



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 includes 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 is included in the first report published each month. This report is issued on a weekly basis throughout the legislative season and provides updates on the content of these bills if and when they progress through the legislative process. This report covers 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 June 1, 2018.

Louisiana

HB 579 was:

- Passed by the first chamber on April 12, 2018
- Included in NCCI's April 20, 2018 **Legislative Activity Report** (RLA-2018-16)
- Amended and passed by the second chamber on May 9, 2018
- Included in NCCI's May 18, 2018 **Legislative Activity Report** (RLA-2018-20)
- Enacted on June 1, 2018, with an effective date of August 1, 2018

HB 579, in part, amends and reenacts **section 40:1046 Recommendation of marijuana for therapeutic use; rules and regulations; Louisiana Board of Pharmacy and the adoption of rules and regulations relating to the dispensing of recommended marijuana for therapeutic use; the Department of Agriculture and Forestry and the licensure of a production facility** of the Louisiana Health and Safety law to stipulate that employers and their workers compensation insurers shall not be obligated or ordered to pay for recommended or prescribed medical marijuana in claims arising under present law relative to workers compensation.

Missouri

HB 1719 was:

- Passed by the first chamber on March 15, 2018
- Included in NCCI's March 23, 2018 **Legislative Activity Report** (RLA-2018-12)
- Amended and passed by the second chamber on May 16, 2018
- Amended by the Conference Committee and passed by both chambers on May 18, 2018
- Included in NCCI's May 25, 2018 **Legislative Activity Report** (RLA-2018-21)
- Enacted on June 1, 2018, with an effective date of August 28, 2018

HB 1719 repeals and adds numerous sections to the Missouri Annotated Statutes, in part, creating the "Professional Employer Organization Act" to provide, in part, that:

- The responsibility to obtain workers compensation coverage shall be specifically allocated in the professional employer agreement to either the professional employment organization (PEO) or the client.
- If the coemployment relationship between a PEO and a client is terminated, the client shall utilize an experience modification rating that reflects its individual experience. The PEO shall provide a client its workers compensation information within five business days of receiving or giving notice that the relationship has been terminated.

- A client may request its workers compensation information at any time and the PEO shall provide such information to the client within five business days of receiving such request. Such information shall also be provided to any future client insurer if requested by such client.
- A client is additionally required to provide prospective insurers with its workers compensation information upon receiving such information from the PEO. A client is further required to disclose to a prospective insurer its current or previous relationship with a PEO. Violation of either of these provisions is subject to a Class A misdemeanor.
- If a third party requests verification of a client's experience modification factor for a client in certain types of insurance policies from a PEO, the PEO shall, within five business days of receipt of receiving the client's consent, provide the information to the third party. If the client refuses to grant consent to a request for information, the PEO shall notify the requesting third party that the client has refused to consent to the disclosure of the information.

SB 981 was:

- Passed by the first chamber on March 29, 2018
- Included in NCCI's April 6, 2018 *Legislative Activity Report* (RLA-2018-14)
- Passed by the second chamber on May 16, 2018
- Included in NCCI's May 25, 2018 *Legislative Activity Report* (RLA-2018-21)
- Enacted on June 1, 2018, with an effective date of August 28, 2018

SB 981 amends *sections 287.127, 287.690, and 287.715* of the Missouri Workers' Compensation Law as follows:

287.127. Notice, employer to post, contents—division to provide notice, when—penalty.—

...

2. The division of workers' compensation shall develop the notice to be posted ~~and shall~~, distribute such notice free of charge to employers and insurers upon request, and publish the notice on the website of the department of labor and industrial relations. Failure to request such notice does not relieve the employer of its obligation to post the notice. If the employer carries workers' compensation insurance, the carrier shall provide the notice, in paper or electronic format, to the insured within thirty days of the insurance policy's inception date. A carrier who elects to provide the notice in electronic format shall direct the insured to the notice available on the website of the department of labor and industrial relations.

...

287.690. Premium tax on insurance carriers, purpose, rate, how determined—use of funds for employers mutual insurance company, purpose.—

1. Prior to December 31, 1993, for the purpose of providing for the expense of administering this chapter and for the purpose set out in subsection 2 of this section, every person, partnership, association, corporation, whether organized under the laws of this or any other state or country, the state of Missouri, including any of its departments, divisions, agencies, commissions, and boards or any political subdivisions of the state who self-insure or hold themselves out to be any part self-insured, company, mutual company, the parties to any interindemnity contract, or other plan or scheme, and every other insurance carrier, insuring employers in this state against liability for personal injuries to their employees, or for death caused thereby, under this chapter, shall pay, as provided in this chapter, tax upon the net deposits, net premiums or net assessments received, whether in cash or notes in this state, or on account of business done in this state, for such insurance in this state at the rate of two percent in lieu of all other taxes on such net deposits, net premiums or net assessments, which amount of taxes shall be assessed and collected as herein provided. Beginning October 31, 1993, and every year thereafter, the director of the division of workers' compensation shall estimate the amount of revenue required to administer this chapter and the director shall determine the rate of tax to be paid in the following calendar year pursuant to this section commencing with the calendar year beginning on January 1, 1994. If the balance of the fund estimated to be on hand on December thirty-first of the year each tax rate determination is made is less than one hundred ten percent of the previous year's expenses plus any additional revenue required due to new statutory requirements given to the division by the general assembly, then the director shall impose a tax not to exceed two percent in lieu of all other taxes on net deposits, net premiums or net assessments, rounded up to the nearest one-half of a percentage point, which amount of taxes shall be assessed and collected as herein provided. The net premium equivalent for individual self-insured employers ~~and any group of political subdivisions of this state qualified to self-insure their liability pursuant to this chapter as authorized by section 537.620~~ shall be based on average rate classifications calculated by the department of insurance, financial institutions and professional registration as taken from premium rates filed by the twenty insurance companies providing the greatest volume of workers' compensation insurance coverage in this state. For employers qualified to self-insure their liability pursuant to this chapter, the rates filed by such group of employers in accordance with subsection 4 of section 287.280 shall be the net premium equivalent. Any group of political subdivisions of this state qualified to self-insure their liability pursuant to this chapter as authorized by section 537.620 may choose either the average rate classification method or the filed rate method, provided that the method used may only be changed once without receiving the consent of the director of the division of workers' compensation. Every entity required to pay the tax imposed pursuant to this section and section 287.730 shall be notified by the division of workers' compensation within ten calendar days of the date of the determination of the rate of tax to be imposed for the following

year. **Net premiums, net deposits or net assessments** are defined as gross premiums, gross deposits or gross assessments less cancelled or returned premiums, premium deposits or assessments and less dividends or savings, actually paid or credited.

...
287.715. Annual surcharge required for second injury fund, amount, how computed, collection—violation, penalty—supplemental surcharge, amount.

...
2. Beginning October 31, 2005, and each year thereafter, the director of the division of workers' compensation shall estimate the amount of benefits payable from the second injury fund during the following calendar year and shall calculate the total amount of the annual surcharge to be imposed during the following calendar year upon all workers' compensation policyholders and authorized self-insurers. The amount of the annual surcharge percentage to be imposed upon each policyholder and self-insured for the following calendar year commencing with the calendar year beginning on January 1, 2006, shall be set at and calculated against a percentage, not to exceed three percent, of the policyholder's or self-insured's workers' compensation net deposits, net premiums, or net assessments for the previous policy year, rounded up to the nearest one-half of a percentage point, that shall generate, as nearly as possible, one hundred ten percent of the moneys to be paid from the second injury fund in the following calendar year, less any moneys contained in the fund at the end of the previous calendar year. All policyholders and self-insurers shall be notified by the division of workers' compensation within ten calendar days of the determination of the surcharge percent to be imposed for, and paid in, the following calendar year. The net premium equivalent for individual self-insured employers ~~and any group of political subdivisions of this state qualified to self-insure their liability pursuant to this chapter as authorized by section 537.620~~ shall be based on average rate classifications calculated by the department of insurance, financial institutions and professional registration as taken from premium rates filed by the twenty insurance companies providing the greatest volume of workers' compensation insurance coverage in this state. For employers qualified to self-insure their liability pursuant to this chapter, the rates filed by such group of employers in accordance with subsection 4 of section 287.280 shall be the net premium equivalent. Any group of political subdivisions of this state qualified to self-insure their liability pursuant to this chapter as authorized by section 537.620 may choose either the average rate classification method or the filed rate method, provided that the method used may only be changed once without receiving the consent of the director of the division of workers' compensation. The director may advance funds from the workers' compensation fund to the second injury fund if surcharge collections prove to be insufficient. Any funds advanced from the workers' compensation fund to the second injury fund must be reimbursed by the second injury fund no later than December thirty-first of the year following the advance. The surcharge shall be collected from policyholders by each insurer at the same time and in the same manner that the premium is collected, but no insurer or its agent shall be entitled to any portion of the surcharge as a fee or commission for its collection. The surcharge is not subject to any taxes, licenses or fees.

BILLS PASSING SECOND CHAMBER

The following workers compensation-related bills passed the second chamber within the one-week period ending June 1, 2018.

Illinois

SB 904 was:

- Passed by the first chamber on April 26, 2017
- Amended and passed by the second chamber on May 30, 2018

SB 904 amends *sections 820 ILCS 305/8.2* and *820 ILCS 305/8.2a* of the Illinois Workers' Compensation Act as follows:

(820 ILCS 305/8.2)

Sec. 8.2. Fee schedule.

...
(d) When a patient notifies a provider that the treatment, procedure, or service being sought is for a work-related illness or injury and furnishes the provider the name and address of the responsible employer, the provider shall bill the employer or its designee directly. The employer or its designee shall make payment for treatment in accordance with the provisions of this Section directly to the provider, except that, if a provider has designated a third-party billing entity to bill on its behalf, payment shall be made directly to the billing entity. ~~Providers and providers~~ shall submit bills and and providers shall submit bills and records in accordance with the provisions of this Section.

(1) All payments to providers for treatment provided pursuant to this Act shall be made within 30 days of receipt of the bills as long as the ~~bill claim~~ contains substantially all the required data elements necessary to adjudicate the ~~bill bills~~.

(2) If the ~~bill claim~~ does not contain substantially all the required data elements necessary to adjudicate the bill, or the claim is denied for any other reason, in whole or in part, the employer or insurer shall provide written notification to the provider in the form of an explanation of benefits, explaining the basis for the denial and describing any additional necessary data elements, to the provider within 30 days of receipt of the bill. The Commission, with assistance from the Medical Fee Advisory Board, shall adopt rules detailing the requirements for the explanation of benefits required under this subsection.

(3) In the case (i) of nonpayment to a provider within 30 days of receipt of the bill which contained substantially all of the required data elements necessary to adjudicate the bill, (ii) of ~~or~~ nonpayment to a provider of a portion of such a bill, or (iii) where the provider has not been issued an explanation of benefits for a bill up to the lesser of the actual charge or the payment level set by the Commission in the fee schedule established in this Section, the bill, or portion of the bill up to the lesser of the actual charge or the payment level set by the Commission in the fee schedule established in this Section, shall incur interest at a rate of 1% per month payable by the employer to the provider. Any required interest payments shall be made by the employer or its insurer to the provider not later than within 30 days after payment of the bill.

(4) If the employer or its insurer fails to pay interest required pursuant to this subsection (d), the provider may bring an action in circuit court to enforce the provisions of this subsection (d) against the employer or its insurer responsible for insuring the employer's liability pursuant to item (3) of subsection (a) of Section 4. Interest under this subsection (d) is only payable to the provider. An employee is not responsible for the payment of interest under this Section. The right to interest under this subsection (d) shall not delay, diminish, restrict, or alter in any way the benefits to which the employee or his or her dependents are entitled under this Act.

The changes made to this subsection (d) by this amendatory Act of the 100th General Assembly apply to procedures, treatments, and services rendered on and after the effective date of this amendatory Act of the 100th General Assembly.

...

(820 ILCS 305/8.2a)

Sec. 8.2a. Electronic claims.

(a) The Director of Insurance shall adopt rules to do all of the following:

...

(4) Ensure that health care providers have an opportunity to comply with requests for records by employers and insurers for the authorization of the payment of workers' compensation claims.

(5) Ensure that health care providers are responsible for supplying only those medical records pertaining to the provider's own claims that are minimally necessary under the federal Health Insurance Portability and Accountability Act of 1996.

(6) Provide that any electronically submitted bill determined to be complete but not paid or objected to within 30 days shall be subject to interest pursuant to item (3) of subsection (d) of Section 8.2.

(7) Provide that the Department of Insurance shall impose an administrative fine if it determines that an employer or insurer has failed to comply with the electronic claims acceptance and response process. The amount of the administrative fine shall be no greater than \$1,000 per each violation, but shall not exceed \$10,000 for identical violations during a calendar year.

...

(c) The rules requiring employers and insurers to accept electronic claims for payment of medical services shall be proposed on or before January 1, 2012, and shall require all employers and insurers to accept electronic claims for payment of medical services on or before June 30, 2012. The Director of Insurance shall adopt rules by January 1, 2019 to implement the changes to this Section made by this amendatory Act of this 100th General Assembly. The Commission, with assistance from the Department and the Medical Fee Advisory Board, shall publish on it its Internet website a companion guide to assist with compliance with electronic claims rules. The Medical Fee Advisory Board shall periodically review the companion guide.

...

SB 1737 was:

- Passed by the first chamber on April 27, 2017
- Amended and passed by the second chamber on May 31, 2018

SB 1737 amends, creates, and repeals numerous sections of the Illinois Compiled Statutes Annotated, including, but not limited to, the following:

(215 ILCS 5/456)

Sec. 456. Making of rates.

(1) All rates shall be made in accordance with the following provisions:

...

(d) Rates shall not be excessive, inadequate or unfairly discriminatory.

~~A rate in a competitive market is not excessive. A rate in a noncompetitive market 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.~~

...

(215 ILCS 5/457)

Sec. 457. Rate filings.

~~(1) Every Beginning January 1, 1983, every company shall prefile file with the Director every manual of classifications, every manual of rules and rates, every rating plan and every modification of the foregoing which it intends to use. Such filings shall be made at least not later than 30 days before after they become effective. A company may satisfy its obligation to make such filings by adopting the filing of a licensed rating organization of which it is a member or subscriber, filed pursuant to subsection (2) of this Section, in total or, with the approval of the Director, by notifying the Director in what respects it intends to deviate from such filing. If a company intends to deviate from the filing of a licensed rating organization of which it is a member, the company shall provide the Director with supporting information that specifies the basis for the requested deviation and provides justification for the deviation. Any company adopting a pure premium filed by a rating organization pursuant to subsection (2) must file with the Director the modification factor it is using for expenses and profit so that the final rates in use by such company can be determined.~~

~~(2) Each Beginning January 1, 1983, each licensed rating organization must prefile file with the Director every manual of classification, every manual of rules and advisory rates, every pure premium which has been fully adjusted and fully developed, every rating plan and every modification of any of the foregoing which it intends to recommend for use to its members and subscribers, at least not later than 30 days before after such manual, premium, plan or modification thereof takes effect. Every licensed rating organization shall also file with the Director the rate classification system, all rating rules, rating plans, policy forms, underwriting rules or similar materials, and each modification of any of the foregoing which it requires its members and subscribers to adhere to not later than 30 days before such filings or modifications thereof are to take effect. Every such filing shall state the proposed effective date thereof and shall indicate the character and extent of the coverage contemplated.~~

~~(3) A filing and any supporting information made pursuant to this Section shall be open to public inspection as soon as filed after the filing becomes effective.~~

~~(4) A filing shall not be effective nor used until approved by the Director. A filing shall be deemed approved and legally effective if the Director fails to disapprove within 30 days after the filing.~~

(215 ILCS 5/458)

Sec. 458. Disapproval of filings.

~~(1) If within 30 thirty days of any filing the Director finds that such filing does not meet the requirements of this Article, he shall send to the company or rating organization which made such filing a written notice of disapproval of such filing, specifying therein in what respects he finds that such filing fails to meet the requirements of this Article and stating when, within a reasonable period thereafter, such filing shall be deemed no longer effective. A company or rating organization whose filing has been disapproved shall be given a hearing upon a written request made within 30 days after the disapproval order. If the company or rating organization making the filing shall, prior to the expiration of the period prescribed in the notice, request a hearing, such filings shall be effective until the expiration of a reasonable period specified in any order entered thereon. If the rate resulting from such filing be unfairly discriminatory or materially inadequate, and the difference between such rate and the approved rate equals or exceeds the cost of making an adjustment, the Director shall in such notice or order direct an adjustment of the premium to be made with the policyholder either by refund or collection of additional premium. If the policyholder does not accept the increased rate, cancellation shall be made on a pro rata basis. Any policy issued pursuant to this subsection shall contain a provision that the premium thereon shall be subject to adjustment upon the basis of the filing finally approved.~~

...

~~(4) Whenever an insurer has no legally effective rates as a result of the Director's disapproval of rates or other act, the Director shall on request of the insurer specify interim rates for the insurer that are high enough to protect the interests of all parties and may order that a specified portion of the premiums be placed in an escrow account approved by him or her. When new rates become legally effective, the Director shall order the escrowed funds or any overcharge in the interim rates to be distributed appropriately, except that refunds to policyholders that are de minimis shall not be required.~~

(215 ILCS 5/460)

Sec. 460. Competitive market; approval of rates.

~~(a) Beginning January 1, 1983, a competitive market is presumed to exist unless the Director, after a hearing, determines that a reasonable degree of competition does not exist in the market and the Director issues a ruling to that effect. For purposes of this Article only, market shall mean the statewide workers' compensation and employers' liability lines of business. In determining whether a reasonable degree of competition exists, the Director shall consider relevant tests of workable competition pertaining to market structure, market performance and market conduct. Such tests may include, but need not be limited to, the following: size and number of firms actively engaged in the market, market shares and changes in market shares of firms, ease of entry and exit from a given market, underwriting restriction, and whether profitability for companies generally in the market is unreasonably high. The determination of competition involves the interaction of the various tests and the weight given to specific tests depends upon the particular situation and pattern of test results.~~

~~—In determining whether or not a competitive market exists, the Director shall monitor the degree of competition in this State. In doing so, he shall utilize existing relevant information, analytical systems and other sources; cause or participate in the development of new relevant information, analytical systems and other sources; or rely on some combination thereof. Such~~

activities may be conducted internally within the Department of Insurance, in cooperation with other state insurance departments, through outside contractors, or in any other appropriate manner.

(b) If the Director finds that a reasonable degree of competition does not exist in a market, he may require that the insurers in that market file supporting information in support of existing rates. If the Director believes that such rates may violate any of the requirements of this Article, he shall call a hearing prior to any disapproval. If the Director determines that a competitive market does not exist in the workers' compensation market as provided in a ruling pursuant to this Section, then every company must prefile every manual of classifications, rules, rates, rating plans, rating schedules, and every modification of the foregoing covered by such rule. Such filing shall be made at least 30 days prior to its taking effect, and such prefiling requirement shall remain in effect as long as there is a ruling in effect pursuant to this Section that a reasonable degree of competition does not exist.

(c) The Director shall disapprove a rate if he finds that the rate is excessive, inadequate or unfairly discriminatory as defined in Section 456. An insurer whose rates have been disapproved shall be given a hearing upon a written request made within 30 days after the disapproval order.

If the Director disapproves a rate, he shall issue an order specifying in what respects it fails to meet the requirements of this Article and stating when within a reasonable period thereafter such rate shall be discontinued for any policy issued or renewed after a date specified in the order. The order shall be issued within 30 days after the close of the hearing or within such reasonable time extension as the Director may fix. Such order may include a provision for premium adjustment for the period after the effective date of the order for policies in effect on such date.

(d) Whenever an insurer has no legally effective rates as a result of the Director's disapproval of rates or other act, the Director shall on request of the insurer specify interim rates for the insurer that are high enough to protect the interest of all parties and may order that a specified portion of the premiums be placed in an escrow account approved by him. When new rates become legally effective, the Director shall order the escrowed funds or any overcharge in the interim rates to be distributed appropriately, except that refunds to policyholders that are de minimis shall not be required.

(215 ILCS 5/462a)

Sec. 462a. Premium increase notice.

A policy of workers' compensation insurance issued, delivered, amended, or renewed on or after January 1, 2019 shall remain in full force and effect subject to the same terms and conditions, loss cost multipliers, and classification of the employer with regard to the payment of dividends, unless written notice is mailed or delivered by the insurer to the employer, at the address shown on the policy, and to the employer's authorized agent or broker, indicating the insurer's intention to condition renewal upon issuance of a policy that supersedes the policy previously issued and that will result in a premium in excess of 5% above the rate recommendation filed with the Department, exclusive of any premium increase generated as a result of increased loss costs or increased exposure units or as a result of experience rating, contractor credit adjustment program, large deductible, retrospective rating, or audit. The notice shall be delivered at least 30 days in advance of the expiration date of the policy, and shall set forth: (1) the amount of the premium increase or, if the amount cannot reasonably be determined as of the time the notice is provided, a reasonable estimate of the premium increase based upon the information available to the insurer at that time; and (2) the reason for the increased premium in excess of the rate recommendation filed with the Department. Nothing in this Section requires the insurer to provide notice when the employer, an agent or broker authorized by the employer, or another insurer of the employer has delivered written notice that the policy has been replaced or is no longer desired.

BILLS PASSING FIRST CHAMBER

There were no relevant workers compensation-related bills that passed the first chamber within the one-week period ending June 1, 2018.

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 |
|--------------------|----------------------------------|---------------------|
| IN, NC, SC, TN | Amy Quinn | 803-356-0851 |
| HI, NV, UT | Brett Barratt | 801-401-6464 |
| MO, NE, OK, SD | Carla Townsend | 314-843-4001 |
| AZ, IA, KS, KY | Clarissa Preston | 561-945-4517 |
| DC, MD, NM, VA, WV | David Benedict | 804-380-3005 |
| CO, FL | Dawn Ingham | 561-893-3165 |
| CT, ME, NH, RI | Justin Moulton | 860-969-7903 |
| VT | Laura Backus Hall | 802-454-1800 |
| AL, GA, LA, MS | Laura Hart Bryan | 225-618-8168 |
| AR, IL, TX | Terri Robinson | 501-333-2835 |
| Federal Issues | Tim Tucker | 202-403-8526 |
| AK, ID, MT, OR | Todd Johnson | 503-892-8919 |

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