LEGISLATIVE ACTIVITY REPORT

The nation's most experienced provider of workers compensation information, tools, and services | Regulatory Services

December 7, 2018 | RLA-2018-37

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 November 30, 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)
- Vetoed (amendatory) by the governor on August 28, 2018
- Included in NCCI's September 7, 2018 ***Legislative Activity Report*** (RLA-2018-33)
- Overridden (governor's amendatory veto) by the first chamber on November 14, 2018
- Included in NCCI's November 23, 2018 ***Legislative Activity Report*** (RLA-2018-36)
- Overridden (governor's amendatory veto) by the second chamber, enacted, and effective on November 27, 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 lessor 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
- Included in NCCI's June 8, 2018 ***Legislative Activity Report*** (RLA-2018-23)
- Vetoed (amendatory) by the governor on August 26, 2018
- Included in NCCI's September 7, 2018 ***Legislative Activity Report*** (RLA-2018-33)
- Overridden (governor's amendatory veto) by the first chamber on November 14, 2018
- Included in NCCI's November 23, 2018 ***Legislative Activity Report*** (RLA-2018-36)
- Overridden (governor's amendatory veto) by the second chamber and enacted on November 27, 2018; with an effective date for section 462a of November 27, 2018, and an effective date for sections 456, 457, 458, and 460 of February 1, 2019

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 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 SECOND CHAMBER

The following workers compensation-related bill passed the second chamber within the one-week period ending November 30, 2018.

Illinois

HB 3452 was:

- Passed by the first chamber on March 23, 2017
- Amended and passed by the second chamber on November 14, 2018

HB 3452 amends ***section 820 ILCS 305/8.2*** 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 shall submit bills and records in accordance with the provisions of this Section.
…
(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 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, 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 within ~~not later than~~ 30 days after payment of the bill.
(4) If the employer or its insurer fails to pay interest within 30 days after payment of the bill as required pursuant to paragraph (3) ~~this subsection (d)~~, the provider may bring an action in circuit court for the sole purpose of seeking payment of interest pursuant to paragraph (3) ~~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. The circuit court's jurisdiction shall be limited to enforcing payment of interest pursuant to paragraph (3). Interest under paragraph (3) ~~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 paragraph (3) ~~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.
...

BILLS PASSING FIRST CHAMBER

There were no relevant workers compensation-related bills that passed the first chamber within the one-week period ending November 30, 2018.

FEDERAL ISSUES

Issue	Update
Insurance Data Security	A panel of the US House of Representatives passed legislation amending the Gramm-Leach Bliley Act, in part, to provide a national standard for financial institution data security and breach notification on behalf of all consumers. The Financial Services Committee passed the Consumer Information Notification Requirement Act (H.R. 6743), which requires federal financial regulators to establish data breach standards. However, state insurance regulators are required to enforce the federal standards for covered insurance entities, unless they have enacted state-specific data security legislation and exercise the preemption provision in the legislation. The National Association of Insurance Commissioners adopted the Insurance Data Security Model Law. Currently, South Carolina is the only state that has enacted legislation based on that model.
Terrorism Risk Insurance Data Calls	State insurance regulators and the Federal Insurance Office have released for public comment, notices for the 2019 Terrorism Risk Insurance Data Call. Both notices are designed to inform the industry of compliance requirements for next year's data call and provide an opportunity to offer input. In regard to workers compensation insurance, NCCI and independent state rating bureaus will once again be designated as the reporting entities for individual carriers (except for workers compensation reinsurance data). For other lines of insurance, individual carriers must submit required terrorism data by May 15, 2019.

STATE COMMITTEE ACTIVITY

State	Update
Oregon	The Management-Labor Advisory Committee met on December 3. The following legislative concepts were presented by stakeholders: • Proposed post-traumatic stress disorder legislation by the State Fire Fighters Council • Proposed vocational benefit assistance changes by the International Association of Rehabilitation Professionals • Suggested "Come Along" provider changes for certified managed care organizations by the Oregon Chiropractic Association • Proposed the Oregon LC 522 Civil Penalty Cap, which would change limits on civil penalties by the Department of Consumer and Business Services for violating certain workers compensation statutes or required practices

OTHER ITEMS OF INTEREST

State	Update
Florida	On November 27, the Florida Division of Workers' Compensation held: • A rule development workshop for the *Florida Workers' Compensation Reimbursement Manual for Hospitals*, 2018 edition • Rule hearings for the *Florida Workers' Compensation Health Care Provider Reimbursement Manual*, 2018 edition • Rule hearings for the *Florida Workers' Compensation Reimbursement Manual for Ambulatory Surgical Centers (ASCs),* 2018 edition. The manuals contain updated lists of maximum reimbursable allowances for various medical services
Missouri	The Supreme Court of Missouri heard oral arguments on October 24 in the case of *Douglas Cosby v. Treasurer of the State of Missouri as Custodian of the Second Injury Fund*. The petitioner sustained several unrelated injuries prior to 2014. He suffered an additional work-related injury in 2014. The two parties disputed the extent to which the fund is liable for permanent partial disability benefits following amendments to Section 287.220 of the Revised Statutes of Missouri, which prohibit any claim against the Second Injury Fund for injuries occurring after January 1, 2014. The case challenges the application and constitutionality of the statute.

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, NM, NV, UT	Brett Barratt	801-401-6464
IL, MO, OK	Carla Townsend	561-893-3819
AZ, KS, KY	Clarissa Preston	561-945-4517
DC, MD, 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
IA, NE, SD	Stephanie Paswaters	303-200-6728
AR, TX	Terri Robinson	501-333-2835
Federal Issues	Tim Tucker	202-403-8526
AK, ID, MT, OR	Todd Johnson	503-892-8919

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