

# **2017 Report**

## **Workers Compensation Insurance in North Carolina**



**North Carolina Rate Bureau**

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## **I. Report Scope**

This report has been compiled to provide an overview of matters related to Workers Compensation in which the North Carolina Rate Bureau has oversight.

The North Carolina Rate Bureau (Bureau) files rates, loss cost, rules, and forms on behalf of all member companies writing workers compensation insurance in North Carolina. The Bureau does not have regulatory authority over the approval of the filed rates, loss cost, rules, and forms or the administrative components of the workers compensation insurance system in North Carolina. However, there are many industry related activities and much data that the Bureau and its member companies must consider when making decisions related to their roles and responsibilities.

The report that follows provides an overview of workers compensation insurance matters that are under the jurisdiction of the Bureau or that have an impact on its operations.

## **II. Report Limitations**

This report does not encompass a complete study of all issues affecting Workers Compensation in North Carolina. It has been prepared using the best available information on workers compensation insurance from sources that may be considered experts in the field of insurance regulation and workers compensation insurance. The data used for this report has been provided to the Bureau by carriers writing workers compensation insurance in North Carolina or data that has been reported to or collected by various industry groups. There has been no independent verification of Bureau data by outside sources and no verification by the Bureau of information used from outside sources.

## **III. Executive Summary**

Workers compensation insurance provides benefits for employees for injury or death that occurs in the course of their employment. Benefits may include replacement of wages, cost of medical treatment, compensation for disability and/or death benefits. The workers compensation system is a no-fault system. It is a system that provides protection for both the employer and the employee. In North Carolina the employer is held liable for certain benefits by way of the Workers Compensation Act. In return for the protection provided by the Act, the injured employee waives most of their rights to seek compensation for work related losses through the court system.

North Carolina has several options for employers to meet their statutory obligations for workers compensation insurance. Those options include, but may not be limited to, voluntary coverage, residual market coverage (assigned risk), self-insurance, or participation in a self-insured fund.

Overall the North Carolina workers compensation market appears to be stable. The number of carriers in the marketplace totaled 533 as of June 1, 2017. There has been very little fluctuation in carriers licensed to write workers compensation over the past five years. The consistency in the number of carriers available to write workers compensation insurance in North Carolina enables most employers to find coverage in either the voluntary or the assigned risk market.

As it is in most other states, in North Carolina there is an ongoing concern about the cost of workers compensation for employers and carriers and the fees associated with administering adequate levels of benefits for injured workers. Rate filings over the past five years have yielded more decreases than increases. The past three rate filings for voluntary market coverage have resulted in decreases. Assigned Risk rates have fluctuated between decreases and a slight increase during the same three year period. The Bureau responds to requests, from the General Assembly and various state agencies, for information and expertise on how changes in rules and rates may impact the workers compensation system in North Carolina.

#### **IV. North Carolina Workers Compensation Insurance Market**

##### **A. Overview of the Workers Compensation System**

Workers compensation laws were developed to protect both the injured worker and the employer. They are designed to ensure that employees, who are injured in the course of their employment, are provided timely and predictable compensation and medical care without regard to fault. In exchange for this, the employee relinquishes their right to sue their employer for the tort of negligence.

In North Carolina, workers compensation insurance is required for businesses which regularly employ three or more employees. This includes all entities operating as corporations, sole proprietorships, limited liability companies and partnerships. There are limited exceptions to the “three or more employee” rule. Those exceptions include operations that present radiation exposure, sawmill and logging operators, domestic servants, and seasonal agricultural workers. With the exception of certain executives (executive officers, sole proprietors, and partners), employees are not permitted to waive their right to workers compensation coverage.

According to North Carolina Workers Compensation statutes, employers have multiple options for providing coverage. Along with the voluntary and residual markets, employers may also seek coverage by way of a group self-insured fund or elect to become an individual self-insured employer.

**B. State of the North Carolina Workers Compensation Insurance Market**

In total, North Carolina Workers Compensation premium from insurers in 2016 was approximately \$1.5 Billion. This comprised 5.2% of all North Carolina property and casualty premium written. These premiums do not include any self-insured employers or funds.

The following table shows the total Workers Compensation Premium for the last 5 years.

Year	Written Premium Volume	Change from Prior Year
2012	\$1,243,572,271	7.30%
2013	\$1,355,515,678	9.00%
2014	\$1,430,888,634	5.60%
2015	\$1,487,631,736	4.00%
2016	\$1,493,077,196	0.40%

In North Carolina, workers compensation coverage provided by insurance companies may be purchased in the voluntary market (private carriers) or through the residual market (assigned risk). The majority of workers compensation insurance written in North Carolina is written in the voluntary market. In 2016, 96% of workers compensation premium reported to the Bureau were written in the voluntary market and 4% was written through the Assigned Risk Plan.

A number of things, such as market share and trend, should be considered when assessing the sustainability of the workers compensation market in North Carolina. However, the number of policies written in assigned risk is often viewed as an indication of the health of the voluntary market. The table below shows the number of policies assigned and the total premium volume for coverage written through the assigned risk market for the past five years.

Year End	Policy Count		Premium Volume		Average Premium	
	Assigned Risk % of Mkt	Voluntary % of Mkt	Assigned Risk % of Mkt	Voluntary % of Mkt	Assigned Risk	Voluntary
2012	12.20%	87.80%	3.00%	97.00%	\$2,627	\$11,682
2013	13.00%	87.00%	3.60%	96.40%	\$3,204	\$12,232
2014	14.00%	86.00%	4.00%	96.00%	\$3,257	\$12,359
2015	13.90%	86.10%	3.90%	96.10%	\$4,476	\$12,432
2016	13.90%	86.10%	4.00%	96.00%	\$3,101	\$12,082

**i. Voluntary Market**

The availability of insurance is usually described in terms of insurer capacity and the supply of insurance products in the market. As in other lines of insurance, the availability of workers compensation coverage is impacted by the number of carriers writing and their capacity to write in the market. There were 531 member companies available to write workers compensation coverage in North Carolina in 2016. As shown in the table below there has been very little fluctuation in this number over the past five years.

Year	# of Carriers
2012	528
2013	527
2014	532
2015	531
2016	531

Many of the workers compensation carriers writing coverage in North Carolina are members of insurance groups that write a large segment of the overall premium in the marketplace. Over the past five years, the top ten carriers writing workers compensation insurance in North Carolina has remained fairly stable. The chart below shows the top ten carriers and their written premium for workers compensation in 2016.

2016 RANK	GROUP NAME	2016 WRITTEN PREMIUM	WRITTEN PREMIUM MARKET SHARE	% CHANGE FROM 2015
1	Travelers Group	\$116,996,024	7.8%	-7.1%
2	Builders Group	\$107,574,075	7.2%	+13.3%
3	Hartford Fire Group	\$98,988,106	6.6%	+0.7%
4	WR Berkley Corp Group	\$96,331,582	6.5%	-11.9%
5	BCBS OF MI GRP	\$72,211,815	4.8%	+21.5%
6	Zurich Group	\$69,016,510	4.6%	0.0%
7	American Financial Group	\$62,214,988	4.2%	-7.4%
8	Liberty Mutual Group	\$60,694,697	4.1%	-6.2%
9	ACE Group	\$55,535,295	3.7%	+9.2%
10	AmTrust NGH Group	\$39,518,603	2.7%	+0.9%

**ii. Residual Market**

Residual markets exist to ensure the availability of insurance coverage. The North Carolina Workers Compensation Insurance Plan (NCWCIP) is the mechanism for residual market coverage in North Carolina. Most often the NCWCIP is referred to as the assigned risk plan. The assigned risk plan for North Carolina is administered by the North Carolina

Rate Bureau and is available for most employers unable to secure workers compensation insurance coverage in the voluntary market. Employers must be in good standing with the NCWCIP rules to qualify for coverage through the assigned risk plan. Employers seek coverage in the assigned risk plan for a variety of reasons. The most prevalent reasons are (1) they are a new company; (2) they have a small number of employees; or (3) they have poor claim history.

The residual market is the market of last resort. It is not intended to compete with the voluntary market. Rates charged for policies in the residual market generally have higher rates than those available in the voluntary market. In the NCWCIP 88.5% of employers have premiums less than \$5,000. In addition, the average premium in the residual market is only around \$3,000. These measures are shown in the table below.

<b>Policy Year 2016</b>			
<b>Premium Size</b>	<b>Number of Policies</b>	<b>Written Premium</b>	<b>Average Premium</b>
0-\$5,000	21,525	\$35,937,318	\$1,670
\$5,000-\$25,000	2,522	\$24,203,735	\$9,597
\$25,000-\$100,000	268	\$11,418,990	\$42,608
\$100,000+	23	\$3,914,656	\$170,202
Total	24,338	\$75,474,699	\$3,101

The top 10 types of business written in the Residual Market include the following:

<b>Top 10 Assigned Risk Class Codes</b>		<i>7/1/16 - 6/15/17</i>
<b>Rank</b>	<b>Class Code</b>	<b>Phraseology</b>
1	5645	Carpentry-Construction of Residential Dwellings Not Exceeding Three Stories in Height
2	5474	Painting NOC & Shop Operations, Drivers
3	5437	Carpentry-Installation or Cabinet Work or Interior Trim
4	8810	Clerical Office Employees
5	5445	Wallboard, Sheetrock, Drywall, Plasterboard or Cement Board Installation Within Buildings & Drivers
6	7228	Trucking Local Hauling-All Employees & Drivers
7	5551	Roofing-All Kinds & Drivers
8	9014	Janitorial Services by Contractors - No Window Cleaning Above Ground Level & Drivers
9	5022	Masonry NOC
10	5348	Ceramic Tile, Indoor Stone, Marble or Mosaic Work

Both servicing and direct assignment carriers provide assigned risk coverage written through the North Carolina assigned risk plan. Servicing carriers issue policies and provide services to assigned employers in return for a servicing carrier fee paid by the National Reinsurance Pool. The servicing carriers are selected through a competitive bid process to write plan coverage for a three (3) year period. The share or quota of assigned risk business for servicing carriers is determined based on their bid. Carriers not selected as servicing carriers may request permission to write assigned risk coverage as a direct assignment carrier. Direct assignment carriers are not reinsured through the National Reinsurance Pool. Direct assignment carriers are solely responsible for the financial results of policies they write. Their share or quota is based on their percentage of premium writings in the voluntary market. Effective 1/1/2017, carriers writing assigned risk business are as follows:

**Direct Assignment Carriers:**

ACE American Insurance Company  
American Interstate Insurance Company  
American Zurich Insurance Company  
Auto Owners Insurance Company  
Builders Mutual Insurance Company  
Cincinnati Insurance Company  
Continental Casualty Company  
Hartford Underwriters Insurance Company

**Servicing Carriers:**

Amguard Insurance Company  
Liberty Mutual Insurance Company  
Travelers Property & Casualty Company

## **V. The North Carolina Workers Compensation Ratemaking Process**

In North Carolina, workers compensation carriers are required by statute to be members of the North Carolina Rate Bureau (Bureau). The Bureau is a non-profit organization established by NCGS 58-36-1. One role of the Bureau is to establish and administer class codes, rates, loss cost, rating plans, policy forms, and policy provisions for workers compensation insurance in North Carolina. The Bureau is responsible for preparing and filing workers compensation loss cost and assigned risk rates with the North Carolina Department of Insurance on an annual basis by September 1<sup>st</sup>, as required by statute.

Only the loss costs, loss cost multipliers, and assigned risk rates approved by the Commissioner of Insurance can be used by carriers issuing workers compensation policies in North Carolina.

Loss costs are the amounts needed for the carrier to pay medical, indemnity, disability claims and loss adjustment expenses. Loss adjustment expenses are expenses directly related to the handling of claims and include attorney fees for both the claimant and the employer.

It is the responsibility of the individual carriers to file for the approval of their loss cost multiplier. Loss cost multipliers are based on the other cost a carrier may incur in the course of

doing business. Other cost includes salaries, commissions, rent, utilities and assessments levied by the guaranty fund and the assigned risk plan.

Assigned risk rates are developed using the combination of voluntary loss cost and a loss cost multiplier specific to the assigned risk market. The loss cost multiplier for assigned risk is based on an analysis of expenses relative to the insureds in the assigned risk market. The largest component of expenses relative to the assigned risk market is the assigned risk differential. The differential reflects that policies in assigned risk are generally of higher risk than those insured in the voluntary market.

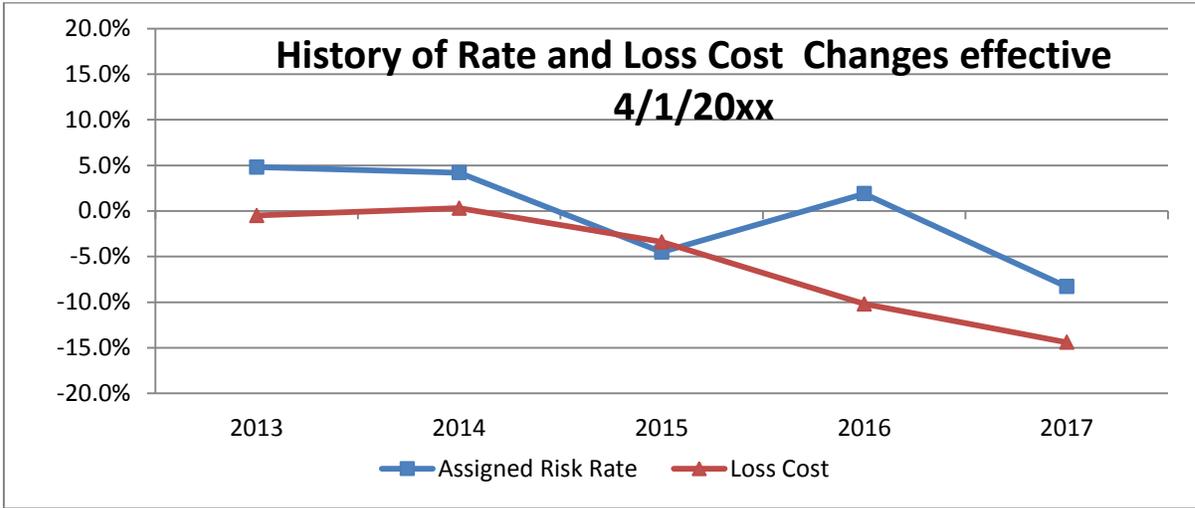
For workers compensation insurance, premium is developed using the insured employer's payroll, the appropriate loss cost and loss cost multiplier, or the assigned risk rate. The loss cost or assigned risk rate will vary based class. The appropriate class is determined based on the type of business or industry of the employer. For voluntary coverage, the loss cost is multiplied by the loss cost multiplier and then by the employers' payroll divided by 100 to determine the manual premium. The manual premium is then multiplied by the employers' experience modification factor to develop the standard premium. The experience modification factor is developed by comparing an employers' actual loss experience by class code to the average experience of all employers in that class code. The development of premium for assigned risk policies uses an assigned risk rate instead of a loss cost and loss cost multiplier.

#### **A. Loss Cost and Assigned Risk Rates**

The filings for loss cost and assigned risk rates are submitted to the North Carolina Department of Insurance on behalf of all member companies. The selections and assumptions used in the filings are prepared by actuarial and advisory service contractors hired by the Bureau. Once compiled, the assumptions and selections are presented to Bureau Staff in detail. The results are then summarized and offered to the Bureau's Workers Compensation Committee for their consideration. The Workers Compensation Committee provides Staff with feedback and makes selections that are further summarized and presented to the Bureau's Governing Committee. The Governing Committee makes the final selections and assumptions that are to be used in the filing submitted to the Department. In both the residual and voluntary markets, rates charged for policies must comply with the statutory requirement that rates not be inadequate, excessive, or unfairly discriminatory (G.S. 58-36-10).

While workers compensation coverage may be readily available in the voluntary market, for most employers, affordability is an ongoing concern. The need for an annual review to determine if loss costs should be increased or decrease is an effort to ensure that rates are

not excessive or inadequate. As shown in the graph below, the past five years have brought a series of decreases and increases in the voluntary loss cost and assigned risk rates.



The Bureau files an update or review for loss cost annually. However, there may be instances in which the approval process becomes lengthy as the Department may need additional information or disagree with the data or assumptions that have been offered in support of the filing. This type of activity impacts the ratemaking process.

**B. Loss Cost Multipliers**

It is up to each carrier to develop and file for approval with the Department its own loss cost multiplier (LCM). The LCM is the second component of their rate (Rate = Advisory Loss Cost \* Loss Cost Multiplier). This component is based on the company's own operating expenses, taxes, and profit provision.

Although workers compensation carriers are required to use a loss cost approved by the Department, certain provisions of NCGS 58-36-100(j) allow a carrier to elect to use the current prospective loss cost or one that was previously filed and approved with a different effective date. The Bureau maintains a reference tool, available on the Bureau's website, of the loss cost multipliers that have been approved by the Department of Insurance for the industry.

**VI. Administration Changes in North Carolina**

2017 brings a number of administration changes for North Carolina. From the top, those changes include the leadership of newly elected Governor Roy Cooper and Insurance Commission Mike Causey. Several changes to the North Carolina Insurance Department staff

have also been made, including a new Senior Deputy Commissioner and a new Deputy Commissioner for Property and Casualty insurance.

In North Carolina, the North Carolina Industrial Commission (NCIC) is responsible for the adjudication of workers compensation claims and the administration of the Workers Compensation Act. The NCIC consist of six Commissioners appointed by the Governor for terms of six years. Although there have been changes in the makeup of the Commission in recent years, the NCIC remains under the leadership of Chairman Charlton L. Allen. Chairman Allen is assisted in adjudicating claims and administering the North Carolina Workers Compensation Act by:

- Commissioner, Phillip A. Baddour – Appointed in 2017
- Commissioner, Linda Cheatham – Appointed in 2010
- Commissioner, Christopher C. Loutit – Appointed in 2016
- Commissioner, Tammy R. Nance – Appointed in 2011
- Commissioner, Yolanda K. Stith – Appointed in 2016

## **VII. Regulatory Changes Impacting Workers Compensation in North Carolina**

With a changing and diverse workplace environment in North Carolina, it is imperative that the Bureau stay abreast of the latest industry trends and regulatory activity. A number of legislative changes and a variety of regulatory activity that impacts workers compensation have occurred in the past several years. There are also a number of proposed legislative changes in 2017. In addition, decisions from court cases impact North Carolina Workers Compensation.

### **A. Past Legislative and Regulatory Activity**

Protecting and Putting North Carolina Back to Work Act (House Bill 709) - On June 13, 2011 House Bill 709 was signed into law. HB 709 included revisions to G.S.97-2 that:

- Allow reasonable access to medical information related to claim or injury
- Require an employee to submit to an independent medical exam or risk termination of benefits
- Change the definition of suitable employment
- Limits Temporary Total Disability (TTD) to 500 weeks and Temporary Partial Disability (TPD) to 300 weeks ( Allows TPD and TTD combined to not exceed 500 weeks)
- Limits Permanent Total Disability to specific catastrophic injuries.
- Increases death benefits from 400 weeks of compensation to 500
- Increase burial expenses from \$3,500 to \$10,000
- Revises the composition of the Commission by reducing the number of commissioner from seven to six, limits commissioners to two terms (6 years per term), and requires three commissioners affiliated with employees and three affiliated with employers.

An Act to Make Base Budget Appropriations for Current Operations of State Departments, Institutions, and Agencies, and for Other Purposes (Senate Bill 744) – Senate Bill 744 was signed into law on August 7, 2014. SB 744 limits reimbursement for prescription drugs and professional pharmaceutical services to ninety-five percent (95%) of the average wholesale price of the product. In preparation for future rate filings the Bureau requested that the National Council on Compensation Insurance (NCCI) estimate the impact of this change. The NCCI estimated this change will result in an impact of -0.4% on overall workers compensation cost in North Carolina.

Change in Definition of Employee (House Bill 765) — House Bill 765 was signed into law on October 22, 2015. HB 765 amends the definition of “Employee” in the Workers Compensation Act G.S.97-2(2). The amended definition allows, under certain conditions, executive officers, directors, or committee members that perform voluntary services for nonprofit corporations to be excluded from the definition of employee, thereby allowing them not be counted when determining the number of persons regularly employed pursuant to G.S.97-2(1).

Drug Formulary — On April 1, 2016, in accordance with a North Carolina General Assembly directive, the North Carolina Industrial Commission released a study on the implementation of a drug formulary in North Carolina. This study was based on a data analysis performed by the Workers’ Compensation Research Institute of pharmacy data for State Workers’ Compensation Claims for calendar years 2012 through 2014. The study is titled “*Report of the Findings and Recommendations of the North Carolina Industrial Commission Regarding the Implementation of a Drug Formulary in Workers’ Compensation Claims.*”

NCAC Rule Changes - The North Carolina Industrial Commission made changes to the North Carolina Administrative Code (NCAC) Rules to be effective April 1, 2015 and July 1, 2015, that impact Professional and Institutional Services.

Rule 04 NCAC 10 J.0102 – *Fees for Professional Services* (Physicians) was updated effective April 1, 2015 to make minor rulemaking corrections. This rule was revised again effective July 1, 2015 to include fee scheduled changes making the maximum allowable reimbursement rate for services to be based on a percentage of the Medicare Part B Fee Schedule for North Carolina.

Rule 04 NCAC 10J.0103 – *Fees for Institutional Services* (Inpatient and Outpatient hospitals, Ambulatory Surgical Centers) established effective April 1, 2016 that service fees paid to inpatient and outpatient institutions be based on the current year’s facility-specific Medicare rate as established by the Centers for Medicare & Medicaid Services (CMS). This rule change included a decrease in the percentage to be used effective January 1, 2016 and January 1, 2017.

The National Council on Compensation Insurance (NCCI) estimated that the combined impact of both the professional services and institutional services will be -1.5% on North Carolina workers compensation costs prospectively.

Ambulatory Surgical Center Fee Schedule – The North Carolina Industrial Commission (NCIC) sets the Workers Compensation fee schedule for Ambulatory Surgical Centers (ASC) through the rulemaking process. Prior to April 1, 2015, the Industrial Commission fee schedule set the rate of reimbursement for ASCs to be 67.15% of billed charges. A new fee schedule established by rule 04NCAC 10J.0103 set the maximum reimbursement rate for ASCs at 220% of the Medicare rate effective April 1, 2015. The rule further reduced the maximum reimbursement for ASCs at January 1, 2016 to 210%, and effective January 1, 2017 to 200%.

On October 1, 2015, Surgical Care Affiliates (SCA), which operates several ASC's in North Carolina and a number of others nationwide, challenged the NCIC April 1, 2015 fee schedule. The SCA filed a Request for Declaratory Ruling. The request sought a ruling by the NCIC asking that the fee schedule change for ASCs be made invalid. In May 2016, the NCIC denied SCA's request. SCA found the NCIC ruling unacceptable and filed a Petition for Judicial Review in Wake County Superior Court seeking a reversal of NCIC's denial of its request for relief from the Declaratory Ruling. By a decision issued August 9, 2016, the Court reversed NCIC's Declaratory Ruling and granted the relief requested by SCA. The effect of this decision was that the NCIC's April 1, 2015 fee schedule change, as it applied to ASCs, was invalidated and that the prior fee schedule allowing 67.15% of billed charges for ASCs be reinstated.

The NCIC appealed the decision, and requested a "stay" of the Court's decision. The NCIC proposed a temporary rule to be effective January 1, 2017 that allows ambulatory surgery centers to be paid usual, customary, and reasonable charges for services rendered. The temporary rule amendment to Rule 04 NCAC 10J .0103 was approved by the Rule Review Commission on December 16, 2106, and will go into effect on January 1, 2017.

On June 15, 2017, the NCIC proposed a new permanent rule with a hearing scheduled July 19, 2017. The rule proposes a revision to 04 NCAC 10J.0103 to provide a schedule of maximum reimbursement rates for institutional medical providers participating in the workers compensation system. This rulemaking amends the rule with respect to the maximum reimbursement rates for ASCs. The rule sets reimbursement rates at a percentage of the amount the Centers for Medicare and Medicaid Services ("CMS") would pay for services. CMS regularly updates and publishes its fee schedule. The rule, as amended, will provide a maximum reimbursement rate of 200% for institutional services that are eligible for payment by CMS when performed at an ASC.

Additionally, for institutional services performed at an ASC that are eligible for payment by CMS if performed at an outpatient hospital facility, but are not eligible for payment by CMS if performed at an ASC, the amended rule sets a maximum reimbursement rate of 135%.

## **B. 2017 Proposed Legislative and Regulatory Activity**

Workers Compensation for Inmates/Unemployment Insurance and Workers Compensation/Newsprint (House Bill 205) - House Bill 205, filed February 28, 2017, proposes, (1) prison inmates who participate in state programs that place them in private-sector jobs be allowed to collect workers compensation benefits based on the state average weekly wage and (2) newspaper carriers would no longer be classified as independent contractors. This would require newspapers to provide workers compensation coverage and pay unemployment insurance tax for newspaper carriers. As of June 8, 2017, this bill was in the Committee on Rules, Calendar and Operations of the House.

Workers Compensation/Independent Truckers (House Bill 830) - House Bill 830, filed April 11, 2017, proposes that the Workers Compensation Act allow motor carriers and independent contractors (owner/operators) to mutual agree that the independent contractor and any of his employees be covered by the motor carrier's workers compensation insurance and for that purpose only, the independent contractor would be treated as an employee of the motor carrier. This would also allow the motor carrier to charge a fee for providing workers compensation coverage. As of April 13, 2017, this bill was in the Committee on Rules, Calendar and Operations of the House.

Workers Compensation/Clarify Medicare Methodology (Senate Bill 165) – Senate Bill 165 proposes clarification on the scope of the Industrial Commission's (IC) authority for setting, on an expedited basis, the maximum fee schedule for medical compensation under the Workers Compensation Act. In 2013 a statute was passed that directed the IC to base the maximum fee schedule for medical payments "for physician and hospital compensation" on applicable Medicare payment methodologies. This reduced the maximum fees from the previous fee schedule. The 2013 statute also allowed the IC to expedite the rulemaking process to change the fee schedule. Ambulatory surgery center's sued and obtained a trial court ruling that they could argue that they were not subject to the maximum fee schedule changes, because they were not "hospitals or physicians." That ruling is on appeal to the Court of Appeals. Although the court ruling was stayed, pending the appeal, the IC adopted a temporary rule effective January 1, 2017, allowing the ambulatory surgical centers to continue to use the prior maximum fee schedule for the time being.

By removing “hospital and physician” language, Senate Bill 165 would revise the 2013 statute to make it clear that the maximum fee schedule approved by the IC would be applicable to all medical compensation. If Senate Bill 165 passes, the IC will be able to set a new maximum fee schedule applicable to all providers on a prospective basis, and the only issue that will remain in the pending Court of Appeals case will be the fees the ambulatory surgical centers claim should have been paid under the former fee scheduled between 4/1/2015 and 12/31/2016. This bill is in the Committee on Rules and Operations of the Senate.

Employee Misclassification Reform (Senate Bill 407) - Senate Bill 407 proposes the creation of an Employee Classification Section with the Industrial Commission. The purpose of this unit would be to prevent misclassification of employees as independent contractors and to coordinate their efforts with other state agencies. As of April 27, 2017, this bill was in the Committee on Rules, Calendar and Operations of the House.

Correction Enterprise and Workers Compensation (Senate Bill 431) – Senate Bill 431 removes prisoners performing work in the Corrections Enterprise System of the NC Department of Corrections from the category of prisoners entitled to recovery of workers compensation when injured while working for the prison system. Through the Corrections Enterprise system the NC Department of Corrections develops and operates industrial, agricultural and service enterprises that employ incarcerated offenders. This provides them with meaningful work experiences and rehabilitative opportunities. As of March 29, 2017 this bill is in the Committee on Rules and Operations of the Senate.

Clarify Workers Compensation Policy Cancellation (Senate Bill 489) – Senate Bill 489 clarifies when notices of cancellation of workers compensation policies are presumed effective and complete. It appears that it is an effort to reverse a 2012 Court of Appeals’ opinion which held that an insurer cannot effectively cancel a workers compensation policy by mail unless the insurer could produce the green card associated with the required registered or certified mail notification. This bill states that notice of intent to cancel shall be conclusively presumed completed three days after the notice is sent by the insurer if the insurer also provides notice by electronic means as defined in G.S. 58-2-225(a) or by first-class mail. As of April 27, 2017 this bill was in the Committee on Rules, Calendar and Operations of the House.

North Carolina Workers Compensation Opioid Task Force – The task force was created as a result of the April 1, 2016 drug formulary study performed by the Industrial Commission at the direction of the General Assembly. Industrial Commission Chairman Charlton Allen announced the establishment of the task force in February 2017. The task force includes representatives of a variety of workers compensation stakeholders and is charged with the responsibility to study

the opioid crisis and recommend solutions. The task force has met three times since its formation with the most recent meeting occurring June 6, 2017.

Wilkes v. City of Greenville, No. 368PA15, Supreme Court of North Carolina, 06/09/2017.

Wilkes was injured while working for the City of Greenville. The North Carolina Industrial Commission accepted Wilkes' claim as compensable under the Workers Compensation Act, and the City of Greenville began paying Wilkes compensation for temporary total disability. Wilkes later filed a Form 33 requesting a medical motion hearing regarding his symptoms. The Commission concluded that Wilkes failed to meet his burden of establishing that his anxiety and depression were a result of his work-related accident and that he was not entitled to disability payments made after January 2011. The court of appeals (1) vacated and remanded in part, ruling that, on remand, the Commission should give Plaintiff the benefit of a presumption that his anxiety and depression were related to his injuries; and (2) reversed in part, ruling that Plaintiff had met his burden of establishing disability. The Supreme Court affirmed as modified and remanded for further proceedings, holding (1) Plaintiff was entitled a presumption of compensability in regard to his continued medical treatment; and (2) the Commission failed to address the effects of Plaintiff's tinnitus in determining whether Plaintiff lost wage-earning capacity.

#### **VIII. TRIA/TRIPRA**

The Terrorism Risk Insurance Program Reauthorization Act (TRIPRA) of 2015 extends the federal backstop program through December 31, 2020. Under Section 111 of TRIPRA the Federal Insurance Office is required to collect data annually. The North Carolina Rate Bureau participated in the 2016 and 2017 FIO Data Call by providing data as requested. The Bureau also participated in the National Association of Insurance Commissioners Data Calls related to Terrorism Risk Insurance Coverage.

## IX. Glossary

As used in this report, the following terms have the meaning set forth below:

<b><i>Class Code</i></b>	An individual job classification (e.g., roofer, office worker, truck driver).
<b><i>Experience Modification Factor</i></b>	A factor used in deterring rates and developed by NCCI or the Rating Bureau, which compares an individual employer's loss experience by class code to the average experience of all insurers. Also called experience rating factor.
<b><i>Loss Cost</i></b>	The losses, per \$100 of payroll, an insurer expects to incur for medical, lost wage and disability payments.
<b><i>Loss Cost Multiplier</i></b>	A factor developed by workers' compensation insurers that accounts for underwriting expenses, such as commissions and brokerage expenses, other acquisition expenses, general expenses, second injury and guaranty fund assessments, taxes, licenses, and fees, and profit and contingencies. The loss cost multiplier includes any loss cost modification factor developed by the insurer.
<b><i>NCCI</i></b>	National Council on Compensation Insurance - The nation's most experienced provider of workers' compensation information, tools, and services. It gathers data, analyzes industry trends, and prepares objective insurance rate and loss cost recommendations.
<b><i>Premium</i></b>	The amount paid by an employer to an insurer for workers' compensation insurance. $\text{Premium} = \text{Loss Costs} \times \text{Loss Cost Multiplier} \times (\text{Payroll}/100)$ .
<b><i>Rate</i></b>	The cost per unit of insurance. $\text{Rate} = \text{Loss Costs} \times \text{Loss Cost Multiplier}$
<b><i>Ratemaking</i></b>	The process of calculating a premium so that it is not excessive, inadequate, or unfairly discriminatory.
<b><i>Standard Premium</i></b>	The type of premium that accounts for differences by class code. $\text{Standard Premium} = \text{Manual Premium} \times \text{Experience Modification Factor}$