



Workers' Compensation and Auto No-fault Legislative Review

November 10, 2021 | 2:00-3:00 p.m. ET

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Presenters



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Learning objectives

- Review 2021 **legislative** developments relevant to workers' comp. and auto no-fault medical care
- Review major categories of legislative focus
- Understand the potential impact of these developments

Name that Policy



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PRESUMPTIONS

MARIJUANA

Name
that
Policy

Public policies that provide workers' compensation coverage for a COVID infection?

- A. Vaccines
- B. Presumptions
- C. Drive-through testing
- D. All of the above



Public policies that provide workers' compensation coverage for a COVID infection?

- A. Vaccines
- B. Presumptions**
- C. Drive-through testing
- D. All of the above

COVID-19 Presumptions

A legal presumption that presumes certain employees who contracted COVID-19 did so in the course and scope of employment, making it compensable under state workers' comp/occupational disease laws.

- Most often include rebuttable provisions
- Often limited to specific employee types: healthcare workers, first responders, “essential workers” – but some are broader
- Several adopted in 2020 via governor or regulatory agency action
- Some enacted through legislation later in 2020
- Several more enacted or extended in 2021, with several other bills filed attempting to do so but failed

2021 Workers' Comp COVID-19 Presumption Legislation Enacted

State/Action	Description	Status
Alaska HB 76	Extends current emergency proclamation related to COVID-19 presumptions and extends retroactive period to cover statutory gap period	Effective May 1, 2021
Arkansas HB 1488	Allows workers to file a workers' compensation claim for COVID-19 if they can prove they contracted the virus while at work	Retroactive to March 11, 2020 and remains in effect until May 1, 2023
District of Columbia B58/B59	Create a presumption for COVID-19 to be considered a compensable injury if contract in course and scope of employment	B59 expires December 24, 2021
Illinois HB 4276	Extended previous COVID-19 presumption which expired at end of 2020 until June 30, 2021	Effective February 26, 2021

2021 Workers' Comp COVID-19 Presumption Legislation Enacted

State/Action	Description	Status
Minnesota HF 2253	Among other provisions, extends existing COVID-19 presumption for frontline workers (set to expire May 1, 2021) through December 31, 2021	Effective April 27, 2021
Tennessee SB 995	Adds a virus or disease declared a pandemic by Governor subject to a rebuttable presumption under workers' compensation laws for emergency rescue workers	Effective July 2021
Texas SB 22	Provides a COVID-19 presumption for various first responders, EMTs, peace officers, firefighters and other detention officers	Effective June 14, 2021
Vermont SB 9	Extends prior rebuttable presumption that a front-line worker who is diagnosed with COVID-19 is entitled to benefits under the workers' compensation law until 30 days after termination of state of emergency	Signed February 3, 2021

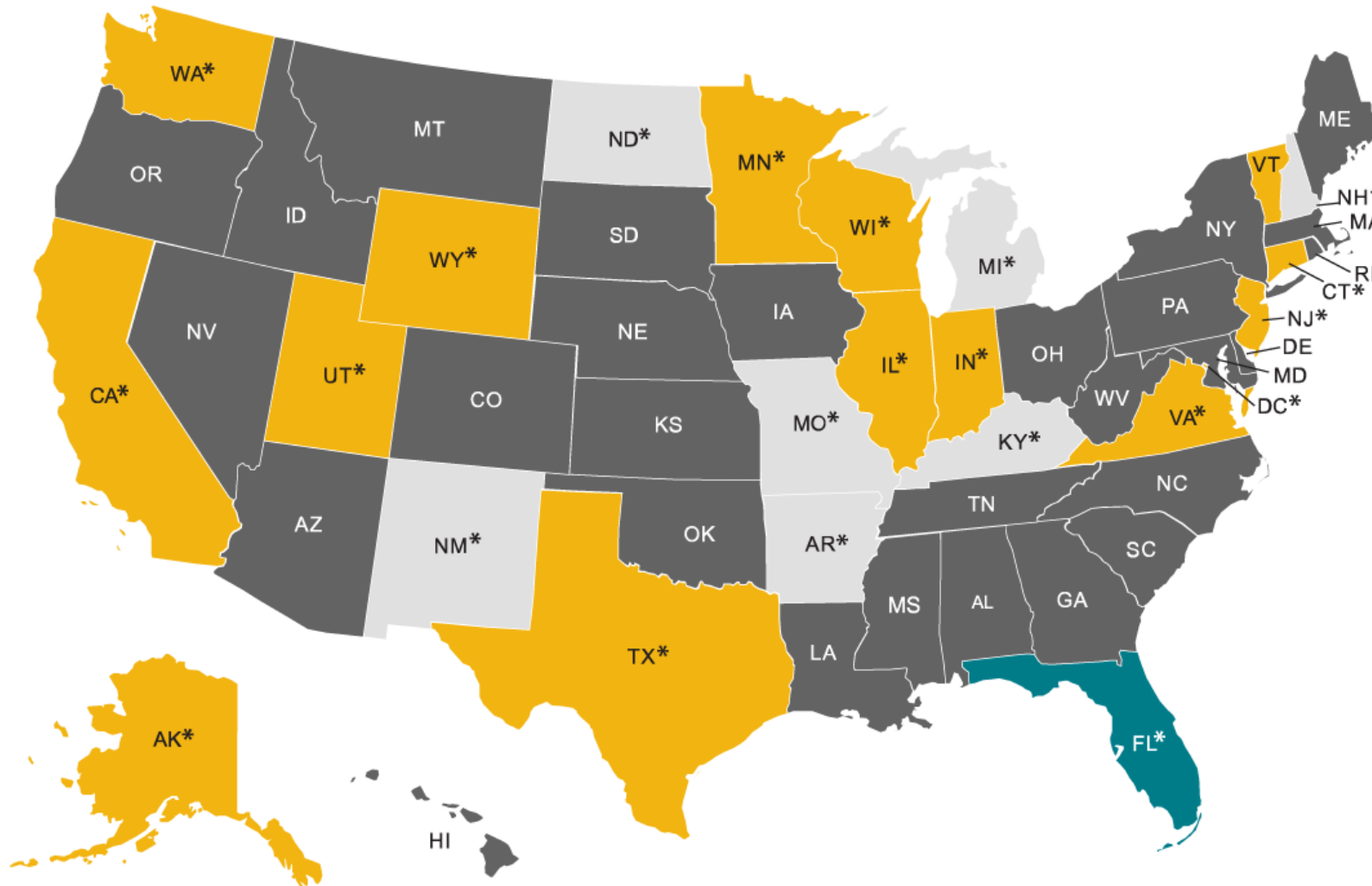
2021 Workers' Comp COVID-19 Presumption Legislation Enacted

State/Action	Description	Status
Virginia HB 1985	<ul style="list-style-type: none"> • Adds that COVID-19 in certain health care providers shall be presumed to be an occupational disease • Presumption will not apply to anyone offered a COVID-19 vaccine by their employer unless they are immunized or their physician determines immunization would pose a significant risk to their health 	Effective July 1, 2021
Virginia SB 1375	<ul style="list-style-type: none"> • Creates a presumption of compensability for COVID-19 that causes death or disability for firefighters, emergency medical services personnel, law-enforcement officers and correctional officers • COVID-19 must be established with a positive diagnostic test • Retroactive to March 1, 2020 	Effective July 1, 2021
Virginia HB 2207	Extends period during which COVID-19 would be presumed compensable for first responders, police, firefighters and correctional workers until the end of 2021	Effective July 1, 2021

2021 Workers' Comp COVID-19 Presumption Legislation Enacted

State/Action	Description	Status
Washington SB 5115	Creates a presumption for frontline employees who develop an infectious or contagious disease during a public health emergency	Effective May 2021
Washington SB 5190	<ul style="list-style-type: none"> • Establishes for health care employees a presumption for any infectious or contagious diseases which are the subject of a public health emergency • The presumption is that employee contracted or was exposed to disease at health care facility 	Effective May 11, 2021
Wyoming SF 19	Extends original legislative COVID-19 presumption expiration date to March 31, 2022	Effective April 6, 2021

Workers' Comp COVID-19 Presumption Policies To Date



	Legislation
	Emergency Declaration by Governor, DOI or WC Agency
	WC Agency Bulletin regarding existing exposure requirements
	No action to date

*Additional presumption language for this state is available at workcompauto.optum.com/covid

Workers' compensation presumption policies cover:

- A. PTSD
- B. Cancer(s)
- C. Heart disease
- D. All of the above



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Other Types of Workers' Comp Presumptions

Similar to COVID-19 presumptions, initial legal presumption that particular employees who are diagnosed with the condition acquired it in the course and scope of employment, and thereby compensable under state workers' comp/occupational disease laws

- May include a provision allowing for rebuttal
- Often for first responders and range from cancer to heart disease to PTSD
- Typically require legislation to establish
- Several enacted or extended through legislation in 2021, with other bills filed attempting to do so

2021 Enacted Workers' Comp Presumption Legislation

State/Action	Description	Status
Alabama HB 94	Adds cardiac death presumptions to cover volunteer firefighters, firefighters employed by Alabama Forestry Commission	Effective May 21, 2021
Alabama HB 532	Extends death presumption for certain cancers for firefighters who die within 10 years of their last date of employment	Effective August 1, 2021
Arizona SB 1451	Modifies existing presumption to include certain types of cancer to be covered under WC for firefighters and peace officers	Effective August 2021

2021 Enacted Workers' Comp Presumption Legislation

State/Action	Description	Status
Idaho SB 1009	Amends law to clarify that state fire marshal and state fire marshal's deputies are considered firefighters for purposes of certain workers comp PTSD benefits for first responders	Effective July 1, 2021
Illinois HB 3662	Adds staph infections, including methicillin-resistant Staphylococcus aureus to the list of other conditions presumed compensable for first responders	Effective August 2021
Missouri SB 45	Modifies and extends certain cancer presumptions for firefighters	Effective August 28, 2021
Nebraska LB 407	Permits correctional officers to file claims for mental illnesses acquired on the job without an accompanying physical injury (first responders already covered)	Effective September 2021

2021 Enacted Workers' Comp Presumption Legislation

State/Action	Description	Status
Oregon HB 2915	Applies current “heart-lung” occupational disease presumption to City of Portland firefighters, who are not otherwise subject to the workers’ comp law	Effective June 1, 2021
Virginia HB 1818 & SB 1275	Adds salaried or volunteer emergency medical services personnel to list of persons, who after five years of service, compensable for occupational disease or death cause by hypertension or heart disease	Effective July 1, 2021
West Virginia HB 3045	Deletes the July 1, 2023 sunset provision for the work comp presumption regarding certain cancers for firefighters	Effective July 2021
West Virginia HB 3107	Allows coverage of PTSD claims for law enforcement, firefighters, dispatchers and EMTs who are diagnosed with the condition by a licensed psychiatrist	Signed April 2021
Wisconsin SB 11	Creates coverage under the workers’ compensation law for PTSD suffered by firefighters and police officers	Effective April 29, 2021

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PRESUMPTIONS

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In workers' comp., who chooses the injured worker's physician?

- A. The employer
- B. The injured person
- C. Both



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Provider Choice/Network Legislation

Legislation introduced this year in multiple states to permit injured workers to choose providers in states that, to some degree, currently permit the employer or insurer to make that choice

- Most focused on treating physicians, but some broader or focused on pharmacy
- None have been successful this year thus far

Provider Choice/Network Legislation

State/Action	Description	Status
California AB 399	<ul style="list-style-type: none"> • Would create several new requirements for MPNs • Would make fee schedule the minimum, not the maximum, and prohibit contracting for lower rates • Would require DWC to fine payers or MPNs for violations 	Carryover to 2022
California AB 1465	<ul style="list-style-type: none"> • As introduced, would establish a statewide MPN (CAMPN) and permit injured workers to choose a provider from CAMPN in lieu of their employer/insurer's MPN • Subsequently amended to instead require CHSWC to submit a study on delays and access to care issues in MPNs 	Carryover to 2022
Colorado SB 197	<ul style="list-style-type: none"> • Would have provided injured workers control over selection of primary treating physician in workers' comp cases (allowed to choose from any Level I or Level II accredited physician) • Existing law requires injured workers to select a physician from a list provided by their employer or insurer 	Failed

Provider Choice/Network Legislation

State/Action	Description	Status
<p>Iowa HF 123</p>	<ul style="list-style-type: none"> • Would have permitted an employer to still be permitted to choose the physician in a workers' comp claim but only if an injured worker has not pre-designated a physician – giving injured worker the right to pre-designate a physician who is a primary care provider, who has previously provided treatment to them and has retained their medical records • Would have also provided that an employer or their workers' compensation insurer shall not coerce or otherwise attempt to influence an injured worker's choice of a physician 	<p>Assigned to House Labor Committee with no subsequent movement</p>
<p>Indiana HB 1339</p>	<ul style="list-style-type: none"> • Would have provided that an injured worker is entitled to choose their attending physician • Would have permitted that, if due to nature of injury, injured worker is unable to select an attending physician or does not select one and nature of injury requires immediate treatment and care, employer should select 	<p>Failed</p>

Provider Choice/Network Legislation

State/Action	Description	Status
Kansas HB 2312 & SB 203	<ul style="list-style-type: none"> • HB 2312 would have made a simple five-word addition to law (“designated by the injured employee”) to be added to existing provision stating it is the duty of the employer to provide for the services of a healthcare provider • SB 203 would have added those same five words, but also amend existing language to state that it shall be the duty of the employer “to pay for” (rather than “provide for”) the services of a healthcare provider 	Neither bill saw movement after referral to first committees
Montana HB 412	<ul style="list-style-type: none"> • Would “restore” right of injured worker to choose their treating physician by removing provisions stating insurer may designate physician and add that treating physician may be changed at any time with consent of injured worker and insurer • Under the bill, use of a PPO or MCO would have still been permitted and all emergency care outside of the MCO would be permitted 	Failed

Provider Choice/Network Legislation

State/Action	Description	Status
New York AB 1013, AB 1174 & SB 1026	<ul style="list-style-type: none">• Bill details vary, but would amend existing law where an insurer or employer may contract with a pharmacy network and require injured workers to use it exclusively• Under these bills, an injured worker would be free to obtain prescribed medications at the pharmacy of their choice as long as that pharmacy is registered as a resident, in-state pharmacy with the state Board of Pharmacy; however, any resident, in-state pharmacy contracted with the network the insurer or employer designates would still be obligated to process all claims through their contract with the designated network• Injured worker choice would also not apply to any non-resident, out-of-state pharmacies nor to any compound medications prescribed• Insurer or employer would have the right to deny any charges from non-resident, out-of-state pharmacies and any charges for non-FDA approved extemporaneous compound medications	S 1026 saw most movement (passed Senate); A 1013 & A 1174 stayed in first committee

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Which state implemented its first medical fee schedules for auto no-fault in 2021 based on legislative direction from 2019?

- A. Florida
- B. Michigan
- C. New Jersey
- D. New York



Which state implemented its first medical fee schedules for auto no-fault in 2021 based on legislative direction from 2019?

- A. Florida
- B. Michigan**
- C. New Jersey
- D. New York

Michigan Auto Legislation

- 2019 auto no-fault reform law called for major changes
- Reform law's new fee schedule provisions took effect July 2, 2021
- Several stakeholders voiced concern to policymakers in months leading up to and after implementation that provisions in the law establishing reimbursement limits for services without a Medicare rate may be inadequate or impractical to implement
- Resulting legislation filed attempting to make changes to the law
- Some other non-fee-schedule bills also filed attempting to modify law

Michigan Auto Legislation

State/Action	Description	Status
SB 28	<ul style="list-style-type: none"> • Establishes "post-acute auto injury provider relief fund" under which a provider may receive a distribution if they can demonstrate that fee schedule law has caused them to bill at rates below their cost • States it is the intent of the legislature that info contained in reports on this fund and distributions from it, along with other relevant data, will be used to determine whether changes are necessary to the law to ensure adequate services in the future 	Effective July 15, 2021
HB 4992	<ul style="list-style-type: none"> • Would amend provisions governing reimbursement for services without Medicare rates to remove percentage markdowns and add a geographic region market survey DIFS will be required to conduct annually • Reimbursement would be based on the average amount charged in the relevant geographic region • If provider had a charge description master in effect on January 1, 2019, they would not be eligible for reimbursement for more than the amount payable under it 	Pending in first committee

Michigan Auto Legislation

State/Action	Description	Status
HB 5125	<ul style="list-style-type: none"> • Would delay percentage of 2019 charge provisions in the law for those services without a Medicare rate until July 2, 2022 (until then, charges would be limited to a “reasonable amount” not to exceed provider’s customary charges) 	Pending in first committee
HB 4486 & SB 314	<ul style="list-style-type: none"> • Would add extra reimbursement provisions and a specific fee schedule for rehab clinics 	Pending in first committee
HB 5168	<ul style="list-style-type: none"> • Would add detailed UR and prior authorization requirements, including (among many other requirements/provisions), a standardized electronic prior authorization request process 	Pending in first committee
HB 5169	<ul style="list-style-type: none"> • Would add a provider is not entitled to a lien against or reimbursement from any recovery in tort by the injured person for any part of the charge for the treatment, including, but not limited to, any part of the charge that exceeds the amount payable under the reform law fee schedule provisions 	Pending in first committee

Florida Auto Legislation

- Legislature passed legislation (SB 54) to change the way auto insurance is carried by all Florida drivers
- Would have:
 - Repealed the “No Fault” structure of auto insurance
 - Repealed requirement that drivers carry a minimum of \$10,000 PIP coverage
 - Required drivers to carry a minimum of \$25,000 for bodily-injury/death of one person and a minimum of \$50,000 for bodily-injury/death of two or more people in an accident
 - Modified coverage requirements for property damage and liability
- Vetoed by governor June 29, 2021
- Several other bills also attempted to reform system, but failed to pass

Notable Auto Legislation in Other States

State/Action	Description	Status
<p>New Jersey SB 3463</p>	<ul style="list-style-type: none"> • Would provide that under auto no-fault the fee for a medical service not subject to medical fee schedule will be "reasonable and prevailing fee of 75% of practitioners within the region" • If a fee for a procedure cannot be ascertained by reasonable and prevailing fee of practitioners within region, then fee will be reasonable and prevailing fee of practitioners within the State or, alternative, fee for most similar procedure under fee schedule 	<p>Pending</p>
<p>New York AB 1185</p>	<ul style="list-style-type: none"> • Would de-link auto no-fault fee schedules from workers' comp fee schedules • In establishing auto fee schedules, superintendent shall ensure that provider reimbursement rates accurately reflect treatment needs of no-fault claimants including establishment of rates sufficient to reimburse specialty providers who treat no-fault claimants 	<p>Pending</p>

Notable Auto Legislation in Other States

State/Action	Description	Status
New York AB 6591	Would make several changes to auto no-fault law, including requiring certification of MCOs and use of treatment protocols	Pending
New York SB 3553	Among other provisions – would require that, after consultation with Workers' Compensation Board and Commissioner of Health, treatment guidelines be adopted for auto claims	Pending
New York SB 4047	Would provide for use of treatment guidelines in no-fault system and prohibit insurers from paying any charge which exceeds applicable fee schedule or which is not provided for under fee schedule or compensable under Medicare	Pending

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2021 continued a trend of multiple-state activity on initial opioid prescriptions.

A. True

B. False



2021 continued a trend of multiple-state activity on initial opioid prescriptions.

A. True

B. False

Opioid Legislation

Trend continues of changes in prescribing practice and pharmacy laws seeking to curb opioid misuse and abuse, but at a slower pace than before.

- Often focused on limiting prescriptions for opioids and/or adding prerequisites for prescribing
- Most typically not focused on and do not address insurance coverage or authorization, while a few are expressly applicable to workers' comp

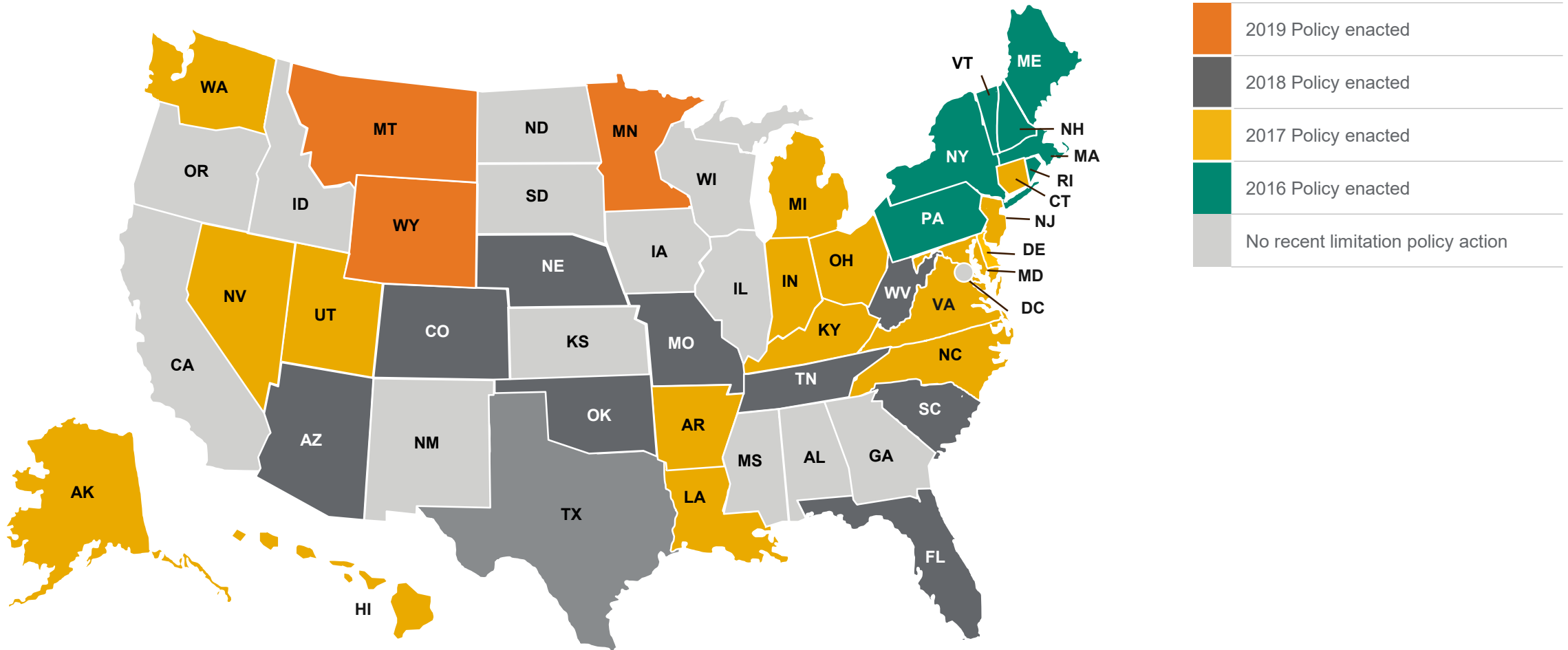
Enacted Opioid Legislation

State/Action	Description	Status
Colorado HB 1276	<ul style="list-style-type: none">• Removes prior expiration date of existing law limiting certain prescribers from prescribing more than a 7-day supply of an opioid (was set to repeal on September 1, 2021)• Requires prescriber licensing boards, on or before November 1, 2021, to by rule limit the supply of a benzodiazepine prescribed to a patient who has not obtained a benzodiazepine prescription from the prescriber within the last 12 months – however, may not limit when prescribed to treat certain listed conditions• Rules must allow for appropriate tapering off of benzodiazepines and must not require or encourage abrupt discontinuation or withdrawal	Effective July 1, 2021

Enacted Opioid Legislation

State/Action	Description	Status
North Dakota HB 1139	<ul style="list-style-type: none"> • States that the state workers' comp. agency/state fund (WSI) may not pay for opioid therapy that exceeds 90 MMEs/day, or more than a 7-day supply within any single outpatient transaction during the initial 30-day period of opioid therapy (several exceptions listed) • WSI also may not pay for benzodiazepine therapy beyond a cumulative duration of 4 weeks, except when approved by WSI for treatment of anxiety disorder, or any combination therapies that include controlled substances from either of the above (opioid or benzodiazepine therapy) concurrently • Requires an injured worker receiving any therapy exceeding these limits on the law's effective to be in compliance with the new limits by July 1, 2022 	Effective August 1, 2021
Utah HB 15	<ul style="list-style-type: none"> • Removes a surgery exception to the state's existing 7-day limit on certain opioid prescriptions • Requires prescribers to take additional steps when issuing a "high-risk prescription" 	Effective May 5, 2021
Multiple states	Some states enacted requirements for prescribers to co-prescribe naloxone/opioid antagonist with an opioid prescription under certain conditions	

Initial Opioid Prescribing Limits



Data – Reflects Legislation/Regulation enacting initial opioid prescribing limitations.
 Note – Initial days supply limitations can vary across jurisdictions and treatment facilities.
 Current as of **January 2021**.



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Marijuana is Federally approved for use:

- A. Only in the Capitol building
- B. No, it is still a Schedule I drug
- C. If eaten but not smoked
- D. At Grateful Dead concerts



Marijuana is Federally approved for use:

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B. No, it is still a Schedule I drug

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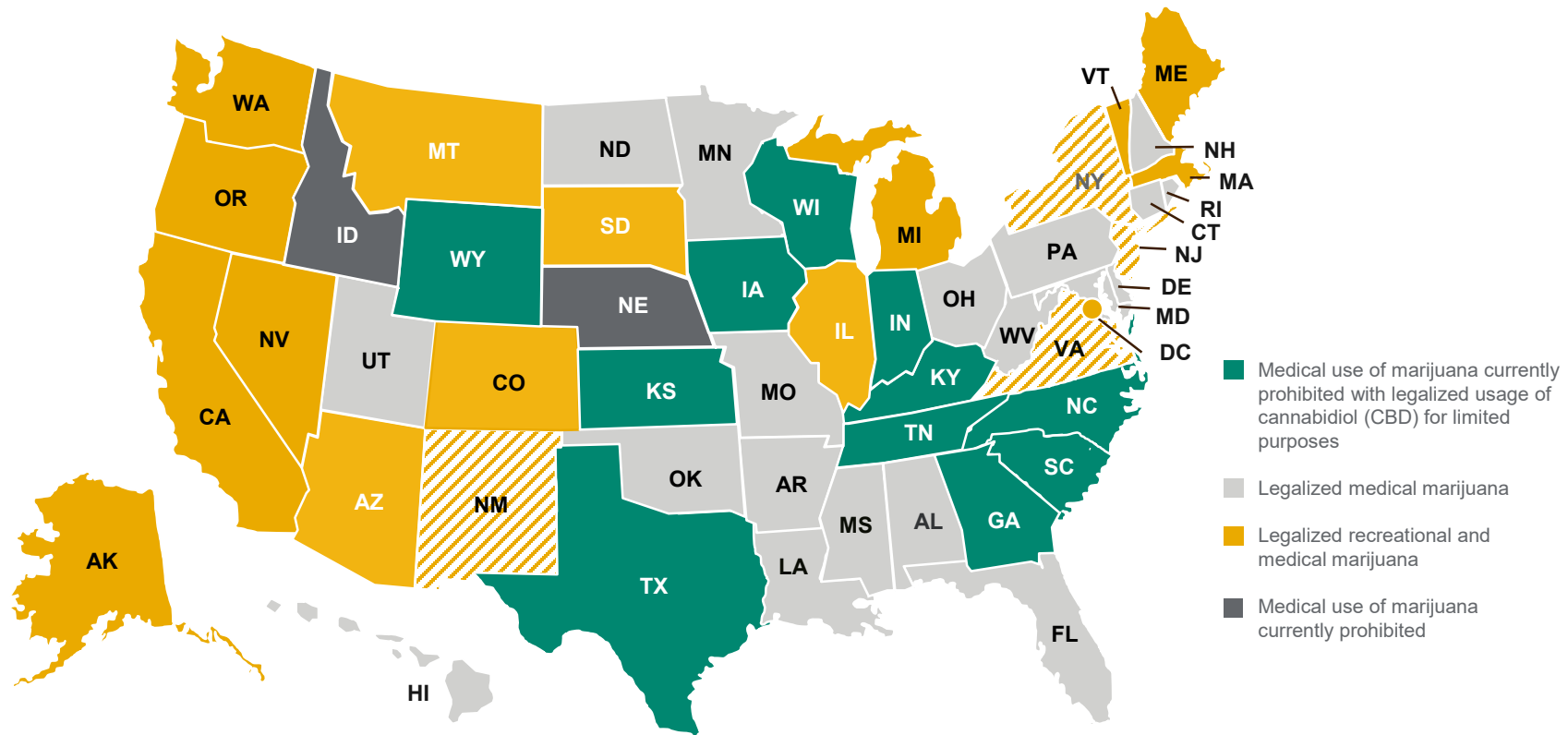
D. At Grateful Dead concerts

Marijuana Legislation

Continued uptick in states approving medical marijuana.

- Notable increase in states also approving recreational/adult use marijuana
- Some legislation specifically calls out workers' comp. or auto coverage
 - Some require reimbursement
 - Most expressly do not require reimbursement
- Issues of coverage for workers' comp. often play out in case law without legislative clarity

Marijuana Legalization To Date



Source: ProCon.org *Includes workers' comp fee schedule reimbursement for medical marijuana. Current as of July 2021.

Legislative Action

State/Action	Description	Status
<p>Federal</p>	<ul style="list-style-type: none"> • House passes Secure and Fair Enforcement Banking Act (SAFE), HR 1996 <ul style="list-style-type: none"> – Would provide safe-haven for banks and states which engage in sanctioned business of medical or recreational marijuana – Legitimate cannabis-related business would not be subject to money laundering or racketeering laws • HR 2649 Decriminalizes cannabis and establishes an Equitable Licensing grant program within the Small Business Administration • U.S. Senate President Schumer renews push for change on existing marijuana controlled substance status: Cannabis Administration and Opportunity Act 	<p>SAFE Act passed House April 19, 2021 Pending in Senate</p> <p>Others still under development</p>
<p>Alabama SB 46</p>	<ul style="list-style-type: none"> • Allows use of marijuana for treatment of certain qualifying medical conditions or symptoms of conditions (includes PTSD and chronic pain) • Does not require an insurer to pay for or to reimburse costs associated with the use 	<p>Effective May 17, 2021</p>

Legislative Action

State/Action	Description	Status
New Jersey AB 21	Permits possession, cultivation and utilization of recreational marijuana for people over the age of 21 and permits sale after rule-making developments	Effective February 22, 2021
New Jersey AB 1708 & SB 3406	<ul style="list-style-type: none"> • Would require workers' comp, PIP and health insurance carriers to cover costs associated with medical use of cannabis • Would provide that coverage would not be required if federal government intervened to enforce Controlled Substances Act 	Pending in original chambers
New Mexico HB 2a	<ul style="list-style-type: none"> • Permits possession, cultivation and utilization of recreational marijuana for people over the age of 21 • Permits the state sale of recreational marijuana after rule-making developments 	Effective April 12, 2021

Legislative Action

State/Action	Description	Status
New York AB 242	Would require that, regardless of federal financial participation, medical marijuana, when dispensed under state law, shall be deemed to be a "prescription drug" for purposes of coverage under the workers' comp law	Pending in original chamber
New York SB 854	<ul style="list-style-type: none"> • Permits the possession, cultivation and utilization of up to a certain amount of recreational marijuana • Permits the state sale of recreational marijuana after rule-making developments 	Effective March 31, 2021
Pennsylvania SB 749	Legislation would free work comp insurers and payers from being required to provide coverage for medical marijuana	Currently in Senate
Virginia HB 2312	<ul style="list-style-type: none"> • Permits possession, cultivation and utilization of recreational marijuana for people over the age of 21 • Permits the state sale of recreational marijuana after rule-making developments 	Enacted April 7, 2021

SUPER BONUS ROUND

Name
that
Policy

“Policy Guys” Outlook for 2022



More PTSD coverage and presumption legislation



COVID-19 vaccine reaction presumptions



State formularies back again?



Opioid overdoses and chronic opioid usage (compared to initial prescription)



Focus on medical costs?



DISCLAIMER: COVID changes everything (please refer to 2020 & 2021)



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- Guest experts
- Dad jokes and a few chuckles
- A new podcast every month



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Related Resources

“Policy Matters” webpage:

<https://workcompauto.optum.com/content/owca/owca/en/insights/policy-matters.html>

Optum Workers' Comp and Auto No-fault Legislative and Regulatory Tracker:

<https://workcompauto.optum.com/content/owca/owca/en/insights/policy-matters/bill-status-client-report.html>

COVID-19 Resources webpage:

<https://workcompauto.optum.com/content/owca/owca/en/resources/Covid-19.html>

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