



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 26, 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
- Included in NCCI's May 26, 2017 **Legislative Activity Report** (RLA-2017-20)
- Enacted on May 26, 2017, with an effective date of August 1, 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.

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Arizona

HB 2161 was:

- Passed by the first chamber on February 21, 2017
- Included in NCCI's March 3, 2017 **Legislative Activity Report** (RLA-2017-08)
- Amended and passed by the second chamber on May 4, 2017
- Included in NCCI's May 12, 2017 **Legislative Activity Report** (RLA-2017-18)
- Enacted on May 22, 2017, with a projected effective date of August 8, 2017

HB 2161 amends **section 23-901.01. Occupational disease; proximate causation; definitions** of the Arizona Revised Statutes as follows:

23-901.01. Occupational disease; proximate causation; definitions

A. The occupational diseases as defined by section 23-901, paragraph 13, subdivision (c) shall be deemed to arise out of the employment only if all of the following six requirements exist:

1. There is a direct causal connection between the conditions under which the work is performed and the occupational disease.
2. The disease can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment.
3. The disease can be fairly traced to the employment as the proximate cause.
4. The disease does not come from a hazard to which workers would have been equally exposed outside of the employment.
5. The disease is incidental to the character of the business and not independent of the relation of employer and employee.
6. The disease after its contraction appears to have had its origin in a risk connected with the employment, and to have flowed from that source as a natural consequence, although it need not have been foreseen or expected.

B. Notwithstanding subsection A of this section and section 23-1043.01: ~~7~~

1. Any disease, infirmity or impairment of a firefighter's or peace officer's health that is caused by brain, bladder, rectal or colon cancer, lymphoma, leukemia or ~~aden carcinoma~~ adenocarcinoma or mesothelioma of the respiratory tract and that results in disability or death is presumed to be an occupational disease as defined in section 23-901, paragraph 13, subdivision (c) and is deemed to arise out of employment.

2. Any disease, infirmity or impairment of a firefighter's health that is caused by buccal cavity and pharynx, esophagus, large intestine, lung, kidney, prostate, skin, stomach or testicular cancer or non-hodgkin's lymphoma, multiple myeloma or malignant melanoma and that results in disability or death is presumed to be an occupational disease as defined in section 23-901, paragraph 13, subdivision (C) and is deemed to arise out of employment.

~~C.~~ D. The ~~presumption is~~ presumptions provided in subsection B of this section are granted if all of the following apply:

1. The firefighter or peace officer passed a physical examination before employment and the examination did not indicate evidence of cancer.
2. The firefighter or peace officer was assigned to hazardous duty for at least five years.
3. The firefighter or peace officer was exposed to a known carcinogen as defined by the international agency for research on cancer and informed the department of this exposure, and the carcinogen is reasonably related to the cancer.
4. For the presumption provided in subsection B, paragraph 2 of this section, the firefighter received a physical examination that is reasonably aligned with the National Fire Protection Association Standard on Comprehensive Occupational Medical Program for Fire Departments (NFPA 1582).

~~C.~~ D. Subsection B of this section applies to former firefighters ~~and or~~ and or peace officers who are sixty-five years of age or younger and who are diagnosed with a cancer that is listed in subsection B of this section not more than fifteen years after the firefighter's or peace officer's last date of employment as a firefighter or peace officer.

~~D.~~ E. Subsection B of this section does not apply to cancers of the respiratory tract if ~~the firefighter or peace officer has smoked tobacco products~~ there is evidence that the firefighter's or peace officer's exposure to cigarettes or tobacco products outside of the scope of the firefighter's or peace officer's official duties is a substantial contributing cause in the development of the cancer.

F. The presumptions provided in subsection B of this section may be rebutted by a preponderance of the evidence that there is a specific cause of the cancer other than an occupational exposure to a carcinogen as defined by the International Agency for Research on Cancer.

~~E.~~ G. For the purposes of this section:

1. "Firefighter" means a full-time firefighter who was regularly assigned to hazardous duty.

2. "Peace officer" means a full-time peace officer who was regularly assigned to hazardous duty as a part of a special operations, special weapons and tactics, explosive ordinance disposal or hazardous materials response unit.

HB 2410 was:

- Passed by the first chamber on February 21, 2017
- Included in NCCI's March 3, 2017 *Legislative Activity Report* (RLA-2017-08)
- Passed by the second chamber on May 4, 2017
- Included in NCCI's May 12, 2017 *Legislative Activity Report* (RLA-2017-18)
- Enacted on May 22, 2017, with a projected effective date of August 8, 2017

HB 2410 amends *section 23-901. Definitions* and adds new *section 23-1043.05. Heart-related, perivascular and pulmonary cases; firefighters; definition* of the Arizona Revised Statutes, in part, to read:

23-901. Definitions

...

13. "Personal injury by accident arising out of and in the course of employment" means any of the following:

- (a) Personal injury by accident arising out of and in the course of employment.
- (b) An injury caused by the wilful act of a third person directed against an employee because of the employee's employment, but does not include a disease unless resulting from the injury.
- (c) An occupational disease that is due to causes and conditions characteristic of and peculiar to a particular trade, occupation, process or employment, and not the ordinary diseases to which the general public is exposed, and subject to section 23-901.01 or, for heart-related, perivascular or pulmonary cases, section 23-1043.05.

...

23-1043.05. Heart-related, perivascular and pulmonary cases; firefighters; definition

A. A heart-related, perivascular or pulmonary injury, illness or death of a firefighter is presumed to be an occupational disease as defined in section 23-901, paragraph 13, subdivision (C), compensable pursuant to section 23-1043.01 and deemed to arise out of employment if all of the following apply:

1. The firefighter passed a physical examination before employment and the examination did not indicate evidence of heart-related, perivascular or pulmonary injury or illness.
2. The firefighter received a physical examination that is reasonably aligned with the National Fire Protection Association standard on comprehensive occupational medical program for fire departments (NFPAa 1582).
3. The firefighter was exposed to a known event and the heart-related, perivascular or pulmonary injury, illness or death occurred within twenty-four hours after the exposure and was reasonably related to the exposure.

B. The presumption provided in subsection a of this section may be rebutted by a preponderance of the evidence that there is a specific cause of the heart-related, perivascular or pulmonary injury, illness or death other than the employment.

C. Subsection A of this section does not apply if there is evidence that the firefighter's exposure to cigarettes or tobacco products outside the scope of the firefighter's official duties is a substantial contributing cause in the development of the heart-related, perivascular or pulmonary injury, illness or death.

D. For the purposes of this section, "firefighter" means a firefighter or volunteer firefighter as described in section 23-901, paragraph 6, subdivision (D).

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
- Included in NCCI's April 28, 2017 *Legislative Activity Report* (RLA-2017-16)
- Enacted on May 22, 2017, with an effective date of July 1, 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.

...

Texas

HB 1456 was:

- Passed by the first chamber on April 20, 2017
- Included in NCCI's April 28, 2017 *Legislative Activity Report* (RLA-2017-16)
- Passed by the second chamber on May 12, 2017
- Included in NCCI's May 19, 2017 *Legislative Activity Report* (RLA-2017-19)
- Enacted and effective on May 26, 2017

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.

SB 1494 was:

- Passed by the first chamber on April 20, 2017
- Included in NCCI's April 28, 2017 *Legislative Activity Report* (RLA-2017-16)
- 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 22, 2017, with an effective date of September 1, 2017

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.

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
- Included in NCCI's May 26, 2017 *Legislative Activity Report* (RLA-2017-20)
- Enacted on May 26, 2017 with an effective date of September 1, 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 SECOND CHAMBER

The following workers compensation-related bills passed the second chamber within the one-week period ending May 26, 2017.

Illinois

HB 2525 was:

- Passed by the first chamber on April 27, 2017
- Included in NCCI's May 5, 2017 *Legislative Activity Report* (RLA-2017-17)
- Amended and passed by the second chamber on May 26, 2017

HB 2525 amends the Illinois Compiled Statutes Annotated as follows:

- Provides that a rate is excessive if it is likely to produce a long-run profit that is unreasonably high for the insurance provided or if expenses are unreasonably high in relation to the services rendered
- Repeals provisions regarding presumptions that a competitive market exists, determining whether a competitive market exists, and disapproval of rates under specified circumstances
- Provides that accidental injuries sustained while traveling to or from work do not arise out of and in the course of employment
- Defines “in the course of employment” and “arising out of the employment”
- Permits an employer to file with the Illinois Workers’ Compensation Commission a workers compensation safety program or a workers compensation return-to-work program implemented by the employer
- Provides that the Commission may certify any such safety program as a bona fide safety program after reviewing the program
- Provides that, in a provision concerning compensation for the period of temporary total incapacity for work resulting from an accidental injury, (i) injuries to the shoulder shall be considered injuries to part of the arm and (ii) injuries to the hip shall be considered injuries to part of the leg
- Provides that the Illinois Workers’ Compensation Commission, in consultation with the Workers’ Compensation Medical Fee Advisory Board shall establish an evidence-based drug formulary
- Requires an annual investigation of procedures covered for ambulatory surgical centers and the establishment of a fee schedule
- Changes a waiting period for benefits for certain firefighters, emergency medical technicians, and paramedics
- Changes compensation computations for subsequent injuries to the same part of the spine
- Defines terms
- Contains, among other things, provisions concerning:
 - Repetitive and cumulative injuries
 - Permanent partial disability determinations
 - Electronic claims
 - Annual reports by the Commission concerning the state of self-insurance for workers compensation in Illinois
 - Duties of the Workers’ Compensation Premium Rates Task Force

HB 2622 was:

- Passed by the first chamber on April 27, 2017
- Included in NCCI’s May 5, 2017 *Legislative Activity Report* (RLA-2017-17)
- Passed by the second chamber on May 26, 2017

HB 2622 amends section **215 ILCS 5/416 Illinois Workers’ Compensation Commission Operations Fund Surcharge** of the Illinois Compiled Statutes Annotated as follows:

215 ILCS 5/416 Illinois Workers’ Compensation Commission Operations Fund Surcharge

...

(h) After the effective date of this amendatory Act of the 100th General Assembly, the Director shall make a loan to the Illinois Employers Mutual Insurance Company of \$10,000,000 from the Illinois Workers’ Compensation Commission Operations Fund for the start-up funding and initial capitalization of the Illinois Employers Mutual Insurance Company. The Board of Directors of the Illinois Employers Mutual Insurance Company shall make an application to the Director for the loans, stating the amount to be loaned to the Illinois Employers Mutual Insurance Company. The Illinois Employers Mutual Insurance Company shall repay the loans in full within 5 years after issuance, plus any interest that would have accrued thereon had the loan not occurred.

HB 2622 also creates a new Article to the Illinois Compiled Statutes Annotated entitled the Illinois Employers Mutual Insurance Company as follows:

215 ILCS 5/1700. Purpose.

The purpose of this Article is to establish the Illinois Employers Mutual Insurance Company as a nonprofit, independent public corporation to insure Illinois employers against liability for workers’ compensation and occupational disease coverage.

215 ILCS 5/1705. Definitions.

As used in this Article:

“Board” means the board of directors of the Illinois Employers Mutual Insurance Company.

“Board director” means a member of the board of directors of the Company.

“Company” means the Illinois Employers Mutual Insurance Company created by this Article.

215 ILCS 5/1710. Establishment of the Company.

(a) There is hereby created the Illinois Employers Mutual Insurance Company, which shall be a nonprofit, independent public corporation. The Company shall be operated as a domestic mutual insurance company, subject to all applicable provisions of this Code.

(b) The Company shall issue insurance for workers' compensation and occupational disease. The Company shall not provide any other type of insurance.

(c) The Company shall provide workers' compensation coverage to employers at the highest level of service and savings consistent with reasonable applicable actuarial standards and shall maintain the financial integrity of the Company. The Company shall foster employer involvement in safety initiatives and the creation of workplace safety plans set forth in Section 1740 of this Article.

(d) The Company shall not be considered a State agency or instrumentality of the State for any purpose. Employees of the Company are not employees of the State and are not subject to the Personnel Code. The Company shall not receive any State appropriations or funds, except for an initial loan or loans made pursuant to Section 416 of this Code. The State shall not borrow or otherwise appropriate funds from the Company. The Company or its liabilities shall not be deemed to constitute a debt or a liability of the State or a pledge of the full faith and credit of the State.

215 ILCS 5/1715. Board of directors.

(a) The Company shall be managed by a 7-member board of directors. The board of directors shall be appointed by the Governor with the advice and consent of the Senate. For the initial set of appointments, 2 Board directors shall be appointed to a term ending July 1, 2019, 2 Board directors shall be appointed to a term ending July 1, 2020, 2 Board directors shall be appointed to a term ending July 1, 2021, and one Board director shall be appointed to a term ending July 1, 2022. All initial appointments shall be made by the Governor within 30 days after the effective date of this amendatory Act of the 100th General Assembly. Thereafter, all appointments or reappointments shall be for a 5-year term ending on July 1 of the fifth year. The appointment and reappointment of Board directors by the Governor shall be subject to the provisions of Article 3A of the Illinois Governmental Ethics Act.

(b) A Board director appointed by the Governor must meet all of the following qualifications:

(1) he or she does not have any interest as a stockholder, employee, attorney, agent, broker, or contractor of an insurance entity that writes workers' compensation insurance or whose affiliates write workers' compensation insurance; however, nothing in this Section shall be construed to prohibit an individual who previously had an interest in an insurance entity that writes workers' compensation insurance or whose affiliates write workers' compensation insurance from being appointed to the Board;

(2) he or she is not the spouse or an immediate family member living with a person who has an interest as a stockholder, employee, attorney, agent, broker, or contractor of an insurance entity that writes workers' compensation insurance or whose affiliates write workers' compensation insurance; however, nothing in this Section shall be construed to prohibit an individual who previously had an interest in an insurance entity that writes workers' compensation insurance or whose affiliates write workers' compensation insurance from being appointed to the Board;

(3) he or she is a resident of the State of Illinois;

(4) he or she is of good moral character and has never pleaded guilty to, or been found guilty of, a felony; and

(5) he or she is not a registered lobbyist under the Lobbyist Registration Act.

(c) The Board directors shall elect a chairman from the Board.

(d) The Board is vested with the full power, authority, and jurisdiction over the Company and may perform any necessary or convenient act in the exercise of its power. The Board shall discharge its duties with the care, skill, prudence, and diligence as that of prudent directors acting in a similar enterprise and purpose. The powers of the Board include, but are not limited to:

(1) the ability to enter into contracts;

(2) the purchase of reinsurance; and

(3) the declaration of dividends.

(e) The Board shall develop bylaws which shall be subject to the restrictions set forth in this Article. The bylaws shall provide for a schedule of at least quarterly meetings and set forth rules specifically relating to the conduct of meetings and voting procedures.

(f) The Board shall reflect the ethnic, cultural, and geographical diversity of the State.

215 ILCS 5/1720. Ratemaking.

The Board shall have full power and authority to establish rates to be charged by the Company for insurance, subject to the applicable provisions of this Code. The Board shall contract for the services of or hire an independent actuary, who is a member in good standing with the American Academy of Actuaries, to develop and recommend actuarially sound rates. Rates shall be set at amounts sufficient, when invested, to carry all claims to maturity, meet the reasonable expenses of conducting the business of the Company, and maintain a reasonable surplus.

215 ILCS 5/1725. Guaranty fund.

The Company shall be subject to Article XXXIV of this Code and shall pay any assessments required for members of the Illinois Insurance Guaranty Fund.

215 ILCS 5/1730. Chief executive officer.

(a) The Board shall hire a chief executive officer who shall serve at the pleasure of the Board. The chief executive officer shall not be a member of the Board and must be qualified by education and experience to manage an organization with financial and

operational obligations to policyholders and claimants. The compensation of the chief executive officer shall be determined by the Board.

(b) The chief executive officer shall be responsible for conducting the day-to-day operations of the Company, including the hiring of personnel. The chief executive officer shall also maintain an Internet website for the Company, which shall include information regarding the purchase of policies from the Company, as well as any reports required to be published under this Article.

(c) The chief executive officer shall present a proposed operating budget for the Company to the Board for its approval on an annual basis. The operating budget shall include a description of administrative and personnel costs.

215 ILCS 5/1735. Liability.

The Board and its employees shall not be personally liable for acts performed in good faith, without the intent to defraud, and made in an official capacity.

215 ILCS 5/1740. Workplace safety plan.

(a) The chief executive officer shall formulate, implement, and monitor a workplace safety plan for all policyholders. This plan shall include written guidance to reduce workplace accidents, prevent injuries, and promote safe working conditions. Each plan shall have clearly stated safety objectives for the policyholder.

(b) Employees of the Company shall have access to the premises of any policyholder for the purpose of examining the safety conditions of the workplace. The Company may terminate a policy if there is a refusal by the policyholder to permit on-site examinations by the Company or if the policyholder disregards or fails to comply with the safety objectives set forth by the Company in the workplace safety plan.

215 ILCS 5/1745. Investments.

(a) The Company shall formulate and adopt an investment policy that safeguards the value of all assets and maximizes investment potential. All investments by the Company shall be subject to the applicable restrictions for domestic mutual insurers set forth in this Code.

(b) The Company may retain an independent investment counsel who shall be subject to standards applicable to fiduciaries responsible for safeguarding the assets of a corporation.

215 ILCS 5/1750. Dividends.

(a) The Company may declare a dividend in accordance with the requirements set forth in this Code.

(b) Dividends may be distributed in the form of premium discounts, dividends, or a combination of dividends and discounts.

(c) In addition to any requirements for dividends set forth in this Code, dividends may only be distributed if:

(1) the initial funding of the Company has been repaid in full;

(2) an independent actuarial report of the prior year's operations has been completed and reviewed by the Board;

(3) the Company has met all expenses for administration and claims for the prior year; and

(4) adequate reserves exist to pay all claims.

215 ILCS 5/1755. Sale of policies.

The Company shall administer the sale of policies for workers' compensation and occupational disease coverage. The Company shall utilize the Internet and other technologies to the greatest extent possible in order to facilitate the purchase of a policy for employers in this State.

215 ILCS 5/1760. Auditing requirements.

(a) The Company shall be subject to all examinations and audits required under this Code.

(b) The Board shall retain a competent and independent firm of certified public accountants to perform an annual audit of the performance and management of the Company and an audit of the accounts, funds, and securities of the Company. The costs of these audits shall be paid for by the Company. The audits shall be published on the Company's Internet website.

215 ILCS 5/1765. Annual report.

(a) On July 1, 2018, the Board shall prepare and submit a report to the Governor, the President of the Senate, the Minority Leader of the Senate, the Speaker of the House, and the Minority Leader of the House. This report shall describe the progress of the Company to date in establishing its operations as a domestic mutual insurance company in this State providing workers' compensation and occupational disease coverage. This report shall include the information required in subsection (b) of this Section, if available.

(b) Beginning July 1, 2019 and continuing every July 1 thereafter, the Board shall prepare and submit a report to the Governor, the President of the Senate, the Minority Leader of the Senate, the Speaker of the House, and the Minority Leader of the House. This report shall contain, at a minimum, the following information:

(1) a summary of the most recent audits performed pursuant to Section 1760 of this Code;

(2) statistical and actuarial data related to the determination of premium rate levels; and

(3) the incidence of work-related injuries and costs related to those injuries.

(c) The reports required under this Section shall be submitted electronically and posted on the Internet website of the Company.

Nevada

AB 83 was:

- Passed by the first chamber on April 25, 2017
- Included in NCCI's May 5, 2017 *Legislative Activity Report* (RLA-2017-17)
- Amended and passed by the second chamber on May 24, 2017

AB 83 adds to, revises, and repeals various provisions of the Nevada Revised Statutes including, but not limited to, the following:

- **Section 35** of this bill defines the term "large-deductible agreement" as certain agreements in which the policyholder must bear the risk of loss of a specified amount of \$25,000 or more per claim or occurrence covered under the policy of industrial insurance
- **Section 37** of this bill limits the applicability of **Sections 38** and **39** to policies of industrial insurance with large-deductible agreements that are issued by insurers with both ratings below specified levels and surpluses below specified amounts
- **Section 37** further specifies that **Sections 38** and **39** only apply to policies of industrial insurance issued or renewed on or after January 1, 2018, and which are not issued to a governmental entity
- **Section 38** of this bill requires full collateralization of the outstanding obligations owed under a large-deductible agreement and limits the size of the policyholder's obligations under the large-deductible agreement
- **Section 39** of this bill generally prohibits an insurer from issuing or renewing a policy of industrial insurance that includes a large-deductible agreement if the insurer is in a hazardous financial condition
- **Section 166** of this bill revises the definition of the term "tangible net worth" in relation to industrial insurance, specifically self-insured employers and associations of self-insured employers

AB 458 was:

- Passed by the first chamber on May 9, 2017
- Included in NCCI's May 19, 2017 *Legislative Activity Report* (RLA-2017-19)
- Passed by the second chamber on May 22, 2017

AB 458 adds to and revises various provisions of **Chapter 616C—Industrial Insurance: Benefits for Injuries or Death** of the Nevada Revised Statutes as follows:

- **Section 2** of this bill specifies that a physician or chiropractor may use interchangeably certain phrases that relate to a claim for compensation when determining the causation of an industrial injury or occupational disease.
- **Section 3:**
 - Sets forth that an injured employee is entitled to an independent medical examination for a claim for compensation that is open or when the closure of a claim is under dispute
 - Authorizes the injured employee to obtain an independent medical examination:
 - (1) when a dispute arises from a determination issued by the insurer;
 - (2) within 30 days after the injured employee receives a certain report generated by a medical examination; or
 - (3) by leave of a hearing officer or appeals officer
 - Requires an injured employee to select a physician or chiropractor from the panel of physicians or chiropractors established by the Administrator of the Division of Industrial Relations of the Department of Business and Industry
 - Requires the insurer to:
 - (1) pay for an independent medical examination; and
 - (2) upon request, receive a copy of any report or other document that is generated as a result of the independent medical examination
 - Allows the injured employee to obtain only one independent medical examination per calendar year
- **Section 4** provides for a vocational rehabilitation counselor to be appointed by the insurer and injured employee when a written assessment is requested or when a plan for a program of vocational rehabilitation is required.
- Existing law requires, where there is a previous disability, the percentage of disability for a subsequent injury to be determined by deducting from the entire disability of the person the percentage of previous disability as it existed at the time of the subsequent injury (NRS 616C.490). The Division of Industrial Relations of the Department of Business and Industry previously implemented a regulation that required an apportionment to be made by subtracting the percentage of previous disability as it existed at the time of the previous disability from the percentage of present disability as it existed at the time of the present disability (NAC 616C.490). The Nevada Supreme Court in *Pub. Agency Comp. Trust v. Blake*, 127 Nev. 863 (2011), found this regulation to be invalid since it was in conflict with the existing statute.
- **Section 8** incorporates the substance of the regulation at issue into existing law.

- Existing law authorizes an insurer, after sending notice to the claimant, to close a claim if, during the first 12 months after a claim is opened, the medical benefits required to be paid for the claim are less than \$300. Existing law further requires an insurer to send to a claimant who receives less than \$300 in medical benefits within 6 months after the claim is opened a written notice that explains how the claim may be closed if, during the first 12 months after the claim is opened, the medical benefits required to be paid for the claim are less than \$300 (NRS 616C.235).
- **Section 7.3** increases the amount of medical benefits required to be paid for the claim from \$300 to \$800.
- Existing law sets forth that if an employee’s claim is reopened, the employee is not entitled to vocational rehabilitation services or benefits for a temporary total disability if, before the claim was reopened, the employee retired for reasons unrelated to the injury for which the claim was originally made (NRS 616C.390).
- **Section 7.7** defines the term “retired” for the purposes of these existing provisions.
- **Section 9:**
 - Specifies the maximum amount of a lump sum that a person injured on or after July 1, 1995, and before January 1, 2016; on or after January 1, 2016, and before July 1, 2017; and on or after July 1, 2017, may elect to receive as his or her compensation
 - Requires the tables used to calculate the lump sum to be adjusted on July 1 of each year

Texas

HB 451 was:

- Passed by the first chamber on April 20, 2017
- Included in NCCI’s April 28, 2017 *Legislative Activity Report* (RLA-2017-16)
- Passed by the second chamber on May 24, 2017

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 919 was:

- Passed by the first chamber on April 28, 2017
- Included in NCCI’s May 5, 2017 *Legislative Activity Report* (RLA-2017-17)

- Passed by the second chamber on May 24, 2017

HB 919 adds **section 88.126. Workers' Compensation Insurance Coverage: Intrastate Fire Mutual Aid System and Regional Incident Management Teams** of the Texas Education Code to read as follows:

Section 88.126. Workers' Compensation Insurance Coverage: Intrastate Fire Mutual Aid System and Regional Incident Management Teams.

(a) In this section:

- (1) "Intrastate fire mutual aid system team" means an intrastate fire mutual aid system team established under the state emergency management plan under Section 418.042, Government Code, or the statewide mutual aid program for fire emergencies under Section 418.110, Government Code, and coordinated by the Texas A&M Forest Service to assist the state with fire suppression and all-hazard emergency response activities before and following a natural or man-made disaster.
 - (2) "Local government employee member" means a member employed by a local government, as defined by Section 102.001, Civil Practice and Remedies Code.
 - (3) "Member" means an individual, other than an employee of The Texas A&M University System, who has been officially designated as a member of an intrastate fire mutual aid system team or a regional incident management team.
 - (4) "Nongovernment member" means a member who is not a state employee member, a local government employee member, or an employee of The Texas A&M University System.
 - (5) "Regional incident management team" means a regional incident management team established under Section 88.122 or under the state emergency management plan under Section 418.042, Government Code, and coordinated by the Texas A&M Forest Service to assist the state with managing incident response activities before and following a natural or man-made disaster.
 - (6) "State employee member" means a member employed by an agency of the state other than a component of The Texas A&M University System.
- (b) Notwithstanding any other law, during any period in which an intrastate fire mutual aid system team or a regional incident management team is activated by the Texas Division of Emergency Management, or during any training session sponsored or sanctioned by the Texas Division of Emergency Management for an intrastate fire mutual aid system team or a regional incident management team, a participating nongovernment member or local government employee member is included in the coverage provided under Chapter 501, Labor Code, in the same manner as an employee, as defined by Section 501.001, Labor Code.
- (c) Service with an intrastate fire mutual aid system team or a regional incident management team by a state employee member who is activated is considered to be in the course and scope of the employee's regular employment with the state.
- (d) Service with an intrastate fire mutual aid system team or a regional incident management team by an employee of The Texas A&M University System is considered to be in the course and scope of the employee's regular employment with The Texas A&M University System.

HB 919 also amends **Section 408.0445. Average Weekly Wage for Members of State Military Forces and Texas Task Force 1, Section 501.001 Definitions, and Section 501.002 Application of General Workers' Compensation Laws; Limit on Actions and Damages** of the Texas Labor Code as follows:

Sec. 408.0445. Average Weekly Wage For Members of State Military Forces, And Texas Task Force 1, Intrastate Fire Mutual Aid System Teams, and Regional Incident Management Teams.

...

(c) For purposes of computing income benefits or death benefits under Section 88.126, Education Code, the average weekly wage of an intrastate fire mutual aid system team member or a regional incident management team member, as defined by Section 88.126, Education Code, who is engaged in authorized training or duty is an amount equal to the sum of the member's regular weekly wage at any employment, including self-employment, that the member holds in addition to serving as a member of an intrastate fire mutual aid system team or a regional incident management team, as applicable, except that the amount may not exceed 100 percent of the state average weekly wage as determined under Section 408.047. A member for whom an average weekly wage cannot be computed shall be paid the minimum weekly benefit established by the division.

Section 501.001 Definitions

...

- (5) "Employee" means a person who is:
- (A) in the service of the state pursuant to an election, appointment, or express oral or written contract of hire;
 - (B) paid from state funds but whose duties require that the person work and frequently receive supervision in a political subdivision of the state;
 - (C) a peace officer employed by a political subdivision, while the peace officer is exercising authority granted under:
 - (i) Article 2.12, Code of Criminal Procedure; or
 - (ii) Articles 14.03(d) and (g), Code of Criminal Procedure;
 - (D) a member of the state military forces, as defined by Section 437.001, Government Code, who is engaged in authorized training or duty; ~~or~~

(E) a Texas Task Force 1 member, as defined by Section 88.301, Education Code, who is activated by the Texas Division of Emergency Management or is injured during training sponsored or sanctioned by Texas Task Force 1; or
(F) an intrastate fire mutual aid system team member or a regional incident management team member, as defined by Section 88.126, Education Code, who is activated by the Texas Division of Emergency Management or is injured during training sponsored or sanctioned by the Texas Division of Emergency Management on behalf of an intrastate fire mutual aid system team or a regional incident management team, as applicable.

Section 501.002 Application of General Workers™ Compensation Laws; Limit on Actions and Damages

...
(g) For purposes of this chapter and Section 88.126, Education Code, the Texas A&M Forest Service shall perform all duties of an employer in relation to an intrastate fire mutual aid system team member or a regional incident management team member who is injured and receives benefits under this chapter.

HB 919 also states the following:

The change in law made by this Act applies only to a claim for workers' compensation benefits based on a compensable injury that occurs on or after the effective date of this Act. A claim based on a compensable injury that occurs before the effective date of this Act is governed by the law in effect on the date the compensable injury occurred, and the former law is continued in effect for that purpose.

HB 1983 was:

- Passed by the first chamber on April 28, 2017
- Included in NCCI's May 5, 2017 **Legislative Activity Report** (RLA-2017-17)
- Passed by the second chamber on May 23, 2017

HB 1983 adds **Section 504.019. Coverage for Post-Traumatic Stress Disorder for Certain First Responders** to the Texas Labor Code as follows:

Sec. 504.019. Coverage for Post-Traumatic Stress Disorder for Certain First Responders.

(a) In this section:

(1) "First responder" means an individual employed by a political subdivision of this state who is:

(A) a peace officer under Article 2.12, Code of Criminal Procedure;

(B) a person licensed under Chapter 773, Health and Safety Code, as an emergency care attendant, emergency medical technician, emergency medical technician-intermediate, emergency medical technician-paramedic, or licensed paramedic; or

(C) a firefighter subject to certification by the Texas Commission on Fire Protection under Chapter 419, Government Code, whose principal duties are firefighting and aircraft crash and rescue.

(2) "Post-traumatic stress disorder" means a disorder that meets the diagnostic criteria for post-traumatic stress disorder specified by the American Psychiatric Association in the Diagnostic and Statistical Manual of Mental Disorders, fifth edition, or a later edition adopted by the commissioner of workers' compensation.

(b) Post-traumatic stress disorder suffered by a first responder is a compensable injury under this subtitle only if it is based on a diagnosis that:

(1) the disorder is caused by an event occurring in the course and scope of the first responder's employment; and

(2) the preponderance of the evidence indicates that the event was a substantial contributing factor of the disorder.

HB 1983 also amends **Section 408.006 Mental Trauma Injuries** of the Texas Labor Code as follows:

Section 408.006 Mental Trauma Injuries

...
(b) Notwithstanding Section 504.019, a A mental or emotional injury that arises principally from a legitimate personnel action, including a transfer, promotion, demotion, or termination, is not a compensable injury under this subtitle.

HB 1983 also states the following:

The change in law made by this Act applies only to a claim for workers' compensation benefits based on a compensable injury that occurs on or after the effective date of this Act. A claim based on a compensable injury that occurs before that date is governed by the law as it existed on the date the compensable injury occurred, and the former law is continued in effect for that purpose.

HB 1989 was:

- Passed by the first chamber on April 27, 2017
- Included in NCCI's May 5, 2017 **Legislative Activity Report** (RLA-2017-17)
- Passed by the second chamber on May 24, 2017

HB 1989 amends **section 407.045 Withdrawal from Self-Insurance** of the Texas Labor Code as follows:

407.045 Withdrawal from Self-Insurance

...

(a-1) For purposes of Subsection (a), an adequate program includes a program in which the certified self-insurer has insured or reinsured all workers' compensation obligations incurred by the self-insurer with an authorized insurer under an agreement that is filed with and approved in writing by the commissioner. The obligations incurred include:

- (1) all known claims and expenses associated with those claims; and
- (2) all incurred but not reported claims and expenses associated with those claims.

...

HB 2053 was:

- Passed by the first chamber on April 20, 2017
- Included in NCCI's April 28, 2017 *Legislative Activity Report* (RLA-2017-16)
- Passed by the second chamber on May 24, 2017

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 2082 was:

- Passed by the first chamber on May 9, 2017
- Included in NCCI's May 19, 2017 **Legislative Activity Report** (RLA-2017-19)
- Passed by the second chamber on May 24, 2017

HB 2082 adds new **section 404.1525. First Responder Liaison** to the Texas Labor Code to read:

Sec. 404.1525. First Responder Liaison.

(a) In this section, "first responder" has the meaning assigned by Section 504.055.

(b) The public counsel shall designate an employee of the office to act as first responder liaison.

(c) The first responder liaison shall assist an injured first responder and, if applicable, the ombudsman assigned to the first responder's case, during a workers' compensation administrative dispute resolution process.

(d) The first responder liaison:

(1) must meet the qualifications for designation as an ombudsman under this subchapter; and

(2) is subject to the training and education requirements for an ombudsman under this subchapter.

In addition, **HB 2082** amends **section 404.153. Employer Notification; Administrative Violation.** of the Texas Labor Code as follows:

Sec. 404.153. Employer Notification; Administrative Violation.

(a) Each employer shall notify its employees of the ombudsman program in the manner prescribed by the office.

(a-1) An employer that employs first responders or supervises volunteer first responders shall notify the first responders of the first responder liaison in the manner prescribed by the office. In this subsection, "first responder" has the meaning assigned by Section 504.055.

(b) An employer commits an administrative violation if the employer fails to comply with this section.

HB 2112 was:

- Passed by the first chamber on April 13, 2017
- Included in NCCI's April 21, 2017 **Legislative Activity Report** (RLA-2017-15)
- Passed by the second chamber on May 24, 2017

HB 2112 amends various provisions of the Texas Labor Code as follows:

Section 402.066. Recommendations to Legislature.

(a) The commissioner shall consider and recommend to the legislature changes to this subtitle, ~~including any statutory changes required by an evaluation conducted under Section 402.074.~~

...

Section 406.007. Termination of Coverage by Employer; Notice.

(a) An employer who terminates workers' compensation insurance coverage obtained under this subtitle shall file a written notice with the division ~~by certified mail~~ not later than the 10th day after the date on which the employer notified the insurance carrier to terminate the coverage. The notice must include a statement certifying the date that notice was provided or will be provided to affected employees under Section 406.005.

...

Section 406.008. Cancellation or Nonrenewal of Coverage by Insurance Company; Notice.

(a) An insurance company that cancels a policy of workers' compensation insurance or that does not renew the policy by the anniversary date of the policy shall deliver notice of the cancellation or nonrenewal to the division, and by certified mail or in person to the employer, ~~and the division~~ not later than:

(1) the 30th day before the date on which the cancellation or nonrenewal takes effect; or

(2) the 10th day before the date on which the cancellation or nonrenewal takes effect if the insurance company cancels or does not renew because of:

(A) fraud in obtaining coverage;

(B) misrepresentation of the amount of payroll for purposes of premium calculation;

(C) failure to pay a premium when due;

(D) an increase in the hazard for which the employer seeks coverage that results from an act or omission of the employer and that would produce an increase in the rate, including an increase because of a failure to comply with:

(i) reasonable recommendations for loss control; or

(ii) recommendations designed to reduce a hazard under the employer's control within a reasonable period; or

(E) a determination made by the commissioner of insurance that the continuation of the policy would place the insurer in violation of the law or would be hazardous to the interest of subscribers, creditors, or the general public.

...

Section 406.144. Election to Provide Coverage; Agreement.

...

(d) The hiring contractor shall send a copy of an agreement under this section to:
(1) the hiring contractor's workers' compensation insurance carrier; and
(2) the division, on the division's request on filing of the agreement with the division.

...

Section 406.145. Joint Agreement.

...

(c) The hiring contractor shall send a copy of a joint agreement signed under this section to:
(1) the hiring contractor's workers' compensation insurance carrier; and
(2) the division, on the division's request on filing of the joint agreement with the division.

...

Section 408.150. Vocational Rehabilitation.

(a) The division shall refer an employee to the Texas Workforce Commission ~~Department of Assistive and Rehabilitative Services~~ with a recommendation for appropriate services if the division determines that an employee could be materially assisted by vocational rehabilitation or training in returning to employment or returning to employment more nearly approximating the employee's preinjury employment. ~~The division shall also notify insurance carriers of the need for vocational rehabilitation or training services.~~ The insurance carrier may provide vocational rehabilitation or training services through a private provider of vocational rehabilitation services ~~under Section 409.012.~~

(b) An employee who refuses services or refuses to cooperate with services provided under this section by the Texas Workforce Commission ~~Department of Assistive and Rehabilitative Services~~ or a private provider loses entitlement to supplemental income benefits.

Section 409.010. Information Provided to Employee or Legal Beneficiary.

Immediately on receiving notice of an injury or death from any person, the division shall send mail ~~send mail~~ to the employee or legal beneficiary a clear and concise description of:

- (1) the services provided by:
(A) the division; and
(B) the office of injured employee counsel, including the services of the ombudsman program;
(2) the division's procedures; and
(3) the person's rights and responsibilities under this subtitle.

Section 409.011. Information Provided to Employer; Employer's Rights.

(a) Immediately on receiving notice of an injury or death from any person, the division shall send mail ~~send mail~~ to the employer a description of:

- (1) the services provided by the division and the office of injured employee counsel;
(2) the division's procedures; and
(3) the employer's rights and responsibilities under this subtitle.

...

Section 409.012. Vocational Rehabilitation Information.

...

(b) If the division determines that an injured employee would be assisted by vocational rehabilitation, the division shall notify:
(1) the injured employee in writing of the services and facilities available through the Texas Workforce Commission ~~Department of Assistive and Rehabilitative Services~~ and private providers of vocational rehabilitation; and
(2) the Texas Workforce Commission ~~Department of Assistive and Rehabilitative Services~~ and the affected insurance carrier that the injured employee has been identified as one who could be assisted by vocational rehabilitation.

(c) The division shall cooperate with the office of injured employee counsel, the Texas Workforce Commission ~~Department of Assistive and Rehabilitative Services~~, and private providers of vocational rehabilitation in the provision of services and facilities to employees by the Texas Workforce Commission ~~Department of Assistive and Rehabilitative Services~~.

...

Section 409.013. Plain Language Information; Notification of Injured Employee

...

(b) On receipt of a report under Section 409.005, the division shall:

~~(1) contact the affected employee; by mail or by telephone and~~

~~(2) shall provide the information required under Subsection (a) to that employee, together with any other information that may be prepared by the office of injured employee counsel or the division for public dissemination that relates to the employee's situation, such as information relating to back injuries or occupational diseases.~~

HB 2112 also repeals the following provisions of the Labor Code as follows:

~~**Section 402.074. Strategic Management; Evaluation.**~~

The commissioner shall implement a strategic management plan that:

- ~~(1) requires the division to evaluate and analyze the effectiveness of the division in implementing:~~
- ~~(A) the statutory goals adopted under Section 402.021, particularly goals established to encourage the safe and timely return of injured employees to productive work roles; and~~
- ~~(B) the other standards and requirements adopted under this code, the Insurance Code, and other applicable laws of this state; and~~
- ~~(2) modifies the organizational structure and programs of the division as necessary to address shortfalls in the performance of the workers' compensation system of this state.~~

Section 406.144. Election to Provide Coverage; Agreement.

...

~~(c) An agreement under this section shall be filed with the division either by personal delivery or by registered or certified mail and is considered filed on receipt by the division.~~

...

Sections 406.145. Joint Agreement

...

~~(b) A joint agreement shall be delivered to the division by personal delivery or registered or certified mail and is considered filed on receipt by the division.~~

...

~~(d) The division shall maintain a system for accepting and maintaining the joint agreements.~~

...

~~**Section 408.032. Study on Interdisciplinary Pain Rehabilitation Program and Facility Accreditation Requirement.**~~

The division shall study the issue of required accreditation of interdisciplinary pain rehabilitation programs or interdisciplinary pain rehabilitation treatment facilities that provide services to injured employees and shall report to the legislature regarding any statutory changes that the division considers necessary to require that accreditation.

~~**Section 408.086. Division Determination of Extended Unemployment or Underemployment.**~~

~~(a) During the period that impairment income benefits or supplemental income benefits are being paid to an employee, the commissioner shall determine at least annually whether any extended unemployment or underemployment is a direct result of the employee's impairment.~~

~~(b) To make this determination, the commissioner may require periodic reports from the employee and the insurance carrier and, at the insurance carrier's expense, may require physical or other examinations, vocational assessments, or other tests or diagnoses necessary to perform the commissioner's duty under this section and Subchapter H.~~

Section 409.012. Vocational Rehabilitation Information.

...

~~(d) A private provider of vocational rehabilitation services may register with the division.~~

...

In addition, **HB 2112** includes the following clauses:

The change in law made by this Act applies only to a notice, agreement, description, or information required to be sent or provided on or after the effective date of this Act.

This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2017.

HB 2119 was:

- Passed by the first chamber on May 6, 2017
- Included in NCCI's May 19, 2017 *Legislative Activity Report* (RLA-2017-19)
- Passed by the second chamber on May 23, 2017

HB 2119 amends *section 408.183 Duration of Death Benefits* of the Texas Labor Code as follows:

Sec. 408.183 Duration of Death Benefits.

...

(b) An eligible spouse is entitled to receive death benefits for life or until remarriage. On remarriage, the eligible spouse is entitled to receive 104 weeks of death benefits, commuted as provided by commissioner rule.

(b-1) Notwithstanding Subsection (b), an eligible spouse who remarried is eligible for death benefits for life if the employee was a first responder, as defined by Section 504.055, who suffered death in the course and scope of employment or while providing services as a volunteer. This subsection applies regardless of the date on which the death of the first responder occurred.

...

HB 2119 also repeals Chapter 1018 (H.B. 1094), Acts of the 84th Legislature, Regular Session, 2015.

In addition, **HB 2119** states the following:

The change in law made by this Act to Section 408.183, Labor Code, applies only to an eligible spouse who remarries on or after the effective date of this Act. An eligible spouse who remarried before that date is governed by the law as it existed immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

HB 2546 was:

- Passed by the first chamber on April 27, 2017
- Included in NCCI's May 5, 2017 *Legislative Activity Report* (RLA-2017-17)
- Passed by the second chamber on May 24, 2017

HB 2546 amends *section 408.025 Reports and Records Required from Health Care Providers* of the Texas Labor Code as follows:

408.025 Reports and Records Required from Health Care Providers

...

(a-1) A treating doctor may delegate to a physician assistant who is licensed to practice in this state under Chapter 204, Occupations Code, the authority to complete and sign a work status report regarding an injured employee's ability to return to work. The delegating treating doctor is responsible for the acts of the physician assistant under this subsection.

...

West Virginia

SB 1010 was:

- Passed by the first chamber and second chamber on May 24, 2017

SB 1010 amends and reenacts *section 33-3-33a Excess moneys of Fire Protection Fund deposited into Volunteer Fire Department Workers' Compensation Premium Subsidy Fund; other funding; special report from State Fire Marshal by December 15, 2015; termination of program June 30, 2016* of the Code of West Virginia to provide for the:

- Deposit of moneys into the Volunteer Fire Department Workers' Compensation Premium Subsidy Fund until June 30, 2020
- Expiration of Volunteer Fire Department Workers' Compensation Subsidy Program and closure of the Volunteer Fire Department Workers' Compensation Premium Subsidy Fund on June 30, 2020
- Transfer of any remaining moneys in the Volunteer Fire Department Workers' Compensation Premium Subsidy Fund upon closure of such fund

BILLS PASSING FIRST CHAMBER

The following workers compensation-related bill passed the first chamber within the one-week period ending May 26, 2017.

Louisiana

HB 592 amends *Title 23, Section 1203.1. Definitions; medical treatment schedule; medical advisory council* of the Louisiana Revised Statutes as follows:

§ 1203.1. Definitions; medical treatment schedule; pharmacy formulary; medical advisory council

...

B.(1) The director shall, through the office of workers' compensation administration, promulgate rules in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., to establish a medical treatment schedule and a pharmacy formulary.

~~(1) Such rules shall be promulgated no later than January 1, 2011.~~

(2) ~~The~~ Both the medical treatment schedule and the pharmacy formulary shall meet the criteria established in this Section, ~~and~~ The medical treatment schedule shall be organized in an interdisciplinary manner by particular regions of the body and organ systems.

(3) The content of the pharmacy formulary shall be the most recent version of the Workers' Compensation Drug Formulary of the Official Disability Guidelines Appendix A: Treatment in Workers' Comp, published by the Work Loss Data Institute along with the associated supporting evidence, studies, and applicable portions of the guidelines specific to the drugs listed in Appendix A.

(4) The rules and regulations necessary to establish a pharmacy formulary shall be promulgated and the formulary adopted by January 1, 2018.

(5) In workers' compensation claims in which the injury takes place on or after January 1, 2018, the pharmacy formulary shall be utilized for all drugs prescribed or dispensed for outpatient use.

(6) In workers' compensation claims in which the injury takes place prior to January 1, 2018, the pharmacy formulary shall be utilized for all refills and new prescriptions prescribed or dispensed for outpatient use on and after July 1, 2018.

...

D. The medical treatment schedule and the pharmacy formulary shall be based on guidelines which shall meet all of the following criteria:

...

H.(1) ~~The~~ director, with the assistance of the medical advisory council, is authorized to review and update the medical treatment schedule no less often than at least once every two years. Such Any updates shall be made by rules promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq. administrative rule. In no event shall the ~~The~~ schedule shall not contain multiple guidelines ~~covering the same aspects~~ that address the same aspect of the same medical condition ~~which are~~ simultaneously in force.

(2) The pharmacy formulary shall be automatically updated with the most recent version of the Workers' Compensation Drug Formulary of the Official Disability Guidelines Appendix A: Treatment in Workers' Comp, published by the Work Loss Data Institute along with the associated supporting evidence, studies, and applicable portions of the guidelines specific to the drugs listed in Appendix A. The director and the medical advisory council shall obtain a list identifying any updates to the formulary.

I. After the promulgation of the medical treatment schedule and the pharmacy formulary, throughout this Chapter, and notwithstanding any provision of law to the contrary, medical care, services, and treatment due, pursuant to R.S. 23:1203 et seq., by the employer to the employee shall mean care, services, and treatment in accordance with the medical treatment schedule or the pharmacy formulary. Medical care, services, and treatment that ~~varies~~ vary from the promulgated medical treatment schedule or the pharmacy formulary shall also be due by the employer when it is demonstrated to the medical director of the office by a preponderance of the scientific medical evidence, that a variance from the medical treatment schedule or the pharmacy formulary is reasonably required to cure or relieve the injured worker from the effects of the injury or occupational disease given the circumstances.

J.(1) After a medical provider has submitted to the payor the request for authorization and the information required by Chapter 27 of Title 40 of the Louisiana Administrative Code, ~~Title 40, Chapter 27~~, the payor shall notify the medical provider of ~~their~~ any action on the request within five business days of receipt of the request. If any dispute arises ~~after January 1, 2011~~, as to whether the recommended care, services, or treatment is in accordance with the medical treatment schedule or pharmacy formulary or whether a variance from the medical treatment schedule or pharmacy formulary is reasonably required as contemplated in Subsection I of this Section, any aggrieved party shall file, within fifteen calendar days, an appeal with the office of workers' compensation administration medical director or associate medical director on a form promulgated by the director. The medical director or associate medical director shall render a decision as soon as is practicable, but ~~in no event~~, not more than thirty calendar days from the date of filing.

...

L.(1) It is the intent of the legislature that, with the establishment and enforcement of the medical treatment schedule and the pharmacy formulary, medical and surgical treatment, hospital care, and other ~~health care~~ healthcare provider services shall be delivered in an efficient and timely manner to injured employees.

(2) Notwithstanding any other provision of law or pharmacy formulary rules or regulations to the contrary, any prior authorization of a pharmacy or any other healthcare provider dispensing drugs, regardless of the classification or the lack of classification of any individual drug, shall be in accordance with the provisions of R.S. 23:1142. Nothing related to the pharmacy formulary or associated rules or regulations shall alter any mutual consent requirements or the right to a choice of pharmacy pursuant to this Title.

M.(1) With regard to all treatment not covered by the medical treatment schedule or the pharmacy formulary promulgated in accordance with this Section, all medical care, services, and treatment shall be in accordance with the guidelines set forth in Subsection D of this Section.

...

FEDERAL ISSUES

Issue	Update
Congress	Upon its return following the Memorial Day holiday, Congress resumed legislative discussions on reforms to the Affordable Care Act, comprehensive tax reform, and infrastructure funding. Following the release of the Administration's budget proposal, Congress will begin discussions on federal government funding approaches because action is necessary before the end of the federal fiscal year on September 30.
Social Security Disability Offset—Administration's Budget Proposal	The Administration's fiscal year 2018 budget has been released and contains a provision that would eliminate the Workers' Compensation Reverse Offsets for Social Security in 15 states that were preserved in federal legislation in 1981. The elimination of the reverse offset effectively shifts costs to employers and workers compensation plans in the states that have maintained the offsets. The budget estimates savings from this at \$164 million over the 10 years ending 2027. The states identified by the Social Security Administration with offsets include Alaska, California, Colorado, Florida, Louisiana, Minnesota, Nevada, New Jersey, New York, North Dakota, Ohio, Oregon, Washington, and Wisconsin. The Administration's budget proposal is the initial step in formulating the federal budget, and the ultimate disposition of this Social Security Disability proposal will be determined in the congressional appropriation's process and upcoming negotiations.

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

STATE LEGISLATIVE ACTIVITY

State	Update
Nebraska	The state legislature has proposed studies to: <ul style="list-style-type: none"> • Examine the feasibility of adopting a workers compensation drug formulary (LR 168) • Review reimbursement rates for ambulatory surgical centers and outpatient hospitals with respect to provision of workers compensation services (LR 183) • Review reimbursement rates for ambulatory surgical centers and outpatient hospitals with respect to workers compensation services in (LR 201)
Rhode Island	Notable provisions in recently introduced HB 6224 include: <ul style="list-style-type: none"> • Repealing of the "material hindrance" definition • Providing for an appeal of certain retirement board decisions to the workers compensation court • Extending the deadline for legislative appropriation to the Uninsured Fund from June 30, 2017, to June 30, 2018

STATE COMMITTEE ACTIVITY

State	Update
Idaho	The Industrial Commission has adopted emergency rules to delay implementation of the Electronic Data Interchange Claims Release 3.0 from July 1 to November 4, 2017.
Virginia	On May 23, 2017, a public hearing was held by the Workers' Compensation Commission, providing the opportunity for public comments on the Medical Fee Schedule and Ground Rules. The hearing followed the public review of the medical fee schedule and comment period via the Commission's website from April 10 to May 10, 2017. The medical fee schedule will be implemented in January 2018.

OTHER ITEMS OF INTEREST

State	Update
Alabama	The Circuit Court of Jefferson County rendered a decision in <i>Clower v. CVS Caremark</i> declaring the Workers' Compensation Act (Act) in Alabama unconstitutional. Specifically, the order in the decision found that provisions in the Code (concerning a \$220 cap on permanent partial disability benefits and the 15% cap on attorneys' fees) were unconstitutional and, due to a nonseverability statute, the entire Act was declared unconstitutional. Due to the serious nature of the decision, the Circuit Court judge initially issued a 120-day stay and later extended the stay to indefinite, to permit legislative action on the provisions of the Alabama Code that were declared unconstitutional.

State	Update
Kentucky	<p>The state Supreme Court rendered a decision on April 27, 2017, in the cases <i>Marshall Parker v. Webster County Coal, LLC (Dotiki Mine), et al.</i> and <i>Webster County Coal, LLC (Dotiki Mine) v. Marshall Parker, et al.</i> (“Parker”) ruling that KRS 342.730(4) was unconstitutional. The impacted statute provided that income benefits ended when a workers compensation claimant became eligible for “normal old-age Social Security retirement benefits” or two years, whichever occurred last. The Supreme Court ruled that the statute violates the rights to equal protection because it “discriminates against those who qualify for one type of retirement benefit (Social Security) from those who do not qualify for that type of retirement benefit but do qualify for another type of retirement benefit (teacher retirement).”</p> <p><i>As a result of the Kentucky Supreme Court’s decision in the Parker cases, NCCI submitted a law-only filing to the Department of Insurance on May 26, 2017, seeking an increase in the voluntary loss costs of 5.6% for all new, renewal, and outstanding policies effective July 1, 2017. The filing circular (KY-2017-01) is available on ncci.com.</i></p>
Mississippi	<p>In a matter of first impression, in <i>Taylor, et al. v. Reliance Well Service Inc., et al.</i>, the Court of Appeals has determined that the Workers’ Compensation Commission (the “Commission”) cannot vacate an approved settlement on the grounds of “mistake of fact” just because the employee died in the time between both parties signing the settlement agreement and the Commission approving it. The Court reasoned that even though the Commission was unaware of the employee’s death, this was irrelevant to the Commission’s determination that the settlement was in the best interest of the injured worker. The matter has been remanded to the Commission for further consideration of a separate and unrelated challenge brought by the employer.</p>
Oregon	<p>Gov. Kate Brown has recently created an opioid task force to address the abuse/misuse of opioids.</p>
South Carolina	<p>On March 8, 2017, the South Carolina Supreme Court issued a decision related to permanent disability benefits for back injuries in the case of <i>Clemmons v. Lowe’s Home Centers</i>. Since 2007, there has been a rebuttable presumption of permanent total disability (PTD) for injured workers with more than 50% impairment to the back. This recent Supreme Court decision overrules a 2012 Court of Appeals decision by finding that an employee’s return to work is not, by itself, enough to rebut the presumption of PTD. A Petition for Rehearing was filed on April 7, 2017. The state Supreme Court has not yet responded to this request for rehearing. NCCI is monitoring the application of the <i>Clemmons</i> decision and will communicate the potential impact, if any, on South Carolina loss costs and rates at a later date.</p>

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.