



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 29, 2018.

New Hampshire

SB 84 was:

- Passed by the first chamber on January 3, 2018
- Included in NCCI's January 12, 2018 **Legislative Activity Report** (RLA-2018-02)
- Amended and passed by the second chamber on April 19, 2018
- Included in NCCI's April 27, 2018 **Legislative Activity Report** (RLA-2018-17)
- Enacted on June 25, 2018, with an effective date of January 1, 2019

SB 84 amends **section 281-A:40 Memorandum of Payment** of the New Hampshire Workers' Compensation Law as follows:
281-A:40 Memorandum of Payment. An employer or the employer's insurance carrier shall make payment of compensation in the amount and manner provided by this chapter. Payment shall be made by direct deposit 6 weeks from the date of disability if the injured worker elects this payment method. The employer or the employer's insurance carrier shall notify the injured worker in writing of his or her right to payment by direct deposit. If no election is made, payment shall be made by paper check mailed to the injured worker. The employer shall file memoranda of such payments with the commissioner in accordance with rules adopted by the commissioner under RSA 281-A:60.

North Carolina

HB 995 was:

- Passed by the first chamber on June 7, 2018
- Included in NCCI's June 15, 2018 **Legislative Activity Report** (RLA-2018-24)
- Passed by the second chamber on June 28, 2018
- Enacted and effective on June 29, 2018

HB 995 amends **section 58-47-60** of **Article 47—Workers' Compensation Self-Insurance** of the North Carolina Insurance Code to read as follows:

§ 58-47-60. Definitions.

As used in this part:

...

(14) "Third-party administrator" or "TPA" means a person engaged by a board to execute the policies established by the board and to provide day-to-day management of the group. "Third-party administrator" or "TPA" does not mean:

a. An employer acting on behalf of its employees or the employees of one or more of its affiliates, affiliates or a municipal employer acting on behalf of the employees of a third-party entity managing a municipal transit system.

...

In addition, **HB 995** includes the following language:
This act applies to the City of Winston-Salem only.

Rhode Island

HB 8215 Substitute A is identical to **SB 2924 Substitute B**

HB 8215 Substitute A was:

- Passed by the first chamber on June 20, 2018
- Included in NCCI's June 29, 2018 **Legislative Activity Report** (RLA-2018-26)
- Passed by the second chamber on June 23, 2018
- Enacted and effective on June 28, 2018

SB 2924 Substitute B was:

- Passed by the first chamber on June 13, 2018
- Included in NCCI's June 22, 2018 **Legislative Activity Report** (RLA-2018-25)
- Amended and passed by the second chamber on June 22, 2018
- Included in NCCI's June 29, 2018 **Legislative Activity Report** (RLA-2018-26)
- Enacted and effective on June 28, 2018

HB 8215 Substitute A/SB 2924 Substitute B amend numerous sections of the Rhode Island General Laws—Title 28. Labor and Labor Relations as follows:

SB 2924 Substitute B amends numerous sections of the Rhode Island General Laws—Title 28. Labor and Labor Relations as follows:

§ 28-29-19. Waiver of claim of common law rights.

(a) Any employee, ~~or corporate officer, or manager, managing member or member of a limited liability company,~~ or the parent or guardian of any minor employee, who has given notice to the employer that he or she claimed his or her right of action at common law may waive that claim by filing a notice in writing with the director and the employer or his or her agent which shall take effect five (5) days after the filing with the director.

(b) ~~Any corporate officer, or manager, managing member or member of a limited liability company who has given notice to the employer and its workers' compensation insurance carrier that they claimed their right of action at common law may waive that claim by filing a notice in writing with the director and the employer or their agent and its workers' compensation insurance carrier which shall take effect five (5) days after the filing with the director. The insurance carrier shall keep a copy of the notice consistent with the rules and regulations of the department.~~

~~(b)~~ (c) Any person who is appointed a corporate officer between January 1, 1999 and December 31, 2001 and was not previously an employee of the corporation may elect to become subject to chapters 29–38 of this title upon filing a notice in writing with the director and his or her employer and its workers' compensation insurance carrier which notice takes effect five (5) days after the filing of his or her notice.

§ 28-29-30. Advisory council.

(a) There is created a workers' compensation advisory council consisting of ~~sixteen (16)~~ seventeen (17) members as follows:

(1) The chief judge of the workers' compensation court and ~~one~~ two (2) additional ~~judge~~ judges of the workers' compensation court and one member of the Bar who primarily represents injured workers before the workers' compensation court, both to be selected by the chief judge;

...

(5) Three (3) representatives from business appointed by the governor, ~~one of whom shall be a self-insured employer,~~ and one of whom shall represent cities and towns;

...

§ 28-30-4. Workers' compensation administrator—Appointment—Powers and duties.

...

(b) The administrator shall:

...

(7) Have the power to act as a notary public as provided in § 42-30-14.

§ 28-36-15. Penalty for failure to secure compensation—Personal liability of corporate officers.

...

(i)...(3) Actions filed with the workers' compensation court pursuant to this section shall ~~not~~ be subject to a pretrial conference in accordance with § 28-35-20 ~~but~~ and shall be assigned consistent with the workers' compensation court rules of practice.

...

CHAPTER 28-53

~~Rhode Island Uninsured Employers Fund~~ Rhode Island Uninsured Protection Fund

§ 28-53-1. Preamble and legislative findings.

...

WHEREAS, Professionals providing services covered under the provisions of the Workers' Compensation Act have taken into account, in the performance of their service, the important public policy benefit of a sound and properly functioning workers' compensation system in this state, and have tirelessly committed themselves to protect and ~~maintained~~ maintain the integrity of this system; and

...

WHEREAS, Additional reform is required to provide ~~appropriate compensation, health care and rehabilitative services~~ payments to employees who are injured while in the service of uninsured employers and to eliminate the flagrant abuse of the system by illegally uninsured employers by requiring them to accept their legal responsibility to pay the appropriate benefits to their insured employees; now, therefore be it

RESOLVED, That it is declared to be the intent of the legislature that an uninsured employers protection fund be created to ensure that injured workers who are employed by illegally uninsured employers are not deprived of ~~workers' compensation benefits~~ payments. The fund shall have enforcement mechanisms as are necessary to induce illegally uninsured employers to acknowledge their malfeasance, provide legally mandated ~~benefits payments~~ for injured workers; and to assure that all participants in the system recognize their obligation to conduct themselves in a manner consistent with the overall integrity of the compensation system. All amounts owed to the uninsured employers protection fund from illegally uninsured employers are intended to be excise taxes and as such, all ambiguities and uncertainties are to be resolved in favor of a determination that such assessments are excise taxes.

§ 28-53-2. Establishment—Sources—Administration.

(a)(1) There shall be established within the department of labor and training a special restricted receipt account to be known as the Rhode Island uninsured employers protection fund. The department shall maintain the fund for the exclusive purpose of making payments to an injured employee otherwise entitled to benefits pursuant to chapters 29 through 38 of title 28, or in the case of death of the injured employee, to person(s) presumed wholly dependent for support upon the deceased employee, as defined in § 28-33-13, and any costs specifically associated therewith, where the employer required to secure payment of such compensation failed to insure or self-insure its liability at the time the injury took place as determined by the director and the workers' compensation court.

(2) The fund shall be capitalized from excise taxes assessed against uninsured employers pursuant to the provisions of § 28-53-9 and from general revenues appropriated by the legislature. Beginning in state fiscal year ending ~~June 30, 2018~~ June 30, 2019, the legislature may appropriate up to two million dollars (\$2,000,000) in general revenue funds annually for deposit into the Rhode Island uninsured employers protection fund.

...

(c) All amounts owed to the uninsured employers protection fund from illegally uninsured employers are intended to be excise taxes and as such, all ambiguities and uncertainties are to be resolved in favor of a determination that such assessments are excise taxes.

§ 28-53-3. Powers and duties of the fund.

The fund shall:

(a) Be ~~obligated~~ authorized to pay covered claims as determined by the director ~~or~~ and the workers' compensation court pursuant to the provisions of this section and promulgate all rules and regulations necessary to effectuate the provisions and overall purpose of this chapter. The rules and regulations shall be promulgated in accordance with the administrative procedures act, chapter 35 of title 42, and shall include, but not be limited to, the filing of claim forms and other documentation supporting the claim, and proof of dependency, if relevant. All claims must contain a release necessary to allow the director to investigate the claim;

...

§ 28-53-7. Payments to employees of uninsured employers.

(a) Where it is determined that the employee was injured in the course of employment while working for an employer who fails to maintain a policy of workers' compensation insurance as required by § 28-36-1 et seq., in accordance with the provisions of this chapter, the uninsured employers protection fund shall is authorized to pay the benefits to which the injured employee would be entitled pursuant to chapters 29 to 38 of this title subject to the limitations set forth herein.

(b) The workers' compensation court shall hear all petitions for payment from the fund pursuant to § 28-30-1 et seq.; provided, however, that the uninsured ~~employers protection~~ fund and the employer shall be named as parties to any petition seeking payment of benefits from the fund.

(c) Where an employee is deemed to be entitled to benefits from the uninsured ~~employers protection~~ fund, the fund shall pay benefits for ~~disability and medical expenses~~ incapacity as provided pursuant to chapters 29 to 38 of this title except that the employee shall not be entitled to receive benefits for medical expenses pursuant to the provisions of § 28-33-5 or loss of function and disfigurement pursuant to the provisions of § 28-33-19.

(d) The fund shall pay costs, counsel, and witness fees, as provided in § 28-35-32, to any employee who successfully prosecutes any petitions for ~~compensation; petitions for medical expenses payment;~~ petitions to amend a pretrial order or memorandum of agreement; and all other employee petitions; and to employees who successfully defend, in whole or in part, proceedings seeking to reduce or terminate any and all ~~workers' compensation benefits payments;~~ provided, however, that the attorney's fees awarded to counsel who represent the employee in petitions for lump-sum commutation filed pursuant to § 28-33-25, or in the settlement of disputed cases pursuant to § 28-33-25.1, shall be limited to the maximum amount paid to counsel who serve as court-appointed attorneys in workers' compensation proceedings as established by rule or order of the Rhode Island supreme court. Any payment ordered by the court or due under this section shall not be subject to liens set forth in § 28-33-27(b), nor shall such payments be assignable or subject to assignment in any way.

(e) In the event that the uninsured employer makes payment of any monies to the employee to compensate the employee for lost wages or medical expenses, the fund shall be entitled to a credit for all such monies received by, or on behalf of, the employee against any future benefits payable directly to the employee The fund shall be entitled to full reimbursement from the uninsured employer for any and all payments made to employee as well as all costs, counsel and witness fees paid out by the fund in connection with any claim and/or petition plus any and all costs and attorney fees associated with collection and reimbursement of the fund.

(f) This section shall apply to injuries that occur on or after ~~July 1, 2018~~ February 1, 2019.

§ 28-53-8. Limitations on payments to injured employees.

(a) Where the director determines by experience or other appropriate accounting and actuarial methods that the reserves in the fund are insufficient to pay all claims presented or pending, the director shall petition the workers' compensation court for an order to make appropriate, proportionate reductions in the payments being made to injured employees by the fund or to suspend all payments to injured employees until such time as the reserves maintained by the fund are sufficient to resume the payment of benefits. The matter shall be heard by the chief judge. If the court determines that the monies held by the fund are insufficient to ~~fully pay all claims~~ make payments as they fall due, the court shall issue an order directing that a proportionate reduction be made in the payments made to those employees receiving ~~benefits payments~~ from the fund. In considering the fund's request for relief, the court shall give due weight to the policy of the workers' compensation act that ~~benefits payments~~ are to be paid weekly and that the unwarranted reduction or interruption in the employee's weekly ~~compensation benefit payment~~ will impose financial hardship upon the injured worker.

...

(d) Payments under this chapter shall not be awarded to any injured employee or dependent if the award would directly or indirectly inure to the benefit of the uninsured employer.

(e) No payment shall be awarded when the director or the court, in its discretion, determines that unjust enrichment to or on behalf of the illegally uninsured employer would result.

(f) No interest shall be included in or added to payments under this chapter.

(g) No payments will be awarded under this chapter to an injured employee, or in the case of death of the injured employee, to person(s) presumed wholly dependent for support upon the deceased employee, as defined in § 28-33-13, in a total amount in excess of fifty thousand dollars (\$50,000) plus any attorneys' fees awarded in connection with petitions for payment from the fund.

(h) Applications for payment under this chapter shall be filed with the director within the time limits set forth in § 28-35-57.

§ 28-53-9. Penalties, taxes and assessments against non-complying employers.

(a) Where it is determined that an employer has failed to maintain a policy of workers' compensation insurance as required by Rhode Island general laws § 28-36-1 et seq. and that while the employer was uninsured in violation of the statute, an employee suffered a compensable injury, the uninsured ~~employers protection~~ fund shall commence the payment of weekly ~~benefits and medical expenses necessary to cure, relieve or rehabilitate the employee from the effects of the work related injury~~ payment to the employee as set forth herein, subject to fund availability. ~~The~~ On behalf of the fund, the director shall acquire a lien against the goods and chattels of the uninsured employer to the extent of any payments made by it to the injured employee. The lien(s) shall arise and attach as of the date on which the fund makes payment to the injured employee without further action by the fund or the court. The lien shall have priority over all subsequently perfected liens and security interests.

...

BILLS PASSING SECOND CHAMBER

There were no relevant workers compensation-related bills that passed the second chamber within the one-week period ending June 29, 2018.

BILLS PASSING FIRST CHAMBER

There were no relevant workers compensation-related bills that passed the first chamber within the one-week period ending June 29, 2018.

FEDERAL ISSUES

Issue	Update
Medicare Set-Asides (MSAs)	<p>Legislation has been introduced in the US Senate that would reform the Medicare Set-Aside (MSA) process. Senators Rob Portman (R-OH) and Bill Nelson (D-FL) introduced S. 3079, which would clarify and make more efficient the MSA approval process under the Medicare Secondary Payer Act.</p> <p>Key provisions of the MSA reform legislation include:</p> <ul style="list-style-type: none">• Permitting injured workers who receive settlements to remit MSAs directly to the Centers for Medicare & Medicaid Services (CMS) rather than self-administer• Creating both a timeframe (60 days) for the CMS to make MSA determinations and an appeal process• Requiring the CMS to apply state workers compensation laws in determining future medical amounts to be included in MSAs <p>This legislation is substantially similar to bills introduced in the last Congress. The Congressional Budget Office (CBO) scored previous bills that were determined to generate a CMS budgetary savings of approximately \$164 million over 10 years.</p>
Marijuana	<p>Senator Chuck Schumer (D-NY) has introduced legislation that would decriminalize marijuana by “descheduling” it from the list of illegal substances under the Controlled Substances Act of 1970. Currently, marijuana is classified as a Schedule 1, drug which means it is deemed to have no currently accepted medical use and a high potential for abuse. S. 3174 would, among other things, recognize state laws regarding marijuana but maintain the federal government’s authority to prevent marijuana trafficking from states that have legalized marijuana to those that have not. S. 3174 is the latest introduction of a number of bills that seek to address the disparity in the legality of marijuana under state and federal laws.</p>

OTHER ITEMS OF INTEREST

State	Update
Maine	<p>In <i>Bourgoin v. Twin Rivers Paper Co.</i>, the Maine Supreme Court recently found that an employer is not required to reimburse for medical marijuana as a workers compensation treatment. The court determined that because marijuana remains illegal under the federal Controlled Substances Act, Maine’s medical marijuana law is preempted and cannot be used as the basis to require reimbursement.</p>
Oklahoma	<ul style="list-style-type: none">• The Oklahoma Supreme Court rendered a decision on June 26, upholding the mandate that permanent partial disability be governed by the “latest” edition of the <i>American Medical Association (AMA) Guides</i>, which is currently the 6th edition. In the case of <i>Robert Hill v. American Medical Response</i>, the Court concluded that: “The mandatory use of the AMA Guides, 6th Edition, for assessing impairment of non-scheduled members does not violate the Constitution.” On July 2, a petition for rehearing was filed with the Oklahoma Supreme Court. The petition alleges that:<ol style="list-style-type: none">1. The Supreme Court misinterpreted a key statute.2. “The Supreme Court’s analysis of the difference between “impairment” and “disability” was flawed.”3. The majority opinion is based on irregularity of procedure in allowing a newly appointed justice, who did not participate in the oral argument, to vote on the opinion.• The Oklahoma Supreme Court rendered its decision on June 26, to repeal an executive order of the governor reinstating rebates of the Multiple Injury Trust Fund (MITF.) Insurance writer assessments fund the MITF with a historical provision that a rebate of two-thirds of the amount be returned to insurance companies. Resulting from a legislative debate of statutory language in 2015, the governor issued emergency rules explicitly repealing the rebate.• In the case of <i>CompSource Mutual Insurance Company v. Oklahoma Tax Commission</i>, 2018 OK 54, the court concluded, “...the 2015 amendment to 85A O.S. § 31 did not repeal 68 O.S.2011 § 6101 by implication. The rebates authorized by the Legislature in section 6101 have not been expressly repealed by the Legislature.

State	Update
	The court further noted, “the two orders of the Tax Commission are reversed, and the proceedings are remanded to the Tax Commission for the appropriate processing of section 6101 rebates for protestants.”
South Dakota	<p>The Department of Labor and Regulation adopted rules on June 5, to amend its Workers Compensation Fee Schedule. The reasons for adopting these rules are to change references to the most current version of the relative values manual the department uses, and to revise the conversion factors for some medical services.</p> <p><i>NCCI estimates that the proposed changes to the South Dakota Medical Fee Schedule, if adopted, would result in an impact of +0.1% (\$0.2M) on South Dakota workers compensation system costs.</i></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.

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This report is informational and is not intended to provide an interpretation of state and federal legislation.