Research BULLETIN

Prepared by UWC – Strategic Services on Unemployment & Workers' Compensation
Published by the National Foundation for Unemployment Compensation & Workers' Compensation

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STATE WORKERS' COMPENSATION LEGISLATION AND RELATED CHANGES ADOPTED IN 2012

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AUGUST 2013

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Executive Summary

This report details significant changes in 2012 to state workers' compensation laws and administrative rules. Medical exams, medical costs, employer rates and adjudication continue to be the primary areas of concern. An area of increasing concern relates to prescription drug abuse. The extended list of changes categorized by issue and state is provided below as a handy reference. A detailed summary of the legislative and administrative changes in the 50 states, District of Columbia, Puerto Rico and the U.S. Virgin Islands follows.

Claim Procedures, Adjudication, Appeals, Arbitration, Mediation, Settlements, Attorney Fees

AZ, AK, CT, GA, HI, IL, IN, LA, ME, MD, MA, MS, NE, NM, NY, ND, OK, OR, SC, TN, TX, VA, WA

Classification of Workers, Electronic Benefit Payments, Exemptions

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AK, CO, CT, DE, FL, GA, LA, MT, NC, OK, VA

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AR, CA, GA, ME, MD, MA, MS, OH, OR, TN, VA, WI

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CA, LA, ME, MT, ND, OH, OR, TN, UT, VT, WA, WI

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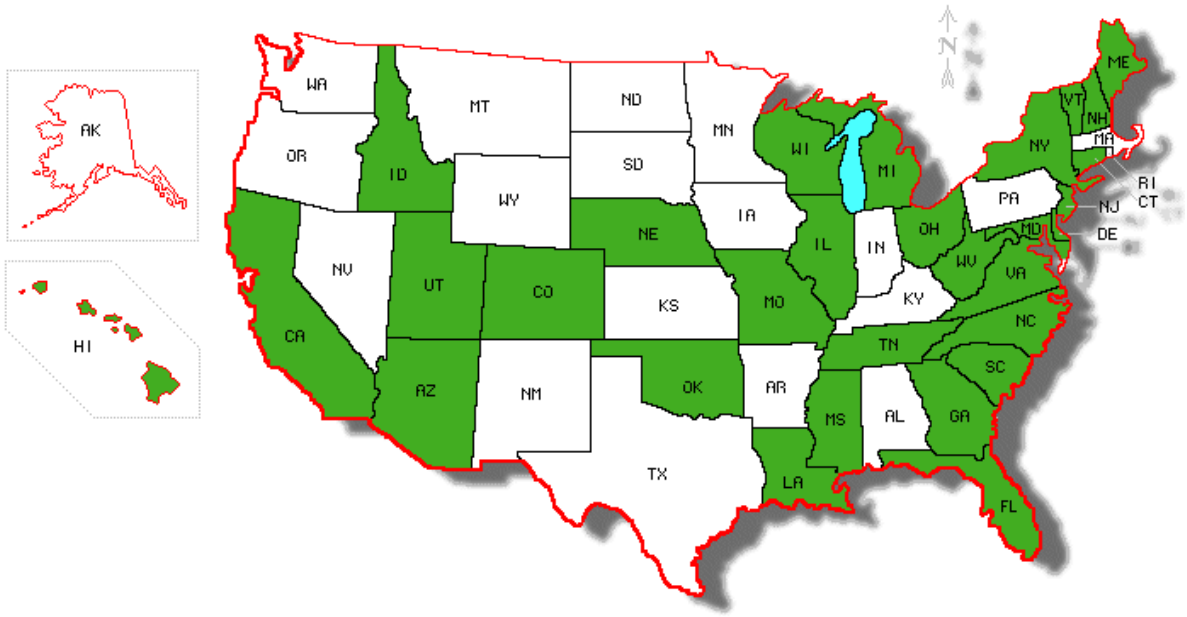
AZ, CO, FL, IL, MI, MS

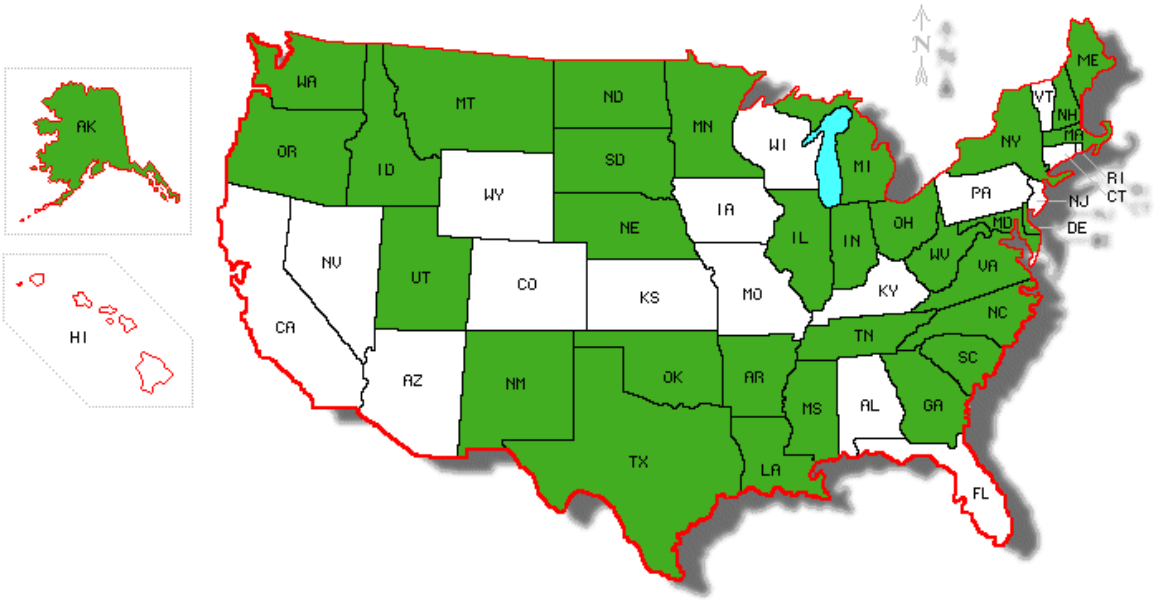
Intentional Torts, Negligence Actions, Exclusive Remedy

AZ, MO

States that enacted statutory workers' compensation changes in 2012



States that made administrative rule changes in 2012



ALABAMA

– *No Changes Were Made in 2012*

Legislation: None

Administrative Changes: None.

ALASKA

– *Made Administrative Changes*

Legislation: None.

Administrative Changes:

- **Register 201** – Effective March 28, 2012. The rule: (1) provides that a hearing officer may hear and decide certain procedural and stipulated matters without a board panel; (2) re-adopts the provisions and procedure for cancelling or continuing a hearing before the Alaska Workers' Compensation Board; and (3) conforms references to physician reports amended December 22, 2011. Click here for a copy of register 201.

- **Register 203** – Effective July 13, 2012. This rule amended Alaska Regulation 8 AAC 55.010 – 8 AAC 55.900, pertaining to the administration of the Alaska Commercial Fishermen's Fund, and appeals to the Alaska Fishermen's Fund Advisory and Appeals Council. Click here for a copy of register 203.

- **Register 204** – Effective December 2, 2012. This rule amended Alaska Regulation 8 AAC 45.065, 45.138 and 45.174, by: (1) providing that a board designee may reconsider their decision on a discovery order within 10 days of the order; (2) changing the method by which the department chooses an organization to provide cost-of-living data; and (3) providing for the procedure by which the division director may issue a stop-work-order against employers who have failed to carry workers' compensation insurance. Click here for a copy of Register 204.

ARIZONA

– *Amended Statute*

Legislation:

- **HB 2155** was signed by Arizona Governor Jan Brewer on April 3, 2012. The bill: (1) allows an independent medical exam (IME) physician to disclose data obtained from the Arizona State Board of Pharmacy's Controlled Substances Prescription Monitoring Program to the employee, employer, insurance carrier, and the Industrial Commission; and (2) clarifies that an interested party to a workers' compensation claim may request an IME physician both request, and report the results of an injury to the Arizona State Board of Pharmacy's Controlled Substances Prescription Monitoring Program. Click here for a copy of HB 2155.

- **HB 2368** was signed by Arizona Governor Jan Brewer on April 11, 2012. The bill: (1) allows a workers' compensation claimant to pursue a remedy against another person whose negligence or wrong further aggravates the employee's existing industrial injury; (2) changes the specific index used to adjust the maximum average monthly wage from the "Arizona mean wage" to the "employment cost index"; and (3) adds a new section titled "evidence-based medical treatment guidelines." Click here for a copy of HB 2368.

- **SB 1016** was signed by Arizona Governor Jan Brewer on March 13, 2012. The bill: (1) removes the language that prohibited marketing representatives of the State Compensation Fund from being licensed to sell any insurance other than workers' compensation insurance; and (2) allows an employee to elect payment of workers' compensation benefits using electronic fund transfers and prepaid debit cards in addition to a negotiable instrument. Click here for a copy of SB 1016.

Administrative Changes: None.

ARKANSAS

– Made Administrative Changes

Legislation: None.

Administrative Changes:

There were two advisory updates and one new advisory issued by the Arkansas Workers' Compensation Commission.

- **Advisory 2000-1** – The first advisory update was issued on October 30, 2012 and titled "AWCC Advisory 2000-1, *Update*, Weekly Workers' Compensation Rates for 2013 in Arkansas." This advisory sets the weekly maximum workers' compensation rates for 2013. The maximums in 2013 are $602.00 for Total Disability (TD) and $452.00 for Permanent Partial Disability (PPD). For injury or death on and after January 1, 2013, through December 31, 2013, the *maximum* for workers' compensation weekly indemnity benefits is based on 85% of the state Average Weekly Wage (AWW) of $707.91. The AWW is determined by the Department of Workforce Services and is used by the Arkansas Workers' Compensation Commission to calculate compensation rates for injured workers. For TD in 2013, workers get 66 2/3% of their individual AWW, rounded to the nearest whole dollar, up to a *maximum* of $602.00 (85% of $707.91 = $601.72, which rounds off to $602.00). For PPD in 2013, *if TD is $205.35 or greater*, the PPD maximum is 75% of TD, rounded to the nearest whole dollar, up to $452.00 (75% x $602.00 = $451.50, which rounds off to $452.00). *If TD is less than $205.35*, PPD is 66 2/3% of the worker's AWW, up to a $154.00 maximum. The *minimum* weekly PPD and TD rate is $20. The PPD rate for amputation or permanent total loss of use of a member is the same as the employee's TD rate. Click here for a copy of the 2000-1 Update.

- **Advisory 2007-1** – The second advisory update was issued on October 30, 2012 and titled "AWCC Advisory 2007 – 1, *Update*, D&PTD Threshold." This advisory increases the Death and Permanent Disability threshold. In 2007, the threshold was raised from seventy-

five thousand dollars ($75,000) at which the Death and Permanent Disability Trust Fund assumes payments of benefits for injuries resulting in permanent disability or death. The act raising the threshold from $75,000 eliminated the $75,000 cap on weekly benefits paid by the employer or its insurance carrier for injuries occurring on or after January 1, 2008. For injuries occurring prior to January 1, 2008, the $75,000 limit on employer/carrier liability still applies. For injuries occurring on or after January 1, 2008, the employer or its carrier is required to pay weekly benefits for death or permanent total disability not to exceed three hundred twenty-five (325) times the maximum total disability rate at the time of the injury. The maximum total disability rate for 2013 has been determined to be $602.00. Thus, the threshold at which the Death and Permanent Disability Trust Fund will assume payments of benefits for injuries resulting in permanent disability or death for 2013 (1/1 through 12/31) will be $195,650 ($602 x 325 = $195,650). Click here for a copy of the 2007-1 Update.

- **Advisory 2012-1** – The third advisory was issued on December 17, 2012 and is titled "AWCC Advisory 2012-1, Payment Methods for Workers' Compensation Benefits." The purpose of this Advisory is to allow claimants the convenience of choosing how they would like to receive the payment of their benefits. Electronic payment methods may not be implemented if it would result in any fees or an undue burden upon the claimant. Click here for a copy of the advisory.

CALIFORNIA

– Amended Statute

Legislation:

- SB 863 was signed by California Governor Jerry Brown on September 19, 2012. The goals of SB 863 are to improve injured employees' access to medical care, increase benefits, avoid delays and disputes, and reduce costs for employers. The bill: (1) strengthens requirements of medical provider networks to ensure employees' access to medical treatment; (2) establishes a new independent medical review process to resolve disputes between the employee and claims administrator over necessity of treatment recommended by a physician; (3) increases minimum permanent disability benefits paid to low-wage employees and maximum permanent disability benefits paid to higher-wage employees; (4) multiplies all impairment ratings by an adjustment factor of 1.4; (5) restricts or eliminates increased permanent disability benefits for sleep disorder, sexual dysfunction, or psychiatric injury resulting from a physical injury; (6) establishes a supplemental payment program for employees whose permanent disability benefits are disproportionately low compared to their wage loss; (7) simplifies and expedites supplemental job displacement benefits; (8) increases payable burial expenses for injuries resulting in death; (9) authorizes adoption of fees for services of medical practitioners based on the resources required to provide the services; (10) reduces fees for services performed in

ambulatory surgical centers; (11) authorizes adoption of fees for copy services, interpretation services, home care services, vocational experts, and implantable spinal hardware; (12) allows for expedited adjudication of disputes over the authorized medical provider; (13) streamlines the process of selecting a medical evaluator for disputes not subject to independent medical review; (14) establishes a new independent bill review process to resolve disputes over amount of payment for medical or medical-legal services; (15) establishes fees for the filing or activation of liens; (16) restricts assignments of liens; (17) increases state oversight of public sector self-insured employers; and (18) requires disclosure of financial interests in other entities providing services. Click here for a copy of SB 863.

Administrative Changes: None.

COLORADO

– Amended Statute

Legislation:

- **SB 12-110** was signed by Colorado Governor John Hickenlooper on May 3, 2012 and became effective on July 1, 2012. The bill: (1) directs the Commissioner of Insurance to establish a two-tiered surcharge on insurers to finance the Insurance Fraud Cash Fund; (2) states that appropriations from the fund are made to the Department of Law for the investigation and prosecution of insurance fraud; (3) requires the two-tiered fee schedule be based on the prior year's written premiums, gross contract funds and charges received in Colorado; (4) states that entities collecting more than one million dollars will pay one fee and those collecting one million dollars or less will pay a lesser fee, but that the fee is not to exceed three thousand dollars and is payable on March 1 of each year; and (5) states that the intent is to provide greater parity to insurers in the investigation and prosecution of fraud by the Office of the Attorney General. Click here for a copy of SB 12-110.

- **HB 12-1033** was signed by Colorado Governor John Hickenlooper on March 22, 2012. The bill applies to fines resulting from compliance audits of workers' compensation insurers and self-insured pools on or after August 8, 2012. The bill: (1) precludes the imposition of penalties by the Director when the Division determines, as part of a compliance audit, that an insurer failed to timely report an injury, occupational disease or death because the insurer did not have notice or knowledge which would have allowed reporting within the time specified by statute; and (2) does not preclude penalties where, as part of a compliance audit, the Director determines that late reporting did not result from a lack of notice or knowledge of an injury by the insurer, but instead, constituted a knowing or repeated pattern of non-compliance with statutory reporting requirements. Click here for a copy of HB 12-1033.

- **HB 12-1120** was signed by Colorado Governor John Hickenlooper on March 19, 2012. The bill applies to the administration of programs within the Unemployment Insurance and Employment and Training Divisions occurring on or after August 8, 2012. The bill substitutes statutory references to the Division of Employment and

Training in the Workers' Compensation Act, to reflect activities re-assigned to the newly created Division of Unemployment Insurance (UI). Click here for a copy of HB 12-1120.

- **HB 12-1311** was signed by Colorado Governor John Hickenlooper on June 8, 2012 and became effective on July 1, 2012. The bill updates the statutory reference on controlled substances that was re-codified under the laws governing manufacture, distribution and dispensing of prescription drugs and controlled substances, but the definition of "controlled substance" was unchanged. Click here for a copy of HB 12-1311.

Administrative Changes: None.

CONNECTICUT

– Amended Statutes

Legislation:

- **SB 353** (Public Act 12-77) was signed by Governor Dannel P. Malloy on June 6, 2012 (effective October 1, 2012). The bill: (1) allows the Second Injury Fund to request that a Workers' Compensation Commissioner issue a "writ of attachment" to seize an employer's property to secure payments from the Fund; (2) applies when (a) a person has filed a workers' compensation claim, (b) the employer has not satisfied the requirement to carry insurance or demonstrate other means of paying workers' compensation claims, and (c) it appears the situation may require payment from the Second Injury Fund; and (3) clarifies that the Treasurer has the authority to settle claims by way of stipulation including claims by an employer or insurer. Click here for a copy of SB 353.
- **HB 5233** (Public Act 12-126) was signed by Governor Dannel P. Malloy on June 15, 2012 (effective June 15, 2012). This bill: (1) extends workers' compensation coverage for mental or emotional impairment to a firefighter diagnosed with post-traumatic stress disorder (PTSD) because the firefighter witnessed the death of another firefighter while engaged in the line of duty; (2) stipulates to be eligible, the firefighter (a) must be diagnosed by a licensed and board certified mental health professional who determines the PTSD stems from witnessing the death of another firefighter, and (b) is not subject to any other exclusion under workers' compensation law; (3) extends this coverage to volunteer and paid uniformed municipal firefighters; and (4) limits the workers' compensation benefits to treatment from a practicing psychologist or psychiatrist on an approved list established by the Workers' Compensation Commission and does not provide wage replacement benefits. Click here for a copy of HB 5233.
- **HB 5365** (Public Act 12-133) was signed by Governor Dannel P. Malloy on June 15, 2012 (effective October 1, 2012). This bill provides that the Office of Victim Services may now seek reimbursement from additional sources, including payments from state or municipal agencies, insurance benefits, or workers' compensation awards, by filing a lien for two-thirds of the amount of reimbursement of money an applicant for victim compensation wins in a suit against those responsible for the injury or death for which compensation was granted. Click here for a copy of HB 5365.

Administrative Changes: None.

DELAWARE

– Amended Statute and Made Administrative Changes

Legislation:

- **SB 238** was signed by Delaware Governor Jack Markell on August, 7, 2012. This bill changes the fee schedule methodology for hospitals and ambulatory surgery centers – to update the percent of charge paid each year based on a comparison to the change in the CPI-U, Medical, as published by the U.S. Bureau of Labor Statistics, with the prior fiscal year rate change for each ambulatory surgery center (ASC) and hospitals as one entity. The DE Healthcare Association (DHA), on behalf of DE hospitals, and ASCs submit reports to the DE Dept. of Labor (DOL), who uses an independent "fiscal advisor" to verify the validity of the reports and establish the new percent of charge rate. The hospital percent of charge (POC) begins at 80 POC with certain exemptions (emergency personnel and emergency services performed outside a hospital setting), and the ASC percent of charge (POC) begins at 85 POC. Both base rates will cumulatively raise or lower each year based on this comparison. The first reports were due 10/31/12 and the first fee schedule rate change occurred on 1/31/13. The failure of ASC's or hospitals (through the DHA) to comply with the requirements in the statute "shall result in the nonpayment of charges during the period of noncompliance." Click here for a copy of SB 238.

Administrative Changes:

- Amended **Regulation 19 DE Admin. Code 1341** (Introduction and Fee Schedule Guidelines) Effective June 11, 2012 – This regulation was changed to include the injured worker's attorney of record in the distribution list for utilization review determinations. Click here for a copy of Regulation 19 DE Admin. Code 1341.

DISTRICT OF COLUMBIA

– No Changes Were Made in 2012

Legislation: None.

Administrative Changes: None.

FLORIDA

– Amended Statute

Legislation:

- **SB 140** was signed by Florida Governor Rick Scott and became effective on July 1, 2012. The bill repeals the statutory provision which requires the Department of Financial Services (DFS) to compile an annual written report on the administration of Florida's Workers' Compensation Law and submit copies of the annual report to the Legislature and the Governor. The Division of Workers'

Compensation within DFS is responsible for preparing this report. Information contained in the annual report is available on the DFS website. Click here for a copy of SB 140.

- **HB 941** was signed by Florida Governor Rick Scott and became effective on July 1, 2012. The bill provides that upon the expiration of the term of a commercial lines insurance policy, the insurer may transfer the policy to another authorized insurer that is a member of the same group or owned by the same holding company. This type of transfer would be treated as a renewal of the policy, rather than a cancellation or nonrenewal. The insurer is required to provide at least 45 days' notice of its intent to transfer, along with the financial rating of the insurer to which the policy is being transferred. The notice may be provided in the notice of renewal premium. The bill creates a streamlined exemption process for construction and non-construction corporate officers and members of a limited liability company (LLC) by requiring both to elect to be exempt (opt-out) from consideration as an employee for workers' compensation purposes. Presently, Florida employers are required to maintain workers' compensation coverage for "employees." In the construction industry, corporate officers and members of a LLC who are at least 10 percent owners of the corporation or LLC may elect to be exempt (opt-out). In contrast, full-time sole proprietors or partners not engaged in the construction industry may include themselves in the definition of "employee" by mailing a notice of election (opt-in). There is no ownership requirement for non-construction industry exemptions. If no notice is made, the sole proprietor or partner engaged in a non-construction business is not considered an employee and is not eligible for workers' compensation benefits. Current law also provides that full-time members of a non-construction LLC are not currently afforded such an opt-in provision. The bill removes the requirement for workers' compensation insurers to refund excess profits to businesses they insure in the form of cash or credit, as determined by the Office of Insurance Regulation (OIR). Under current law, an excess profit is triggered when an insurer's underwriting gain is greater than the anticipated profit, plus 5 percent, for the 3 most recent calendar years. The bill eliminates the mandatory onsite premium audits of policyholders if a workers' compensation insurer meets certain financial requirements. This change will provide insurers with flexibility to implement risk-based audits. The bill authorizes the Office of Insurance Regulation to expend funds within existing resources for professional development of its employees. Click here for a copy of HB 941.
- **HB 1205** was signed by Florida Governor Rick Scott and became effective on July 1, 2012. The bill amends drug-free workplace provisions concerning state agency employees and concerning employers and employees covered under the Workers' Compensation Law. It authorizes state agencies to conduct random drug testing on all employees every three months. Employees to be tested must be chosen via a computer-generated random sampling by an independent third party, and each sample may not constitute more than ten percent of the total employee population. Agencies may also administer drug tests to all job applicants. Drug testing must be conducted within each agency's

appropriation. The bill also revises provisions related to discipline and management of state agency employees with positive drug tests. An agency may discipline or terminate the employment of any employee who receives a first-time positive drug test. If the employee is not discharged, the employer may refer him or her to an employee assistance program or alcohol and drug rehabilitation program, in which he or she may participate at personal expense or at the expense of a health insurance plan. The employer must determine whether the employee is able to safely and effectively perform assigned job duties while participating in such programs, and if the employee is deemed unable to do so, he or she must be placed in a job assignment which can be performed during that time or placed on leave status. Certain employees, such as those who carry firearms or work with children, are automatically considered to be unable to perform their duties while participating in employee assistance programs or alcohol and drug rehabilitation programs. In provisions relating to employees and employers covered by the Workers' Compensation Law, the bill replaces references to "safety-sensitive" positions with "mandatory-testing" positions and provides a definition for "mandatory-testing." The bill states that employers who maintain drug-free workplace programs which exceed statutory standards are still entitled to receive insurance discounts. The requirement that random drug testing provisions must be specified in collective bargaining agreements before such testing is implemented is deleted. The bill also provides for the drug testing of all Department of Corrections job applicants and for random testing of corrections employees in mandatory-testing positions. Click here for a copy of HB 1205.

- **HB 1277** was signed by Florida Governor Rick Scott and became effective on July 1, 2012. The bill eliminates the requirement that OFR provide a 15-day advance notice to money services business licensees prior to conducting an examination or investigation. This change reduces the opportunity for hiding, destroying, or otherwise tampering with records and materials which may be pertinent to OFR's examination or investigation. While retaining the requirement that each licensee be examined at least once every 5 years, the bill eliminates the requirement that OFR conduct an examination of a business within 6 months of the business becoming licensed. This will provide greater flexibility to OFR by permitting use of its resources in a more targeted manner. Both changes reduce the predictability of when a business may be examined. The bill requires that a check cashing business deposit payment instruments into its own commercial account at a federally insured financial institution and deletes the authorization to sell payment instruments within 5 business days after acceptance. Audit trails and tracking of moneys are facilitated by requiring that the deposit of all payment instruments be made into the business's own account. Maintaining such an account is a prerequisite for continued operation. A licensee is required to notify OFR within 5 business days after it ceases to maintain a commercial depository account in its own name and, before resuming check cashing, must reestablish such an account and notify OFR that the account exists. The bill authorizes disciplinary action and

provides for penalties should a check casher fail to maintain a depository account in its own name, or fail to deposit all payment instruments into its own account. Possible disciplinary actions include denial, revocation, or suspension of a license. In addition, it provides a definition for "fraudulent identification paraphernalia" and specifies that possession and use of fraudulent identification paraphernalia is a prohibited act punishable as a felony of the third degree. The bill stipulates that a check casher may only accept or cash a payment instrument from a person who is the original payee or a conductor who is an authorized officer of the corporate payee named on the instrument's face. Acceptance and cashing of third-party checks is no longer authorized. The bill codifies the $5 fee, currently established by rule, which is linked to the direct cost of verifying such things as a customer's identity or employment. Click here for a copy of HB 1277.

GEORGIA

– *Amended Statute and Made Administrative Changes*

Legislation:

- **HB 548** was signed by Georgia Governor Nathan Deal on May 1, 2012. The bill changes the definition of employee to exempt individuals who are parties to a franchise agreement as set out by the Federal Trade Commission franchise disclosure rule. Click here for a copy of HB 548.
- **HB 971** was signed by Georgia Governor Nathan Deal on May 1, 2012. The bill: (1) provides that the board or any party to a settlement agreement may require that the settlement documents contain language which prorates the lump sum settlement over the life expectancy of the injured worker; (2) states that if payment due under an award is not paid within 20 days the 20% penalty may be excused by the board in the event the employer shows that the nonpayment was due to conditions beyond the control of the employer; (3) deletes the provision limiting appointment of conservators to 52 weeks; (4) increases the amount of settlement permitted when there is a board appointed conservator from $50,000.00 to $100,000.00 (settlements above this amount require a conservator appointed by the probate court or by any other court of competent jurisdiction); and (5) brings hearing loss criteria for claims within current scientifically accepted standards by including consideration of occupational hearing loss at four frequencies including 500, 1,000, 2,000 and 3,000 cycles per second. Click here for a copy of HB 971.

Administrative Changes:

The 2012 Rules, effective July 1, 2012, contain organizational, editorial, and substantive changes adopted by the Georgia State Board of Workers' Compensation. For detailed information regarding changes to a particular rule, please refer to the published version of the rule by clicking here.

- Rule 15(e) was amended to state that no portion of any settlement payment shall be designated as a medical expense except the amount specified in the approved stipulated settlement.
- Rule 15(h) was amended to state that the

Board may make a confidential informal inquiry regarding any settlement.

- Rule 15(m) was amended to permit the Board or any party to a settlement of $5,000.00 or more to require that settlement documents contain language which prorates the lump sum settlement over the life expectancy of the injured worker.
- Rule 108(b)(8) was amended to state that an attorney shall not receive an attorney's fee on any medical treatment or expenses required for an employee, unless the fee is assessed for unreasonable defense.
- Rule 102(d)(4) was amended to require the parties or attorneys to notify the Board or assigned administrative law judge if a ruling on a pending motion is no longer necessary or desired.
- Rule 202 was amended to clarify that the employee is required to provide written notice of the employee's intent to exercise the right to a one-time independent medical examination within 120 days of the employee's receipt of any income benefits.
- Rule 206 was amended to require that a WC-206 form include, in addition to supporting documentation, an explanation of any dispute.
- Rule 226 was amended to change all references to "guardian" and "guardianship" to "conservator" and "conservatorship" to conform to the legislative changes to O.C.G.A. §34-9-226.
- Rule 244 was amended to require that a WC-244 form include supporting documentation, including the policy/plan provision authorizing the provider to obtain reimbursement, and an explanation of any dispute.
- Rules 102 and 108 were amended to insert new Evidence Code citations that became effective January 1, 2013.

GUAM

– No Changes Were Made in 2012

Legislation:

NOTE: A legislative change occurred in 2011 that was not previously reported in the 2011 Workers' Compensation Research Bulletin because it was one small component of the larger operating budget. Public Law 31-077 originated in Substitute Bill No. 1 (2-S) which was passed by the Legislature on September 7, 2011 during the second special session of the 31st Legislature. The Legislature was called into special session by Governor Eddie Calvo on September 5, 2011, specifically to address the 2012 budget that was signed on September 20, 2011. The pertinent provision changed is noted below.

- **22 GCA 9104(j)** was amended to state that any person who is injured while performing service for the government of Guam as an employee under the authorized direction of a public officer or employee, and has been certified by the Worker's Compensation Program as such, *shall* be granted administrative leave with pay for the duration of time as deemed necessary by a licensed physician. The provision for full pay is only for Government of Guam personnel and not for the private sector on island. The previous provision limited payment from date of injury 60 days full pay and then TTD kicks in at up to $250.00 per week.

Administrative Changes: None.

HAWAII

– Amended Statute

Legislation:

- **HB 2584** was signed by Hawaii Governor Neil Abercrombie on July 6, 2012. The bill allows the director of labor and industrial relations to accept the notice of employer's workers' compensation insurance from approved third party agencies in a manner approved by the director. Click here for a copy of HB 2584.
- **HB 2099** was signed by Hawaii Governor Neil Abercrombie on July 6, 2012 (effective 7/1/12). The bill clarifies that attorney's fees may be included in costs that may be assessed against a party who brings, prosecutes, or defends a workers' compensation claim without reasonable ground. Click here for a copy of HB 2099.
- **SB 2833** was signed by Hawaii Governor Neil Abercrombie on June 26, 2012. The bill amends the definition of "employment" by clarifying the "domestic services" exclusion for services to persons with developmental and intellectual disabilities. Click here for a copy of SB 2833.
- **SB 2810** was signed by Hawaii Governor Neil Abercrombie on June 26, 2012. The bill amends the definition of "employment" to exempt aged and disabled recipients of home and community-based services authorized by the Department of Human Services and recipients of state-funded home and community-based services from having to provide workers' compensation, temporary disability insurance, and prepaid health care. Click here for a copy of SB 2810.

Administrative Changes: None.

IDAHO

– Amended Statute and Made Administrative Changes

Legislation:

- **HB 570** was signed by Idaho Governor C.L. Otter on March 29, 2012 (effective July 1, 2012). The bill, dubbed the "Peace Officer and Detention Officer Temporary Disability Act, provides a full salary to employees in certain dangerous occupations whom have been injured on the job. Click here for a copy of HB 570.

Administrative Changes:

- **Rule 170211-1102 – Security for Compensation – Self-Insured Employers** – The rule, effective March 29, 2012, governs self-insured employers, clarifies terms, provides a more detailed application process and outlines continuing reporting and security deposit requirements. Click here for a copy of Rule 170211-1102 rule.
- **Rule 170209-1102– Medical Fees** – This chapter contains medical fee provisions including the annual update for physician fee reimbursement effective July 1, 2012, and the methodology for reimbursement for hospitals and ambulatory surgery centers. Click here for a copy of Rule 170209-1102.

ILLINOIS

– Amended Statute And Made Administrative Changes

Legislation:

- **HB 1084** was signed by Illinois Governor Pat Quinn and became effective June 29, 2012 (Public Act 97-719). The bill provides that the Governor shall appoint arbitrators to three year terms to serve at the Commission and is subject to the advice and consent of the Senate. Previously, the appointment or reappointment of arbitrators was to be made by the ten-member Illinois Workers' Compensation Commission. Click here for a copy of HB 1084.

Administrative Changes:

- **50 Ill. Adm. Code 7110.90** – The rule, effective November 20, 2012, states that prescription drugs filled and dispensed outside of a licensed pharmacy that are repackaged must be reimbursed according to the National Drug Code of the original labeler. The rule change implements Section 8.2(a-3) of the Workers' Compensation Act, which provides that prescriptions filled and dispensed outside of a licensed pharmacy are to be reimbursed at the Average Wholesale Price as published in Medispan based on the National Drug Code for the drug.
- **50 Ill. Adm. Code 9140** – In accordance with the changes to Section 11 of the Workers' Compensation Act made by Public Act 97-18, the Commission promulgated rules for alcohol and drug testing following a workplace accident. The rules set forth the process for the collection of blood, urine, breath, and saliva, including requirements for documentation, transportation, and disposal of the samples collected, as well as associated records. The qualifications for those collecting samples are also defined. These rules were effective November 5, 2012.
- **50 Ill. Adm. Code 7030.30** – This rule change updates the Commission rule on the bases for disqualification of an arbitrator or commissioner. The changes reflect the standards of the Illinois Code of Judicial Conduct, which now governs the hearing and non-hearing conduct of arbitrators and commissioners. In addition, the rule change institutes a process for the filing of a petition to disqualify an Arbitrator or Commissioner. This rule change was effective on December 4, 2012.
- **50 Ill. Adm. Code 7500** – Part 7500 of the Commission's rules governs the procedures of the Commission Review Board, which is the body that evaluates complaints regarding the conduct of arbitrators and commissioners pursuant to Section 14.1 of the Workers' Compensation Act. The rule now requires the General Counsel of the Commission to evaluate all communications received and determine whether the communication is a complaint within the meaning of the rule. Any complaints will then be considered by the Board during its next regularly scheduled meeting. Other changes include the correction of outdated statutory references, typographical errors, and the clarification of confusing and redundant language. The changes to Part 7500 were effective December 4, 2012.

- **50 Ill. Adm. Code 7110.90** – The Commission's Medical Fee Schedule rule was updated to reflect the changes instituted by Public Act 97-18. The most significant changes to the rule include the 30% reduction to the Medical Fee Schedule effective September 1, 2011, a new reimbursement provision for medical implants, and a new provision for the reimbursement of out-of-state medical services. The rule now also reflects the inclusion of accredited Ambulatory Surgical Treatment Facilities in the Medical Fee Schedule and specifies the organizations providing accreditation.

INDIANA

– *Made Administrative Changes*

Legislation: None.

Administrative Changes:

- 631 IAC 1-1-32 –which provides specific direction to medical providers and the payers of their bills as to how and when such charges and inquires to those charges should be conducted.

- 631 IAC 1-1-33- which lays out how much the Worker's Compensation Board may charge for conducting mediations.

IOWA

– *No Changes Were Made in 2012*

Legislation: None.

Administrative Changes: None.

KANSAS

– *No Changes Were Made in 2012*

Legislation: None.

Administrative Changes: None.

KENTUCKY

– *No Changes Were Made in 2012*

Legislation: None.

Administrative Changes: None.

LOUISIANA

– *Amended Statute and Made Administrative Changes*

Legislation:

- **SB 520** (Act 793) was signed by Louisiana Governor Bobby Jindal on June 13, 2012 (effective August 1, 2012). The bill provides for death benefit awards to dependent children of deceased employee. Click here for a copy of SB 520.

- **HB 737** (Act 99) was signed by Louisiana Governor Bobby Jindal on May 11, 2012 (effective August 1, 2012). The bill provides for death benefit awards to living decedents of deceased employee. Click here for a copy of HB 737.

- **HB 1083** (Act 610) was signed by Louisiana Governor Bobby Jindal on May 11, 2012 (effective August 1, 2012). The bill provides that the employer is obligated to pay related medical expenses that would otherwise be required under the Workers' Compensation Act if an employee assigned to a work release program or a transitional work program is injured as a result of such work. Click here for a copy of HB 1083.
- **SB 430** (Act 783) was signed by Louisiana Governor Bobby Jindal on June 13, 2012 (effective August 1, 2012). The bill extends the developmental injury prescription exception from two years to up to three years from date of accident. Click here for a copy of SB 430.
- **SB 763** (Act 860) was signed by Louisiana Governor Bobby Jindal on June 14, 2012 (effective August 1, 2012). The bill: (1) provides that a Payor means that entity which is responsible for the payment of benefits or medical expenses incurred by the claimant as a result of an injury covered by the workers' compensation law; (2) provides that the injured employee who disagrees with any information provided on the notice of payment is to notify, in writing, the payor of the basis for disagreement and provide the amounts believed appropriate (3) provides that the preliminary determination shall be performed by the designee of the director of the office of workers' compensation and shall be a workers' compensation judge; (4) provides for a preliminary hearing for all representatives by phone; (5) provides that a payor who provides the compensation amounts due as recommended by the workers' compensation judge shall not be subject to any penalty and attorney fees regarding such calculation of the compensation due and payment provided with the revised notice of payment; (6) provides that an employer will pay reasonable expenses of the burial of the covered employee, who dies as a result of a work related injury, in an amount not to exceed $8,500 (up from $7,500); (7) requires supplemental earnings to be paid monthly; (8) provides that, in addition to any other benefits to which an injured employee may be entitled, any employee suffering an injury as a result of an accident arising out of and in the course and scope of his employment shall be entitled to a sum of $50,000 (up from $30,000), payable within one-year after the date of the injury; (9) provides that no compensation shall be paid for the first week after the injury is received provided that the disability from the injury continues for two (instead of six) weeks or longer after the date of the accident, compensation for the first week shall be paid after the first two (instead of six) weeks; and (10) provides that disputes over medical treatment pursuant to the medical treatment schedule shall be premature unless a decision of the medical director has been obtained. Click here for a copy of SB 763.
- **HB 298** (Act 76) was signed by Louisiana Governor Bobby Jindal on May 11, 2012 (effective August 1, 2012). The bill provides that the case manager or vocational rehabilitation counselor who communicates with the health care provider shall mail or e-mail, if authorized in writing by the employee or his representative, a written summary of the communication and any work restrictions or modifications required for the employee's reasonable return to employment to the employee, his representative, and the health care

provider within five working days. Click here for a copy of HB 298.

- **HB 931** (Act 141) was signed by Louisiana Governor Bobby Jindal on May 14, 2012 (effective August 1, 2012). The bill requires instead that upon receipt of the first report of injury from the employer, the insurer or the administrator of the employer's workers' compensation claims shall submit the data in electronic data interchange (EDI) format based on International Association of Industrial Accident Boards and Commissions (IAIABC) standards. Click here for a copy of HB 931.

- **HB 498** (Act 88) was signed by Louisiana Governor Bobby Jindal on May 11, 2012 (effective August 1, 2012). The bill: (1) provides that any payor responsible for the payment of the medical expenses incurred by a claimant as a result of a work related injury shall make his records available to the office of workers' compensation administration (OWCA) for review; (2) provides that the data will remain confidential and is not subject to subpoena or discovery in any legal proceeding; and (3) allows the director of the OWCA to review and reproduce the data at his discretion to verify that employers and claimants are free from fraudulent activities. Click here for a copy of HB 498.

- **SB 367** (Act 235) was signed by Louisiana Governor Bobby Jindal on May 22, 2012 (effective August 1, 2012). The bill: (1) defines "payor' and "utilization review company"; (2) provides that the payor may contract with a utilization review company to assist the payor in determining if the request for nonemergency diagnostic testing or treatment, in an amount which exceeds $750, is a medical necessity; and (3) removes the requirement that the request for an independent medical examination made at the behest of the director shall be made prior to the pretrial conference. Click here for a copy of SB 367.

- **SB 386** (Act 652) was signed by Louisiana Governor Bobby Jindal on June 7, 2012 (effective July 1, 2013). The bill provides for payment of medical benefits within 30 days rather than 60 days contingent upon medical providers' adoption and utilization of electronic billing rules and regulations. Click here for a copy of SB 386.

- **HB 126** (Act 573) was signed by Louisiana Governor Bobby Jindal on June 7, 2012 (effective July 1, 2013). The bill provides that no member of the Medical Advisory Council or the Workers' Compensation Advisory Council: (a) acting within the scope of his official functions and duties shall be held individually liable for a policy recommendation or policy action by the council, unless the member's willful or wanton misconduct caused damage or injury, and (b) shall be subject to civil or administrative subpoena for testimony or subpoena duces tecum for documents concerning his recommendations or exercise of judgment as a member of the council. Click here for a copy of SB 386.

Administrative Changes:

The following administrative changes were made by the Louisiana Workforce Commission Office of Workers' Compensation. Click here to access the complete rules.

- Utilization Review Rules (May 2012)

MAINE

– Amended Statute and Made Administrative Changes

Legislation:

- **LD 1913** was signed by Governor Paul LePage on April18, 2012 (effective August 30, 2012). The bill: (1) requires that the Workers' Compensation Board report, at least annually, to the Legislature on costs to employers, associated with long term partial incapacity benefits and permanent impairment ratings; (2) eliminates the requirement that an employer, insurer or group self-insurer continue paying benefits to an employee pending a motion for findings of fact and conclusions of law or pending an appeal of a Hearing Officer decree by the employee; (3) adds a presumption that work is unavailable for an employee participating in a rehabilitation plan ordered by the Workers' Compensation Board for as long as the employee continues to participate in vocational rehabilitation; (4) establishes the time from which the statute of limitations for filing a petition begins from either 2 years from the date an employer is required to file a first report of injury, or the date of the injury if no first report is required; (5) creates a new Appellate Division made up of panels of no fewer than 3 full time Hearing Officers and gives the board authority to adopt routine technical rules of procedure for any review made by the newly created Appellate Division; (6) eliminates the permanent impairment threshold index from an adjusted impairment threshold, based on an actuarial review of cases receiving permanent impairment ratings to a threshold of greater than 12% whole body for injured employees with partial incapacity for injuries on or after January 1, 2006 and before January 1, 2013; (7) states that for injuries on or after January 1, 2013: (a) shortens the time in which a notice of injury must be given from 90 to 30 days; (b) increases the percent of the state average weekly wage calculation from 90% to 100% for the maximum benefit level computation; (c) changes the calculation for determining the weekly compensation for total incapacity, partial incapacity, and death benefits from 80% of the injured employee's net average weekly wage, but not more than the maximum benefit level, to 2/3"“ of the injured employee's gross average weekly wage, but not more than the maximum benefit level; (d) establishes 520 weeks as the end date of benefit eligibility for permanently partially incapacitated injured employees and changes the eligibility requirements for the extension of benefits for permanently partially incapacitated injured employees and states that in order to qualify for an extension, the following requirements must be met: (i) the injured employee must have a whole person permanent impairment rating resulting from an injury in excess of 18%; (ii) the injured employee must have worked 12 of the last 24 months; (iii) the injured employee's earnings over the most recent 26 week period must be 65% or less of the pre injury average weekly wage; (iv) the injured employee's actual earnings must be commensurate with the injured employee's earning capacity which includes consideration of the injured employee's physical and psychological work capacity as determined by an independent medical examiner. Click here for a copy of LD 1913.

- **L.D. 1314** was signed by Governor Paul LePage and became effective on January 1, 2013). The bill: (1) creates a new definition of independent contractor for use by both the Department of Labor and the Workers' Compensation Board; and (2) creates a presumption that an individual is an employee. Click here for a copy of LD 1314.

Administrative Changes:

The Main Workers' Compensation Board amended the following rules in 2012.

- 90 M.A.R. 351 Ch. 1 (the 14-day rule). The amendment: (1) specifies to whom notice of a claim for incapacity benefits must be made; (2) in the event a Notice of Controversy is not filed within 14 days of a claim for incapacity, benefits must be paid from the date the claim is made instead of the former requirement that benefits be paid from the date of incapacity; (3) clarifies that the violation ends when a Notice of Controversy is filed and benefits are paid; and (4) provides that the payment obligation ends even if the average weekly wage and/or compensation rate was calculated incorrectly as long as the payment was reasonable and based on information known at the time of the payment.
- 39 A M.R.S. §328-B(3), (firefighters are entitled to a presumption that certain cancers are work-related). This rule states that in order to be entitled to the presumption during the time of employment as a firefighter, the firefighter must have undergone a standard, medically acceptable test for evidence of the cancer for which the presumption is sought or evidence of the medical conditions derived from the disease, which test failed to indicate the presence or condition of cancer.
- 90 M.A.R. Ch. 1, § 10. The Board also adopted a rule defining the phrase "a standard, medically acceptable test for evidence of the cancer for which the presumption is sought or evidence of the medical conditions derived from the disease [,]" contained in to 39 A M.R.S. § 328-B(3).
- The Executive Director also updated codes and relative weights in the medical fee schedule to ensure the codes and relative weights remain consistent with current medical billing and coding systems. The updates were effective on January 1, 2013.

MARYLAND

– Amended Statute and Made Administrative Changes

Legislation:

- **HB 65** was signed by Maryland Governor Martin O'Malley on April 10, 2012. The bill: (1) modifies the manner in which the Injured Workers' Insurance Fund (IWIF) may cancel a policy for nonpayment of a premium by aligning IWIF's cancellation procedures with those of other workers' compensation insurers by allowing it to cancel policies in accordance with the Insurance Article; and (2) authorizes IWIF to pursue collection of the debt of any policyholder whose insurance is cancelled for nonpayment of a premium and repeals provisions of law relating to the referral of such cases to the Attorney General. Click here for a copy of HB 65. See also SB 30.

- **HB 114** was signed by Maryland Governor Martin O'Malley on April 10, 2012. The bill excludes, from specified assessments payable to the Subsequent Injury Fund (SIF) and the Uninsured Employers' Fund (UEF), the amount of medical benefits specified in a formal set-aside allocation that is part of an approved settlement agreement if specified requirements are met. Click here for a copy of HB 114. See also SB 174.

- **HB 293** was signed by Maryland Governor Martin O'Malley on April 10, 2012. The bill: (1) specifies that the director, rather than the board, of the Uninsured Employers' Fund (UEF) is the appointing authority for all staff and has immediate supervision and direction over fund administration; (2) authorizes the director to employ staff in accordance with the State budget; (3) requires the board of UEF to review the administration of the fund by the fund's director; and (4) authorizes an employee to appeal to the board a disciplinary action taken by the director. Click here for a copy of HB 293.

- **HB 421** was signed by Maryland Governor Martin O'Malley on May 22, 2012. The bill: (1) alters the calculation of workers' compensation benefits for a dependent of a deceased covered employee who died due to an occupational disease by calculating benefits from the date of the last injurious exposure of the covered employee to the hazards of the occupational disease (rather than from the date of disablement from the occupational disease); (2) states that the calculation does not apply to specified public safety or emergency personnel of a municipal corporation or county in the State unless the municipal corporation or county elects to subject those employees to the bill's provisions. Click here for a copy of HB 421.

- **HB 835** was signed by Maryland Governor Martin O'Malley on May 2, 2012. The bill specifies that police officers employed by the Washington Metropolitan Area Transit Authority (WMATA) are eligible for enhanced workers' compensation benefits for permanent partial disabilities. Click here for a copy of HB 835.

- **HB 1017** was signed by Maryland Governor Martin O'Malley on May 2, 2012. The bill: (1) establishes the Task Force to Study Maryland Insurance of Last Resort Programs, including the Injured Workers' Insurance Fund (IWIF); (2) requires the taskforce's preliminary findings to be reported to the General Assembly by December 1, 2012; and (3) requires the taskforce's final findings and recommendations (including any proposed legislation) by December 1, 2013. Click here for a copy of HB 1017.

- **HB 1085** was signed by Maryland Governor Martin O'Malley on May 22, 2012. The bill: (1) alters the definition of "on duty" in workers' compensation law to include the performance of a duty assigned to (a) a member of a fire company appointed as a deputy sheriff; or (b) an individual appointed to serve as a member of the fire police in Washington County; (2) expands the definition of "volunteer company" to include a volunteer fire police unit; (3) specifies that a yearly stipend for expenses of up to $5,200 that is paid to a member by a volunteer company may not be used to determine the member's average weekly wage; and (4) specifies that a member of a volunteer company

who is a covered employee may not be considered a paid covered employee of the volunteer company because the member received such a stipend. Click here for a copy of HB 1085. See also SB 431.

- **HB 1101** was signed by Maryland Governor Martin O'Malley on May 22, 2012. The bill: (1) alters the list of occupational disease presumptions under workers' compensation law for firefighters and related personnel by adding five cancers to the list and removing one; (2) increases the minimum service requirement for a covered employee to qualify for specified occupational disease presumptions; (3) requires the Department of Legislative Services (DLS) to contract with a medical expert in order to complete a study of types of cancers that are likely to be contracted by firefighters and related personnel in the line of duty; and (4) takes effect June 1, 2012, but provisions related to coverage take effect June 1, 2013. Click here for a copy of HB 1101.

- **HB 1175** was signed by Maryland Governor Martin O'Malley on May 2, 2012. The bill authorizes the board of education in Howard County to waive the requirement that a participating employer reimburse the county for the cost of workers' compensation insurance coverage provided to students placed in unpaid work-based learning experiences. Click here for a copy HB 1175.

- **HB 1364** was signed by Maryland Governor Martin O'Malley on May 2, 2012. The bill: (1) exempts specified employers from the presumption under the Workplace Fraud Act that an employer-employee relationship exists between the employer and an individual doing work for the employer if the employer presents specified documentation; and (2) establishes procedures and timetables for enforcement activities and resolution of disputes under the Act. Click here for a copy of HB 1364. See also SB 272.

- **SB 256** was signed by Maryland Governor Martin O'Malley on May 22, 2012. The bill: (1) exempts insurers from issuing a notice of a policy premium renewal at least 45 days prior to the policy's renewal date if the renewal policy premium is greater than $1,000 and increases by the lesser of 3% or $300; and (2) applies to all policies of commercial insurance and workers' compensation insurance issued, delivered, or renewed in the State on or after October 1, 2012. Click here for a copy of SB 256.

- **SB 745** was signed by Maryland Governor Martin O'Malley on May 22, 2012. The emergency bill: (1) converts the Injured Workers' Insurance Fund (IWIF), by October 1, 2013, from an independent State entity into a statutorily created, private, nonprofit, non-stock workers' compensation insurer to be named the Chesapeake Employers' Insurance Company; (2) gives current IWIF employees the option to elect to remain State employees of the fund after the conversion requiring IWIF to remain in existence for as long as it continues to have employees; (3) requires the Maryland Insurance Administration (MIA) to (a) study whether the company should be subject to specified requirements; and (b) contract with a firm to determine IWIF's fair value; and (c) report the study's findings, as specified by the bill, by October 1, 2012. Click here for a copy of SB 745.

Administrative Changes:

The Maryland Workers' Compensation Commission adopted the following rules in 2012. Click here to access the Commission website.

- On September 13, 2012, the Workers' Compensation Commission adopted amendments to Regulation .07 under COMAR 14.09.01 Procedural Regulations to establish a clear procedure and time line for determining the average weekly wage.

- On June 28, 2012, the Workers' Compensation Commission adopted amendments to Regulation .05 under COMAR 14.09.06 Local Office Requirements for Insurers to remove COMAR 14.09.06.05B, which requires an appellant's attorney to send a copy of a petition for judicial review to the Attorney General representing the Commission if the issue being appealed is the award of attorney's fees.

- On March 22, 2012, the Maryland Workers' Compensation Commission took final action and adopted an amendment to Regulation .19 under COMAR 14.09.01 Procedural Regulations. This amendment requires that certain additional information (date of disablement) be included in a settlement agreement so that the Commission may properly evaluate the proposed settlement.

- On February 23, 2012, the Maryland Workers' Compensation Commission took final action and adopted amendments to Regulation .06 and new Regulation .06-1 under COMAR 14.09.01 Procedural Regulations to implement the statutory changes made by the General Assembly in Ch. 436, Acts of 2011. These statutory changes, effective October 1, 2011, concern the death benefits paid to surviving dependents. The law also enables counties and municipal governments to opt into the new death benefits scheme.

- On February 9, 2012, the Maryland Workers' Compensation Commission took final action to adopt amendments to Regulation .03 under COMAR 14.09.03 Guide of Medical and Surgical Fees to modify the medical fee schedule to reflect the current practice of calculating and publishing the yearly Maryland specific conversion factors by December 1 of each year so that insurers may implement the new reimbursement rates by January 1.

MASSACHUSETTS

– Made Administrative Changes

Legislation: None.

Administrative Changes:

The Department of Industrial Accidents (DIA) made the following rule changes in 2012.

- On March 5, 2012, the DIA made a Cost of Living Adjustment (COLA) change. Click here for a copy of the circular.

- On March 26, 2012 the DIA amended the Chronic Pain Treatment Guidelines. Click here for a copy of the circular.

- On April 12, 2012, the DIA amended the settlement approval form and procedure. Click here for a copy of the circular.

- On May 3, 2012, the DIA created a safety grant program. Click here for a copy of the circular.

- On October 9, 2012, the DIA amended the Cost of Living Adjustments (COLA) Payment and Reimbursement Schedules & Requests; Maximum and Minimum Weekly Compensation Rates; and Attorneys' Fee Schedule. Click here for a copy of the circular.

MICHIGAN

– *Amended Statute and Made Administrative Changes*

Legislation:

- **HB 4552** (PA 83) was signed by Michigan Governor Richard Snyder on April 10, 2012. The bill: (1) include in the definition of "employee" those health professionals who volunteer to provide health services during a declared state of disaster or emergency and who are registered with the Michigan Volunteer Registry for workers' compensation purposes; and (2) specifies that the apportionment provisions that determine liability for wages if an employee has more than one employer do not apply to the health care volunteers allows to collect worker's compensation insurance through the state. Click here for a copy of HB 4552.
- **SB 933** (PA 481) was signed by Michigan Governor Richard Snyder on December 27, 2012. The bill specifies that an employer, under the worker's compensation law, would not have to reimburse, or cause to be reimbursed, for charges for medical marijuana treatment. Click here for a copy of SB 933.

Administrative Changes:

- MCL 418.891 was amended to clarify the effective date of the significant changes to several sections of the Workers' Compensation Act made by the December, 2011.
- MCL 418.315A was added to provide: "An employer is not required to reimburse or cause to be reimbursed charges for medical marijuana treatment."
- The Health Care Services Rules, MI's medical cost containment system, were updated including the name of the department; updates to source documents; sets the fee schedule for the vision current procedural terminology (CPT) codes; establishes maximum allowable fees for hearing aids; updates the year of the conversion factor for medicine, radiology and surgical procedures; rescinds payment for Tetanus, Diphtheria, and Acellular Pertussis (Tdap); regulates that physician offices must bill by the original drug code for physician dispensed pharmaceuticals; and allows the Workers' Compensation Agency to downgrade or deny the certification of a carrier or self-insured if the rules are not met.

MINNESOTA

– *Made Administrative Changes*

Legislation: None

Administrative Changes:

- Minnesota increased the conversion factors for the workers' compensation relative value fee schedule and independent medical examination fees by 1.5%, effective on or after October 1, 2012. Click here for a copy of Adopted Exempt Permanent Rule 5221.4020.

MISSISSIPPI

– *Amended Statute and Made Administrative Changes*

Legislation:

- **SB 2576** was signed by Mississippi Governor Phil Bryant on May 14, 2012 (effective July 1, 2012). The bill: (1) requires the claimant to provide medical proof to his employer of the direct causal connection between the work performed and the alleged work-related injury or occupational disease; (2) provides that a preexisting condition does not have to be occupationally disabling for apportionment to apply; (3) provides that, if the employee is treated for his alleged work-related injury or occupational disease by a physician for six months or longer, or if the employee has surgery for the alleged work-related injury or occupational disease performed by a physician, then that physician shall be deemed the employee's selection; (4) increases the maximum amount the commission may award the employee for serious facial or head disfigurement from $2,000.00 to $5,000.00; (5) increases the maximum amount the commission may award in additional compensation from $10.00 per week to $25.00 per week, up to a maximum of 52 weeks, for an employee who as a result of injury is or may be expected to be totally or partially incapacitated for a remunerative occupation and who, under the direction of the commission is being rendered fit to engage in a remunerative occupation; (6) increases the death benefit immediate lump-sum payment from $250.00 to $1,000.00; (7) increases the maximum death benefit for reasonable funeral expenses from $2,000 to $5,000; (8) provides that attorneys may not recover attorney's fees based upon benefits voluntarily paid to an injured employee for temporary or permanent disability; (9) revises provisions regarding the right of an employer to administer or demand the employee submit to a drug and alcohol test; (10) revises provisions regarding the admissibility of drug and alcohol tests as evidence; (11) revises provisions regarding the burden of proof that the employee's use of drugs illegally, use of prescription drugs improperly or intoxication due to the use of alcohol was a contributing cause of the accident; (12) requires the workers' compensation commission to promulgate a written statement specifying the changes made by this act to every employer in this state; and (13) requires employers to post such statement for notice to their employees. Click here for a copy of SB 2576.

Administrative Changes:

On November 2, 2012, the Mississippi Workers' Compensation Commission amended the following rules in 2012.

- Procedural Rule 2.20. Click here for a copy of this rule.
- Procedural Rule 2.21. Click here for a copy of this rule.
- General Rule 7. Click here for a copy of this rule.
- Medical Fee Schedule Dispute Resolution Rules II. Click here for a copy of this rule.

MISSOURI

– *Amended Statute*

Legislation:

- **HB 1540** was signed by Missouri Governor Jay Nixon on July 10, 2012. The bill: (1) codifies the "something more" doctrine by extending the civil liability shield to both employers and co-employees, except that an employee shall not be released from liability for injury or death if the employee engaged in an affirmative negligent act that purposefully and dangerously caused or increased the risk of injury; and (2) authorizes the Division to utilize electronic processes for serving or sending certain notices. Click here for a copy of HB 1540.

Administrative Changes: None.

MONTANA

– *Made Administrative Changes*

Legislation: No legislative session in 2012.

Administrative Changes:

Effective July 13, 2012, the Montana Department of Labor & Industry adopted the following new Administrative Rules to implement Montana's Stay at Work/Return to Work (SAW/RTW) Assistance Program.

- **Rule 24.29.1801 – Definitions** – This rule defines terms used within the SAW/RTW Assistance Program. Click here for a copy of ARM 24.29.1801.
- **Rule 24.29.1803 – Applicability –** This rule establishes SAW/RTW assistance for workers who experience a work-related injury or occupational disease on or after July 1, 2012. Click here for a copy of ARM 27.29.1803.
- **Rule 24.29.1807 – Responsibilities of the Insurer –** This rule requires insurers to adopt a SAW/RTW policy & keep a current copy on file with the department and to provide assistance to a claimant who requests SAW/RTW assistance, if the request is prior to acceptance of the claim, provide the assistance or refer the claimant to the department for assistance. The Rule also requires insurers to notify the department when the claimant's claim is denied or accepted. The rule outlines a SAW/RTW assistance outcome reporting procedure. Click here for a copy of ARM 24.29.1807.
- **Rule 24.29.1811 – Duties of the Department –** This rule establishes SAW/RTW assistance for workers who experience a work-related injury or occupational disease on or after July 1, 2012. Click here for a copy ARM 24.29.1811.
- **Rule 24.29.1815 – Payment Schedule for Department-Provided SAW/RTW Assistance –** This rule establishes a fee schedule for vocational rehabilitation counselors who provide SAW/RTW services on behalf of the department and set maximum per claim service. The rule also authorizes the department to assist employers with work place modifications and/or equipment purchases when these purchases make traditional employment successful. Click here for a copy of ARM 24.29.1815.

- **Rule 24.29.1821 – Vocational Rehabilitation Counselor Pool for Department-Provided SAW/RTW** – This rule authorizes the department to contract with qualified vocational rehabilitation counselors to provide the SAW/RTW assistance. Click here for a copy of ARM 24.29.1821.

Effective July 13, 2012, the Montana Department of Labor & Industry amended or adopted new Administrative Rules related to Workers' Compensation coverage under compensation Plan No. 1 (Self-Insured) and Plan No. 2 (Private).

- **Rule 24.29.601 – Definitions** – This rule defines and clarifies various terms used in substantive rules being amended or adopted, along with technical corrections to improve readability. Click here for a copy of ARM 24.29.601.

- **Rule 24.29.604 – Montana Self-Insurers Guaranty Fund – Acceptance Required for Private Employers or Private Groups** – This rule improves clarity and conforms the rules to current usage guidelines. The rule clarifies that the guaranty fund does not have a role in self-insurance decisions regarding public employers or groups of public employers. Click here for a copy of ARM 24.29.604.

- **Rule 24.29.607 – Public Employers Other Than State Agencies** – This rule clarifies that the guaranty fund does not have a role in self-insurance decisions regarding public employers or groups of public employers. Click here for a copy of ARM 24.29.607.

- **Rule 24.29.608 – Election to be Bound by Compensation Plan No. 1 - Eligibility** – This rule clarifies the applicability of the former Occupational Disease Act to a self-insurer's liability, despite the repeal of the Act in 2005 and the incorporation of those provisions into the Workers' Compensation Act. The rule also deletes an inappropriate AUTH citation. Click here for a copy of ARM 24.29.608.

- **Rule 24.29.610 – When Security Required** – This rule clarifies the applicability of the former Occupational Disease Act to a self-insurer's liability, despite the repeal of the Act in 2005, and the incorporation of those provisions into the Workers' Compensation Act. Click here for a copy of ARM 24.29.610.

- **Rule 24.29.611 – Security Deposit - Criteria** – This rule updates references to various technical terms and standards now used within the bond rating industry. The rule also removes references to specific federal insurance programs and makes other technical language changes. The rule clarifies the effect of certain ratings on the approval of a selected surety, in line with prudent financial standards applicable to surety providers and deletes an inappropriate AUTH citation. Click here for a copy of ARM 24.29.611.

- **Rule 24.29.616 – Excess Insurance - When Security Required** – This rule specifies that excess insurers be admitted carriers in Montana, and not merely licensed in Montana. It also clarifies that changes to a self-insurer's excess policy only take place upon the prior approval of the department. This rule clarifies the applicability of the former Occupational Disease Act to a self-insurer's liability, despite the repeal of the Act in 2005 and the incorporation of those provisions into the Workers' Compensation Act. The rule also deletes

an inappropriate AUTH citation. Click here for a copy of ARM 24.29.616.

- **Rule 24.29.617 – Initial Election – Individual Employers –** This rule deletes obsolete language. Click here for a copy of ARM 24.29.617.

- **Rule 24.29.618 – Initial Election – Employer Groups –** This rule deletes obsolete language and makes clarifications and technical language changes regarding the applicability of various provisions to the individual members or to the group as a whole. Click here for a copy of ARM 24.29.618.

- **Rule 24.29.623 – Renewal Required –** This rule better describes the expected standard features of actuarial reports and makes explicit who is considered by the department to be a qualified actuary. The rule also shortens the lead time from a minimum of 90 days to a minimum of 60 days in advance of the expiration date for self-insurance and makes changes to conform to existing practices for renewals. This rule updates internal citations Click here for a copy of ARM 24.29.623.

- **Rule 24.29.908 – Penalties, Administrative Fines and Interest –** This rule clarifies that an insurer's failure to timely provide required summary reports subjects the insurer to potential liability for penalties, fines and interest. Click here for a copy of ARM 24.29.908.

- **Rule 24.29.954 – Calculation of Amount of Administrative Fund Assessment –** This rule provides for technical changes and updates to the rule's language. Click here for a copy of ARM 24.29.954.

- **Rule 24.29.956 – Computation and Collection of the Administration Fund Assessment Premium Surcharge Rate for Plan No. 2 and Plan No. 3 –** This rule makes the provisions of the rule match up with changes to the underlying statutory provisions. Click here for a copy of ARM 24.29.956.

- **Rule 24.29.631 – Self-Insured Employers and Groups – Transfer of Claim Liabilities –** This rule implements the provisions of HB119 (39-71-2115 MCA enacted as Chap. 112, Laws of 2009). The rule also describes a process which will allow the department (and guaranty fund, when appropriate) to evaluate whether the proposed claims transfer increases, decreases or does not affect the financial ability to pay claims, and how it affects the risk of default in payment. This rule specifies that the entity assuming liability for the claims will have reporting responsibilities. Click here for a copy of ARM 24.29.631.

- **Rule 24.29.709 – Security Deposits for Plan No. 2 Insurers - Reports –** This rule clarifies the financial conditions required by the type of security deposit placed by Plan 2 insurers with the department, and implements the provisions of 39-71-2215, MCA enacted as Chap. 117, Laws of 2007. Click here for a copy of ARM 24.29.709.

NEBRASKA

– Amended Statute and Made Administrative Changes

Legislation:

- **LB 646** was signed by Nebraska Governor Dave Heineman on March 7, 2012. The bill eliminate "immediate" as a qualifier of "medical care" for purposes of defining first responder. Click here for a copy of LB 646.

- **LB 738** was signed by Nebraska Governor Dave Heineman on April 10, 2012. The bill increases the allowance for burial expenses from $6,000 to $10,000. Click here for a copy of LB 738.

Administrative Changes:

All of the rule changes summarized below were adopted by the judges of the court. Click here for a copy of the following rules.

The following amendment to the Nebraska Workers' Compensation Court's Rules of Procedure were adopted at a public hearing on May 9, 2012

- **Rule 26, *Schedules of Fees for Medical, Surgical, and Hospital Services* –** adopt the revised Schedule of Fees for Medical Services with an effective date of June 1, 2012.

- **Rule 65, *Independent Medical Examiners Fees and Costs* –** increase the allowable hourly fee from $200 to $400, and to identify words and terms that are defined in Rule 49.

The following amendment to the Nebraska Workers' Compensation Court's Rules of Procedure were adopted at a public hearing on August 29, 2012.

- **Rule 2 – *Filings* - 2, A –** standardizes terms by substituting "pleading or other document" for "paper or pleading." ; **2,B** – standardizes terms; **2,C** – standardizes terms and updates privacy provisions to allow electronic submission of Addendum 3; and **New Rule 2,D** – adds a new subsection D entitled "*Electronic Filing and Service System*" to set forth definitions and requirements for e-filing.

- **Rule 3 – *Pleadings* - 3, A** – strikes the requirement that a petition be filed in duplicate. Strikes the requirement that pleadings be filed on paper of at least 16-pound substance; **3, G** – standardizes terms for references to pleadings, instruments, etc. Also strikes "or any judge thereof."; and **New Rule 3,I** – sets forth requirements for pleadings, briefs and other documents filed under a limited scope representation arrangement.

The following amendments to the Nebraska Workers' Compensation Court's Rules of Procedure were adopted at a public hearing on December 13, 2012.

- **Rule 26, *Schedules of Fees for Medical, Surgical, and Hospital Services* –** identify Medicare Diagnostic Related Groups to be included in the Diagnostic Related Group inpatient hospital fee schedule effective January 1, 2013.

NEVADA

– No Changes Made in 2012

Legislation: No legislative session in 2012.

Administrative Changes: None.

NEW HAMPSHIRE

– Amended Statute and Made Administrative Changes

Legislation:

- **HB 1587** was signed by New Hampshire Governor John Lynch on June 7, 2012. The bill: (1) limits the requirement for formal Safety Programs to employers of 15 or more; and (2) eliminates the biennial reporting requirement. Click here for a copy of HB 1587.

- **HB 420** was signed by New Hampshire Governor John Lynch on June 7, 2012. The bill changes the factors used to determine if a worker is an independent contractor or an employee. Click here for a copy of HB 420.

Administrative Changes:

The following changes were made to the New Hampshire Department of Labor Administrative Rules in 2012. Click here for a complete listing of the Administrative Rules.

- **Regulation Lab 1500** - New regulations dealing with employee-leasing companies generally, including the provision at Lab 1503.02 acknowledging that the leasing company may cover employees by more than one workers' compensation insurance policy.

NEW JERSEY

– Amended Statute

Legislation:

- **AB 2652** was signed by New Jersey Governor Chris Christie on November 11, 2012. The bill bans charging workers' compensation claimants for medical expense, and gives the Division of Workers' Compensation sole jurisdiction over work-related medical claims. Click here for a copy of AB 2652

Administrative Changes: None.

NEW MEXICO

– Made Administrative Changes

Legislation: None.

Administrative Changes:

The following changes were made to the New Mexico Workers' Compensation Administration Rules and Statutes, effective December 31, 2012. Click here for a complete listing of the New Mexico Workers' Compensation Administration Rules and Statutes.

- **Rule 3** – Amended to clarify the eligibility of mileage and travel reimbursements in a workers' compensation claim.

- **Rule 4** – Amended to streamline mediation, adjudication and formal hearing process to simplify how a case

proceeds through the dispute resolution process.

- **Rule 4** – Amended by the adoption of evidence based guidelines (Official Disability Guidelines™) creating a presumption that treatment recommended under those guidelines is reasonable and necessary, thereby streamlining the approval process and taking care of injured workers sooner and more effectively.
- **Rule 4** – Amended to clarify the attorney billing process at various stages of a workers' compensation claim.
- **Rule 7** – Updated and amended the Health Care Provider Fee Schedule, and added an amendment to require electronic billing to be effective January 1, 2014.

NEW YORK

– Amended Statute and Made Administrative Changes

Legislation:

- **SB 6978** was signed by New York Governor Andrew Cuomo on July 18, 2012. The bill: (1) amended provisions related to the rate service organization (RSO) for workers' compensation, presently the New York Compensation Insurance Rating Board; (2) extended to 2018 two existing requirements, which had been scheduled to sunset in 2013: (a) the use of filed loss costs as the rate setting methodology; and (b) the requirement that the RSO have four public members on its board of governors and underwriting committee and a public actuary (the public members are appointed by the AFL-CIO, the Business Council of NYS, the Department of Financial Services and the Workers' Compensation Board); and (3) allows the temporary continuation of the public members' term, once expired, until a replacement can be named. Click here for a copy of SB 6978.

Administrative Changes:

The New York Workers' Compensation Board adopted the following rules in 2012.

- **12 NYCRR Part 440 and 442** (Adopted November 6, 2012) The proposed regulations establish fee schedules for pharmacy and durable medical equipment and include rules for the use of the fee schedules and pharmacy networks. Click here for a copy of these rules.
- **12 NYCRR §§ 300.7, 300.9, 300.13, 300.18, 325-4.6, 326-1.5, 326-2.7, 330.4, 340.4, 345.4**. (adopted July 17, 2012) The amendments provide the Board with flexibility in determining the appropriate means for the recording of hearings. Click here for a copy of these rules.
- **Amendments to §§ 329.3, 333.2, 343.2 and 348.2** (adopted June 1, 2012) Amendments to the Board's Medical, Podiatry, Chiropractic and Psychology Fee Schedules. Click here for a copy of these rules.
- **12 NYCRR §§ 325-1.5 and 325-2.1 and the proposed addition of 12 NYCRR Subpart 325-7**. (adopted February 28, 2012) The amendments permit carriers and employers to contract with and direct use of a diagnostic testing network. The addition of Subpart 325-7 provides the procedures for use of diagnostic testing networks. Click here for a copy of these rules.

NORTH CAROLINA

– Amended Statute and Made Administrative Changes

Legislation:

- **HB 237** was signed by North Carolina Governor Beverly E. Perdue on June 21, 2012. The bill includes the following provisions: (1) confidentiality of information from the North Carolina Rate Bureau; (2) technical corrections to HB 709, previously signed into law on June 24, 2011; and (3) creation of a Joint Legislative Committee on Workers' Compensation Insurance Coverage Compliance and Fraud Prevention and Detection. Click here for a copy of HB 237. Click here for a copy of HB 709, previously enacted in 2011.

- **SB 847** was signed by North Carolina Governor Beverly E. Perdue on July 17, 2012. The bill made a technical correction to G.S. 58-36-17, and allowed the release of specific information from the North Carolina Rate Bureau. Click here for a copy of SB 847.

Administrative Changes:

In compliance with the Administrative Procedure Act, the North Carolina Industrial Commission has adopted rules approved by the Rules Review Commission. On January 1, 2013, the following new rules became effective.

- **04 NCAC 10A.0301, Proof of Insurance Coverage** – Click here for a copy of 04 NCAC 10A .0301.
- **04 NCAC 10J.0101, Fees for Medical Compensation** - Click here for a copy of 04 NCAC 10J.0101.

Pursuant to G.S. §150B-21.3(b2), a portion of the approved rules are subject to legislative review. All remaining approved rules have a delayed effective date, to be determined in accordance with the legislative review. Click here for the rules subjected to legislative review and here for the approved rules with a delayed effective date.

NORTH DAKOTA

– Made Administrative Changes

Legislation: No legislative session in 2012.

Administrative Changes:

The North Dakota Workers' Compensation Bureau promulgated the following rules in 2012. Click here for a copy of the revised administrative rules.

- Organizational Rule; Doctor's Opinion; Attorney's Fees; Mileage Reimbursements for Medical Treatment and Adult Learning Center; Permanent Impairment Evaluations; Medical Necessity; Motor Vehicle Purchase or Modification; Home Modification; Utilization Review; Treatment Requiring Authorization; Provider Responsibilities and Billings; Determination of Employment; Vocational Rehabilitation Grant Program; Retrospective Rating Program; Procedure for Dispute Resolution; Eligibility – Billing - Risk Management Program; and Safety Outreach Program.

OHIO

– Amended Statute and Made Administrative Changes

Legislation:

- **HB 284** was signed by Ohio Governor John Kasich on December 20, 2012. The bill primarily revises Ohio's laws on governing physician assistants. The bill includes provisions expanding who can authorize approval of physical therapy treatment for a workers' compensation claim to include a physician's assistant. Click here for a copy of HB 284.

- **HB 487** was signed by Ohio Governor John Kasich on June 11, 2012. The bill primarily makes appropriations for state programs. However, the bill includes provisions allowing BWC to publish rules online instead of pamphlet form, allowing a designee to attend the BWC Nominating Committee if the president of the appointed association is unable to attend and includes state university hospitals for Self-Insurance. Additionally, the bill clarifies partial disability compensation shall be paid in installments unless under circumstances established in law, allows professional sports teams who meet certain criteria, to provide workers' compensation coverage through their league coverage and states and injured worker cannot file an Ohio claim if BWC certifies the leagues coverage under this exemption. Click here for a copy of HB 487.

- **HB 509** was signed by Ohio Governor John Kasich on June 26, 2012. The bill primarily makes changes to the laws governing local governments. The bill includes provisions permitting certain legislative bodies of counties and districts to engage in cost allocation for workers' compensation payments. Click here for a copy of HB 509.

- **SB 139** was signed by Ohio Governor John Kasich on December 20, 2012. The bill establishes certain financial capacity requirements for professional employer organizations, clarifies rights and liabilities of professional employer organizations and client employers, and makes other changes to the professional employer organization law. Click here for a copy of SB 139.

- **SB 316** was signed by Ohio Governor John Kasich on June 25, 2012. The bill primarily revises authorizations and conditions with respect to education, workforce development, and early childhood care. The bill includes provisions establishing a "learn to earn" training program under ODJFS and prescribes the circumstances in which an individual who is injured or contracts an occupational disease in the course of and arising out of participation in an ODJFS learn to earn program receives compensation and benefits. The bill exempts from liability for an injury suffered or occupational disease contracted, except with respect to intentional torts, ODJFS, or any entity conducting the training under that program. Additionally, the bill permits ODJFS to establish a separate workers' compensation coverage policy for learn to earn participants. Click here for a copy of SB 316.

Administrative Changes:

The following summarizes Ohio Bureau of Workers' Compensation rules that were

amended or enacted in 2012. All rules can be found on the Register of Ohio by entering the rule number here.

- Medical Rules
- Code of Ethics
- Employer Premium and Rate Program Rules
- Rehabilitation Rules
- Procedures for State and Self-Insuring Employers
- Marine Industry Fund

OKLAHOMA

– Amended Statute and Made Administrative Changes

Legislation:

- **HB 2258** was signed by Oklahoma Governor Mary Fallin on May 25, 2012 (effective November 1, 2012). This bill requires the Oklahoma Tax Commission, Workers' Compensation Court, Department of Labor, CompSource Oklahoma and the Oklahoma Employment Security Commission to share information and coordinate investigative and enforcement efforts to detect contractors that intentionally misclassify employees as independent contractors rather than employees for the purpose of affecting withholding and social security, unemployment tax or workers' compensation premiums. Provides a penalty for such misclassification. The bill also requires contractors to include proof of their employer identification number on all public construction project bids, and creates new law sections to be codified as 68 O.S., §§1708 and 1709. Click here for a copy of HB 2258.

- **HB 3074** was signed by Oklahoma Governor Mary Fallin on April 25, 2012 (effective November 1, 2012). This bill excludes workers' compensation from a provision authorizing hospital liens when an injured person asserts a claim against an insurer. The bill Amends 42 O.S., §43. Click here for a copy of HB 3074.

- **HB 3079** was signed by Oklahoma Governor Mary Fallin on May 25, 2012 (effective August 24, 2012). This bill is an omnibus measure which, as relevant, amends multiple Workers' Compensation Code sections to change "Office of State Finance" and "Department of Central Services" to "Office of Management and Enterprise Services." Strikes the Director of Central Purchasing from the CompSource Oklahoma Board of Managers, reducing the Board from 9 to 8 members, since the Department of Central Services was consolidated into the successor entity. Amends 85 O.S., §§303, 361, 365, 370, 376, 384, 387, 389, 403 and 412. Click here for a copy of HB 3079.

- **SB 1060** was signed by Oklahoma Governor Mary Fallin on May 1, 2012 (effective August 24, 2012). This bill directs insurers to notify the Attorney General Workers' Compensation and Insurance Fraud Unit of suspected fraud by a claimant. Amends 36 O.S., §363. Click here for a copy of SB 1060.

- **SB 1246** was signed by Oklahoma Governor Mary Fallin on May 15, 2012 (effective November 1, 2012). This bill provides that if a claimant is charged with workers' compensation fraud, any pending workers' compensation proceeding is stayed after the preliminary hearing is concluded and the claimant is bound over, and shall remain

stayed until final disposition of the criminal case. The bill also provides that all notice requirements shall continue during the stay, and amends 85 O.S., §410. Click here for a copy of SB 1246.

- **SB 1321** was signed by Oklahoma Governor Mary Fallin on April 5, 2012 (effective November 1, 2012). This bill permits the Attorney General to contract with retired peace officers certified by the Council on Law Enforcement Education and Training (CLEET) or CLEET-certified private investigators for investigative services related to the Attorney General Workers' Compensation Fraud Unit. This bill amends 85 O.S., §410. Click here for a copy of SB 1321.

Administrative Changes:

The Oklahoma Workers' Compensation Court made the following rule changes in 2012. A full list of rules can be found by clicking here and scrolling down to Chapter 4.

- Oklahoma Treatment Guidelines (OTG) for Schedule II Drugs were developed by the state Physician Advisory Committee, effective 4/2/12. To access the OTG, click here.
- Oklahoma Workers' Compensation Electronic Data Interchange Advisory Committee issued recommendations regarding development and implementation of an electronic data interchange (EDI) system.

OREGON

–Made Administrative Changes

Legislation: None.

Administrative Changes:

The following rules were adopted by the Oregon Workers' Compensation Division in 2012. Click on the rule number for a copy of the rule.

- **Oregon Medical Fee and Payment Rules** [chapter 436, division 009] – Effective 4/1/12: Increased payment for ambulance and dental services; increased payment for chiropractic manipulation codes 98940 – 98943; established Oregon specific (billing) codes for closing examinations and closing reports; specified that injectable drugs are prescription medications and subject to the fee schedule; reduced the minimum round-trip mileage eligible for reimbursement from 60 miles to 15 miles for interpreters; and required that implantable devices be paid separately to an ambulatory surgery center (ASC) and not packaged with the surgery charge.
- **Managed Care Organizations (MCOs)** [chapter 436, division 015] –Effective 4/1/12: Streamlined the MCO certification and plan development process; eliminated the requirement for prospective MCOs to "qualify" before applying for certification; eliminated the requirement that an MCO send a copy of every provider agreement to the director; and required that if the MCO schedules a medical exam for the worker, the appointment letter must inform the worker if and why a psychological evaluation is part of the exam.
- **Oregon Medical Fee and Payment *Temporary* Rules** [chapter 436, division 009] – Effective 4/23/12: Required payment for hearing services billed with HCPCS codes V5000 through V5999 at the provider's usual rate, unless

otherwise provided by a contract, removing the existing limitation for these services to 80% of the provider's usual fee; and specified maximum monthly rental rates for certain codes used to bill for durable medical equipment, prosthetics, and orthotics, and explained how to determine daily rates.

- **Procedural Rules, Rulemaking, Hearings, and Attorney Fees *Temporary*** [chapter 436, division 001] – Effective 7/1/12: Amended the attorney fee matrix to show the maximum fee and fee ranges as percentages of the adjusted maximum fee payable under statute, ORS 656.385(1), rather than as percentages of the state average weekly wage (SAWW).

- **Oregon Medical Fee and Payment Rules** [chapter 436, division 009] – Effective 10/20/12: Set maximum rental rates for certain durable medical equipment, prosthetics, and orthotics; required that certain hearing and vision services be reimbursed at the provider's usual fee, unless otherwise provided by contract; adjusted maximum reimbursement amounts for durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) to make the maximums proportionate to the reimbursement levels by service category before 1/1/2012; and allowed payment to ambulatory surgery centers for certain individual surgical procedures that are usually packaged.

- **Employer-at-Injury Program** [chapter 436, division 105] – Effective 11/1/12: Specified that a new Employer-at-Injury program may not be used for a non-disabling claim that does not become disabling within two years from the date of injury; combined the $2,500 maximum reimbursement amounts for worksite modification and purchases of tools and equipment to provide a maximum combined reimbursement of $5,000; and provided that all modifications and purchases made by the employer in good faith are reimbursable.

- **Preferred Worker Program** [chapter 436, division 110] – Effective 11/1/12: Clarified that if an employer changes its name or ownership status or changes the job duties of a preferred worker during the premium exemption period, the employer is not eligible for an additional three years of premium exemption; and provided that if the employer accommodates the worker's injury-caused restrictions while waiting for a worksite modification to be completed, the employer may elect to start wage subsidy immediately.

- **Vocational Assistance to Injured Workers** [chapter 436, division 120] – Effective 11/1/12: Required use of the cost-of-living matrix (in Bulletin 124) to calculate a worker's adjusted weekly wage if the worker's regular employment was the job at the time of aggravation; limited the types of worker notices that must also be sent to the Workers' Compensation Division; clarified that a condition for ending eligibility is completion of any necessary worksite modifications; clarified that the insurer must not use any knowledge, skills, or abilities gained by the worker, at the worker's expense, after the date of injury or aggravation to determine the worker's eligibility for vocational assistance; prescribed the conditions, time frames, and documentation applicable to a worker's self-sponsored training; and provided that basic training, on-the-job

training, and occupational skills training may be extended by the insurer (beyond the time frames stated in rule).

- **Procedural Rules, Rulemaking, Hearings, and Attorney Fees** [chapter 436, division 001] – Effective 12/28/12: Provided that an administrative law judge may issue an interim order that is not subject to review by the director; clarified that no new evidence, not just new "medical" evidence, may be admitted or considered at hearing in medical service, medical treatment, and managed care disputes; and revised the attorney fee matrix in OAR 436-001-0410 to show the maximum fee and fee ranges as percentages of the adjusted maximum fee under statute, ORS 656.385(1).

- **Disability Rating Standards** [chapter 436, division 035] – Effective 1/1/13: Included additional types of spinal fractures in the definition of irreversible findings; provided that a physician may determine findings of impairment to be invalid based on the physician's medical expertise; clarified that supplemental disability (due to other employment affected by the injury) is not considered in the determination of the worker's average weekly wage when calculating work disability; provided discretion for using contralateral comparisons in determining normal strength; explained that a job description that the parties agree to may be substituted for descriptions from "Dictionary of Occupational Titles"; clarified that the worker's lifting capacity is based on the whole person; provided that work restrictions include limitations on use of the hand for fine manipulation, squeezing, or grasping; clarified when sensation loss and hypersensitivity may be rated; provided values for joint instability of the wrist; provided that toes may receive values for dermatological conditions; removed the requirement that the worker must have a loss of use or function in the lower extremity to receive a value if the worker cannot be on his or her feet for more than two hours in an 8-hour period; provided that enucleation of the eye is rated at 100% loss; provided that a compression fracture followed by a corpectomy is given a surgical value and the maximum compression fracture value; included the odontoid process in the list of fractures of the posterior elements of a vertebra that may receive a value; provided that each inferior or superior ramus subject to displacement and deformity in a fractured pelvis is valued at 2%; provided that injuries to the brain or head do not have to be organically based; and provided that headaches that are not a direct result of a brain or head injury (e.g., cervicogenic, sensory input issues, etc.) are given a value of 10%.

- **Employer/Insurer Coverage Responsibility** [chapter 436, division 050] – Effective 1/1/13: Amended the definition of "process claims" to allow receipt of claim reports at locations out of state as long as claims are forwarded to an Oregon location for processing; clarified insurers', self-insured employers', and worker leasing companies' record-keeping requirements; eliminated the requirement that a self-insured employer may only obtain an irrevocable standby letter of credit from a federally chartered bank that has an Oregon branch office; revised self-insured employers' reporting requirements; provided that when determining the amount of a self-insured employer's security deposit, the

director may consider changes in the employer's business, and may include IBNR, losses incurred but not reported; clarified that a worker leasing company may not provide workers' compensation coverage for another leasing company doing business in Oregon; prohibited a client employer from obtaining workers on a non-temporary basis from an unlicensed worker leasing company; clarified what it means to provide a worker on a temporary basis; amended the types of information a worker leasing company applicant must provide to the director; listed reasons the director may refuse to issue or renew a license or disqualify a person, controlling person, or worker leasing company from applying for a license in the future, and provided that a person may appeal the director's decision; and eliminated matrices for penalties against worker leasing companies, and instead referred to the director's general authority to impose penalties under statute, ORS 656.745.

- **Workers' Benefit Fund Assessment** [chapter 436, division 070] – Established the hourly assessment rate that subject employers and any employers electing to provide workers' compensation coverage for their employees must pay to the Department of Consumer and Business Services for the Workers' Benefit Fund – effective April 1, 2013, the rate will increase from 2.8 cents to 3.3 cents per hour worked.

PENNSYLVANIA

– *No Changes Were Made in 2012*

Legislation: None

Administrative Changes: None.

PUERTO RICO

– *No Changes Were Made in 2012*

Legislation: None.

Administrative Changes: None.

RHODE ISLAND

– *No Changes Were Made in 2012.*

Legislation: None.

Administrative Changes: None.

SOUTH CAROLINA

– *Amended Statute and Made Administrative Changes*

Legislation:

- **HB 3111** was signed by South Carolina Governor Nikki Haley on June 7, 2012. The bill: (1) amends the mandatory approval of certain attorney and

physician fees by the Workers' Compensation Commission, so as to provide for the adoption and adjustment of fee schedules by the commission; (2) provides for the adjustment of proposed fee schedules by the commission; (3) provides for an appeal process from a decision of the commission concerning a fee schedule; (4) amends enumerated exceptions of contested cases from departments of the executive branch that must be heard by the administrative law court, and (5) deletes the exemption of the Workers' Compensation Commission. Click here for a copy of HB 3111.

Administrative Changes:

- **Pharmacy Fee Schedule** was amended and can be found by clicking here.

SOUTH DAKOTA

– *Made Administrative Changes*

Legislation: None.

Administrative Changes:

The following rule changes were reported by the South Dakota Department of Labor and Regulation for 2012.

- **Chapter 47:03** was amended effective December 6, 2012 to update the conversion factors for evaluation and management services, medical testimony, and independent medical evaluations. The relative unit values for the entire schedule are found in Relative Values for Physicians, 2012©, and Relative Values for Dentists, 2011©. Click here for a copy of this rule.

TENNESSEE

– *Amended Statute and Made Administrative Changes*

Legislation:

- **HB 3372/SB3315** (Public Chapter 1100) was signed by Tennessee Governor Bill Haslam on May 28, 2012, and had an effective date of July 1, 2012. The bill provides that if an injured employee is referred for pain management, a panel of physicians must be provided and the office of each physician listed on the panel must be located no more than 175 miles from the injured employee's residence or place of employment. It clarifies that the injured employee is not entitled to a second opinion on the issue of impairment, diagnosis or prescribed treatment relating to pain management. This bill allows the employer to use utilization review to determine whether the prescribed pain management meets medically accepted standards when a schedule II, III, or IV controlled substance has been used for a period of more than 90 days or if the employee establishes that the pain management fails to meet medically accepted standards. As a condition of receiving pain management, the injured employee may sign a formal agreement with the physician prescribing pain management acknowledging the conditions under which the injured employee may continue to be prescribed schedule II, III, or IV controlled substances. If the injured employee violates any terms of the agreement on more than one (1) occasion, the injured employee's right to pain management through prescription medication, shall be terminated and the injured employee will no longer be

entitled to the prescription of schedule II, III, or IV controlled substances for the management of pain. In the event the violation occurs prior to a finding that the injured employee is totally disabled, the incapacity to work due to lack of pain management shall not be considered when determining whether the injured employee is entitled to permanent total disability benefits. Click here for a copy of Public Chapter 1100.

- **HB 2808/SB 2923** (Public Chapter 1030) was signed by Tennessee Governor Bill Haslam on May 21, 2012. The bill clarifies that a suit may be filed in the county in which the employee resided at the time of the injury or in the county where the injury occurred. If the employee has relocated to another county, the suit may not be filed in that county. This portion of the bill became effective on May 21, 2012. This bill also lowers the cost of an exemption from obtaining workers' compensation insurance with the Secretary of State's office. This portion of the bill becomes effective on January 1, 2013. Click here for a copy of Public Chapter 1030.

- The Tennessee General Assembly also updated the maximum and minimum indemnity benefit rates so that for temporary benefits, the maximum weekly benefit rate for injuries occurring July 1, 2012 through June 30, 2013 is $886.60 or 110% of the state's average weekly wage; for permanent benefits, the maximum weekly benefit rate for injuries occurring July 1, 2012 through June 30, 2013 is $806.00 or 100% of the state's average weekly wage; and so that the minimum weekly benefit rate for injuries occurring July 1, 2012 through June 30, 2013 for both temporary and permanent benefits is $120.90.

Administrative Changes:

- **Tenn. Comp. R. & Regs. 0800-02-12-.03** – Effective August 9, 2012, the Tennessee Department of Labor and Workforce Development amended this rule governing the Drug Free Workplace Program to include two new substances (MDMA and 6-Acetylmorphine) and to lower the cut-off levels for amphetamines and cocaine so that rule mirrors federal Department of Transportation drug testing standards. Click here for a copy of Tenn. Comp. R. & Regs. 0800-02-12.03.

The Tennessee Department of Labor and Workforce Development amended the following rules within the Medical Fee Schedule. Click here for a copy of the Medical Fee Schedule rules.

- **Tenn. Comp. R. & Regs. 0800-02-18-.02** – Effective August 9, 2012, the Tennessee Department of Labor and Workforce Development amended this medical fee schedule rule by changing the Medicare conversion factor from 38.0870 to 33.9764, by providing instruction that orthopedic and neurosurgeons may place a modifier on a surgical bill to indicate their specialty but if they fail to do so the provider's specialty will be determined by listing provided in the Tennessee Department of Health database, and by capping reimbursement rates for laboratory and pathology services at 200% of the Medicare reimbursement rate.

- **Tenn. Comp. R. & Regs. 0800-02-18-.08** – Effective August 9, 2012, the Tennessee Department of Labor and Workforce Development amended this medical fee schedule rule to allow a chiropractor to bill for an office visit on the same day that a chiropractor

performs a manipulation when it is the patient's first visit with the provider.

- **Tenn. Comp. R. & Regs. 0800-02-18-.12** – Effective August 9, 2012, the Tennessee Department of Labor and Workforce Development amended this medical fee schedule rule to require that pharmaceutical bills submitted for reimbursement for the dispensation of repackaged and compounded drugs include the National Drug Control Number of the original manufacturer.

- **Tenn. Comp. R. & Regs. 0800-02-18-.13** – Effective August 9, 2012, the Tennessee Department of Labor and Workforce Development amended this medical fee schedule rule to set the reimbursement rate for ground ambulance services at 150% of the Medicare reimbursement rate.

TEXAS

– *Made Administrative Changes*

Legislation: No legislative session in 2012.

Administrative Changes:

- On January 24, 2012 the rules pertaining to Onsite Inspections, Proposals for Decision and Cease and Desist Orders were adopted. Click here for a copy of this rule.

- On March 26, 2012 the rule pertaining to the Division's requirements for explanation of benefits was adopted. Click here for a copy of this rule.

- On May 11, 2012 the rule pertaining to Medical Dispute Resolution was adopted. Click here for a copy of this rule.

- On July 9, 2012 the rule pertaining to Designated Doctor Rules (DD eligibility, testing and procedures) was adopted. Click here for a copy of this rule.

- On July 13, 2012 the rule pertaining to Non-Subscriber Reporting (NSR) was adopted. Click here for a copy of this rule.

- On October 17, 2012 the rule pertaining to Medical Quality Review Procedures (MQRP) was adopted. Click here for a copy of this rule.

- On December 17, 2012 the rule pertaining to Post Designated Doctor Exams by Treating and Referral Doctors were adopted. Click here for a copy of this rule.

UTAH

– *Amended Statute and Made Administrative Changes*

Legislation:

- **HB 19** was signed by Governor Gary R Herbert on March 22, 2012 and became law on May 8, 2012. The bill prohibits a government entity from using a nine digit number (i.e. Social Security Number) as a person's identification number the only exception being the State Tax Commission and no exception for workers' compensation purposes. Click here for a copy of HB 19.

- **SB 52** was signed by Governor Gary R Herbert on March 23, 2012 and became law on May 8, 2012. The bill: (1) assures a motor vehicle carrier's independent truck driver who waive their rights to workers' compensation have insurance coverage for work related accidents; (2) requires these drivers be covered by occupational accident related insurance with a minimum aggregate policy limit of $1,000,000 for all benefits paid; and (3) requires the Utah Labor Commission to verify this coverage before issuing a workers' compensation coverage waiver. Click here for a copy of SB 52. Also see companion bill, SB 121.

Administrative Changes:

- **R612-1-3 (C) Restorative Services Authorization.** Effective October 10, 2012, physical therapists, chiropractors and other medical providers who rendering restorative services are required to file with a payor notice of treatment of specific body regions using specific forms. Click here for a copy of this rule on page 28.

- **R612-3-4. Workers' Compensation Rules - Self-Insurance. Qualifying Requirements.** The monetary qualifying requirements for prospective as well as current self-insured employers were amended by deleting the provision allowing irrevocable letters of credit as an acceptable alternative in lieu of a surety bond. The amendment took effect October 10, 2012**.** Click here for a copy of this rule on page 31.

- **R612-2-5. Regulation of Medical Practitioner Fees.** Effective December 1, 2012, the Labor Commission adopted and incorporated by reference the Optum Essential RBRVS, 2012 1st Quarter Emergency Update and the 2012 American Medical Association Current Procedural Terminology (CPT) as the method for calculating reimbursements. Reference to the 1st Quarter Emergency Update and the Ingenix 2011 Current Procedural Coding Expert, effective December 1, 2011 was deleted. Also adopted and incorporated by reference were the Utah Labor Commission's 2013 Medical Fee Standards, effective December 1, 2012. Click here for a copy of these rule changes on page 33.

VERMONT

– Amended Statute

Legislation:

- **SB 136** (Act No. 133) was signed by Vermont Governor Peter Shumlin on May 5, 2012 (effective on July 1, 2012). The bill: (1) clarifies that the commissioner of labor shall ensure that a worker who has been out of work for 90 days is screened for vocational rehabilitation services; (2) amends the definition of "child" in the workers' compensation statutes to include a grandchild; and (3) requires the department of labor to study whether vocational rehabilitation services should be subject to performance standards and whether injured workers are receiving vocational rehabilitation services in a timely manner. Click here for a copy of SB 136.

Administrative Changes: None.

VIRGINIA

– Amended Statute and Made Administrative Changes

Legislation:

- **HB 137** was signed by Governor Robert F. McDonnell on May 18, 2012 (effective July 1, 2012). The bill: (1) revised the presumption, in the absence of a preponderance of evidence to the contrary, that an injury is work related if an employee is physically or mentally unable to testify and there is un-rebutted prima facie evidence that the injury was work related; and (2) substitutes the phrase "arose out of and were in the course of employment" for "were work related." Click here for a copy of HB 137.
- **HB 153** was signed by Governor Robert F. McDonnell on April 6, 2012 (effective July 1, 2012). The bill: (1) excludes a person who suffers an injury on or after July 1, 2012, from coverage under the Virginia Workers' Compensation Act if there is jurisdiction under either the Longshore and Harbor Workers' Compensation Act or the Merchant Marine Act of 1920; and (2) provides that the Workers' Compensation Act will not be construed to eliminate or diminish any right that a person or his personal representative may have under either of such federal acts. Click here for a copy of HB 153.
- **HB 453** was signed by Governor Robert F. McDonnell on March 20, 2012 (effective July 1, 2012). The bill: (1) excuses the Commonwealth from assessment of a penalty for failing to pay workers' compensation benefits when the Commonwealth has issued a regular payroll payment to the employee in lieu of compensation covering the period of disability; (2) allows the payment to be made in any form, and not only by check; and (3) clarifies that a regular payroll payment issued by the Commonwealth includes payments issued net of deductions for elected and mandatory benefits and other standard deductions. Click here for a copy of HB 453.
- **HB 1169** was signed by Governor Robert F. McDonnell on April 4, 2012 (effective July 1, 2012). The bill provides that the Workers' Compensation Commission shall retain jurisdiction for employees to pursue payment of charges for medical services notwithstanding that bills or parts of bills for health care services may have been paid by a source other than an employer, workers' compensation carrier, guaranty fund, or uninsured employer's fund. Click here for a copy of HB 1169.
- **SB 576** was signed by Governor Robert F. McDonnell on April 5, 2012 (effective July 1, 2012). The bill: (1) extends until July 1, 2015 the existing 0.5 percent maximum tax rate that may be assessed on uninsured or self-insured employers; (2) states that the maximum rate is scheduled to revert to 0.25 percent on July 1, 2012; and (3) states the revenues from the tax fund workers' compensation benefits that are awarded against such employers from the uninsured employer's fund. Click here for a copy of SB 576.
- **SB 577** was signed by Governor Robert F. McDonnell on April 4, 2012 (effective July 1, 2012). The bill: (1) provides that a majority of the members of the Workers' Compensation Commission constitutes a quorum for purposes of exercising the judicial,

legislative, and discretionary functions of the Commission, regardless of whether there is a vacancy on the Commission; (2) provides that a quorum is not necessary for the exercise of the Commission's administrative functions; and (3) states that the existing requirement that the chairman of the Commission appoint a Deputy Commissioner to participate in a review when all Commissioners are unable to hear the review is revised to make such appointment optional. Click here for a copy of SB 577.

Administrative Changes:

The Virginia Workers' Compensation Commission changed the following rules.

- **2011 Cost of Living Adjustment (COLA) Benefits** - Click here for a copy of the rate.

- **Minimum and Maximum Compensation Rate** - Click here for a copy of the rates.

VIRGIN ISLANDS

– No Changes Were Made in 2012

Legislation: None.

Administrative Changes: None.

WASHINGTON

– Made Administrative Changes

Legislation: None.

Administrative Changes:

- **Claim Resolution Structured Settlement Agreements, Chapter 296-14A WAC** – This rulemaking assists in the implementation of claim resolution structured settlement agreements. These agreements are available for claims for injured workers age 55 and older effective January 1, 2012, 53 and older effective January 1, 2015, and 50 and older effective January 1, 2016. Chapter 296-14A WAC was created to clarify requirements and the process for structured settlement agreements. The rules were effective April 20, 2012. Click here for Chapter 296-14A WAC.

- **Washington Stay at Work Program, Chapter 296-16A WAC** - This rulemaking assists in the implementation of the program created the previous year by the Washington State Legislature. The program provides reimbursements to employers who provide transitional or light duty work to injured workers unable to return to their regular job because of work restrictions related to their injury. Some of the reimbursement costs do not negatively impact the employer's experience rating. These rules were effective May 21, 2012. Click here for Chapter 296-16A WAC.

- **Medical Aid Conversion Factors, Physical Therapy Rules, and Occupational Therapy Rules** - These rules update conversion factors provided in WAC 296-20-135 and maximum daily fees provided in WAC 296-23-220 and WAC 296-23-230 for certain professional health care services for injured workers. Rule changes are necessary to maintain current overall fees for health care services, which are published annually in the Medical Aid Rules and Fee Schedules.

- **WAC 296-20-010 General Information** - This rulemaking clarifies when and under what circumstance a provider can charge an injured worker for a "no show" or "missed appointment" related to the industrial injury on an allowed claim. The amended rule was effective March 23, 2012. Click here for a copy of WAC 296-20-010.

- **Medical Provider Network** - Rules for implementing requirement mandated by the Washington State Legislature that beginning 1/1/13, care beyond the initial office or emergency-room visit for injured workers be performed by providers in a network established by the Department of Labor and Industries.
  - Effective February 3, 2012, WACs 296-20-01010, 296-20-01020, 296-20-01030, 296-20-01040, 296-20-01050, 296-20-01060, 296-20-01070, 296-20-01080, 296-20-01090, and 296-20-01100 were created to: 1) establish minimum standards for joining and staying in the statewide network; 2) allow the department to take further action to monitor quality of care and assure efficient management of the network; and 3) clarify what constitutes patterns of risk of physical or psychiatric harm or death that determines when the department may remove a provider from the network
  - Effective April 6, 2012, WACs 296-20-015, 296-20-025, 296-20-065, 296-20-075, and 296-20-12401 were amended to: 1) Clarify "initial visit;" 2) Inform health care providers and workers as to what services may be provided by a non-network provider; and 3) When care must be transferred to a network provider.

WEST VIRGINIA

– Amended Statute and Made Administrative Changes

Legislation:

– **HB 4256** was signed by Governor Earl Ray Tomblin on March 30, 2012 effective June 7, 2012). The bill: (1) authorizes the Insurance Commissioner to limit any "single subject of insurance" to no more than 10% of the statutorily required surplus; and (2) adds a common regulatory requirement that RRGs update any OIC filing with new information. Click here for a copy of HB 4256.

Administrative Changes:

- **114 CSR 94 - Workers' Compensation Insurance for State Agencies** – was adopted by the West Virginia Offices of the Insurance Commissioner in January, 2012 (Effective April 20, 2012). This new rule (initially promulgated as an emergency rule) includes conditions for participation by and removal of "discretionary participants" (non-executive state agencies), provides for an annual "open enrollment" period during which non-- executive agencies may enroll, and permits the Commissioner to require the execution of a participation agreement. Click here for a copy of 114 CSR 94.

- **113 CSR 1 - Premium Subsidy** – was amended by the West Virginia Offices of the Insurance Commissioner in January, 2012 (Effective April 20, 2012). This rule changes the maximum income level for eligibility for the subsidies for the

state high risk plan (the WV Health Insurance Plan or "AccessWV"). The previous rule set the maximum at 200% of the federal poverty level, and this amendment raises it to 400% to reflect the 2011 statutory change. The amendment also defines "average annual household income," a term used in the statute, to be the income reported on the applicant's last year's federal tax return plus any unreported income such as child support, etc. of any household member. Click here for a copy of 113 CSR 1.

WISCONSIN

– Amended Statute

Legislation:

– **SB 409** (Act 183) was signed by Wisconsin Governor Scott Walker on April 5, 2012. The bill: (1) increases the maximum weekly compensation rate for permanent partial disability to $312 for injuries occurring before January 1, 2013, and to $322 for injuries occurring on or after that date; (2) provides that compensation for temporary disability on account of receiving vocational rehabilitation services shall not be reduced on account of any wages earned for the first 24 hours worked by an employee during a week in which the employee is receiving those services, but that if an employee performs more than 24 hours of work during a week in which the employee is receiving those services, all wages earned for hours worked in excess of 24 during that week shall be offset against the employee's average weekly wage in calculating compensation for temporary disability; (3) provides that an injured employee who is receiving vocational rehabilitation services is entitled to payment for the cost of tuition, fees, and books required for the employee's vocational rehabilitation program; (4) prohibits the Department of Workforce Development (DWD) from allowing compensation for permanent disfigurement for an employee who returns to work for his or her employer at the time of injury, *or who is offered employment with that employer*, unless the employee suffers an *actual* wage loss due to the disfigurement; (5) makes various changes relating to the work injury supplemental benefit (WISB) fund; (6) provides that the WISB fund, rather than the employer or insurer, is liable for certain traumatic injury benefits or treatment expenses only if the date of injury or last payment of compensation, other than for treatment or burial expenses, whichever is later, is before April 1, 2006; (7) permits DWD to bring an action in tort against a third party for damages by reason of an injury for which DWD has paid or is obligated to pay a claim from the WISB fund and entitles the WISB fund to reimbursement from the proceeds collected from the third party for any payments made to an injured employee from that fund; (8) requires an employer or insurer that has paid supplemental benefits to file a claim for reimbursement with DWD by no later than 12 months after the end of the year in which the supplemental benefits were paid in order to receive reimbursement from the WISB fund for the supplemental benefits paid; (9) permits an employee with such permanent partial disability who incurs such further disability as a result of a second injury to receive that additional

compensation from the WISB fund only if the employee has not already received compensation from the WISB fund as a result of a second injury; (10) provides that if the secretary of workforce development determines that the expected ultimate losses to the WISB fund on known claims exceed 85 percent of the cash balance in that fund and that there is a reasonable likelihood that the cash balance in that fund may become inadequate to fund all claims against the fund, the secretary must file with the secretary of administration a certificate attesting that the cash balance in that fund is likely to become inadequate to fund those claims and specifying: a) that payment of those claims will be made as provided in a schedule that DWD must promulgate by rule; b) a date after which payment of those claims will be reduced; or c) a date after which no new claims will be paid; (11) prohibits DWD from requiring submission of a report when the employer or insurer denies the employee's claim for compensation and the employee does not contest that denial; (12) lowers the standard deviations used to determine the reasonableness of a disputed health service fee to 1.2 standard deviations from the mean; (13) requires DWD to conduct an audit of the databases certified by the DWD; and (14) requires the secretary of workforce development to create a committee to study methods of funding the cost of providing regular, periodic increases in the weekly indemnity for permanent total disability, if legislation providing for those increases were to be enacted. Click here for a copy of SB 409.

Administrative Changes: None.

WYOMING

– No Changes Made in 2012

Legislation: None.

Administrative Changes: None.

Legislative Session Information

There are twenty-six states that began new sessions in 2011 and carried over bills to 2012 (odd to even years), including AK, CA, DE, GA, HI, IL, IA, KS, ME, MA, MI, MN, NE, NH, NY, NC, OH, OK, PA, RI, SC, TN, VT, WA, WV and WI (RI technically does carry over bills, but typically will reintroduce legislation). Two states (NJ and VA) do not carry over bills from 2011 and began new legislative sessions in 2012. These states carried over legislation from 2012 to 2013 (even years to odd years). The remaining eighteen states do not carry over legislation, including AL, AZ, AR, CO, CT, FL, ID, IN, KY, LA, MD, MS, MO, NM, OR, SD, UT and WY. Four states hold biennial legislative sessions in odd years, including MT, NV, ND and TX where there was no legislative session in 2012. Most of the states have adjourned Sine Die for 2013. The 2013 legislative and administrative session activity will be published in the 2014 Workers' Compensation Research Bulletin.

UWC wishes to acknowledge that many of the legislative summaries were derived or excerpted from analyses prepared by various state agencies or research bureaus and the states.