



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

There were no relevant workers compensation-related bills enacted within the one-week period ending August 31, 2018.

### BILLS PASSING SECOND CHAMBER

There were no relevant workers compensation-related bills that passed the second chamber within the one-week period ending August 31, 2018.

### BILLS PASSING FIRST CHAMBER

There were no relevant workers compensation-related bills that passed the first chamber within the one-week period ending August 31, 2018.

### BILLS VETOED BY GOVERNOR

The following workers compensation-related bills were vetoed by the governor within the one-week period ending August 31, 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
- Included in NCCI's June 8, 2018 **Legislative Activity Report** (RLA-2018-23)
- Amendatory veto issued by the governor on August 28, 2018

As 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 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 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
- Included in NCCI's June 8, 2018 **Legislative Activity Report** (RLA-2018-23)
- Amendatory veto issued by the governor on August 26, 2018

As 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 pre-file 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 pre-file 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 pre-filing 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.

**STATE COMMITTEE ACTIVITY**

State	Update
Florida	The Florida Workers' Compensation Insurance Guaranty Association Surcharge Ad-hoc Working Group held a public meeting on August 28 to discuss surcharge methodology.
Illinois	The Workers Compensation Advisory Board and the Medical Fee Advisory Board of the Illinois Workers Compensation Commission (IWCC) are both scheduled to meet on September 17. Visit IWCC's website for agendas and meeting logistics.
Louisiana	The Louisiana Workers' Compensation Advisory Council is scheduled to meet on September 27. Visit the Louisiana Workforce Commission's website for more information.
Maine	The Maine Workers' Compensation Board rules that were adopted in June have been approved by Governor Paul LePage, returned by the Attorney General's office, and filed with the secretary of state. The rules became effective September 1, 2018. Visit the Maine Workers' Compensation Board website for more information.
Montana	The Montana Economic Affairs Interim Committee of the Legislature held a meeting on September 6. This was the last meeting of the interim committee. The purpose of the meeting was for the Committee to review

	legislation for the various agencies for which the Committee has monitoring responsibilities and to finish its work on studies related to the Montana State Fund. Visit the Committee's Web page for more information.
<b>New Mexico</b>	The New Mexico Appeals Board (Board) is scheduled to meet on September 13 to consider Board business and hear an appeal.
<b>Oregon</b>	The Oregon Management-Labor Advisory Committee will meet on October 1. An agenda for the meeting is pending. Visit the Committee's Web page for more information.

## OTHER ITEMS OF INTEREST

State	Update
<b>Colorado</b>	The Colorado Division of Workers' Compensation (Division) held a public meeting on August 14 to consider proposed rule changes to the Medical Utilization Standards and Medical Fee Schedule. The proposed rule changes are available on the Division's website.
<b>Florida</b>	The Florida Division of Workers' Compensation (Division) conducted a rule workshop on August 24. The proposed rule amendment is intended to incorporate the 2018 versions of the <i>Florida Workers' Compensation Reimbursement Manual for Ambulatory Surgical Centers</i> and the <i>Florida Workers' Compensation Health Care Provider Reimbursement Manual</i> . The manuals contain the updated lists of maximum reimbursable allowances for various medical services. Preliminary text of the proposed rules and draft versions of the reimbursement manuals are available on the Division's website.
<b>Louisiana</b>	On July 31, in the case of <i>Lyle v. Brock Servs., LLC</i> , the Louisiana Fifth Circuit Court of Appeals upheld a workers compensation judge's grant of summary judgment in favor of the employer. In upholding the ruling, the Court reaffirmed the underlying conclusion that a clerical worker's development of sarcoidosis, as a result of exposure to mold at her workplace, does not fall under the definition of an occupational disease under the Louisiana Workers' Compensation Act, as her condition did not arise from "cases and conditions characteristic of and peculiar to her employment as a clerical worker."
<b>Montana</b>	On July 31, in the case of <i>Montana State Fund v. Liberty Northwest Insurance Corp.</i> , the Montana Supreme Court held that the original insurer, which was liable for the occupational disease at the time it was diagnosed, remained liable when the injury later worsened even though the employer was covered by a new insurer when the injury worsened.

## 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	561-893-3812
HI, NV, UT	Brett Barratt	801-401-6464
MO, NE, OK, SD	Carla Townsend	561-893-3819
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	225-635-4481
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This report is informational and is not intended to provide an interpretation of state and federal legislation.