

Workers Compensation Advisory Council

Management Proposals

4/29/2025

1. Medical Fee Schedule. Wisconsin is an extreme outlier in that we do not have a medical fee schedule in place to control costs for workers compensation medical claims. We propose that the Department develop a medical fee schedule for medical charges based on average group health rates to be in place by January 1, 2027. The fee schedule shall strive to keep costs below the national average according to national data from WCRI. The fee schedule may be regional to account for different costs in various regions of the state.

2. Employer Directed Care. We propose allowing employer directed care for the first 90 days of treatment outside of emergency room care. To utilize this, employers must specify a diverse list of health care providers who are authorized to provide care for injured workers. The list shall include at least 6 health care providers, at least 3 of whom must be physicians who are geographically accessible and have specialties that are appropriate based on anticipated work-related medical problems of the employees. This list must include contact information and must be posted in a prominent location.

3. Reduce Statutory Minimums for PPD. We propose reducing current statutory minimum permanent partial disability ratings by fifty percent in DWD Administrative Code 80.32 where surgical treatments have made it such that outcomes result in no permanent disability.

4. Approval of Compromise Agreements. We propose clarifying the 2023-24 agreed upon language with the underlined changes:

--amend 102.18 (1) (b) 1d. to: If an application has been filed under s. 102.17 (1) (a) 1. for a claim for compensation , after the division issues an order on the merits of the case of the claim under subd.1, or an order under sub. (2) (c), if there is no pending action for review by a court, the division shall return to the department the file for the case of the claim within 30 days after issuing the order. The department shall conduct further administrative activities, including closing the case of the claim. 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 102.17 (4) (a) to: Except as provided in this subsection and s. 102.555 (12) (b), in the case of occupational disease, the right of an employee, the employee's legal representative, a dependent, the employee's employer or the employer's insurance company, or other named party to proceed under this section shall not extend beyond 12 years after the date of the injury or death or after the date that compensation, other than for treatment or burial expenses, was last paid, or would have been last payable if no advancement were made, whichever date is latest, and in the case of traumatic injury, that right shall not extend beyond 6 years after that date. The statute of limitations under this subsection begins to run on the date an order is issued by the division approving a compromise agreement. 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. A further claim is not barred except as provided in this subsection, regardless of whether an award is made.

5. Case Closure. We propose requiring that cases be closed when compromises are approved.

6. PTD Benefit Limitation. We propose terminating Permanent Total Disability Benefits once the injured worker is eligible to receive Social Security old-age retirement benefits. Benefits should terminate upon the death of the recipient.

7. Prohibit PPD Stacking. LIRC and the courts have held that the minimum awards set forth in Wis. Admin. DWD 80.32 can be stacked for each surgical procedure due to the same injury. This leads to awards that are higher than the amount set by the code. We propose that permanent disability ratings be based on actual ratings as assessed by medical experts.

8. Require Work Exposure to be Predominant Cause to Allow Compensability. We propose that for non-traumatic injury to be compensable under worker's compensation, workplace exposure must be the predominant cause of the condition.

9. PTD Re-evaluation. We propose allowing an employer or insurer to request an injured worker receiving PTD benefits to have their PTD ratings re-evaluated every 3 years.

10. Death Benefits. We propose that no death benefits be allowed in PTD claims when the death is unrelated to the occupational injury or illness.

11. Statute of Limitations. We propose reducing the statute of limitations to 2 years, except that in the case of occupational disease caused by exposure to toxic substances there shall be no statute of limitations, and where an employee's injury, that is otherwise undisputed, requires a prosthesis or artificial joint, there shall be no statute of limitations as to the medically necessary treatment expenses directed to said prosthesis or artificial joint.

12. Tolling the Statutes. Past Department practice allowed tolling the statutes. This practice was ended by DOA Division of Hearings and Appeals effective March 1, 2017. We propose to amend Wis. State. 102 to state that:

- Applications will only be accepted by the Department when there is a justiciable controversy.
- Repeal section 102.17(2) of the statutes.
- Require OWCH to dismiss a pending application for hearing when there are no, or there are no longer, disputed issues for which the parties to the claim are seeking a determination.
- Provide that the statute of limitations in a worker's compensation case is tolled when an application for hearing is pending but that the statute of limitations shall not be extended as a result of the filing of an application for hearing.
- Provide that consideration paid for a compromise agreement is not an advancement of benefits as provided by section 102.32(6m) of the statute.
- Section 102.17 (4) (a), and 102.18(1)(b)Id., applies to all dates of injury (not just to dates of injury after March 24, 2024).

13. Eliminate Safety Offsets. Workers Compensation was intended to be a no-fault system. Therefore, we propose eliminating safety offsets under Wis. Stat 102.57 and 102.58.

14. Third Party Observers. In order to protect patient confidentiality and promote open dialog on issues we propose eliminating the use of third-party observers in psychology IME's.

15. Case Management Access. 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 involvement in care and discharge planning.