

DRAFT
Council on Worker's Compensation
Meeting Minutes – Virtual Meeting (WebEx)
Madison, Wisconsin
July 17, 2025

The Department of Workforce Development (DWD) provided public notice of the meeting under Wis. Stat. § 19.84.

Members present via video and telephone: Ms. Bloomingdale, Mr. Buchen, Mr. Dipko (Chairperson), Ms. Frank, Mr. Fugina, Mr. Kent, Ms. Kosnicki, Mr. Large, Ms. Meidl, Mr. Reese, and Mr. Schwanda.

Excused: Mr. Nettum, Mr. Tindall, and Ms. Ver Velde

Staff Present: Mr. Brockman, Ms. Brown, Ms. Driese, Mr. Guler, Ms. Halsey, Ms. McCormick, Mr. O'Malley, Mr. Przybylo, Ms. Przybylo, and Mr. Spencer.

- 1. Call to Order/Introductions:** Mr. Dipko convened the Worker's Compensation Advisory Council (WCAC) meeting at approximately 2:09 p.m. in accordance with Wisconsin's open meetings law and called roll of the WCAC members. Mr. Dipko announced there would be a slight deviation from the agenda and the first item of business would be Labor and Management Proposals followed by the Department Proposals.
- 2. Labor & Management Proposals:** Mr. Buchen advised that an agreement had been reached between Labor and Management, which Ms. Bloomingdale confirmed. He stated he would go through the proposals one by one and then a motion could be made to accept the proposals. Labor and Management agreed to the following:
 - Labor Proposal 1, increase permanent and total disability benefits for existing claims to a 6-year lag and allow supplemental benefits to injured workers who are receiving compensation for permanent total disability from the Second Injury Fund.
 - Labor Proposal 2, increase permanent partial disability (PPD) maximum benefit rate by \$8 in 2026 and \$8 in 2027.
 - Labor Proposal 6, amend s. 102.17(4), Wis. Stats., to include shoulder replacement and reverse shoulder replacement as additional serious traumatic injuries with no statute of limitations.
 - Labor Proposal 7, eliminate restricted accounts for compromise agreements.
 - Labor Proposal 13, allow advanced practice registered nurses (APRN) and physician assistants (PA) to provide opinions on cause and extent of disability.

- Labor Proposal 14, allow doctors of audiology (Au. D) to provide opinions on cause and extent of disability.
- Management Proposal 4, amend s. 102.18(1)(b)1d., Wis. Stats., to add, "In the case of an order issued under sub. (2)(c), the division shall dismiss the application for hearing at the time the order is issued. This subdivision applies to all division orders issued after the effective date of this subdivision, regardless of the date of injury." Amend s. 102.17(4)(a), Wis. Stats., to add, "An order approving a compromise agreement after the effective date of this subsection must include a dismissal of the pending application for hearing in the compromised claim, regardless of the date of injury."
- Management Proposal 5, require that cases be closed when compromises are approved.
- Management Proposal 7, prohibit PPD stacking.
- Management Proposal 12, amend ch. 102 to state, "Applications will only be accepted by the department when there is a justiciable controversy." Also, require the department to dismiss a pending application for hearing where there are no disputed issues for which the parties to the claim are seeking a determination. The statute of limitations in a worker's compensation case is tolled when an application for hearing is pending but the statute of limitations shall not be extended as a result of the filing of an application for hearing. Consideration paid for a compromise agreement is not an advancement of benefits as provided by s. 102.32(6m), Wis. Stats. The changes to ss. 102.17(4)(a) and 102.18(1)(b)1d. apply to all dates of injury (not just to dates of injury after March 24, 2024.)
- Management Proposal 15, in the case of inpatient hospitalization, the health care provider shall not restrict the employer or insurer case management personnel from access to records and participation in discharge planning when required to ensure that an injured worker with disability has appropriate housing and transportation. Employers or case management personnel will have no authority to direct care.
- Labor and Management also agreed to extend PTSD coverage for first responders, as provided in 2021 Wisconsin Act 29, to include emergency medical responders, emergency medical services practitioners, and volunteer and part-time fire fighters as the WCAC had previously proposed in 2023 Assembly Bill 1074.

Mr. Buchen made a motion to accept the proposals for the Agreed Upon Bill for the 2025-2026 session. Ms. Bloomingdale seconded the motion. The motion passed unanimously.

3. Department Proposals: Mr. O'Malley presented the Department Proposals, which were as follows:

Department Proposal 1 – Appropriation Changes: The Department proposes modifying structures for worker's compensation administration appropriations to allow the Department to accurately reflect all expenditures and billings, and account for supporting revenues. Four changes are proposed.

1. Combine the existing worker's compensation operations appropriations, s. 20.445 (1) (ra) and (rp), Wis. Stats., into a single appropriation, reflecting similar operations functions of these two appropriations and the single revenue source which is the separate non-lapsible worker's compensation operations fund (SEG Fund 227).
2. Make the proposed combined operations appropriation, noted above, a sum sufficient appropriation. This change would allow the Department to, under a streamlined process, request budget authority increases as necessary in amounts that reflect anticipated costs included in the annual assessment process used to collect revenue for these costs.
3. Eliminate the requirement in s. 20.445 (1) (ra), Wis. Stats., to transfer, from the worker's compensation operations fund to the Labor and Industry Review Commission, revenue in an amount equal to the Chapter 20 schedule for appropriation under s. 20.427 (1) (ra), Wis. Stats., rather than an amount equal to expenditures. Provide authority to the Commission to fund expenses up to statutory limits directly from the fund.
4. Create a new, separate appropriation in the worker's compensation operations fund, with \$5,000,000 in annual budget authority, to be used exclusively for providing reimbursement to insurance carriers paying supplemental benefits under s. 102.44 (1) (c), Wis. Stats. The Department is currently authorized to collect up to \$5,000,000 per year from worker's compensation insurers to fund these payments.

Mr. Buchen asked about the sum sufficient appropriation. Mr. O'Malley provided additional explanation, noting the Department currently operates under an annual appropriation.

Department Proposal 2: Worker's compensation insurance fraud continues to be a problem in Wisconsin. Current law specifies criminal penalties for various types of insurance fraud which are punishable as either a Class A misdemeanor or a Class I felony depending on the dollar value of the claim or benefit. The proposal is to add the presentation of false or fraudulent applications for worker's compensation insurance coverage, and those which falsely or fraudulently misclassify employees to lower insurance premiums, as criminally punishable insurance fraud by employers.

Department Proposal 3: In 2021 Wisconsin Act 29 law enforcement officers and full-time fire fighters, who were diagnosed with PTSD, were eligible to receive compensation without the requirement of experiencing unusual stress of greater

dimension than the day-to-day emotional strain and tension experienced by similarly situated employees. The proposal will also include emergency medical responders, emergency medical services practitioners, part-time fire fighters, volunteer fire fighters, correctional officers, emergency dispatchers, coroners, coroner staff members, medical examiners and medical examiner staff members with the same worker's compensation coverage for PTSD as was previously provided to law enforcement officers and full-time fire fighters.

Department Proposal 4: An employer is not liable for compensation for temporary disability during an employee's healing period if the employee is terminated or suspended from employment due to misconduct or substantial fault connected with the employee's work. The proposal is to delete suspension or termination for substantial fault as a basis for denying liability for compensation for temporary disability during the healing period.

Mr. Buchen stated that it was his understanding this provision was in the Governor's proposed budget and asked if there were corresponding changes in the unemployment laws. Mr. O'Malley confirmed the Executive Budget removed reference to "substantial fault" in s. 108.04 (5g) (a), Wis. Stats.

Department Proposal 5: Expenses for retaining an insurance carrier or insurance service organization (TPA) for adjusting, processing, investigating, and paying claims with the Uninsured Employers Fund (UEF) are currently paid from the fund for worker's compensation operations. Expenses for legal fees and costs involving the UEF are also paid from the worker's compensation operations fund under current law. The amendment will transfer payment for these expenses and costs to the UEF.

Mr. Buchen asked how much money was involved. Mr. O'Malley said those figures were not available, but he estimated it was likely a few hundred thousand dollars per year to cover expenses such as the TPA retaining an attorney to defend claims against the UEF, obtaining medical or vocational reports, or other similar costs.

Department Proposal 6: Some employers who are illegally uninsured for worker's compensation liability continue to operate their businesses without worker's compensation insurance coverage after being assessed payments under s. 102.82 (2), Wis. Stats., multiple times. The current monetary sanctions are not severe enough to be an effective deterrent to some employers who regularly continue business operations without worker's compensation insurance coverage. For these employers the current monetary sanctions are merely a cost of doing business. The proposal is to increase the monetary sanctions for repeat violators. These monetary sanctions in s. 102.82, Wis. Stats., are imposed by the Worker's Compensation Division.

Department Proposal 7: Some employers who are illegally uninsured for worker's compensation liability continue to operate their businesses without worker's compensation insurance coverage after being assessed payments under s. 102.85

(1) and (2), Wis. Stats., multiple times. The current monetary penalties are not severe enough to be an effective deterrent to employers who regularly continue business operations without worker's compensation insurance coverage. For these employers the current monetary penalties are merely a cost of doing business. The proposal is to increase the monetary penalties for repeat violators. The fines or forfeitures under s. 102.85 (1) and (2), Wis. Stats., are imposed by the Circuit Court.

Mr. Buchen asked what the current sanctions were against employers under this provision. Mr. O'Malley advised that the forfeiture for failure to comply with ss. 102.16 (3) or 102.28 (2), Wis. Stats., for less than eleven days is not less than \$100 nor more than \$1,000. The forfeiture for failing to comply for more than 10 days is not less than \$10 nor more than \$100 per day. Additional fines can also be imposed by the courts.

Department Proposal 8: Counselors employed by the Division of Vocational Rehabilitation (DVR) are subpoenaed to worker's compensation hearings to authenticate the DVR records pertaining to employees who claim vocational rehabilitation training. The proposal is to allow the admission of DVR records into evidence at hearings without requiring the presence of a DVR counselor at a hearing to authenticate the file.

Department Proposal 9: The general rule is that worker's compensation benefits are not assignable to be taken for the debts of the injured employee subject to two (2) exceptions. One of the exceptions provided in s. 102.27 (2) (a), Wis. Stats., is that worker's compensation benefits are assignable for family support. There is an incorrect citation in a cross reference in s. 102.27 (2) (a), Wis. Stats. The incorrect citation was apparently due to a drafting error that occurred a few years ago. The incorrect citation is s. 767.75 (1). The correct citation is s. 767.75 (1f). The proposal is to amend s. 102.27 (2) (a) to correctly cite the cross reference.

Department Proposal 10: Worker's compensation insurance carriers may request reimbursement for supplemental benefit payments to injured employees under s. 102.44 (1) (c), Wis. Stats. Currently, worker's compensation insurance carriers submit reimbursement request on a hardcopy form (WKC-140) to the Department by mail or fax. The Department's updated Insurer Pending Reports portal includes an application for supplemental benefit reimbursement requests to be made through that portal. The proposal is to require all workers compensation insurance carriers to send requests for claiming supplemental benefit reimbursement to the Department through the updated Insurer Pending Reports portal. Supplemental benefit reimbursement requests will be directly linked to the specific claim which will greatly assist the Department with its ability to monitor these claims. By insurance carriers using the portal, supplemental benefit reimbursement claims will not get lost in the mail, and the Department will be able to operate more efficiently and provide more timely service in processing claims for reimbursement.

Mr. Dipko reiterated that Proposals 1 through 7 were taken from the Executive Budget, as had several proposals from the last session, and that Proposals 8 through 10 were

generated from within the Worker's Compensation Division. Mr. Buchen commented that it was hard to understand why the Governor was proposing changes to ch. 102, Wis. Stats., as part of the budget process without going through the WCAC. Ms. Bloomingdale concurred that all changes to the Worker's Compensation laws should come through the WCAC in all respects.

The WCAC took no action on the Department Proposals at this meeting but indicated that Department Proposal 3 was not needed since they had addressed that with their agreement.

- 4. Other Business:** The Labor and Management members advised that they intended to meet again virtually in early August at a date not yet determined. Mr. Buchen advised he would prepare one document containing the WCAC's agreed upon proposals and would provide it to the Department by Thursday, July 24, 2025. Ms. Bloomingdale and Mr. Buchen requested the Department to begin the drafting process as to the agreed upon provisions. The next meetings of the WCAC are currently scheduled for August 26 and 27, 2025.
- 5. Adjournment:** Mr. Buchen made a motion to adjourn the meeting which was seconded by Ms. Bloomingdale. The motion passed unanimously and the meeting was adjourned at 3:03 p.m.