

# Workers' Comp Legislative Activity

October 15, 2018 – December 1, 2018

## Illinois

### ILLINOIS H.B. 200 - WORKERS' COMPENSATION (PRESCRIPTION DRUG FORMULARY), WORKERS' COMPENSATION (UTILIZATION REVIEW AND APPEALS)

**Summary:** Current version (11/13/2018): This measure specifies that when an employee is required to travel away from their employee's premises to do their job, the employee's accidental injuries arise out of their employment and are in the course of their employment when the conduct in which the employee was engaged at the time is reasonable and that conduct may have been anticipated or foreseen by the employer.

The measure allows the following factors to be considered when determining if an employee was required to travel:

- i. whether the employer had knowledge that the employee may be required to travel to perform the job,
- ii. whether the employer furnished any mode of transportation to or from the employee,
- iii. whether the employee received, or the employer paid or agreed to pay, any remuneration or reimbursement for costs or expenses of any form of travel,
- iv. whether the employer in any way directed the course or method of travel,
- v. whether the employer in any way assisted the employee in making any travel arrangements,
- vi. whether the employer furnished lodging or in any way reimbursed the employee for lodging, and
- vii. whether the employer received any benefit from the employee traveling.

Additionally, the measure specifies that injuries to the shoulder are considered injuries to the arm and that injuries to the hip are considered injuries to the leg, for the purposes of determining compensation.

The measure requires the Commission to create a drug formulary and limits workers' compensation prescriptions to that formulary.

The measure also requires the Commission to investigate all procedures, treatments, and services covered for ambulatory surgical treatment centers and establish fee schedule amounts for any procedures, treatments, and services for which fee schedule amounts have not been established.

The measure requires any electronically submitted workers' compensation bill determined to be complete to be paid or objected to within 30 days and establishes a penalty of \$1,000 per violation for failure to comply with the requirement.

The measure requires an employer to authorize or disapprove treatment within 14 days of receiving all appropriate records and data elements needed to allow the employer to make a determination and establishes a \$30 per day fine, payable to the employee, not to exceed \$10,000.

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The measure requires the employer or insurer to provide written notification to the provider and to the employee, or his or her designee, in the form of an explanation of benefits that explains the basis for the denial, when a claim is denied for a work-related illness or injury.

Senate amendment

(11/13/2018): <http://www.ilga.gov/legislation/100/HB/PDF/10000HB0200sam001.pdf>

Committee amendment

(6/27/2017): <http://www.ilga.gov/legislation/100/HB/PDF/10000HB0200ham001.pdf>

Introduced version: <http://www.ilga.gov/legislation/100/HB/PDF/10000HB0200.pdf>

**Status:** Prefiled 12/5/2016. Referred to Rules Committee 1/11/2017. Assigned to Executive Committee 1/25/2017. Hearing held; passed Committee 2/8/2017. Referred to Rules Committee 4/28/2017. Hearing held; amended; passed Committee 6/27/2017. Passed House 6/28/2017. Referred to Senate Judiciary Committee; Rules suspended; Passed Committee 6/29/2017. Amendment filed; referred to Senate Judiciary Committee 11/13/2018. Hearing held; Amendment adopted; passed Committee; passed Senate 11/14/2018.

**Outlook:** The Senate Judiciary Committee passed the measure as amended by a vote of 10-0. The Senate adopted the amendment by a vote of 57-0.

The measure was sent to the House for concurrence on Senate amendments.

An amendment was recently filed on this measure and will be heard November 14 by the Senate Judiciary Committee. The amendment concerning a denied claim for a work-related illness or injury, requires the employer or insurer to provide written notification to the provider and to the employee, or his or her designee, in the form of an explanation of benefits that explains the basis for the denial, when a claim is denied for a work-related illness or injury.

The hearing will be open to the public and testimony will be accepted at the discretion of the Chair, Senator Kwame Raoul (D). A vote may occur at the discretion of the Chair.

This measure passed the House by a vote of 64-48.

During the June 27 hearing, the House Rules Committee amended this measure into your issue scope and passed the measure 3-1. The amendment inserts language concerning injuries arising out of required travel, inserts language concerning compensation for shoulder and hip injuries, requires the creation of a workers' compensation formulary, requires payment of workers' compensation claims within 30 days, and requires a determination to be made by an employer within 14 days of receiving all necessary information. The measure is now eligible for consideration by the full House.

The Illinois Legislature has adjourned sine die. The Legislature will reconvene in November for a veto session. When the legislature reconvenes for their veto session or a special session, this measure will retain its current status and will be eligible for consideration.

**State Outlook:** The Democratic Party controls the House of Representatives and the Senate, while the Republican Party controls the Governor's Office. The General Assembly has a two-year session. Each session historically adjourns May 31, but sine die adjournment does not occur until a few days before the beginning of the next session. Bills left pending at the end of a session in an odd-numbered year may be carried over to the following session in the subsequent even-numbered year. At the beginning of session, it is not uncommon for legislators to introduce "shell bills". A shell bill is a legislative bill, typically with no substantive provisions, that is introduced for purposes of later being amended to include the actual legislative proposals advanced by the introducer.

Upon introduction, bills are referred to a committee. However, committees are not required to hear every bill referred to them. Additionally, Committees often call last-minute hearings without notice. If the measure receives a hearing, members of the public may testify on the bill and legislators may amend the measure. Committees may hold multiple hearings on a measure before reporting the bill out to another committee or to the floor. Bills are often considered in multiple committees before being considered in a chamber. Legislators in Illinois typically file a large number of amendments, either on the floor or in committee. Illinois has very loose germaneness rules.

If the bill passes the committee, it is reported to the floor for a second reading, where it can be debated and amended. Bills in Illinois require three readings for final passage in each chamber and may be amended on third reading. If there are differences between the House and Senate versions of the bill, a conference committee is appointed to resolve differences. Members of the conference committees are appointed by the Speaker of the House and Senate President and consist of five representatives and five senators. If the report is passed by the committee, it goes back to the House and Senate for final approval. After the report passes both chambers, the final bill is sent to Governor for action. Additionally, Illinois's budget occurs annually and only contains appropriations. After the Governor submits a budget to the General Assembly, all Senate and House Appropriations committees review and consider budgetary legislation. Final passage of the budget before May requires a simple majority vote. After May, a three-fifths majority vote is required to pass the measure. After passage, the final budget is sent to the Governor for approval.

**Effective Date:** June 1, 2018

## Nebraska

### NEBRASKA L.R. 383 - WORKERS' COMPENSATION (PRESCRIPTION DRUG FORMULARY)

**Summary:** This measure establishes an interim study to examine the feasibility of adopting a workers' compensation drug formulary, including the following:

- i. whether prescribing practices in workers' compensation cases affect or contribute to the prescription opioid problem,
- ii. whether the use of a drug formulary would result in more efficient delivery of medications, provide workers with reasonable and necessary care and treatment, and reduce utilization of habit-forming opioids and narcotics,
- iii. the extent to which use of a workers' compensation drug formulary would provide savings in

workers' compensation claims,  
iv. whether the use of a drug formulary can decrease the length of disability for injured workers and increase return-to-work rates and outcomes, and  
v. whether a workers' compensation drug formulary, if adopted, should cover all prescription drugs or be limited to only controlled substances or only opioids.

<https://nebraskalegislature.gov/FloorDocs/105/PDF/Intro/LR383.pdf>

**Status:** Introduced; referred to Executive Board 3/27/2018. Referred to Senate Business and Labor Committee 4/4/2018. Hearing scheduled 11/27/2018.

**Outlook:** This measure will be heard November 27 in the Senate Business and Labor Committee.

The hearing will be open to the public and testimony will be accepted at the discretion of the Chair, Senator Joni Albrecht (I). A vote is unlikely but remains at the discretion of the Chair.

While the Nebraska legislature is technically non-partisan, the sponsor of this measure is affiliated with the Republican Party. This measure has not garnered the support of co-sponsors.

**State Outlook:** The Nebraska Legislature is technically non-partisan, but Republican-affiliated members compose the majority of the Senate.

Upon introduction, a bill may be referred to a committee by a nine-member reference committee. Committees are required to hear all bills refer to them and Legislators may designate on bill as a priority bill, which are heard before all non-priority bills. The committee chair may designate two bills in committee as priority bills, and the Speaker of the House may designate an additional 25 priority bills. When a hearing is held, members of the public may testify, and the committee may either kill the bill, hold it for further discussion, or advance it to the full legislature with or without recommended amendments. Omnibus bills are often introduced by committees that cove a broad spectrum of relevant issues.

Once reported out of committee, measures are placed in the General File and are eligible for debate and consideration by the full Legislature. This is regarded as the most important part of the legislative process and 25 votes are required to adopt amendments or move a bill from General File to the Select File, which is the next stage of consideration. Once in the Select file, bills may be debated, further amended, and voted on for a second time before moving to the final reading. Bills may not be voted on for final passage until at least five legislative days after its introduction and one legislative day after it is placed on final reading.

Nebraska's budget process occurs on a biennial basis and contain only appropriations. The process begins when the Governor's budget proposal is sent to the Appropriations Committee for consideration. If the Appropriations Committee does not place an amended version in the General File by the 70th day of session, the Governor's proposal is placed on the General File instead. Amendments can be offered to the bill on the floor before the bill is moved to final passage. If the Governor vetoes the bill, the Appropriations Committee must move to recommend the full chamber override the veto within one day of receiving the Governor's veto message. If the motion fails, the chair may arrange to override selected

portions of the bill. Thirty votes are required to amend a veto override motion that includes another line-item veto.

## Ohio

### OHIO H.B. 733 - WORKERS' COMPENSATION (MEDICAL COVERAGE AND REIMBURSEMENT)

**Summary:** This measure requires the Administrator of Workers' Compensation or a self-insuring public employer to pay for services used to determine whether a person employed by a detention facility sustained an injury or occupational disease after exposure to another person's blood or bodily fluids.

[http://search-prod.lis.state.oh.us/solarapi/v1/general\\_assembly\\_132/bills/hb733/IN/00?format=pdf](http://search-prod.lis.state.oh.us/solarapi/v1/general_assembly_132/bills/hb733/IN/00?format=pdf)

**Status:** Introduced 9/19/2018. Referred to House Insurance Committee 11/13/018.

**Outlook:** This measure was referred to the House Insurance Committee chaired by Representative Tom Brinkman (R).

This measure awaits a hearing. The hearing, if scheduled, will be open to the public, testimony will be accepted, and a vote may occur at the discretion of the Chair.

**State Outlook:** The Republican Party controls the House of Representatives and the Senate, as well as the Governor's Office. Legislative sessions in Ohio last two years, convening the first Monday in January during odd-numbered years. Ohio is a year-round Legislature and recesses several times throughout the year. Bills left pending at the end of a session in an odd-numbered year may be carried over to the following session in subsequent even-numbered year.

All introduced bills must first be referred to either the House Rules and Reference Committee or the Senate Reference Committee, where they will then be referred to a standing committee. Committees are required to hear every bill referred to them. Typically, measures receive at least three committee hearings prior to a committee vote. A sponsor is permitted to provide testimony during the measure's first hearing, proponents are permitted to provide testimony during the second hearing, and opponents and third parties are permitted to provide testimony during the third hearing. If the bill passes the committees of referral, it is reported to the floor for a second reading, where it can be debated and amended. Bills in Ohio require three readings for final passage in each chamber and may be amended on third reading. After the measure has passed both chambers, the final bill is sent to the Governor for action.

Ohio's budget process occurs on a biennial basis and contains policy and appropriations. The budget process begins with hearings in the House Finance Committee, where legislators hear testimony and amend the bill for an extended period. Once out of committee, the bills go to the floor for debate and approval and then moves to the Senate for further consideration, where the process repeats itself. After the bill passes the Senate, a conference committee is appointed to resolve differences. After final passage, the measure goes to the Governor for action.