective date of this Act in conjunction with a claim for workers' compensation benefits, regardless of the date on which the compensable injury that is the basis of the claim occurred.

### 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, ID, MT, NV, OR	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
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.