



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 May 19, 2017.

### Oregon

**HB 2335** was:

- Passed by the first chamber on March 2, 2017
- Included in NCCI's March 10, 2017 **Legislative Activity Report** (RLA-2017-09)
- Passed by the second chamber on May 9, 2017
- Included in NCCI's May 19, 2017 **Legislative Activity Report** (RLA-2017-19)
- Enacted on May 17, 2017, with an effective date of January 1, 2018

**HB 2335** amends *section 656.268 Claim closure; termination of temporary total disability benefits; reconsideration of closure; medical arbiter to make findings of impairment for reconsideration; credit or offset for fraudulently obtained or overpaid benefits; rules* of the Oregon Revised Statutes as follows:

**656.268 Claim closure; termination of temporary total disability benefits; reconsideration of closure; medical arbiter to make findings of impairment for reconsideration; credit or offset for fraudulently obtained or overpaid benefits; rules.**

...

(8) ...

(b) If ~~neither party requests a medical arbiter and~~ the director determines that insufficient medical information is available to determine disability, the director may appoint, and refer the claim to, a medical arbiter ~~appointed by the director.~~

(c) At the request of either of the parties, the director shall appoint a panel of as many as three medical arbiters ~~shall be appointed in accordance with criteria that the director sets by rule.~~

(d) The arbiter, or panel of medical arbiters, ~~shall~~ must be chosen from among a list of physicians qualified to be attending physicians referred to in ORS 656.005 (12)(b)(A) ~~who were selected by whom~~ the director selected in consultation with the Oregon Medical Board and the committee referred to in ORS 656.790.

(e) ...

(C) At the conclusion of the 60-day postponement period, if the worker has not attended and cooperated with a medical arbiter examination or established good cause, ~~there shall be no further opportunity for the worker to~~ may not attend a medical arbiter examination for this claim closure. The reconsideration record ~~shall~~ must be closed, and the director shall issue an order on reconsideration based upon the existing record.

(D) All disability benefits suspended ~~pursuant to~~ under this subsection, including all disability benefits awarded in the order on reconsideration, or by an Administrative Law Judge, the Workers' Compensation Board or upon court review, ~~shall not be~~ are not due and payable to the worker.

(f) The insurer or self-insured employer shall pay the costs of examination and review by the medical arbiter or panel of medical arbiters ~~shall be paid by the insurer or self-insured employer.~~

(g) The findings of the medical arbiter or panel of medical arbiters ~~shall~~ must be submitted to the director for reconsideration of the notice of closure.

(h) After reconsideration, no subsequent medical evidence of the worker's impairment is admissible before the director, the Workers' Compensation Board or the courts for purposes of making findings of impairment on the claim closure.

(i)(A) ~~When~~ If the basis for objection to a notice of closure issued under this section is a disagreement with the impairment used in rating the worker's disability, and the director determines that the worker is not medically stationary at the time of the reconsideration or that the closure was not made pursuant to this section, the director is not required to appoint a medical arbiter ~~prior to the completion of~~ before completing the reconsideration proceeding.

...

(13) An insurer or self-insured employer may take a credit or offset of previously paid workers' compensation benefits or payments against any further workers' compensation benefits or payments due a worker from that insurer or self-insured employer when the worker admits to having obtained the previously paid benefits or payments through fraud, or a civil judgment or criminal conviction is entered against the worker for having obtained the previously paid benefits through fraud. Benefits or payments obtained through fraud by a worker ~~shall~~ may not be included in any data used for ratemaking or individual employer rating or dividend calculations by an insurer, a rating organization licensed pursuant to ORS chapter 737, the State Accident Insurance Fund Corporation or the director.

...

**HB 2336** was:

- Passed by the first chamber on March 2, 2017
- Included in NCCI's March 10, 2017 *Legislative Activity Report* (RLA-2017-09)
- Passed by the second chamber on May 9, 2017
- Included in NCCI's May 19, 2017 *Legislative Activity Report* (RLA-2017-19)
- Enacted on May 17, 2017, with an effective date of January 1, 2018

**HB 2336**, as amended, amends *sections 656.443 Procedure upon default by employer or self-insured employer group, 656.591 Election not to bring action operates as assignment of cause of action, and 656.593 Procedure when worker elects to bring action; release of liability and lien of paying agency in certain cases* of the Oregon Revised Statutes as follows:

Section 1. **656.443 Procedure upon default by employer or self-insured employer group.**

...

(2) ~~Prior to~~ Before any default by the employer or self-insured employer group, the employer or group is entitled to all interest and dividends on securities on deposit and to exercise all voting rights, stock options and other similar incidents of ownership of the securities.

(3) If for any reason the certification of a self-insured employer or self-insured employer group is canceled or terminated, the surety bond or other security deposited with the director ~~shall~~ must remain on deposit or in effect, as the case may be, for a period of at least 62 months after the employer ceases to be a self-insured employer. The surety bond or other security ~~shall~~ must be maintained in an amount necessary to secure the outstanding and contingent liability arising from the accidental injuries secured by the surety bond or other security; and to ~~assure~~ ensure the payment of claims for aggravation and claims arising under ORS 656.278 based on those accidental injuries. At the expiration of the 62-month period, or of another period the director may consider proper, the director may accept in lieu of the surety bond or other security deposited with the director a policy of paid-up insurance in a form approved by the director.

(4) If a self-insured employer or self-insured employer group is in default, is decertified by the director or cancels ~~its~~ the employer's or the group's certification under ORS 656.434, the director may:

(a) Order members of the group to pay an assessment for the continuing claim liabilities as specified in ORS 656.430 (7)(a)(D)(i); and

(b) Determine the claims processing agent that ~~shall process~~ processes claims of the self-insured employer or self-insured employer group. The claims processing agent may be the assigned claims agent selected under ORS 656.054.

(5) Member assessments collected under subsection (4) of this section ~~shall~~ must be deposited in the Consumer and Business Services Fund created in ORS 705.145.

(6) Failure to pay an assessment ordered under subsection (4) of this section subjects members of the self-insured employer group to civil penalties as provided in ORS 656.745.

(7) A claims processing agent that the director designates under subsection (4) of this section, other than the State Accident Insurance Fund Corporation, may choose the legal counsel the claims processing agent employs for representation under this section.

Section 2. **656.591 Election not to bring action operates as assignment of cause of action.**

(1) An election made pursuant to ORS 656.578 not to proceed against ~~the an~~ an employer or third person operates as an assignment to the paying agency of the cause of action, if any, of ~~the a~~ a worker, or the beneficiaries or legal representative of ~~the a~~ a deceased

worker; against the employer or third person, and the paying agency may bring action against ~~such the~~ employer or third person in the name of the ~~injured~~ worker or other beneficiaries.

(2) Any sum ~~recovered by~~ the paying agency recovers in excess of the expenses ~~the paying agency~~ incurred in making ~~such the~~ recovery and the amount ~~expended by~~ the paying agency expended for compensation, first aid or other medical, surgical or hospital service, together with the present ~~worth value~~ of the monthly payments of compensation to which ~~such the~~ worker or other beneficiaries may be entitled under this chapter, ~~shall must~~ be paid ~~such to the~~ worker or other beneficiaries.

(3) A paying agency shall repay the Department of Consumer and Business Services for any expenditures from the Consumer and Business Services Fund, the Self-Insured Employer Adjustment Reserve, the Self-Insured Employer Group Adjustment Reserve or the Workers' Benefit Fund that the department makes, together with the present value of any reasonably expected future expenditures from the funds or reserves that the department may make, to reimburse the paying agency for the paying agency's costs and to compensate or pay other costs of a worker's claim because of a self-insured employer's or self-insured employer group's insolvency, default or decertification.

### Section 3. 656.593 Procedure when worker elects to bring action; release of liability and lien of paying agency in certain cases.

(1) If ~~the a~~ worker or the beneficiaries of the worker elect to recover damages from ~~the an~~ employer or third person, the worker or beneficiaries shall give notice of such the election shall be given to the paying agency by personal service or by registered or certified mail. The paying agency likewise ~~shall must~~ be given notice of the name of the court in which ~~such the~~ action is brought, and a return showing service of ~~such the~~ notice on the paying agency ~~shall must~~ be filed with the clerk of the court but ~~shall not be~~ is not a part of the record except to give notice to the defendant of the lien of the paying agency, as provided in this section. The proceeds of any damages ~~recovered the worker or beneficiaries recover~~ from an employer or third person ~~by the worker or beneficiaries shall be~~ are subject to a lien of the paying agency for ~~its the~~ paying agency's share of the proceeds as set forth in this section. ~~When~~ If the proceeds are paid in a series of payments, each payment ~~shall must~~ be distributed proportionately to each recipient according to the formula provided in this section, unless ~~the parties~~ otherwise agreed by the parties agree. The total proceeds ~~shall must~~ be distributed as follows:

(a) Costs and attorney fees incurred ~~shall must~~ be paid, ~~such and the~~ attorney fees ~~in no event to~~ may not exceed the advisory schedule of fees established by the Workers' Compensation Board for such actions.

(b) The worker or the beneficiaries of the worker ~~shall must~~ receive at least 33-1/3 percent of the balance of ~~such the~~ recovery.

(c) The paying agency ~~shall must~~ be paid and retain the balance of the recovery, but only to the extent that ~~it the~~ paying agency is compensated for ~~its the~~ paying agency's expenditures for compensation, first aid or other medical, surgical or hospital service, and for the present value of ~~its~~ reasonably ~~to be~~ expected future expenditures the paying agency makes for compensation and other costs of the worker's claim under this chapter. ~~Such~~ Other costs include expenditures ~~of that~~ the Department of Consumer and Business Services makes from the Consumer and Business Services Fund, the Self-Insured Employer Adjustment Reserve, the Self-Insured Employer Group Adjustment Reserve and the Workers' Benefit Fund ~~in reimbursement of to reimburse~~ the costs of the paying agency. ~~Such~~ Other costs also include assessments for the Workers' Benefit Fund; and ~~include~~ any compensation ~~which that~~ may become payable under ORS 656.273 or 656.278.

(d) The balance of the recovery ~~shall must~~ be paid to the worker or the beneficiaries of the worker forthwith. The board shall resolve any conflict as to the amount of the balance which that the paying agency may be retained by the paying agency shall be resolved by the board retain.

(2) The amount ~~retained by~~ the worker or the beneficiaries of the worker ~~shall retain must~~ be in addition to the compensation or other benefits to which ~~such the~~ worker or beneficiaries are entitled under this chapter.

(3) A claimant may settle any third party case with the approval of the paying agency, in which event the paying agency is ~~authorized to~~ may accept ~~such a~~ share of the proceeds ~~as may be that is~~ just and proper and the worker or the beneficiaries of the worker ~~shall must~~ receive the amount to which the worker would be entitled for a recovery under subsections (1) and (2) of this section. The board shall resolve any conflict as to what may be a just and proper distribution shall be resolved by the board.

(4) As used in this section, "paying agency" includes the Department of Consumer and Business Services with respect to ~~its~~ expenditures from the Consumer and Business Services Fund, the Self-Insured Employer Adjustment Reserve, the Self-Insured Employer Group Adjustment Reserve and the Workers' Benefit Fund in reimbursement of the department makes, together with the present value of any reasonably expected future expenditures from the funds or reserves that the department may make, to reimburse the costs of another paying agency for vocational assistance and the costs of claims of noncomplying employers. and to compensate or pay other costs of a worker's claim because of a self-insured employer's or self-insured employer group's insolvency, default or decertification.

(5) The department ~~shall must~~ be repaid for ~~its the~~ department's expenditures from the proceeds the paying agency recovered ~~by the paying agency~~ in an amount proportional to the amount of the department's reimbursement of the paying agency's costs. The department shall deposit all moneys received by the department receives under this section shall be deposited in the same fund from which the paying agency's costs originally had been reimbursed department's expenditures originated.

(6) ~~Prior to~~ Before, and instead of, the distribution of proceeds as described in subsection (1) of this section, ~~when the if a~~ worker or the beneficiaries of ~~the a~~ worker are entitled to receive payment pursuant to a judgment or a settlement in ~~the a~~ third party action in the amount of \$1 million or more, the worker or the beneficiaries of the worker may elect to release the paying agency

from all further liability on the workers' compensation claim, thereby canceling the lien of the paying agency as to the present value of ~~its~~ the paying agency's reasonably expected future expenditures for workers' compensation and other costs of the worker's claim, if all of the following conditions are met as part of the claim release:

- (a) The worker or the beneficiaries of the worker are represented by an attorney.
- (b) The release of the claim is presented in writing and is filed with the Workers' Compensation Board, with a copy served on the paying agency, including the Department of Consumer and Business Services with respect to ~~its~~ the department's expenditures from ~~the Workers' Benefit Fund,~~ the Consumer and Business Services Fund, ~~and~~ the Self-Insured Employer Adjustment Reserve, the Self-Insured Employer Group Adjustment Reserve and the Workers' Benefit Fund.
- (c) The claim release specifies that the worker or the beneficiaries of the worker understand that the claim release means that no further benefits of any nature whatsoever ~~shall~~ will be paid to the worker or the beneficiaries of the worker.
- (d) The release of the claim is accompanied by a settlement stipulation with the paying agency, outlining terms of reimbursement to the paying agency, covering ~~its~~ the paying agency's incurred expenditures for compensation, first aid or other medical, surgical or hospital service and for expenditures from ~~the Workers' Benefit Fund,~~ the Consumer and Business Services Fund, ~~and~~ the Self-Insured Employer Adjustment Reserve, the Self-Insured Employer Group Adjustment Reserve and the Workers' Benefit Fund to the date the release becomes final or the order of the board becomes final. If the payment of such incurred expenditures is in dispute, the release of the claim ~~shall~~ must be accompanied by a written submission of the dispute by the worker or the beneficiaries of the worker to the board for resolution of the dispute by order of the board under procedures allowing for board resolution under ORS 656.587, in which case the release of the claim ~~shall not be~~ is not final until such time as the order of the board becomes final. In such a case, the only issue to be decided by the board is the amount of incurred expenses by the paying ~~agent~~ agency.
- (e) If a service, item or benefit has been provided but a bill for that service, item or benefit has not been received by the paying agency before the release or order becomes final, the reimbursement payment ~~shall~~ must cover the bill ~~pursuant to~~ in accordance with the following process:
  - (A) The paying agency may maintain a contingency fund in an amount reasonably sufficient to cover reimbursement for the billing.
  - (B) If a dispute arises as to reimbursement for any bill first received by the paying agency not later than 180 days after the date the release or order became final, the dispute ~~shall~~ must be resolved by order of the board.
  - (C) Any amount remaining in the contingency fund after the 180-day period ~~shall~~ must be paid to the worker or the beneficiaries of the worker.
  - (D) Any billing for a service, item or benefit that is first received by the paying agency more than 180 days after the date the release or order became final is unenforceable by the person who issued the bill.
- (f) The settlement or judgment proceeds are available for payment or actually have been paid out and are available in a trust fund or similar account, or are available through a legally enforceable structured settlement agreement if sufficient funds are available to make payment to the paying agency.
- (g) The agreed-upon payment to the paying agency, or the payment to the paying agency ordered by the board, is made within 30 days of the filing of the withdrawal of the claim with the board or within 30 days after the board has entered a final order resolving any dispute with the paying agency.
- (7) ~~When~~ If a release of further liability on a claim, as provided in subsection (6) of this section, has been filed, and ~~when~~ if payment to the paying agency has been made, the effect of the release is that the worker or the beneficiaries of the worker ~~shall~~ have no further right to seek benefits ~~pursuant to~~ under the original claim, or any independent workers' compensation claim regarding the same circumstances, and the claim ~~shall~~ may not be reasserted, refiled or reestablished through any legal proceeding.

**HB 2336** also includes the following clause:

Section 4. The amendments to ORS 656.443, 656.591 and 656.593 by sections 1 to 3 of this 2017 Act apply to determinations as to a claims processing agent for, and expenditures that occur to or on behalf of, any self-insured employer or self-insured employer group that is insolvent or in default, that has canceled the employer's or group's certification under ORS 656.434 or that the Director of the Department of Consumer and Business Services has decertified, regardless of the date on which the insolvency, default, cancellation or decertification occurred.

**HB 2337** 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 May 9, 2017
- Included in NCCI's May 19, 2017 **Legislative Activity Report** (RLA-2017-19)
- Enacted on May 17, 2017, with an effective date of January 1, 2018

**HB 2337** amends **section 656.206 Permanent Total Disability** of the Oregon Revised Statutes, in part, as follows:

Section 1. **656.206 Permanent Total Disability.**

...

(2) ~~When~~ If permanent total disability results from the a worker's injury, the worker shall receive during the period of that disability compensation benefits equal to 66-2/3 percent of wages not to exceed 100, no more than 133 percent of the average weekly wage nor or no less than the amount of 90 percent of wages a week or the amount of \$50, whichever amount is lesser 33 percent of the average weekly wage .

...

**HB 2337** also includes the following clause:

Section 2. The amendments to ORS 656.206 by section 1 of this 2017 Act apply to injuries occurring on or after the effective date of this 2017 Act.

**HB 2338** 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 May 9, 2017
- Included in NCCI's May 19, 2017 **Legislative Activity Report** (RLA-2017-19)
- Enacted on May 17, 2017, with an effective date of January 1, 2018

**HB 2338** amends **sections 656.005 Definitions, 656.204 Death, and 656.208 Death during permanent total disability** of the Oregon Revised Statutes, in part, as follows:

Section 1. **656.005 Definitions.**

...

(5) "Child" means a child of an injured worker, including:

(a) includes A posthumous child; ;

(b) A child legally adopted prior to before the injury; ;

(c) A child toward whom the worker stands in loco parentis; ;

(d) A child born out of wedlock ;

(e) and A stepchild, if such the stepchild was, at the time of the injury, a member of the worker's family and substantially dependent upon the worker for support; ; and

(f) A dependent child of any age who is an invalid is a child, for purposes of benefits, regardless of age, so long as the child was an invalid at the time of the accident and thereafter remains an invalid substantially dependent on the worker for support. For purposes of this chapter, a dependent child who is an invalid is considered to be a child under 18 years of age was an invalid at the time of the accident and thereafter remains an invalid substantially dependent on the worker for support.

...

(10) (a) "Dependent" means any of the following named following relatives of the worker who, at the time of an accident, depended in whole or in part for the relative's support on the earnings of a worker whose death results from any who dies as a result of an injury: Parent, grandparent, stepparent, grandson, granddaughter, brother, sister, half sister, half brother, niece or nephew, who at the time of the accident, are dependent in whole or in part for their support upon the earnings of the worker. Unless otherwise provided by treaty, aliens not residing within the United States at the time of the accident other than parent, spouse in a marriage or children are not included within the term "dependent."

(A) A parent, grandparent or stepparent;

(B) A grandson or granddaughter;

(C) A brother or sister or half-brother or half-sister; and

(D) A niece or nephew.

(b) "Dependent" does not include an alien who does not reside within the United States at the time of the accident, other than a parent, a spouse or children, unless a treaty provides otherwise.

...

Section 2. **656.204 Death.** If death results from ~~the an~~ an accidental injury, payments ~~shall~~ must be made as follows:

(1)(a) The cost of final disposition of the body and funeral expenses, including but not limited to transportation of the body, ~~shall~~ must be paid, not to exceed 20 times the average weekly wage in any case.

(b) The insurer or self-insured employer shall pay bills submitted for disposition and funeral expenses up to the benefit limit established in paragraph (a) of this subsection. If any part of the benefit remains unpaid 60 days after the date of death or the date of claim acceptance, whichever is later, the insurer or self-insured employer shall pay the unpaid amount to the estate of the worker.

(2)(a) If ~~the a~~ a worker is survived by a spouse, monthly benefits ~~shall~~ must be paid in an amount equal to 4.35 times 66-2/3 percent of the average weekly wage to the surviving spouse until remarriage. The payment shall cease at the end of the month in which the remarriage occurs.

~~(b) If the worker is survived by a spouse, monthly benefits also shall be paid in an amount equal to 4.35 times 10 percent of the average weekly wage for each child of the deceased who is substantially dependent on the spouse for support, until such child becomes 18 years of age.~~

~~(c) If the worker is survived by a spouse, monthly benefits also shall be paid in an amount equal to 4.35 times 25 percent of the average weekly wage for each child of the deceased who is not substantially dependent on the spouse for support, until such child becomes 18 years of age.~~

~~(d) If a surviving spouse receiving monthly payments dies, leaving a child who is entitled to compensation on account of the death of the worker, a monthly benefit equal to 4.35 times 25 percent of the average weekly wage shall be paid to each such child until the child becomes 18 years of age or the child's entitlement to benefits under subsection (8) of this section ceases, whichever is later.~~

~~(e) If a child who has become 18 years of age is a full-time high school student, benefits shall be paid as provided in subsection (8) of this section.~~

~~(f) In no event shall the total monthly benefits provided for in this subsection exceed 4.35 times 133-1/3 percent of the average weekly wage. If the sum of the individual benefits exceeds this maximum, the benefit for each child will be reduced proportionally.~~

~~(3)(a) (b) Upon remarriage, a surviving spouse shall must be paid 36 times the monthly benefit in a lump sum as final payment of the claim, but the monthly payments for each child shall continue as before surviving spousal benefit.~~

~~(b) (c) If, after the date of the subject worker's death, the surviving spouse cohabits with another person for an aggregate period of more than one year and a child has resulted from the relationship, the surviving spouse shall must be paid 36 times the monthly benefit in a lump sum as final payment of the claim, but the monthly payment for any child who is entitled to compensation on account of the death of the worker shall continue as before surviving spousal benefit.~~

~~(4)(a) (3)(a) If the a worker does not leave a spouse but leaves a child under 18 19 years of age, a monthly benefit equal to 4.35 times 25 percent of the average weekly wage shall must be paid to each such child until the child becomes 18 19 years of age.~~

~~(b) If a child who has become 18 years of age is a full-time high school student, benefits shall be paid as provided in subsection (8) of this section.~~

~~(c) (b) In no event shall The total benefits provided for in this subsection may not exceed 4.35 times 133-1/3 percent of the average weekly wage. If the sum of the individual benefits exceeds this maximum, the benefit for each child will must be reduced proportionally.~~

~~(5)(a) (4)(a) If the a worker leaves a dependent other than a surviving spouse or a child, a monthly payment shall must be made to each dependent that is equal to 50 percent of the average monthly support the dependent actually received by such dependent from the worker during the 12 months ~~next~~ preceding the occurrence of the accidental injury. If a dependent is under the age of 18 19 years at the time of the accidental injury, the payment to the dependent shall must cease when such the dependent becomes 18 19 years of age. The payment to any dependent shall must cease under the same circumstances that would have terminated the dependency had the injury not happened.~~

~~(b) If the dependent who has become 18 years of age is a full-time high school student, benefits shall be paid as provided in subsection (8) of this section.~~

~~(c) (b) In no event shall The total benefits provided for in this subsection may not exceed 4.35 times 10 percent of the average weekly wage. If the sum of the individual benefits exceeds this maximum, the benefit for each dependent will must be reduced proportionally.~~

~~(6) (5) If a child is an invalid at the time the child otherwise becomes ineligible for benefits under this section, the payment to the child shall must continue while the child remains an invalid. If a person is entitled to payment because the person is an invalid, payment shall must terminate when the person ceases to be an invalid.~~

~~(7) If, at the time of the death of a worker, the child of the worker or dependent has become 17 years of age but is under 18 years of age, the child or dependent shall receive the payment provided in this section for a period of one year from the date of the death. However, if after such period the child is a full-time high school student, benefits shall be paid as provided in subsection (8) of this section.~~

~~(8)(a) (6)(a) Benefits under this section which are to be paid as provided in this subsection shall be paid for the child or dependent until the child or dependent becomes 19 years of age. If, however, the child or dependent is attending higher education or begins attending higher education within six months of the date the child or dependent leaves high school, benefits shall be paid until the child or dependent becomes 23 years of age, ceases attending higher education or graduates from an approved institute or program, whichever is earlier. If a child or dependent is between 19 and 26 years of age at the time of a worker's death, or becomes 19 years of age after the worker's death, monthly benefits must be paid for not more than 48 months until the age of 26 during a period in which the child or dependent is completing secondary education, is obtaining a general educational development certificate or is attending a program of higher education. The child or dependent must provide an insurer or self-insured employer with documentation that enables the insurer or self-insured employer to determine the child's or dependent's eligibility for monthly benefits.~~

~~(b) If a child or dependent who is eligible for benefits under this subsection ~~has no~~ does not have a surviving parent, the child or dependent shall must receive 4.35 times 66-2/3 percent of the average weekly wage ~~until the child or dependent becomes 23 years of age, ceases attending higher education or graduates from an approved institute or program, whichever is earlier.~~~~

(c) As used in this subsection, “attending a program of higher education” means regularly attending community college, college or university, or regularly attending a course of vocational or technical training designed to prepare the participant for gainful employment. A child or dependent enrolled in an educational course load of less than one-half of that determined by the educational facility to constitute “full-time” enrollment is not “attending a program of higher education.”

~~(9)~~ (7) As used in this section, “average weekly wage” has the meaning for that term provided in ORS 656.211.

Section 3. **656.208 Death during permanent total disability.** ~~(1) If the an~~ injured worker dies during the period of the worker’s permanent total disability, whatever the cause of death, ~~leaving a spouse or any dependents listed in ORS 656.204, and the worker leaves a beneficiary,~~ payment ~~shall~~ must be made in the same manner and in the same amounts as provided in ORS 656.204.

~~(2) If any surviving spouse to whom the provisions of this section apply remarries, the payments on account of a child or children shall continue to be made to the child or children the same as before the remarriage.~~

**HB 2338** also includes the following clauses:

Section 4. The Director of the Department of Consumer and Business Services shall adjust under ORS 656.506 (7) the amount and duration of benefits that accrue on and after the effective date of this 2017 Act for injuries that occurred before the effective date of this 2017 Act. An insurer, or a self-insured employer, shall pay benefits that exceed the amount and duration of benefits that would have been due to a worker under the law that existed at the time of the worker’s injury and the director shall reimburse the insurer or selfinsured employer from the Workers’ Benefit Fund.

Section 5. The amendments to ORS 656.005, 656.204 and 656.208 by sections 1 to 3 of this 2017 Act apply to injuries that occur on or after the effective date of this 2017 Act, except that ORS 656.204 (6)(a) applies to benefits that accrue on or after the effective date of this 2017 Act regardless of the date on which the injury occurred. The insurer shall deduct from the 48-month maximum specified for benefits in ORS 656.204 (6)(a) the number of months during which a child or dependent received benefits after the age of 19 if the child or dependent became 19 years of age before the effective date of this 2017 Act.

## South Carolina

**HB 3406** was:

- Passed by the first chamber on January 27, 2017
- Included in NCCI’s February 3, 2017 *Legislative Activity Report* (RLA-2017-04)
- Amended and passed by the second chamber on May 10, 2017
- Included in NCCI’s May 19, 2017 *Legislative Activity Report* (RLA-2017-19)
- Enacted and effective on May 19, 2017

**HB 3406**, in part, amends **Section 2 of Act 95 of 2013**, relating to the maintenance tax imposed by the Workers’ Compensation Commission on self-insurers as follows:

### Time effective

Section 2. This act takes effect ~~July 1, 2013,~~ July 1, 2017, and must be terminated five years after the effective date of the act unless otherwise authorized by the General Assembly. Beginning on July 1, 2014, and on each July first thereafter, the South Carolina Workers’ Compensation Commission must report to the Chairman of House Ways and Means Committee, the Chairman of Senate Finance, and the Governor the amount of money the agency has received in the previous fiscal year pursuant to this act.

## Tennessee

**SB 297** was:

- Passed by the first chamber on April 13, 2017
- Included in NCCI’s April 21, 2017 *Legislative Activity Report* (RLA-2017-15)
- Amended and passed by the second chamber on May 3, 2017
- Included in NCCI’s May 12, 2017 *Legislative Activity Report* (RLA-2017-18)
- Enacted and effective on May 19, 2017

**SB 297**, as amended, amends **sections 50-6-124. Utilization review system—Pre-admission review—Penalties for rendering excessive or inappropriate services—Legislative intent—Treatment guidelines** and **50-6-204. Medical treatment, attendance and hospitalization—Release of medical records—Reports—Disputes—Reimbursement or payment of expenses—Burial expenses—Physical examinations—Pain management—Impairment ratings** of the Tennessee Code as follows:

**50-6-124. Utilization review system—Pre-admission review—Penalties for rendering excessive or inappropriate services—Legislative intent—Treatment guidelines.**

...

(i) (1) Except as otherwise provided in subdivision (i)(2), the system of utilization review established by the administrator or provided by an employer shall not apply to:

(A) Diagnostic procedures ordered in accordance with the treatment guidelines by the authorized treating physician or chiropractor in the first thirty (30) days after the date of injury; or

(B) Diagnostic studies recommended by the treating physician in the event the initial treatment regimen is nonsurgical, without diagnostic testing, and is not successful in returning the injured worker to employment.

(2) A recommended invasive procedure shall be subject to utilization review at any time.

(3) For purposes of this subsection (j):

(A) "Diagnostic procedures" includes, but is not limited to, routine and specialty radiography, magnetic resonance imaging that is not for low back pain without radiculopathy, a computerized tomography scan, a myelogram, an arthrogram, an ultrasound, and electromyogram and nerve conduction velocity testing; and

(B) "Initial treatment" means the first series of treatments or therapies or first two (2) medication trials ordered by the authorized treating physician in accordance with the adopted treatment guidelines within sixty (60) days of a reported injury.

**50-6-204. Medical treatment, attendance and hospitalization—Release of medical records—Reports—Disputes—Reimbursement or payment of expenses—Burial expenses—Physical examinations—Pain management—Impairment ratings.**

(a)

...

(3)

...

(B) If three (3) or more independent reputable physicians, surgeons, chiropractors or specialty practice groups not associated in practice together are not available in the employee's community, the employer shall provide a list of three (3) independent reputable physicians, surgeons, chiropractors, or specialty practice groups within a one-hundred-twenty-five ~~(100)~~ mile radius of the employee's community of residence. For purposes of this subdivision (a)(3)(B), "not associated in practice together" means at least one (1) physician, surgeon, chiropractor, or specialty practice group is not associated in practice with another physician, surgeon, chiropractor, or specialty practice group that is on the list or panel provided to an employee pursuant to this section.

...

(c) In case death results from the injury or occupational disease, as defined in § 50-6-102, the employer shall, in addition to the medical services, etc., referred to in subsections (a) and (b), pay the burial expenses of the deceased employee, not exceeding ~~seven thousand five hundred dollars (\$7,500)~~ ten thousand dollars (\$10,000). If the deceased employee leaves no dependents entitled to compensation under this chapter, the employer shall pay to the employee's estate the additional benefits provided in § 50-6-209(b)(2) and (3), and shall also be liable for the medical and hospital services and burial expenses provided for in this section.

...

**BILLS PASSING SECOND CHAMBER**

The following workers compensation-related bills passed the second chamber within the one-week period ending May 19, 2017.

**Alabama**

**HB 242** was:

- Passed by the first chamber on April 6, 2017
- Included in NCCI's April 14, 2017 *Legislative Activity Report* (RLA-2017-14)
- Passed by the second chamber on May 17, 2017

**HB 242** amends *section 25-5-50 Applicability; exemption for corporate officers; coverage for school boards, volunteer fire departments, and rescue squads; sports officials* of the Code of Alabama 1975, in part, as follows:

**25-5-50 Applicability; exemption for corporate officers; coverage for school boards, volunteer fire departments, and rescue squads; sports officials.**

...

(b) Notwithstanding subsection (a), an officer of a corporation or individual limited liability company member may elect ~~annually~~ to be exempt from coverage by filing written certification of the election with ~~the department and~~ the employer's insurance carrier.

The exemption shall remain in effect at all times, unless properly revoked as provided herein, including subsequent coverage years with the same workers' compensation carrier.

At the end of any calendar year, a corporate officer or individual limited liability company member who has been exempted, by proper certification from coverage, may revoke the exemption and thereby accept coverage by filing written certification of his or her election to be covered with ~~the department and~~ the employer's insurance carrier.

The certification for exemption or reinstatement of coverage shall become effective on the first day of the calendar month following the filing of the certification of exemption or reinstatement of coverage with ~~the department~~ the employer's insurance carrier.

If the corporate officer or individual limited liability company member elects to be exempt from coverage, the election shall not relieve the employer from continuing coverage for all other eligible employees who may have been covered prior to the election or who may subsequently be employed by the firm employer. Notwithstanding any election made pursuant to this provision, the election by the corporate officer or individual limited liability company member does not otherwise change his or her status as an employee for the purpose of determining the threshold number of employees necessary to invoke or trigger the applicability of this chapter.

(c) A corporate officer or individual limited liability company member seeking to secure coverage by revoking an existing exemption, at any time other than the end of the calendar year, in addition to complying with the provisions of subsection (b), shall execute an affidavit verifying that he or she has not suffered an employment accident, exposure, or injury from the date of exemption until the date of the written certification of the election to reinstate coverage. Any corporate officer or individual limited liability company member who fails to execute an affidavit or comply with other terms and conditions of the workers' compensation carrier shall not be entitled to revoke the previous exemption until the end of the calendar year. The revocation of the exemption and reinstatement of coverage shall become effective on the first day of the calendar month following the written acceptance of the certification of exemption or reinstatement of coverage by the employer's workers' compensation insurance carrier.

...

## Alaska

**HB 132** was:

- Passed by the first chamber on May 15, 2017
- Passed by the second chamber on May 17, 2017

**HB 132**, in part, amends **section 23.30.230 Persons Not Covered** of the Alaska Statutes 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) In this section,

...

(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 AS 28.23.180;

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

**Note:** **HB 132** was not included in any previous version of NCCI's *Legislative Activity Report*.

## Texas

**SB 877** was:

- Passed by the first chamber on April 26, 2017
- Included in NCCI's May 5, 2017 *Legislative Activity Report* (RLA-2017-17)
- Passed by the second chamber on May 17, 2017

**SB 877** amends **section 504.053 Election** of the Texas Labor Code as follows:

**504.053 Election**

...

(e) Nothing in this chapter waives sovereign immunity or creates a new cause of action, except that a political subdivision that self-insures either individually or collectively is liable for attorney's fees as provided by Section 417.003.

**SB 1895** was:

- Passed by the first chamber on April 26, 2017
- Included in NCCI's May 5, 2017 *Legislative Activity Report* (RLA-2017-17)
- Passed by the second chamber on May 17, 2017

**SB 1895** amends **section 415.021 Assessment of Administrative Penalties** of the Texas Labor Code as follows:

**415.021 Assessment of Administrative Penalties**

...

(c) In assessing an administrative penalty:

- (1) the commissioner shall consider:
- (A) the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the prohibited act;
  - (B) the history and extent of previous administrative violations;
  - (C) the demonstrated good faith of the violator, including actions taken to rectify the consequences of the prohibited act;
  - (D) the penalty necessary to deter future violations; ~~and~~
  - (E) whether the administrative violation has negative impact on the delivery of benefits to an injured employee;
  - (F) the history of compliance with electronic data interchange requirements; and
  - (G) other matters that justice may require; and
- (2) the commissioner shall, to the extent reasonable, consider the economic benefit resulting from the prohibited act.
- (c-1) The commissioner shall adopt rules that require the division, in the assessment of an administrative penalty against a person, to communicate to the person information about the penalty, including:
- (1) the relevant statute or rule violated;
  - (2) the conduct that gave rise to the violation; and
  - (3) the factors considered in determining the penalty.

**SB 1895** also states the following:

Section 415.021(c), Labor Code, as amended by this Act, applies only to an administrative violation that occurs on or after the effective date of this Act.

The commissioner of workers' compensation shall adopt rules under Section 415.021(c-1), Labor Code, as added by this Act, as soon as practicable after the effective date of this Act.

## BILLS PASSING FIRST CHAMBER

The following workers compensation-related bills passed the first chamber within the one-week period ending May 19, 2017.

### Connecticut

**HB 7132** amends *section 31-294c Notice of claim for compensation. Notice contesting liability. Exception for dependents of certain deceased employees* of the Connecticut General Statutes Annotated as follows:

**Section 31-294c Notice of claim for compensation. Notice contesting liability. Exception for dependents of certain deceased employees.**

(a) No proceedings for compensation under the provisions of this chapter shall be maintained unless a written notice of claim for compensation is given within one year from the date of the accident or within three years from the first manifestation of a symptom of the occupational disease, as the case may be, which caused the personal injury, provided, if death has resulted within two years from the date of the accident or first manifestation of a symptom of the occupational disease, a dependent or dependents, or the legal representative of the deceased employee, may make claim for compensation within the two-year period or within one year from the date of death, whichever is later. Notice of claim for compensation may be given to the employer or any commissioner and shall state, in simple language, the date and place of the accident and the nature of the injury resulting from the accident, or the date of the first manifestation of a symptom of the occupational disease and the nature of the disease, as the case may be, and the name and address of the employee and of the person in whose interest compensation is claimed. An employee of the state shall send a copy of the notice to the Commissioner of Administrative Services. An employee of a municipality shall send a copy of the notice to the town clerk of the municipality in which he or she is employed. An employer, other than the state or a municipality, may opt to post a copy of where notice of a claim for compensation shall be sent by an employee in the workplace location where other labor law posters required by the Labor Department are prominently displayed. In addition, an employer opting to post where notice of a claim for compensation by an employee shall be sent, shall forward the address of where notice of a claim for compensation shall be sent to the Workers' Compensation Commission and the commission shall post such address on its Internet web site. An employer shall be responsible for verifying that information posted at a workplace location is consistent with the information posted on the commission's Internet web site. If an employee, other than an employee of the state or a municipality, opts to mail to his or her employer the written notice of a claim for compensation required under the provisions of this section, such written notice shall be sent by the employee to the employer by certified mail.

As used in this section, "manifestation of a symptom" means manifestation to an employee claiming compensation, or to some other person standing in such relation to him that the knowledge of the person would be imputed to him, in a manner that is or should be recognized by him as symptomatic of the occupational disease for which compensation is claimed.

(b) Whenever liability to pay compensation is contested by the employer, he shall file with the commissioner, on or before the twenty-eighth day after he has received a written notice of claim, a notice in accord with a form prescribed by the chairman of the Workers' Compensation Commission stating that the right to compensation is contested, the name of the claimant, the name of the employer, the date of the alleged injury or death and the specific grounds on which the right to compensation is contested. The employer shall send a copy of the notice to the employee in accordance with section 31-321. If the employer or his legal representative fails to file the notice contesting liability on or before the twenty-eighth day after he has received the written notice of claim, the employer shall commence payment of compensation for such injury or death on or before the twenty-eighth day after

he has received the written notice of claim, but the employer may contest the employee's right to receive compensation on any grounds or the extent of his disability within one year from the receipt of the written notice of claim, provided the employer shall not be required to commence payment of compensation when the written notice of claim has not been properly served in accordance with section 31-321 or when the written notice of claim fails to include a warning that (1) the employer, if he has commenced payment for the alleged injury or death on or before the twenty-eighth day after receiving a written notice of claim, shall be precluded from contesting liability unless a notice contesting liability is filed within one year from the receipt of the written notice of claim, and (2) the employer shall be conclusively presumed to have accepted the compensability of the alleged injury or death unless the employer either files a notice contesting liability on or before the twenty-eighth day after receiving a written notice of claim or commences payment for the alleged injury or death on or before such twenty-eighth day. An employer shall be entitled, if he prevails, to reimbursement from the claimant of any compensation paid by the employer on and after the date the commissioner receives written notice from the employer or his legal representative, in accordance with the form prescribed by the chairman of the Workers' Compensation Commission, stating that the right to compensation is contested. Notwithstanding the provisions of this subsection, an employer who fails to contest liability for an alleged injury or death on or before the twenty-eighth day after receiving a written notice of claim and who fails to commence payment for the alleged injury or death on or before such twenty-eighth day, shall be conclusively presumed to have accepted the compensability of the alleged injury or death. If an employer has opted to post an address of where notice of a claim for compensation by an employee shall be sent, as described in subsection (a) of this section, the twenty-eight-day period set forth in this subsection shall begin on the date when such employer receives written notice of a claim for compensation at such posted address.

...

## Louisiana

**SB 121**, in part, amends numerous sections of *Title 23, Chapter 10 Labor and Worker's Compensation* of the Louisiana Revised Statutes as follows:

**§ 1123. Disputes as to condition or capacity to work; compulsory examination under supervision of the director**

If any dispute arises as to the condition of the employee, or the employee's capacity to work, the director, upon application of any party, shall order ~~an~~ a compulsory examination of the employee to be made by a medical practitioner selected and appointed by the director. The medical examiner shall report his conclusions from the examination to the director and to the parties and such report shall be prima facie evidence of the facts therein stated in any subsequent proceedings under this Chapter.

**§ 1124. Refusal to submit to compulsory examination; effect on right to compensation**

If the employee refuses to submit himself to a compulsory medical examination at the behest of the employer or an examination conducted pursuant to R.S. 23:1123, or in anywise obstructs the same, his right to compensation and to take or prosecute any further proceedings under this Chapter may be suspended by the employer or payor until the examination takes place. Such suspension of benefits by the employer or payor shall be made in accordance with the provisions of R.S. 23:1201.1(A)(4) and (5). When the employee has filed a disputed claim, the employer or payor may move for an order to compel the employee to appear for ~~an~~ a compulsory examination. The employee shall receive at least fourteen days written notice prior to the compulsory examination. When a right to compensation is suspended no compensation shall be payable in respect to the period of suspension.

**§ 1203. Duty to furnish medical and vocational rehabilitation expenses; prosthetic devices; other expenses**

...

E. Upon the first request for authorization pursuant to R.S. 23:1142(B)(1), for a claimant's medical care, service, or treatment, the payor, as defined in R.S. 23:1142(A)(1), shall communicate to the claimant information, in plain language, regarding the procedure for requesting ~~an independent~~ a compulsory medical examination in the event a dispute arises as to the condition of the employee or the employee's capacity to work, and the procedure for appealing the denial of medical treatment to the medical director as provided in R.S. 23:1203.1. A payor shall not deny medical care, service, or treatment to a claimant unless the payor can document a reasonable and diligent effort in communicating such information. A payor who denies medical care, service, or treatment without making such an effort may be fined an amount not to exceed five hundred dollars or the cost of the medical care, service, or treatment, whichever is more.

**§ 1221. Temporary total disability; permanent total disability; supplemental earnings benefits; permanent partial disability; schedule of payments**

Compensation shall be paid under this Chapter in accordance with the following schedule of payments:

...

(4) Permanent partial disability. In the following cases, compensation shall be solely for anatomical loss of use or amputation and shall be as follows:

...

(s)

...

(ii) In any claim for an injury, it must be established by clear and convincing evidence that the employee suffers an injury and that such resulted from an accident arising out of and in the course and scope of his employment. Nothing herein shall limit the right of any party to obtain a second medical opinion or, in appropriate cases, the opinion of an ~~independent~~ compulsory medical examiner pursuant to R.S. 23:1123.

...

#### **§ 1307. Information to injured employee**

Upon receipt of notice of injury from the employer or other indication of an injury reportable under R.S. 23:1306, the office shall mail immediately to the injured employee and employer a brochure which sets forth in clear understandable language a summary statement of the rights, benefits, and obligations of employers and employees under this Chapter, together with an explanation of the operations of the office, and shall invite the employer and employee to seek the advice of the office with reference to any question or dispute which the employee has concerning the injury. Such brochure shall specifically state the procedure for requesting an ~~independent~~ compulsory medical examination in the event a dispute arises as to the condition of the employee or the employee's capacity to work and the procedure for appealing the denial of medical treatment to the medical director as provided in R.S. 23:1203.1. If such brochure has previously been mailed to an employer within the calendar year, the office shall not mail such employer an additional brochure unless the employer specifically requests such.

#### **§ 1317.1. ~~Independent~~ Compulsory medical examinations**

A. Any party wishing to request an ~~independent~~ compulsory medical examination of the claimant pursuant to R.S. 23:1123 and 1124.1 shall be required to make its request at or prior to the pretrial conference. Requests for ~~independent~~ compulsory medical examinations made after that time shall be denied except for good cause or if it is found to be in the best interest of justice to order such examination.

B. An examiner performing ~~independent~~ compulsory exams pursuant to R.S. 23:1123 shall be required to prepare and send to the office a certified report of the examination within thirty days after its occurrence.

C. The report of the examination shall contain the following, when applicable:

(1) A statement of the medical and legal issues the examiner was asked to address.

(2) A detailed summary of the basis of the examiner's opinion, including but not limited to a listing of reports or documents reviewed in formulating that opinion.

(3) The medical treatment and physical rehabilitative procedures which have already been rendered and the treatment, if any, which the examiner recommends for the future, together with reasons for the recommendation.

(4) Any other conclusions required by the scope of the ~~independent~~ compulsory medical examination, together with reasons for the conclusion reached.

(5) A curriculum vitae of the examiner.

(6) A written certification personally signed by the examiner that the report is true. The substance of the certification shall be: "I certify that I have caused this report to be prepared, I have examined it, and to the best of my knowledge and belief, all statements contained herein are true, accurate, and complete."

D. If a physical examination of the claimant was conducted, the certified report shall contain all of the following additional information:

(1) A complete history of the claimant, including all previous relevant or contributory injuries with a detailed description of the present injury.

(2) The complaints of the claimant.

(3) A complete listing of tests and diagnostic procedures conducted during the course of the examination.

(4) The examiner's findings on examination, including but not limited to a description of the examination and any diagnostic tests and X-rays.

E. When the ~~independent~~ compulsory medical examiner's report is presented within thirty days as provided in this Section:

(1) The examiner shall be protected from subpoena except for a single trial deposition. However, upon a proper motion for cause, the workers' compensation judge may order further discovery of the ~~independent~~ compulsory medical examiner as deemed appropriate.

(2) Except to schedule the deposition or further discovery as described above, the office of the ~~independent~~ compulsory medical examiner shall not be contacted regarding the claimant by any party, attorney, or agent.

F. Objections to the ~~independent~~ compulsory medical examination shall be made on form LDOL-WC-1008, and shall be set for hearing before a workers' compensation judge within thirty days of receipt. No mediation shall be scheduled on disputes arising under this Section.

**Contact Information**

If you have any questions about the legislation or proposals mentioned, please contact the appropriate NCCI state relations executive (listed below) or a representative of your local insurance trade association.

<b>State</b>	<b>State Relations Executive</b>	<b>Phone Number</b>
CT, ME, NH, RI, VT	Laura Backus Hall	802-454-1800
FL, 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.