



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 May 3, 2019.

#### Florida

**SB 426** was:

- Passed by the first chamber on April 23, 2019
- Passed by the second chamber on April 24, 2019
- Included in NCCI's May 3, 2019 **Legislative Activity Report** (RLA-2019-16)
- Enacted on May 3, 2019, with an effective date of July 1, 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.

#### Indiana

**HB 1182** was:

- Passed by the first chamber on February 11, 2019

- Included in NCCI's February 22, 2019 **Legislative Activity Report** (RLA-2019-06)
- Amended and passed by the second chamber on March 19, 2019
- Included in NCCI's March 29, 2019 **Legislative Activity Report** (RLA-2019-11)
- Enacted on May 1, 2019, with an effective date of July 1, 2019

**HB 1182** amends **sections 22-3-3-21, 22-3-7-15, and 36-8-12-10**; and adds new **section 36-8-12-10.3** to the Indiana Code to read as follows:

**IC 22-3-3-21 Burial expenses**

Sec. 21. In cases of the death of an employee from an injury by an accident arising out of and in the course of the employee's employment under circumstances that the employee would have been entitled to compensation if death had not resulted, the employer shall pay the burial expenses of such employee, not exceeding ~~seven ten thousand five hundred dollars (\$7,500).~~ (\$10,000).

**IC 22-3-7-15 Death benefits; burial expenses**

Sec. 15. In cases of the death of an employee from an occupational disease arising out of and in the course of the employee's employment under circumstances that the employee would have been entitled to compensation if death had not resulted, the employer shall pay the burial expenses of such employee, not exceeding ~~seven ten thousand five hundred dollars (\$7,500).~~ (\$10,000).

**IC 36-8-12-10 Volunteers; medical treatment and burial expense coverage; determinations; premium expenses**

Sec. 10. (a) A:

- (1) volunteer firefighter, a member of the emergency medical services personnel, or an emergency medical technician working in a volunteer capacity for a volunteer fire department or ambulance company is covered; and
  - (2) volunteer working for a hazardous materials response team may be covered; by the medical treatment and burial expense provisions of the worker's compensation law (IC 22-3-2 through IC 22-3-6) and the worker's occupational diseases law (IC 22-3-7).
- (b) Subject to section 10.3 of this chapter, if compensability of the injury is an issue, the administrative procedures of IC 22-3-2 through IC 22-3-6 and IC 22-3-7 shall be used to determine the issue.

...

**IC 36-8-12-10.3**

Sec. 10.3. (a) This section applies to an employee of a private employer who:

- (1) is a volunteer firefighter or volunteer member; and
  - (2) has notified the employee's employer in writing that the employee is a volunteer firefighter or volunteer member, regardless of whether the employer rejected the notification under section 10.7(c) of this chapter.
- (b) An employee described in subsection (a) who leaves the employee's duty station to respond to a fire or emergency call after the employee has reported to work shall, for worker's compensation purposes, be considered an employee of the unit while in the performance of the duties of a volunteer firefighter or volunteer member.
- (c) The employee described in subsection (a) shall, for worker's compensation purposes, be considered as having entered in and acted in the regular course and scope of the employment with the unit when the employee responds to the fire or emergency call as a volunteer firefighter or volunteer member, regardless of whether the employee responds by traveling:
- (1) to a fire station or other place where firefighting equipment that the company or unit is to use is located; or
  - (2) to perform any activities that the employee may be directed to do by the chief of the fire department or, in the absence of the chief, the ranking officer.
- (d) The employee described in subsection (a) shall, for worker's compensation purposes, be considered an employee of the unit until the employee returns to the location from which the employee was originally called to active duty, or until the employee engages in an activity beyond the scope of the performance of the duties of the volunteer firefighter or volunteer member, whichever occurs first.

**Maryland**

**HB 595** was:

- Passed by the first chamber on March 15, 2019
- Included in NCCI's March 22, 2019 **Legislative Activity Report** (RLA-2019-10)
- Passed by the second chamber on March 22, 2019
- Included in NCCI's March 29, 2019 **Legislative Activity Report** (RLA-2019-11)
- Enacted on April 30, 2019, with an effective date of October 1, 2019

**HB 595** amends **section 9-503** of the Annotated Code of Maryland to read:

**§ 9-503. Occupational disease—Presumption—Firefighters, fire fighting instructors, rescue squad members, advanced life support unit members, and police officers**

...

**(c) Cancer.**—A paid firefighter, paid firefighting instructor, paid rescue squad member, paid advanced life support unit member, or a sworn member of the Office of the State Fire Marshal employed by an airport authority, a county, a fire control district, a municipality, or the State or a volunteer firefighter, volunteer fire fighting instructor, volunteer rescue squad member, or volunteer advanced life support unit member who is a covered employee under § 9-234 of this title is presumed to be suffering from an occupational disease that was suffered in the line of duty and is compensable under this title if the individual:

(1) has leukemia or prostate, rectal, throat, multiple myeloma, non-Hodgkin’s lymphoma, brain, testicular, bladder, kidney or renal cell, or breast cancer that is caused by contact with a toxic substance that the individual has encountered in the line of duty;

...

**HB 604** was:

- Passed by the first chamber on March 16, 2019
- Amended and passed by the second chamber on March 22, 2019
- Included in NCCI’s March 29, 2019 **Legislative Activity Report** (RLA-2019-11)
- Enacted on April 30, 2019, with an effective date of October 1, 2019

**HB 604** amends **section 9-503** of the Annotated Code of Maryland to read:

**§ 9-503. Occupational disease—Presumption—Firefighters, fire fighting instructors, rescue squad members, advanced life support unit members, and police officers**

...

**(c) Cancer.**—A paid firefighter, paid fire fighting instructor, paid rescue squad member, paid advanced life support unit member, or a sworn member of the Office of the State Fire Marshal employed by an airport authority, a county, a fire control district, a municipality, or the State or a volunteer firefighter, volunteer fire fighting instructor, volunteer rescue squad member, or volunteer advanced life support unit member who is a covered employee under § 9-234 of this title is presumed to be suffering from an occupational disease that was suffered in the line of duty and is compensable under this title if ~~the individual~~:

(1) the individual has leukemia or prostate, rectal, throat, multiple myeloma, non-Hodgkin’s lymphoma, brain, testicular, or breast cancer that is caused by contact with a toxic substance that the individual has encountered in the line of duty;

(2) the individual has completed at least 10 years of cumulative service within the state as a firefighter, a fire fighting instructor, a rescue squad member, or an advanced life support unit member or in a combination of those jobs ~~in the department where the individual currently is employed or serves~~;

(3) ~~is unable to perform the normal duties of a firefighter, fire fighting instructor, rescue squad member, or advanced life support unit member in the department where the individual currently is employed or serves because of the cancer or leukemia disability; and the cancer or leukemia results in partial or total disability or death; and~~

~~(4)~~ in the case of a volunteer firefighter, volunteer fire fighting instructor, volunteer rescue squad member, or volunteer advanced life support unit member, the individual has met a suitable standard of physical examination before becoming a firefighter, fire fighting instructor, rescue squad member, or advanced life support unit member.

...

**Note:** **HB 604** is identical to **SB 646**.

**HB 795** was:

- Passed by the first chamber on March 29, 2019
- Included in NCCI’s April 5, 2019 **Legislative Activity Report** (RLA-2019-12)
- Passed by the second chamber on April 8, 2019
- Included in NCCI’s April 19, 2019 **Legislative Activity Report** (RLA-2019-14)
- Enacted on April 30, 2019, with an effective date of October 1, 2019

**HB 795** amends **section 9-628** of the Annotated Code of Maryland to read:

**§ 9-628. Compensation for less than 75 weeks.**

**(a) “Public safety employee” defined.**—In this section, “public safety employee” means:

...

(9) a Baltimore County deputy sheriff, but only when the deputy sheriff sustains an accidental personal injury that arises out of and in the course and scope of performing duties directly related to:

...

(v) other administrative duties; ~~or~~

(10) a State correctional officer; ~~or~~

(11) a Baltimore City Deputy Sheriff.

...

**HB 795** also includes the following language:

And be it further enacted, that this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any claims arising from events occurring before the effective date of this Act.

**SB 62** was:

- Passed by the first chamber on March 18, 2019
- Included in NCCI's March 29, 2019 **Legislative Activity Report** (RLA-2019-11)
- Amended and passed by the second chamber on April 6, 2019
- Included in NCCI's April 19, 2019 **Legislative Activity Report** (RLA-2019-14)
- Enacted on April 30, 2019, with an effective date of July 1, 2019

**SB 62** adds a new uncodified section to the Annotated Code of Maryland as follows:

**Uninsured Employers' Fund—Solvency—Study**

(a) On or before October 1, 2019, the Director of the Uninsured Employers' Fund shall report to the Senate Finance Committee, the House Economic Matters Committee, and the Joint Committee on Workers' Compensation Benefit and Insurance Oversight, in accordance with § 2-1246 of the State Government Article, on:

(1) the solvency of the Uninsured Employers' Fund, including the Fund's solvency during the period from October 1, 2012, through August 31, 2019, both inclusive; and

(2) whether the General Assembly should adjust or provide authority to increase the assessment required under § 9-1007 of the Labor and Employment Article.

(b) The report required under subsection (a) of this section shall include:

(1) a discussion of payments for compensation to claimants made from the Uninsured Employers' Fund, from September 1, 2017, through August 31, 2019, both inclusive;

(2) a discussion of the Uninsured Employers' Fund's prospective liabilities, and

(3) a discussion of Bethlehem Steel Corporation hearing loss claims for compensation.

**SB 646** was:

- Passed by the first chamber on March 25, 2019
- Included in NCCI's April 5, 2019 **Legislative Activity Report** (RLA-2019-12)
- Passed by the second chamber on April 4, 2019
- Included in NCCI's April 12, 2019 **Legislative Activity Report** (RLA-2019-13)
- Enacted on April 30, 2019, with an effective date of October 1, 2019

**SB 646** amends **section 9-503** of the Annotated Code of Maryland to read:

**§ 9-503. Occupational disease—Presumption—Firefighters, fire fighting instructors, rescue squad members, advanced life support unit members, and police officers**

...

**(c) Cancer.**—A paid firefighter, paid fire fighting instructor, paid rescue squad member, paid advanced life support unit member, or a sworn member of the Office of the State Fire Marshal employed by an airport authority, a county, a fire control district, a municipality, or the State or a volunteer firefighter, volunteer fire fighting instructor, volunteer rescue squad member, or volunteer advanced life support unit member who is a covered employee under § 9-234 of this title is presumed to be suffering from an occupational disease that was suffered in the line of duty and is compensable under this title ~~if the individual:~~

~~(1) the individual has leukemia or prostate, rectal, throat, multiple myeloma, non-Hodgkin's lymphoma, brain, testicular, or breast cancer that is caused by contact with a toxic substance that the individual has encountered in the line of duty;~~

~~(2) the individual has completed at least 10 years of cumulative service within the state as a firefighter, a fire fighting instructor, a rescue squad member, or an advanced life support unit member or in a combination of those jobs in the department where the individual currently is employed or serves;~~

~~(3) is unable to perform the normal duties of a firefighter, fire fighting instructor, rescue squad member, or advanced life support unit member in the department where the individual currently is employed or serves because of the cancer or leukemia disability; and the cancer or leukemia results in partial or total disability or death; and~~

~~(4) in the case of a volunteer firefighter, volunteer fire fighting instructor, volunteer rescue squad member, or volunteer advanced life support unit member, the individual has met a suitable standard of physical examination before becoming a firefighter, fire fighting instructor, rescue squad member, or advanced life support unit member.~~

...

**SB 646** also includes the following clause:

And be it further enacted, that this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any claim filed before the effective date of this Act.

**Note: SB 646 is identical to HB 604.**

## BILLS PASSING SECOND CHAMBER

The following workers compensation-related bills passed the second chamber within the one-week period ending May 3, 2019.

### Florida

**HB 301** was:

- Passed by the first chamber on April 11, 2019
- Included in NCCI's April 19, 2019 *Legislative Activity Report* (RLA-2019-14)
- Passed by the second chamber on May 3, 2019

**HB 301**, in part, amends **section 440.381** of the Florida Workers' Compensation Law to read:

**440.381 Application for coverage; reporting payroll; payroll audit procedures; penalties.—**

...

(2) Submission of an application that contains false, misleading, or incomplete information provided with the purpose of avoiding or reducing the amount of premiums for workers' compensation coverage is a felony of the ~~third second~~ degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The application must contain a statement that the filing of an application containing false, misleading, or incomplete information provided with the purpose of avoiding or reducing the amount of premiums for workers' compensation coverage is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The application must contain a sworn statement by the employer attesting to the accuracy of the information submitted and acknowledging the provisions of former s. 440.37(4). The application must contain a sworn statement by the agent attesting that the agent explained to the employer or officer the classification codes that are used for premium calculations. The sworn statements by the employer and the agent are not required to be notarized.

...

### New Hampshire

**SB 99-FN** was:

- Passed by the first chamber on March 7, 2019
- Included in NCCI's March 15, 2019 *Legislative Activity Report* (RLA-2019-09)
- Amended and passed by the second chamber on May 2, 2019

**SB 99-FN** amends **section 281-A:2** of the New Hampshire Workers' Compensation Law to read:

**281-A:2 Definitions.—**

Any word or phrase defined in this section shall have the same meaning throughout RSA 281-A, unless the context clearly requires otherwise:

...

X-a. "Gainful employment" means employment which reasonably conforms with the employee's age, education, training, temperament and mental and physical capacity to adapt to other forms of similarly remunerative labor than that to which the employee was accustomed.

...

**SB 151-FN** was:

- Passed by the first chamber on February 14, 2019
- Included in NCCI's February 22, 2019 *Legislative Activity Report* (RLA-2019-06)
- Passed by the second chamber on May 2, 2019

**SB 151-FN**, in part, adds a new section to the New Hampshire Workers' Compensation Law as follows:

**281-A:7-a Administrative Orders for Employers' Failure to Secure Compensation Coverage.**

I. In addition to the provisions of RSA 281-A:7, the commissioner may issue a stop work order against an employer subject to this chapter that fails to comply with RSA 281-A:5 by not securing payment of compensation, requiring the cessation of all business operations at the place of employment or job site. Such order shall take effect immediately upon its service upon said employer, until such employer provides evidence, satisfactory to the commissioner that the employer has secured any necessary insurance or self-insurance. The commissioner may serve a stop work order at a place of business or employment by posting a copy of the stop work order in a conspicuous location at the place of business or employment.

II. Any employer aggrieved by the imposition of a stop work order shall have 10 days from the date of its service to appeal such order. Any employer who timely files such appeal shall be granted a hearing by the commissioner within 5 days of receipt of the

appeal. The stop work order shall not be in effect during the pendency of any timely filed appeal. The commissioner may rescind a stop work order if the commissioner finds at the hearing that the employer has at all times been in compliance with this chapter. If the commissioner finds at the hearing that the employer is not in compliance with this chapter, the stop work order shall be effective immediately on the conclusion of the hearing and shall remain in effect until such time as the employer provides evidence, satisfactory to the commissioner, that the employer has secured any necessary insurance or self-insurance.

III. A stop work order issued under this section against any corporation, partnership, sole proprietorship, or limited liability company shall be effective against any successor entity that has one or more of the same principals or officers as the corporation, partnership, sole proprietorship, or limited liability company against which the stop work order was issued and are engaged in the same or equivalent trade or activity.

IV. An employer who violates an issued stop work order shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person.

V. Decisions rendered by the commissioner of the department of labor under paragraph II may be appealed pursuant to RSA 541.

## BILLS PASSING FIRST CHAMBER

The following workers compensation-related bills passed the first chamber within the one-week period ending May 3, 2019.

### Louisiana

**HB 288** adds new **section 22:2013.1** to the Louisiana Insurance Code to read:

**§2013.1. Administration of large deductible policies and insured collateral**

A. This Section shall apply to workers' compensation large deductible policies issued by an insurer subject to delinquency proceedings pursuant to this Chapter; however, this Section shall not apply to first-party claims or to claims funded by a guaranty association net of the deductible unless Subsection C of this Section applies. Large deductible policies shall be administered in accordance with their terms, except to the extent the terms conflict with this Section.

B. For purposes of this Section, the following terms have the following meanings:

(1) "Collateral" means any cash, letters of credit, surety bond, or any other form of security posted by the insured, or by a captive insurer or reinsurer, to secure the insured's obligation under a large deductible policy to pay deductible claims or to reimburse the insurer for deductible claim payments. Collateral may also secure an insured's obligation to reimburse or pay to the insurer as may be required for other secured obligations.

(2) "Commercially reasonable" means to act in good faith using prevailing industry practices and making all reasonable efforts considering the facts and circumstances of the matter.

(3) "Deductible claim" means any claim, including a claim for loss and defense and cost containment expense, unless the expenses are excluded, under a large deductible policy that is within the deductible.

(4)(a) "Large deductible policy" means any of the following:

(i) Any combination of one or more workers' compensation policies and endorsements issued to an insured, and contracts or security agreements entered into between an insured and the insurer in which the insured has agreed with the insurer to do either of the following:

(aa) Pay directly the initial portion of any claim under the policy up to a specified dollar amount, or the expenses related to any claim.

(bb) Reimburse the insurer for its payment of any claim or related expenses under the policy up to the specified dollar amount of the deductible.

(ii) Any policy that contains an aggregate limit on the insured's liability for all deductible claims in addition to a per claim deductible limit.

(iii) Any policy that shifts a portion of the ultimate financial responsibility to pay claims from the insurer to the insured, even though the obligation to initially pay claims may remain with the insurer.

(iv) Any policy with a deductible of one hundred thousand dollars or greater.

(b) "Large deductible policy" shall not include any of the following:

(i) Policies, endorsements, or agreements that provide for the initial portion of any covered claim to be self-insured and further that the insurer shall have no payment obligation within the self-insured retention.

(ii) Policies that provide for retrospectively rated premium payments by the insured or reinsurance arrangements or agreements, except to the extent the arrangements or agreements assume, secure, or pay the policyholder's large deductible obligations.

(5) "Other secured obligations" means obligations of an insured to an insurer other than those under a large deductible policy, including but not limited to those under a reinsurance agreement or other agreement involving retrospective premium obligations, the performance of which is secured by collateral that also secures an insured's obligations under a large deductible policy.

C. Unless otherwise agreed by the responsible guaranty association, all large deductible claims, which are also covered claims as defined by the applicable guaranty association law, including those that may have been funded by an insured before liquidation, shall be turned over to the guaranty association for handling. To the extent the insured funds or pays the deductible claim, pursuant to an agreement by the guaranty fund or otherwise, the insured's funding or payment of a deductible claim will

extinguish the obligations, if any, of the receiver or any guaranty association to pay the claim. No charge of any kind shall be made against the receiver or a guaranty association on the basis of an insured's funding or payment of a deductible claim.

D.(1) To the extent a guaranty association pays any deductible claim for which the insurer would have been entitled to reimbursement from the insured, a guaranty association shall be entitled to the full amount of the reimbursement, and available collateral as provided for in this Section to the extent necessary to reimburse the guaranty association. Reimbursements paid to the guaranty association pursuant to this Subsection shall not be treated as distributions pursuant to R.S. 22:2025 or as early access payments pursuant to R.S. 22:2008(C), 2034, and 2037.

(2) To the extent that a guaranty association pays a deductible claim that is not reimbursed either from collateral or by insured payments, or incurs expenses in connection with large deductible policies that are not reimbursed pursuant to this Section, the guaranty association shall be entitled to assert a claim for those amounts in the delinquency proceeding.

(3) Nothing in this Subsection shall limit any rights of the receiver or a guaranty association that may otherwise exist pursuant to applicable law to obtain reimbursement from insureds for claims payments made by the guaranty association under policies of the insurer or for the guaranty association's related expenses, including but not limited to those provided for in R.S. 22:2061.1, or existing under similar laws of other states.

E.(1) The receiver shall collect reimbursements owed for deductible claims as provided for in this Section, and shall take all commercially reasonable actions to collect the reimbursements. The receiver shall promptly bill insureds for reimbursement of deductible claims that are any of the following:

(a) Paid by the insurer prior to the commencement of delinquency proceedings.

(b) Paid by a guaranty association upon receipt by the receiver of notice from a guaranty association of reimbursable payments.

(c) Paid or allowed by the receiver.

(2) If the insured does not make payment within the time specified in the large deductible policy, or within sixty days after the date of billing if no time is specified, the receiver shall take all commercially reasonable actions to collect any reimbursements owed.

(3) Neither the insolvency of the insurer, nor its inability to perform any of its obligations under the large deductible policy, shall be a defense to the insured's reimbursement obligation under the large deductible policy.

(4) Any contract, counter letter, or other agreement between the insurer and the insured that in any manner seeks to reduce or eliminate the insured's obligation to reimburse the insurer for the deductible shall be null and void as against public policy and shall not be eligible to be used by the insured as a defense to the efforts by the receiver or guaranty association to collect any unpaid deductible.

(5) Except for gross negligence, an allegation of improper handling or payment of a deductible claim by the insurer, the receiver, or any guaranty association shall not be a defense to the insured's reimbursement obligations under the large deductible policy.

F.(1) Subject to the provisions of this Subsection, the receiver shall use collateral, when available, to secure the insured's obligation to fund or reimburse deductible claims or other secured obligations or other payment obligations. A guaranty association shall be entitled to collateral as provided for in this Subsection to the extent needed to reimburse a guaranty association for the payment of a deductible claim. Any distributions made to a guaranty association pursuant to this Subsection shall not be treated as distributions pursuant to R.S. 22:2025 or as early access payments pursuant to R.S. 22:2008(C), 2034, and 2037.

(2) All claims against the collateral shall be paid in the order received and no claim of the receiver, including those described in this Subsection, shall supersede any other claim against the collateral as provided for in Paragraph (4) of this Subsection.

(3) The receiver shall draw down collateral to the extent necessary in the event that the insured fails to do any of the following:

(a) Perform its funding or payment obligations under any large deductible policy.

(b) Pay deductible claim reimbursements within the time specified in the large deductible policy or within sixty days after the date of the billing if no time is specified.

(c) Pay amounts due to the estate for preliquidation obligations.

(d) Timely fund any other secured obligation.

(e) Timely pay expenses.

(4) Claims that are validly asserted against the collateral shall be satisfied in the order in which the claims are received by the receiver. However, if more than one creditor has a valid claim against the same collateral and the available collateral, along with billing collection efforts and to the extent that the collateral is subject to other known secured obligations, are together insufficient to pay each creditor in full, the receiver may prorate payments based on the ratio of the amount of claims each creditor has to the total claims paid by all the creditors.

(5) Excess collateral may be returned to the insured as determined by the receiver after a periodic review of claims paid, outstanding case reserves, and a factor for incurred but not reported claims.

G. The receiver may deduct from the collateral or from the deductible reimbursements reasonable and actual expenses incurred in connection with the collection of the collateral and deductible reimbursements.

H. This Section shall not limit or adversely affect any rights or powers a guaranty association may have pursuant to applicable state law to obtain reimbursement from certain classes of policyholders for claims payments made by the guaranty association under policies of the insolvent insurer, or for related expenses the guaranty association incurs.

## Missouri

**HB 1137** amends **section 285.500** and adds new **section 285.517** to the Missouri Annotated Statutes to read:

**285.500. Definitions.**—For the purposes of sections 285.500 to ~~285.515~~ 285.517 the following terms mean:

(1) “Employee”, any individual who performs services for an employer that would indicate an employer-employee relationship ~~in satisfaction of the factors in IRS Rev. Rule 87-41, 1987-1 C.B.296.~~ , unless the individual satisfies the independent contractor requirement under section 285.517;

...

**285.517. 1.** Any person who performs work for any employer and satisfies all of the following criteria shall be considered an independent contractor:

(1) The person has signed a written contract with the employer that states the employer’s intent to retain the services of the person as an independent contractor and contains acknowledgments that the person understands that he or she is:

(a) Providing services for the employer as an independent contractor;

(b) Not going to be treated as an employee of the employer;

(c) Not going to be provided by the employer with either workers’ compensation benefits under chapter 287 or unemployment compensation benefits under chapter 288;

(d) Obligated to pay all applicable federal and state income taxes, if any, on any moneys earned pursuant to the contractual relationship, and that the employer will not make any tax withholdings from any payments from the employer; and

(e) Responsible for the majority of supplies and other variable expenses that he or she incurs in connection with performing the contracted services unless:

a. The expenses are for travel that is not local;

b. The expenses are reimbursed under an express provision of the contract; or

c. The supplies or expenses reimbursed are commonly reimbursed under industry practice;

(2) The person has filed, intends to file, or is contractually required to file, in regard to the fees earned from work, an income tax return with the Internal Revenue Service for a business or for earnings from self-employment;

(3) The person provides his or her services through a business entity including, but not limited to, a partnership, limited liability company, or corporation, or through a sole proprietorship;

(4) The person has the right to control the manner and means by which the work is to be accomplished, even though he or she may not have control over the final result of the work, provided that the employer may provide orientation, information, guidance, or suggestions about the employer’s products, business, services, customers, and operating systems, and training otherwise provided by law; and

(5) The person satisfies five or more of the following:

(a) The person controls the amount of time personally spent providing services, provided that an agreement may be made with the employer relating to the final completion or final delivery time or schedule, range of hours, or the time entertainment is to be presented if the work contracted for is entertainment;

(b) The person has control over where the services are performed, except in the case of services that can only be performed at certain locations;

(c) The person is not required to work exclusively with one employer, unless:

a. A law, regulation, or ordinance prohibits the person from providing services to more than one employer; or

b. A license or permit that the person is required to maintain in order to perform the work limits the person to working for only one employer at a time and requires identification of the employer;

(d) The person is free to exercise independent initiative in soliciting others to purchase his or her services;

(e) The person is free to hire employees or to contract with assistants, helpers, or substitutes to perform all or some of the work;

(f) The person cannot be required to perform additional services without a new or modified contract;

(g) The person obtains a license or other permission from the employer to utilize any workspace of the employer in order to perform the work for which the person was engaged;

(h) The employer has been subject to an employment audit by the Internal Revenue Service and the Internal Revenue Service has not reclassified the person to be an employee or has not reclassified the category of workers to be employees; and

(i) The person is responsible for maintaining and bearing the costs of any required business licenses, insurance, certifications, or permits required to perform services.

2. No employer shall be required to classify a person who is considered an independent contractor under subsection 1 of this section as an employee, provided that the employer may choose to hire and classify such person as an employee at any time.

3. No political subdivision of the state shall enact, establish, mandate, or otherwise implement any law, ordinance, or regulation in conflict with the provisions of this section.

## North Carolina

**HB 520** amends **section 97-53** and adds new **section 97-53.1** to the North Carolina Workers’ Compensation Act to read:

**§ 97-53. Occupational diseases ~~enumerated, when due to exposure to chemicals.~~ enumerated.**

(a) Occupational Diseases Due to Exposure to Chemicals.—The following diseases and conditions only shall be deemed to be occupational diseases within the meaning of this Article:

...

(6) Lead poisoning.—~~Provided poisoning if the employee shall have been~~ was exposed to the hazard of lead poisoning for at least 30 days in the preceding ~~12 months' period; and, provided further, only~~ 12-month period. Only the employer in whose employment such employee was last injuriously exposed shall be liable.

...

(b) Occupational Diseases of Firefighters.—Any condition or impairment of health caused by any of the following types of cancers shall be deemed to be occupational diseases of firefighters within the meaning of this Article:

(1) Esophageal.

(2) Intestinal.

(3) Rectal.

(4) Testicular.

(5) Brain.

(6) Non-Hodgkin's lymphoma.

(7) Multiple myeloma.

(8) Mesothelioma.

(9) Oral cavity.

#### **§ 97-53.1. Compensability of firefighter occupational diseases.**

(a) Findings.—The General Assembly finds that:

(1) Firefighting is a particularly hazardous occupation that requires firefighters to work under constantly changing and often unstable environments.

(2) Firefighters are routinely exposed to hazardous agents such as carbon monoxide, carcinogens, particulate matter, and a broad array of other toxic chemicals generated from the smoke of burning materials.

(3) Firefighters as a class face an increased risk of certain cancers as a result of their duties and responsibilities toward the general public.

(b) Intent.—Recognizing that firefighting is a hazardous occupation that is essential to protecting the personal safety of the citizens of this State, it is in the interest of the public and the welfare of those who perform firefighting activities to ensure that firefighters are adequately compensated for injuries, illnesses, and deaths that are causally related to their firefighting activities. Therefore, it is the intent of the General Assembly to presume that the diseases specified in G.S. 97-53(b) are occupationally related to firefighting for the purpose of determining eligibility for compensation under the Workers' Compensation Act.

(c) Definitions.—The following definitions apply in this section:

(1) Disability.—Incapacity because of an occupational disease described in G.S. 97-53(b) to earn the wages that the firefighter was receiving at the time of manifestation of the occupational disease.

(2) Firefighter.—A paid, partially paid, or volunteer member of a fire department of a unit of local government.

(d) Presumed Eligibility.—A firefighter shall be presumed eligible for compensation for occupational disease under this Article if either of the following sets of conditions is met:

(1) The firefighter was required to submit to a physical examination upon entering the service of the unit of local government as a firefighter, the examination failed to reveal any evidence of a firefighter occupational disease described in G.S. 97-53(b), and the firefighter has completed at least five years of service as a firefighter for the unit of local government.

(2) The firefighter was not required to submit to a physical examination upon entering the service of the unit of local government as a firefighter and, at the time of disability by an occupational disease described in G.S. 97-53(b), the firefighter has completed at least five years of continuous service immediately preceding January 1, 2017, as a firefighter for the unit of local government.

(e) Burden of Rebuttal.—In the case of a firefighter occupational disease described in G.S. 97-53(b), the unit of local government has the burden of proving, by a preponderance of competent evidence, that the condition was caused by some means other than the firefighter's occupation in order to disqualify the firefighter from receiving compensation for occupational disease pursuant to this section.

(f) Applicability.—This section applies to firefighters of units of local government only.

**HB 520** also includes the following language:

This act is effective when it becomes law and applies to claims for workers' compensation benefits filed on or after that date.

**HB 622** amends **section 97-53** of the North Carolina Workers' Compensation Act to read:

#### **§ 97-53. Occupational diseases enumerated; when due to exposure to chemicals.**

The following diseases and conditions only shall be deemed to be occupational diseases within the meaning of this Article:

...

(30) Special provisions for employment-related occupational diseases of first responders.—The following provisions apply in determining eligibility of a first responder for compensation benefits under this Article:

- a. The term “first responder,” as used in this section, means a law enforcement officer, a firefighter, or an emergency medical technician or paramedic employed by State or local government. The term also includes a volunteer firefighter meeting the requirement of G.S. 58-84-5(3a).
- b. For the purposes of this section, posttraumatic stress disorder, as described in the Diagnostic and Statistical Manual of Mental Disorders, Current Edition, published by the American Psychiatric Association, suffered by a first responder without other injury is a compensable occupational disease that arises out of employment as a first responder and arises out of injuries that are characteristic of and peculiar to a particular trade, occupation, process, or employment if (i) the posttraumatic stress disorder resulted from the first responder acting within the course of his or her employment and (ii) the first responder is examined and subsequently diagnosed with such disorder by a licensed psychiatrist or licensed psychologist who establishes within a reasonable degree of medical certainty that the posttraumatic stress disorder is a result of employment activities.
- c. The disorder must be demonstrated by a preponderance of medical evidence demonstrated by a licensed psychiatrist or licensed psychologist.
- d. An employing agency of a first responder, including volunteer first responders, must provide educational training related to mental health awareness, prevention, mitigation, and treatment.

## Texas

**HB 741** amends *sections 404.109* and *408.183* of the Texas Workers’ Compensation Act to read:

**Sec. 404.109. Injured Employee Rights; Notice**

- (a) The public counsel shall adopt, in the form and manner prescribed by the public counsel and after consultation with the commissioner of workers’ compensation, a notice of injured employee rights and responsibilities to be distributed by the division as provided by commissioner or commissioner of insurance rules.
- (b) The notice adopted under Subsection (a) must inform an injured employee that the employee has the right to choose a treating doctor, including a doctor of medicine, osteopathic medicine, optometry, dentistry, podiatry, or chiropractic who is licensed and authorized to practice.
- (c) A right or responsibility included in the notice adopted under Subsection (a) ~~this section~~ must be consistent with the requirements of this subtitle and division rules.
- (d) This section may not be construed as establishing an entitlement to benefits to which the claimant is not otherwise entitled under this subtitle.

**Sec. 408.183. Duration of Death Benefits.**

- ...
- (b) An eligible spouse is entitled to receive death benefits for life or until remarriage. On remarriage, the eligible spouse is entitled to receive 104 weeks of death benefits, commuted as provided by commissioner rule.
- (b-1) Notwithstanding Subsection (b), an eligible spouse who remarried is eligible for death benefits for life if the employee was a first responder, as defined by Section 504.055, or an individual described by Section 615.003(1), Government Code, or Section 501.001(5)(F) of this code, who suffered death in the course and scope of employment or while providing services as a volunteer. This subsection applies regardless of the date on which the death of the first responder or other individual occurred.
- ...

**HB 741** also includes the following language:

The public counsel of the office of injured employee counsel shall adopt the notice required under Section 404.109, Labor Code, as amended by this Act, not later than December 1, 2019.

The change in law made by this Act to Section 408.183(b-1), Labor Code, applies only to an eligible spouse who remarries on or after the effective date of this Act. An eligible spouse who remarried before that date is governed by the law as it existed immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

### BILLS VETOED BY GOVERNOR

The following workers compensation-related bill was vetoed by the governor within the one-week period ending May 3, 2019.

## Oklahoma

**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
- Included in NCCI’s May 3, 2019 *Legislative Activity Report* (RLA-2019-16)
- Vetoed by the governor on May 1, 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.

#### **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.

<b>State</b>	<b>State Relations Executive</b>	<b>Phone Number</b>
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
AR, TX	Terri Robinson	501-333-2835
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.