



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 April 26, 2019.

Iowa

SF 507 was:

- Passed by the first chamber on March 19, 2019
- Included in NCCI's March 29, 2019 **Legislative Activity Report** (RLA-2019-11)
- Passed by the second chamber on April 9, 2019
- Included in NCCI's April 19, 2019 **Legislative Activity Report** (RLA-2019-14)
- Enacted on April 23, 2019, with an effective date of July 1, 2019

SF 507 adds a new subchapter to **section 85.61** of the Code of Iowa to read:

85.61 Definitions.

In this chapter and chapters 86 and 87, unless the context otherwise requires, the following definitions of terms shall prevail:

...

7. The words "personal injury arising out of and in the course of the employment" shall include injuries to employees whose services are being performed on, in, or about the premises which are occupied, used, or controlled by the employer, and also injuries to those who are engaged elsewhere in places where their employer's business requires their presence and subjects them to dangers incident to the business.

...

c. Personal injuries due to idiopathic or unexplained falls from a level surface onto the same level surface do not arise out of and in the course of employment and are not compensable under this chapter.

...

Oklahoma

SB 274 was:

- Passed by the first chamber on March 12, 2019
- Included in NCCI's March 22, 2019 **Legislative Activity Report** (RLA-2019-10)
- Passed by the second chamber on April 17, 2019
- Included in NCCI's April 26, 2019 **Legislative Activity Report** (RLA-2019-15)
- Enacted on April 25, 2019, with an effective date of November 1, 2019

SB 274 amends **section 85A-98** of the Oklahoma Administrative Workers' Compensation Act to read:

§85A-98. Funds to be transferred to Self-insurance Guaranty Fund.

The Self-insurance Guaranty Fund shall be derived from the following sources:

...

2. ~~Until the Self-insurance Guaranty Fund contains Two Million Dollars (\$2,000,000.00) or in~~ In the event the amount in the net fund balance falls below ~~One Million Dollars (\$1,000,000.00),~~ Seven Hundred Fifty Thousand Dollars (\$750,000.00), the Workers' Compensation Commission shall make an assessment against each private self-insurer and group self-insurance association based on an assessment rate to be determined by the commissioners, not exceeding ~~one percent (1%)~~ two percent (2%) per annum of actual paid losses of the self-insurer during the preceding calendar year, payable to the Tax Commission for deposit to the fund. The assessment against private self-insurers shall be determined using a rate equal to the proportion that the deficiency in the fund attributable to private self-insurers bears to the actual paid losses of all private self-insurers for the year period of January 1 through December 31 preceding the assessment. The assessment against group self-insurance associations shall be determined using a rate equal to the proportion that the deficiency in excess of the surplus of the Group Self-Insurance Association Guaranty Fund at the date of the transfer attributable to group self-insurance associations bears to the actual paid losses of all group self-insurance associations cumulatively for any calendar year preceding the assessment. Each self-insurer shall provide the Workers' Compensation Commission with such information as the Commission may determine is necessary to effectuate the purposes of this paragraph. For purposes of this paragraph, "actual paid losses" means all medical and indemnity payments, including temporary disability, permanent disability, and death benefits, and excluding loss adjustment expenses and reserves.

...

BILLS PASSING SECOND CHAMBER

The following workers compensation-related bills passed the second chamber within the one-week period ending April 26, 2019.

Florida

HB 983 was:

- Passed by the first chamber on April 17, 2019
- Included in NCCI's April 26, 2019 *Legislative Activity Report* (RLA-2019-15)
- Passed by the second chamber on April 26, 2019

HB 983 ratifies adopted rule 69L-3.009, F.A.C. that specifies the types of third-party injuries qualifying as grievous bodily harm of a nature that shocks the conscience, for the purposes of allowing wage replacement benefits for first responder post-traumatic stress disorder.

SB 426 was:

- Passed by the first chamber on April 23, 2019
- Passed by the second chamber on April 24, 2019

SB 426, in part, makes firefighters who are diagnosed with certain cancers eligible to receive certain disability or death benefits. Specifically, in lieu of pursuing workers compensation coverage, a firefighter is entitled to cancer treatment and a one-time cash payout of \$25,000 upon the firefighter's initial diagnosis of cancer. In order to be entitled to such benefits, the firefighter must:

- Be employed full-time as a firefighter
- Be employed by the state, university, city, county, port authority, special district, or fire control district
- Have been employed by their employer for at least five continuous years
- Not have used tobacco products for at least the preceding five years
- Have not been employed in any other position in the preceding five years that is proven to create a higher risk for cancer

The term "cancer" includes bladder cancer, brain cancer, breast cancer, cervical cancer, colon cancer, esophageal cancer, invasive skin cancer, kidney cancer, large intestinal cancer, lung cancer, malignant melanoma, mesothelioma, multiple myeloma, non-Hodgkin's lymphoma, oral cavity and pharynx cancer, ovarian cancer, prostate cancer, rectal cancer, stomach cancer, testicular cancer, and thyroid cancer.

In addition, the employer must provide coverage within an employer-sponsored health plan or through a group health insurance trust fund. The employer must timely reimburse the firefighter for any out-of-pocket deductible, co-payment, or coinsurance costs incurred due to the treatment of cancer.

For disability and death benefits, the employer must consider a firefighter permanently and totally disabled if diagnosed with one of the 21 enumerated cancers and meets the retirement's plan definition of totally and permanently disabled due to the diagnosis of cancer or circumstances that arise out of the treatment of cancer. Moreover, the cancer or the treatment of cancer is deemed to have occurred in the line of duty, resulting in higher disability and death benefits.

Oklahoma

HB 2367 was:

- Passed by the first chamber on March 13, 2019
- Included in NCCI's March 22, 2019 **Legislative Activity Report** (RLA-2019-10)
- Amended and passed by the second chamber on April 24, 2019

HB 2367 is a comprehensive reform bill that amends numerous components of the Oklahoma Administrative Workers' Compensation Act.

HB 2632 was:

- Passed by the first chamber on March 11, 2019
- Included in NCCI's March 22, 2019 **Legislative Activity Report** (RLA-2019-10)
- Amended and passed by the second chamber on April 23, 2019

HB 2632 creates new **sections 6958** through **6969** in the Oklahoma Insurance Code to be cited as the "Patient's Right to Pharmacy Choice Act," in part, to:

- Require pharmacy networks to comply with certain access standards, including:
 - At least 90% of a benefit plan's urban area population must live within 2 miles of a participating pharmacy or within 5 miles of a retail pharmacy designated as a preferred participating pharmacy
 - At least 90% of a benefit plan's suburban area population must live within 5 miles of a participating pharmacy or within 7 miles of a retail pharmacy designated as a preferred participating pharmacy
 - At least 70% of a benefit plan's rural population must live within 15 miles of a retail pharmacy or 18 miles of a preferred participating pharmacy
- Direct the Oklahoma Insurance Department to review and approve retail pharmacy network access for all benefit plans
- Prohibit a pharmacy benefits manager or representative of a pharmacy benefits manager from:
 - Engaging in deceptive advertising
 - Charging a pharmacist for the resolution of a claim
 - Providing a smaller reimbursement to pharmacies under common ownership
 - Denying a pharmacy the opportunity to participate in a network if the pharmacy accepts the terms and conditions of the network
 - Imposing a monetary disadvantage to out-of-network pharmacies
 - Denying or reducing reimbursement for a covered service claim after returning a paid claim
 - Failing to make any payment due to a pharmacy or pharmacist
- Impose certain limitations on pharmacy benefits managers' contracts
- Require that all compensation received by a health insurer must be used to lower the cost of healthcare in the state or expand pharmacy benefit plan coverage
- Require insurers to file an annual report with the commissioner detailing the use of such compensation
- Prohibit certain people from serving on a health insurer's pharmacy and therapeutics committee
- Establish the expectation that each pharmacy and therapeutics committee is to form a formulary that will advertise information related to drug costs, availability, copayments, and maximum allowable cost, and must be available to the public

SB 701 was:

- Passed by the first chamber on March 11, 2019
- Included in NCCI's March 22, 2019 **Legislative Activity Report** (RLA-2019-10)
- Amended and passed by the second chamber on April 25, 2019

SB 701 makes changes to the Administrative Workers' Compensation Act, in part, as follows:

- Clarifies alcohol and drug testing procedures for compensable injuries and adds that a biological specimen can be collected after an injury results in death
- Modifies the definition of "employee"
- Clarifies that employees related to employers are not considered employees for the purposes of workers compensation
- Adds that dependents of employers are not considered employees for the purposes of workers compensation
- Specifies that every employer subject to this act shall provide benefits for employment-related injury or death without regard to fault
- Clarifies guidelines for cases occurring in other jurisdictions and specifies that claimants with cases in multiple jurisdictions shall not receive duplicate benefits
- States that this act shall apply to federally owned lands beyond state territory

- Exempts forms submitted through the Electronic Data Interchange system from having to be copied or to include a statement about fraud penalty
- Allows the employee to send claims notices to healthcare providers by other means beyond certified mail
- States that communication between the Oklahoma Workers' Compensation Commission (Commission) and its staff regarding judgments shall be confidential and not subject to the Open Records Act
- Requires the Commission to comply with the Administrative Procedures Act and allows the Commission to vote on substantive changes to forms
- Allows the Commission to establish a petty cash fund not to exceed \$500 for providing change for persons purchasing materials, paying fines and fees, and transacting other business with the Commission
- Removes the Commission's administrative duties over the Multiple Injury Trust Fund and the Self-insurance Guaranty Fund and removes language stating that these funds must be solely for the use and benefit of the Oklahoma Workers' Compensation Commission
- Requires each carrier, self-insurer, and third party administrator and marketing firm to pay a \$1,000 annual application fee
- Removes the requirement for the state treasurer to transfer sufficient funding to administrate the Multiple Injury Trust Fund
- Caps the fine the Commission can assess against an insurer for its first violation at \$50,000
- Authorizes the Commission to conduct collection proceedings independently or in district court upon any penalty becoming final
- Allows information to be disclosed to Commission employees to investigate and enforce workers compensation coverage and allows such information to be admissible in any hearing before an administrative law judge of the Commission
- Caps compensation of employees receiving temporary total disability compensation, in conjunction with earnings, to not exceed the temporary total disability rate
- States that the employer's report about the injury or death to the Commission shall be kept confidential with the exception of the injured employee
- Strikes language allowing awards or denial of awards regarding cumulative trauma to be reviewed
- Allows notice of hearing and judgment to be delivered by other means beyond certified mail and allows hearings to take place in any county beyond Tulsa or Oklahoma counties
- Allows for the review of cases to happen within six months of receiving final benefit or receiving last medical treatment
- Permanently bars reopening cases that are not filed within time period or in instances when the employee does not comply with the medical treatment plan
- Bars the Oklahoma Supreme Court from reversing or vacating a decision or award made by the Commission unless certain conditions are met as outlined by the measure
- Removes the duty of the Oklahoma Advisory Council to review Oklahoma treatment guidelines and report findings to the Commission
- Creates priorities for the Tax Commission
- Until 2020, the Tax Commission must allocate \$5 million to the Workers' Compensation Revolving Fund in monthly installments before crediting the Administrative Fund
- Strikes language related to the transfer of workers compensation claims from the district courts to the Workers' Compensation Commission and establishes when the transfer will be considered complete
- Removes appealing authority of the Commission of judgments made by the Court of Existing Claims
- Repeals sections related to:
 - The Workers' Compensation Fraud Investigation Unit Funding Report
 - Workers' Compensation Commission Annual Published Report
 - Exceptions to the limit on benefits for employees' absence from scheduled treatment appointment
 - The Oklahoma Employee Injury Benefit Act

SB 841 was:

- Passed by the first chamber on March 5, 2019
- Included in NCCI's March 15, 2019 **Legislative Activity Report** (RLA-2019-09)
- Passed by the second chamber on April 24, 2019

SB 841 establishes the Prescription Access and Affordability Act in the Oklahoma Insurance Code as follows:

§36-6170.

A. This act shall be known and may be cited as the "Prescription Access and Affordability Act".

B. The purpose of the Prescription Access and Affordability Act is to establish minimum and uniform access standards and prohibitions on restriction of the right of a patient to choose a pharmacy provider.

§36-6171.

For purposes of this act:

1. "Benefit plan" means any health benefit plan offered by a health insurance carrier, health maintenance organization, managed care entity, or any other entity that provides prescription drug benefits to covered individuals, including workers' compensation programs, state-administered health benefit plans and self-funded benefit programs;
2. "Mail-order pharmacy" means a pharmacy licensed by this state that primarily dispenses and delivers covered drugs via common carrier;
3. "Pharmacy benefits manager" means a person, business or other entity that performs pharmacy benefits management. The term includes a person or entity acting for a PBM in a contractual or employment relationship in the performance of pharmacy benefits management for a managed-care company, nonprofit hospital, medical service organization, insurance company, third-party payor or a health program administered by a department of this state; and
4. "Retail pharmacy network" means retail pharmacy providers contracted with the entity providing or administering a benefit plan in which the pharmacy primarily fills and sells prescriptions via a retail, storefront location.

§36-6172.

A. Retail pharmacy networks shall comply with the following access standards:

1. At least ninety percent (90%) of covered individuals in the benefit plan's Suburban Service Area live within seven (7) miles of a retail pharmacy designated as preferred participating pharmacy in the benefit plan's retail pharmacy network;
2. At least seventy percent (70%) of covered individuals in the benefit plan's Rural Service Area live within fifteen (15) miles of a retail pharmacy participating in the benefit plan's retail pharmacy network;
3. At least seventy percent (70%) of covered individuals in the benefit plan's Rural Service Area live within eighteen (18) miles of a retail pharmacy designated as a preferred participating pharmacy in the benefit plan's retail pharmacy network; and
4. Mail-order pharmacies shall not be used to meet access standards for retail pharmacy networks.

B. The Oklahoma Insurance Department shall promulgate any rules necessary to administer and enforce the provisions of this section.

§36-6173.

A. The Oklahoma Insurance Department shall review and approve retail pharmacy network access for all benefit plans to ensure compliance with Section 3 of this act.

B. A pharmacy benefits manager or representative of a pharmacy benefits manager shall not:

1. Cause or knowingly permit the use of any advertisement, promotion, solicitation, representation, proposal or offer that is untrue, deceptive or misleading;
2. Charge a pharmacist or pharmacy a fee related to the resolution of a claim, including but not limited to a fee for:
 - a. the submission of a claim,
 - b. enrollment or participation in a retail pharmacy network,
 - c. the development or management of claims processing services, or
 - d. services or claims payment services related to participation in a retail pharmacy network;
3. Reimburse a pharmacy or pharmacist in the state an amount less than the amount that the pharmacy benefits manager reimburses a pharmacy owned by or under common ownership with a pharmacy benefits manager for providing the same covered services. The reimbursement amount shall be calculated on a per-unit basis using the same generic product identifier or generic code number submitted by the pharmacy benefits manager owned or affiliated pharmacy;
4. Deny a pharmacy the opportunity to participate in any pharmacy network at standard or preferred participation status if the pharmacy is willing to accept the terms and conditions that the pharmacy benefits manager has established for other pharmacies as a condition of standard network participation or preferred network participation status;
5. Impose on a covered individual a monetary advantage or penalty, including a higher cost-sharing or additional fee which would affect choices of network pharmacy by a covered person;
6. Retroactively deny or reduce reimbursement for a covered service claim after returning a paid claim response as part of the resolution of the claim, unless:
 - a. the original claim was submitted fraudulently, or
 - b. the pharmacy service provided related to the subject claim violated the Oklahoma Pharmacy Act; or
7. Fail to make any payment due to a pharmacy or pharmacist for covered services properly rendered in the event a pharmacy benefits manager terminates a pharmacy or pharmacist from a pharmacy benefits manager network.

§36-6174.

The prohibitions under this section apply to contracts between pharmacy benefit managers and pharmacists or pharmacies for participation in retail pharmacy networks.

1. A pharmacy benefits manager contract with a pharmacist or pharmacy shall not contain a provision prohibiting disclosure to patients of billed or allowed amounts, reimbursement rates or out-of-pocket costs.

2. A pharmacy benefits manager contract with a participating pharmacist or pharmacy shall not prohibit, restrict or limit disclosure of information to the Insurance Commissioner, law enforcement or state and federal governmental officials investigating or examining a complaint or conducting a review of a pharmacy benefits manager's compliance with the requirements under this act.

§36-6175.

A. All compensation remitted by a pharmaceutical manufacturer, developer or labeler, directly or indirectly related to a health benefit plan or pharmacy benefit plan shall be remitted to, and retained by, that health benefit plan or pharmacy benefit plan for the purposes described in Subsection B of this section.

B. All compensation received by or on behalf of a health insurer from a pharmaceutical manufacturer, developer or labeler shall be used by the health insurer to:

1. Lower health benefits plan or pharmacy benefit plan premiums for covered persons;
2. Lower copayment and coinsurance amounts for covered persons; or
3. Expand pharmacy benefit plan coverage.

C. A health insurer shall file with the commissioner, on or before March 1 each year, an annual report, in a manner and form established by the Insurance Department, demonstrating the amount and nature of how compensation received from pharmaceutical manufacturers, developers or labelers has:

1. Lowered health benefit plan or pharmacy benefit plan premiums for covered persons;
2. Lowered copayment and coinsurance amounts for covered persons; or
3. Expanded pharmacy benefit plan coverage.

D. The annual report filing requirement in subsection C of this section shall not begin until March 1, 2021.

§36-6176.

A. A health insurer's Pharmacy and Therapeutics committee shall establish a formulary.

B. A health insurer shall prohibit conflicts of interest for members of the Pharmacy and Therapeutics committee.

1. A person may not serve on a Pharmacy and Therapeutics committee if the person is:

- a. currently employed or was employed within the preceding year, by a pharmaceutical manufacturer, developer, labeler, wholesaler, or distributor, or
- b. currently receives compensation, or received compensation within the preceding year, from a pharmaceutical manufacturer, developer, labeler, wholesaler, or distributor.

2. A health insurer shall prohibit the Pharmacy and Therapeutics committee, and any member of the Pharmacy and Therapeutics committee, from receiving any compensation or funding from a pharmaceutical manufacturer, developer, labeler, wholesaler, or distributor.

C. A health insurer shall display its formulary on its website to be publicly accessible.

1. The formulary shall be electronically searchable by drug name and any other means required by the commissioner, as established by rule.

2. The formulary shall include, at a minimum, the following:

- a. an indication of whether each drug on the formulary is preferred under the plan,
- b. an indication of whether each drug on the formulary requires prior authorization or has step therapy or quantity limit restrictions,
- c. the specific tier the drug falls under, if the health insurer's plan uses a tiered formulary,
- d. the amount of the drug copayment, if applicable,
- e. the amount of the drug coinsurance, if applicable,
- f. whether the drug is subject to a deductible, and if so, the amount of the deductible,
- g. whether the drug is included on the maximum allowable cost list of the health insurer, and if so, the price of the drug as established by the maximum allowable cost list, and
- h. for drugs not included on the maximum allowable cost list of the health insurer, the average wholesale price as established by the national pricing source.

D. The health insurer shall update the information required in subparagraph g of paragraph 2 of subsection C of this section no less than every seven (7) days.

§36-6177.

A. The Commissioner shall provide for the receiving and processing of individual complaints alleging violations of the provisions of this act or with provisions of Sections 357 through 360 of Title 59 of the Oklahoma Statutes.

B. The Commissioner shall establish a Prescription Access and Affordability Advisory Committee to review complaints, hold hearings and subpoena witnesses and records, initiate prosecution, reprimand, place on probation, suspend, revoke and levy fines not to exceed Ten Thousand Dollars (\$10,000.00) for each count for which any pharmacy benefits manager has been convicted in hearings by the committee. The committee may impose as part of any disciplinary action the payment of costs expended by the

Department of Insurance for any legal fees and costs, including but not limited to staff time, salary and travel expense, witness fees and attorney fees. The committee may take such actions singly or in combination, as the nature of the violation requires.

C. The Committee shall consist of seven (7) persons appointed as follows:

1. Two persons who shall be nominated by the Oklahoma Pharmacists Association;

2. Two consumer members not employed or related to insurance, pharmacy or pharmacy benefit management nominated by the Governor's office;

3. Two persons representing the pharmacy benefits manager or Insurance Industry nominated by the Insurance Commissioner; and

4. One person representing the Attorney General's Office nominated by the Attorney General.

D. Committee members shall be appointed for a term of five (5) years. The terms of the members of the Committee shall expire on June 30 of the year designated for the expiration of the term for which appointed but the member shall serve until a qualified successor has been duly appointed. No person shall be appointed to serve more than two consecutive terms.

E. Hearings shall be held in the Insurance Commissioner's offices or at such other place as the Commissioner may deem convenient.

F. The Commissioner shall issue and serve upon the pharmacy benefits manager a statement of the charges and a notice of hearing in accordance with the Administrative Procedures Act.

G. At the time and place fixed for a hearing, the pharmacy benefits manager shall have an opportunity to be heard and to show cause why the Commissioner or his or her duly appointed hearing examiner should not revoke or suspend the license of the pharmacy benefits manager and levy administrative fines for each count, or both. Upon good cause shown, the Commissioner shall permit any person to intervene, appear and be heard at the hearing by counsel or in person.

H. All hearings will be public and held in accordance with, and governed by, Article II of the Administrative Procedures Act, Section 308A et seq. of Title 75 of the Oklahoma Statutes.

I. The Commissioner, upon written request reasonably made by the licensed pharmacy benefits manager affected by the hearing, and at such expense of the pharmacy benefits manager, shall cause a full stenographic record of the proceedings to be made by a competent court reporter.

J. If the Insurance Commissioner determines, based on an investigation of complaints, that a pharmacy benefits manager has engaged in violations of this act with such frequency as to indicate a general business practice and that the pharmacy benefits manager should be subjected to closer supervision with respect to such practices, the Commissioner may require the pharmacy benefits manager to file a report at such periodic intervals as the Commissioner deems necessary.

§36-6178.

A. Documents, materials, reports, complaints or other information in the possession or control of the Insurance Department that are obtained by or disclosed to the Commissioner or any other person in the course of an evaluation, examination, investigation or review made pursuant to the provisions of this act shall be confidential by law and privileged, shall not be subject to open records request, shall not be subject to subpoena and shall not be subject to discovery or admissible in evidence in any private civil action if obtained from the Commissioner or any employees or representatives of the Commissioner.

B. Nothing in this section shall prevent the disclosure of a final order issued against a pharmacy benefits manager by the Commissioner or his or her duly appointed hearing examiner. Such orders shall be open records.

Oregon

HB 3003 A was:

- Passed by the first chamber on April 2, 2019
- Included in NCCI's April 12, 2019 **Legislative Activity Report** (RLA-2019-13)
- Passed by the second chamber on April 25, 2019

HB 3003 A amends **section 656.443** of the Oregon Workers' Compensation Law to read:

656.443 Procedure upon default by employer or self-insured employer group.

...

~~(3) If for any reason the certification of a self-insured employer or self-insured employer group is canceled or terminated, the surety bond or other security deposited with the director must remain on deposit or in effect, as the case may be, for a period of at least 62 months after the employer ceases to be a self-insured employer. The surety bond or other security must be maintained in an amount necessary to secure the outstanding and contingent liability arising from the accidental injuries secured by the surety bond or other security and to ensure the payment of claims for aggravation and claims arising under ORS 656.278 based on those accidental injuries. At the expiration of the 62-month period, or of another period the director may consider proper, the director may accept in lieu of the surety bond or other security deposited with the director a policy of paid-up insurance in a form approved by the director.~~

(3)(a) If for any reason the certification of a self-insured employer or self-insured employer group is canceled or terminated, the surety bond or other security deposited with the director must remain on deposit or in effect, as the case may be, for a period of at least 62 months after the employer ceases to be a self-insured employer, unless the director accepts in lieu of the surety bond or

other security a policy of paid-up insurance approved by the director. A surety bond or other security that remains on deposit or in effect must be maintained in an amount necessary to secure the outstanding and contingent liability arising from the accidental injuries secured by the surety bond or other security and to ensure the payment of claims for aggravation and claims arising under ORS 656.278 based on those accidental injuries. If the surety bond or other security remains on deposit or in effect at the expiration of the 62-month period, or of another period the director may consider proper, the director may accept in lieu of the surety bond or other security deposited with the director a policy of paid-up insurance in a form approved by the director.
(b) The director may adopt rules necessary to implement the provisions of this subsection.

...

BILLS PASSING FIRST CHAMBER

The following workers compensation-related bills passed the first chamber within the one-week period ending April 26, 2019.

Alabama

HB 187, in part, amends *sections 25-5-60, 25-5-66, 25-5-68, and 25-5-69* of the Code of Alabama as follows:

Section 25-5-60

Compensation for death.

In death cases, where the death results proximately from the accident within three years, compensation payable to dependents shall be computed on the following basis and shall be paid to the persons entitled thereto without administration, or to a guardian or other person as the court may direct, for the use and benefit of the person entitled thereto.

(1) Persons Entitled to Benefits; Amount of Benefits.

...

h. If a dependent is the surviving spouse of a law enforcement officer or firefighter ~~killed~~ who dies on or after January 1, 2018, as a result of injuries received while engaged in the performance of his or her duties, the compensation does not cease upon remarriage.

...

Section 25-5-66

Disposition of compensation upon remarriage of widow of employee who has another dependent.

...

(b) Subsection (a) does not apply to the surviving spouse of a law enforcement officer or firefighter who ~~was killed~~ dies on or after January 1, 2018, as a result of injuries received while engaged in the performance of his or her duties.

Section 25-5-68

Maximum and minimum weekly compensation.

...

(f) Notwithstanding any other provision of this article, the compensation benefits payable to a surviving dependent child of a law enforcement officer or firefighter who ~~was killed~~ dies on or after January 1, 2018, as a result of injuries received while engaged in the performance of his or her duties shall not discontinue at least until the dependent child reaches the age of 18 years.

Section 25-5-69

Compensation to cease upon death or marriage of dependent; proportional benefits for dependents.

~~Except when the dependent is the surviving spouse of a law enforcement officer or firefighter who was killed as a result of injuries received while engaged in the performance of his or her duties, if~~ (a) If compensation is being paid under this article to any dependent, such compensation shall cease upon the death or marriage of such dependent. Where compensation is being paid under this chapter to any dependent, in no event shall such dependent receive more than the proportion which the amount received of the deceased employee's income during his or her life bears to the compensation provided under this article.

(b) Subsection (a) does not apply if the dependent is the surviving spouse of a law enforcement officer or firefighter who dies on or after January 1, 2018, as a result of injuries received in the performance of his or her duties.

Nevada

AB 370 amends *sections 232.680 and 616A.425* of the Nevada Revised Statutes as follows:

Section 1.

NRS 616A.425 Fund for Workers' Compensation and Safety.

...

3. All money and securities in the Fund must be used to defray all costs and expenses of administering the program of workers' compensation, including the payment of:

...

(g) For widows, widowers, surviving children and surviving dependent parents who are entitled to death benefits on account of an industrial injury or a disablement from an occupational disease that occurred before July 1, 2019:

(1) Reimbursement to insurers for the cost of the increase in the death benefits pursuant to subsection 1 of section 3.5 of this act; and

(2) The salary and other expenses of administering the payment of the increase in death benefits pursuant to subsection 1 of section 3.5 of this act.

The provisions of this paragraph shall cease to be of any force or effect when no widow, widower, surviving child or surviving dependent parent is entitled to receive death benefits on account of an industrial injury or a disablement from an occupational disease that occurred before July 1, 2019.

...

Section 4.

NRS 232.680 Payment of costs: Assessments; regulations; federal grants; refunds.

...

4. Assessments made against insurers by the Division after the adoption of regulations must be used to defray all costs and expenses of administering the program of workers' compensation, including the payment of:

...

5. ~~If the Division refunds any part of an assessment, the Division shall include in that refund any interest earned by the Division from the refunded part of the assessment.~~

(g) For widows, widowers, surviving children and surviving dependent parents who are entitled to death benefits on account of an industrial injury or a disablement from an occupational disease pursuant to section 3.5 of this act that occurred before July 1, 2019:

(1) Reimbursement to insurers for the cost of the increase in the death benefits pursuant to subsection 1 of section 3.5 of this act; and

(2) The salary and other expenses of administering the payment of the increase in death benefits pursuant to subsection 1 of section 3.5 of this act.

The provisions of this paragraph shall cease to be of any force or effect when no widow, widower, surviving child or surviving dependent parent is entitled to receive death benefits on account of an industrial injury or a disablement from an occupational disease that occurred before July 1, 2019.

AB 370 also adds new provisions in **sections 3.5 and 3.8** of the bill to be codified in the Nevada Industrial Insurance Act, to read:

Section 3.5.

1. Any widow, widower, surviving child or surviving dependent parent who is receiving death benefits pursuant to chapters 616A to 617, inclusive, of NRS on account of an industrial injury or a disablement from an occupational disease is entitled to an annual increase in those death benefits in the amount of 2.3 percent. The benefits must be increased pursuant to this section:

(a) On January 1, 2020; and

(b) On January 1 of each year thereafter.

2. Any increase in death benefits provided pursuant to this section is in addition to any increase in death benefits to which a widow, widower, surviving child or surviving dependent parent is otherwise entitled by law.

3. Any increase in death benefits pursuant to this section on account of an industrial injury or a disablement from an occupational disease that occurred on or after July 1, 2019, must be paid by insurers, including, without limitation, employers who provide accident benefits for injured employees pursuant to NRS 616C.265, without reimbursement from the Fund for Workers' Compensation and Safety pursuant to section 3.8 of this act.

Section 3.8.

1. An insurer, including, without limitation, an employer who provides accident benefits for injured employees pursuant to NRS 616C.265, who pays an increase in death benefits to a widow, widower, surviving child or surviving dependent parent pursuant to section 3.5 of this act is entitled to be reimbursed for the amount of that increase from the Fund for Workers' Compensation and Safety if the insurer provides to the Administrator all of the following:

(a) The name of the widow, widower, surviving child or surviving dependent parent to whom the insurer paid the increase in death benefits.

(b) The claim number under which death benefits were paid to the widow, widower, surviving child or surviving dependent parent.

(c) The date of the industrial injury or disablement from an occupational disease which resulted in the eligibility of the widow, widower, surviving child or surviving dependent parent for death benefits.

(d) The date of the death of the injured employee who is the:

(1) Spouse of the widow or widower;

(2) Parent of the surviving child; or

(3) Child of the surviving dependent parent.

(e) The amount of the death benefit to which the widow, widower, surviving child or surviving dependent parent was entitled as of December 31, 2019.

(f) Proof of the insurer's payment of the increase in death benefits.

(g) The amount of reimbursement requested by the insurer.

2. An insurer must provide the Administrator with the information required pursuant to subsection 1 not later than March 31 of each year to be eligible for reimbursement pursuant to this section for payments of increases in death benefits which were made in the immediately preceding calendar year.

3. An insurer may not be reimbursed pursuant to this section unless the insurer's request for reimbursement is approved by the Administrator.

4. An insurer may elect to apply any approved reimbursement made pursuant to this section towards any current or future assessment levied by the Administrator pursuant to NRS 232.680.

In addition, **AB 370** also includes the following language:

Section 5.

For the purposes of subsection 1 of section 3.5 of this act, the amount of death benefits which is to be increased by 2.3 percent on January 1, 2020, for a widow, widower, surviving child or surviving dependent parent who is entitled to receive death benefits on account of an industrial injury or a disablement from an occupational disease that occurred before January 1, 1989, shall be deemed to be the amount of annual death benefits the widow, widower, surviving child or surviving dependent parent was entitled to receive before the effective date of this act, compounded 3 times at 2.3 percent. The intent of this section is to put the widow, widower, surviving child or surviving dependent parent in the same position on January 1, 2020, with regard to the amount of death benefits to be increased by 2.3 percent pursuant to paragraph (a) of subsection 1 of section 3.5 of this act, as if the widow, widower, surviving child or surviving dependent parent had been receiving an annual increase of 2.3 percent of his or her annual death benefits on January 1 of each year beginning on January 1, 2017.

Section 6.

For the purposes of subsection 1 of section 3.5 of this act, the amount of death benefits which is to be increased by 2.3 percent on January 1, 2020, for a widow, widower, surviving child or surviving dependent parent who is entitled to receive death benefits on account of an industrial injury or a disablement from an occupational disease that occurred on or after January 1, 1989, and before January 1, 1994, shall be deemed to be the amount of annual death benefits the widow, widower, surviving child or surviving dependent parent was entitled to receive before the effective date of this act, compounded 2 times at 2.3 percent. The intent of this section is to put the widow, widower, surviving child or surviving dependent parent in the same position on January 1, 2020, with regard to the amount of death benefits to be increased by 2.3 percent pursuant to paragraph (a) of subsection 1 of section 3.5 of this act, as if the widow, widower, surviving child or surviving dependent parent had been receiving an annual increase of 2.3 percent of his or her annual death benefits on January 1 of each year beginning on January 1, 2018.

AB 492 adds a new section to the Nevada Industrial Insurance Act to read:

1. Posttraumatic stress disorder, as described in the Fifth Edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association, suffered by a first responder is compensable pursuant to the provisions of chapters 616A to 616D, inclusive, or chapter 617 of NRS if:

(a) The posttraumatic stress disorder is demonstrated by clear and convincing evidence;

(b) The posttraumatic stress disorder resulted from the first responder acting within the course of his or her employment, except as otherwise provided in subsection 3; and

(c) The first responder is examined and subsequently diagnosed with such disorder by a licensed psychiatrist who is authorized as a treating physician pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS, or a psychologist who is licensed pursuant to chapter 641 of NRS, due to one or more traumatic events, including, without limitation:

(1) Seeing for oneself a deceased minor;

(2) Directly witnessing the death of a minor;

(3) Directly witnessing an injury to a minor who subsequently died before or upon arrival at a hospital emergency department;

(4) Participating in the physical treatment of an injured minor who subsequently died before or upon arrival at a hospital emergency department;

(5) Manually transporting an injured minor who subsequently died before or upon arrival at a hospital emergency department;

(6) Seeing for oneself a decedent whose death involved grievous bodily harm of a nature that shocks the conscience;

(7) Directly witnessing a death, including, without limitation, suicide, that involved grievous bodily harm of a nature that shocks the conscience;

(8) Directly witnessing a homicide, regardless of whether the homicide was criminal or excusable, including, without limitation, murder, mass killing as defined in 28 U.S.C. § 530C(b)(1)(m), manslaughter, self-defense, misadventure and negligence;

(9) Directly witnessing an injury, including, without limitation, an attempted suicide, to a person who subsequently died before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience;

(10) Participating in the physical treatment of an injury, including, without limitation, an attempted suicide, to a person who subsequently died before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience; or

(11) Manually transporting a person who was injured, including, without limitation, by attempted suicide, and who subsequently died before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience.

2. Eligibility for benefits for a first responder pursuant to this section does not require a physical injury to the first responder.

3. For the purposes of paragraph (b) of subsection 1, a first responder is deemed not to be acting in the course of his or her employment if the first responder:

(a) Is off duty; or

(b) Is outside the jurisdiction of his or her employer.

4. The time for notice of injury or death in the case of a claim for compensation for posttraumatic stress disorder pursuant to this section is the same as that set forth in NRS 616C.015 or 617.342, as applicable, and is measured from one of the qualifying events listed in paragraph (c) of subsection 1 or the manifestation of the disorder, whichever is later.

5. A claim for compensation pursuant to this section must be properly filed pursuant to NRS 616C.020 or 617.344 not later than 52 weeks after the qualifying event or manifestation of the disorder.

6. Benefits for a first responder pursuant to this section are not subject to:

(a) Apportionment due to a preexisting posttraumatic stress disorder pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS; or

(b) Any limitation on the duration of temporary benefits pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS.

7. An agency which employs a first responder, including without limitation, a first responder who serves as a volunteer, shall provide educational training related to the awareness, prevention, mitigation and treatment of mental health issues.

8. The Division shall adopt regulations which specify the injuries that qualify as grievous bodily harm of a nature that shocks the conscience for the purposes of this section.

9. As used in this section:

(a) "Directly witnessing" means to see or hear for oneself.

(b) "Emergency medical attendant" means a person licensed as an attendant or certified as an emergency medical technician, advanced emergency medical technician or paramedic pursuant to chapter 450B of NRS, whose primary duties of employment are the provision of emergency medical services.

(c) "First responder" means:

(1) A salaried or volunteer firefighter;

(2) A police officer;

(3) An emergency medical attendant;

(4) An emergency dispatcher or call taker who is employed by a law enforcement or public safety agency in this State;

(5) A crime scene investigator who is employed by a law enforcement or public safety agency in this State;

(6) A forensic investigator who is employed by a law enforcement or public safety agency in this State; or

(7) A county coroner or medical examiner.

(d) "Manually transporting" means to perform physical labor to move the body of a wounded person for his or her safety or medical treatment.

AB 492 also amends *sections 616C.180 Injury or disease caused by stress, 616C.400 Minimum duration of incapacity; exceptions, 616C.490 Permanent partial disability: Compensation, and 617.420 Minimum duration of incapacity for temporary total disability; payment of medical benefits* of the Nevada Industrial Insurance Act, to exempt a claim for compensation for posttraumatic stress disorder suffered by a first responder from existing law that:

- Provides that a certain injury or disease sustained by an employee that is caused by stress is compensable under industrial insurance if it arose out of and in the course of employment and sets forth the requirements for such a claim
- Prohibits the payment of temporary compensation benefits for an injury or temporary total disability that does not incapacitate the employee for a minimum number of days
- Prohibits the consideration of factors, other than the degree of physical impairment of the whole person, in calculating the entitlement to compensation for a permanent partial disability except in the case of certain claims for stress

In addition, **AB 492** includes the following language:

The provisions of NRS 354.599 do not apply to any additional expenses of a local government that are related to the provisions of this act.

Texas

SB 1336 amends *sections 2051.157, 2053.001, 2053.051, and 2053.056* of the Texas Insurance Code and *section 407A.351* of the Texas Labor Code as follows:

Sec. 2051.157. Penalty for Certain Violations.

An officer or other representative of an insurance company is subject to a fine of not less than \$100 or more than \$500 if the officer or other representative violates any provision of the following relating to the company's business:

...

(5) Section 2053.051, 2053.052, ~~2053.053~~, or 2053.055.

Sec. 2053.001. Definitions.

In this subchapter:

...

(5) "Supplementary rating information" means any manual, rating plan or schedule, plan of rules, rating rule, classification system, territory code or description, or other similar information required to determine the applicable premium for an insured. The term includes increased limits factors, ~~classification relativities~~, deductible relativities, and other similar factors and relativities.

...

Sec. 2053.051. Hazard Classification System.

(a) For workers' compensation insurance, the department shall:

...

~~(2) establish classification relativities applicable to an employer's payroll in each of the classes at levels adequate to the risks to which the relativities apply.~~

~~(b) The classification relativities established under Subsection (a)(2):~~

~~(1) must be designed to encourage safety;~~

~~(2) may be territorially based; and~~

~~(3) may reflect a difference in losses between employers of high wage earners and employers of low wage earners within the same class.~~

~~(c) The department shall revise the classification system as necessary to carry out the purposes of this chapter at least once every five years.~~

(b) A stock company, mutual insurance company, reciprocal or interinsurance exchange, or Lloyd's plan authorized to engage in the business of workers' compensation insurance in this state may not use hazard classifications other than the classifications established by the department.

Sec. 2053.056. Rate Hearings.

...

(c) The commissioner shall review the information submitted under Subsection (b) to determine the positive or negative impact of the enactment of workers' compensation reform legislation enacted by the 79th Legislature, Regular Session, 2005, on workers' compensation rates and premiums. The commissioner may consider other factors, ~~including relativities under Section 2053.051~~, in determining whether a change in rates has impacted the premium charged to policyholders.

...

Sec. 407A.351. Rates.

(a) Except as provided by Subsection (b), each group shall use the uniform classification system and , experience rating plan, ~~and rate relativities~~ of the department.

(b) A group may :

~~(1) use the relativities promulgated by the department modified to produce rates in accordance with the group's historical experience; or~~

~~(2) file its own rates with the department, including any reasonable and supporting information required by the commissioner.~~

...

SB 1336 also includes the following language:

Effective July 1, 2020, Sections 2053.053 and 2054.354(b), Insurance Code, are repealed.

Sections 2051.157, 2053.001(5), 2053.051, and 2053.056(c), Insurance Code, as amended by this Act, and Sections 407A.351(a) and (b), Labor Code, as amended by this Act, apply only to an insurance policy that is delivered, issued for delivery, or renewed on or after July 1, 2020. A policy delivered, issued for delivery, or renewed before July 1, 2020, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

STATE LEGISLATIVE ACTIVITY

State	Update
Arkansas	SB 673 establishes the Universal Workers' Compensation Act to authorize a limited program of an optional system to allow an employer to secure coverage for injury or death of an employee without regard to work-relatedness.
Georgia	<p>SR 325, approved in the 2019 session, creates the Senate Study Committee on Portable Benefits for Independent Workers. The resolution notes that "portable benefit models provide employees benefits outside the traditional employment relationship and allow independent workers to carry benefits with them from job to job or project to project." Stated purposes of the committee include, but are not limited to, studying the usefulness and implementation of:</p> <ul style="list-style-type: none"> • Portable benefit models and their potential role in encouraging innovation, entrepreneurship, and a modern economy • Portable benefits in order to determine the most effective way to structure employment benefits to support a more independent twenty-first century workforce <p>Additionally, the committee is set to abolish on December 1, 2019.</p>
Illinois	<p>HB 2480:</p> <ul style="list-style-type: none"> • Amends the Workers' Compensation Act and the Workers' Occupational Diseases Act • Includes methicillin-resistant staphylococcus aureus in the list of ailments giving rise to a rebuttable presumption that the ailment arose out of employment of firefighters, emergency medical technicians, and paramedics • Provides that the presumption is intended to shift the burden of proof and requires clear and convincing evidence to overcome the presumption • Contains applicability provisions • Excludes firefighters, emergency medical technicians, and paramedics from certain limitations on recovery for hearing loss
Maine	<p>LD 1501 amends the law governing occupational disease claims under the Maine Workers' Compensation Act. It repeals the chapter in the law governing workers compensation entitled "Occupational Disease Law" and:</p> <ul style="list-style-type: none"> • Defines "personal injury" to include any condition or disease contributed to by an employee's occupational cumulative trauma or exposure that arises out of and in the course of employment • Specifies that the employer in whose employment the employee was last injuriously exposed to the occupational trauma or exposure is fully liable for all incapacity resulting from the occupational trauma or exposure • Specifies that the date of injury for an occupational cumulative trauma or exposure injury is the date that the employee becomes incapacitated from the occupational cumulative trauma or exposure • Provides a method for calculating the amount of the employee's compensation if, on the date of incapacity resulting from occupational cumulative trauma or exposure, the injured employee no longer works in the same occupation in which the employee worked when the employee incurred the last injurious occupational cumulative trauma or exposure
Missouri	HB 1137 , in part, establishes the criteria of a worker to be considered an independent contractor. It states that independent contractors shall have a written contract that states the person is an independent contractor, not an employee, and that the person is responsible for all costs, fees, and taxes as an independent contractor. In addition, the person must have the right to control the manner and means by which the work is accomplished and satisfy at least five out of nine listed requirements of an independent contractor.
Texas	HB 3676 amends the Texas Workers' Compensation Act relating to the eligibility of an injured employee for lifetime income benefits under the workers compensation system.

OTHER ITEMS OF INTEREST

State	Update
Colorado	<p>Proposed amendments to regulation 7 CCR 1101-3, in part:</p> <ul style="list-style-type: none"> Provides that the online semiannual surcharge returns application form can also be filed online instead of only through Form WC 113 Adds payroll for each employee as a requirement for self-insured employer filings and strikes number of employees and total payroll Requires an affidavit to be submitted with all filings Provides that the Division of Workers' Compensation may audit any self-insured employer to ascertain the correctness of the reported wage expenditure, number of persons employed, accuracy of information upon which the experience rating factor was calculated, and other information as necessary
Iowa	<p>As a result of SF 2417, proposed amendments to regulation IAC 876-8.8 update references to the payroll tax tables to be used for the period July 1, 2019, through June 30, 2020.</p> <p>SF 2417 lowered most individual state income tax rates in Iowa beginning in tax year 2019, thereby resulting in higher net pay or "spendable wages" on average for employees in the state. In turn, this impacts the amount of indemnity benefits to be paid to injured workers in Iowa under the Workers Compensation Act, since the rate of compensation for fatal, total disability, and partial disability benefits is 80% of spendable wages, rather than gross wages. Hence, lower taxes and higher spendable wages will lead to higher workers compensation benefits, on average, in Iowa.</p> <p><i>NCCI estimates that the impact of SF 2417 on indemnity benefits may be +0.5% for all injury types. The impact of SF 2417 on overall WC system costs may be +0.2%.</i></p>
New Hampshire	<p>Rule Ins 5000, adopted on April 30 and effective May 5, 2019, updates filing standards and procedures for property and casualty insurance forms and rates.</p>
Oregon	<p>Gadalean v. SAIF Corporation: On April 18, the Oregon Supreme Court (Court) reversed the Court of Appeals' decision and affirmed the Workers' Compensation Board's decision. The Court held that Gadalean, who was injured during a preemployment evaluation, was not a "worker," for purposes of workers' compensation, as he was not engaged to furnish services for remuneration and, therefore, was not eligible for workers' compensation benefits.</p> <p>ORS 836.043.0125-0165: The Oregon Division of Financial Regulation filed new Workers Compensation Test Audit rules on April 19. ID 05-2019 provides Revisions to the Workers Compensation Insurance Test Audit Program, which are effective July 1, 2019. NCCI is the bureau designated to manage the Oregon Workers Compensation Test Audit program.</p>

Contact Information

If you have any questions about the legislation or proposals mentioned, please contact the appropriate NCCI state relations executive (listed below) or a representative of your local insurance trade association.

State	State Relations Executive	Phone Number
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
FL	Dawn Ingham	561-893-3165
IN, NC	Michelle Smith	561-893-3016
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
CO, IA, NE, SD	Stephanie Paswaters	303-200-6728
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Federal Issues	Tim Tucker	202-403-8526
AK, ID, MT, OR	Todd Johnson	561-893-3814

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