# ROUND I: DEPARTMENT PROPOSALS FOR WCAC CONSIDERATION

## A. 23-25 Executive Budget Proposals (1-7)

**Department Proposal 1**

s. 102.07 (5) (b) & (c); 102.51 (1) (a) 1. and 2.

These are changes to harmonize the language of the Wisconsin statutes relating to marriage and the determination of parentage and to better align the statutes with the holding of the U.S. Supreme Court in *Obergefell v. Hodges* (2015).

**Proposed language to amend s. 102.07 (5) (b) & (c)**

s. 102.07 **(5)** (b) The parents, spouse, child, brother, sister, son-in-law, daughter-in-law, ~~father-in-law, mother-in-law~~ parent-in-law, brother-in-law, or sister-in-law of a farmer shall not be deemed the farmer's employees.

s. 102.07 **(5)** (c) A shareholder-employee of a family farm corporation shall be deemed a “farmer" for purposes of this chapter and shall not be deemed an employee of a farmer. A “family farm corporation" means a corporation engaged in farming all of whose shareholders are related as lineal ancestors or lineal descendants, whether by blood or by adoption, or as spouses, brothers, sisters, uncles, aunts, cousins, sons-in-law, daughters-in-law, ~~fathers-in-law, mothers-in-law~~ parents-in-law, brothers-in-law or sisters-in-law of such lineal ancestors or lineal descendants.

**Proposed language to amend s. 102.51 (1) (a) 1. and repeal 102.51 (1) (a) 2.**

s. 102.51 **(1)** (a) 1. A ~~wife~~ married person upon ~~a husband~~ his or her spouse with whom he or she is living at the time of ~~his~~ the spouse's death.

**Department Proposal 2**

ss. 102.13 (1) (a), (b) (intro.), 1., 3. and 4., (d) 1., 2., 3. and 4.; (2) (a) and (b); 102.17 (1) (d) 1. and 2.; 102.29 (3); and 102.42 (2) (a)

The is a change to update terminology from advanced practice nurse prescribers to advanced practice registered nurses.

**Proposed language to amend s. 102.13 (1) (a):**

s. 102.13 **(1)** (a) Except as provided in sub. (4), whenever compensation is claimed by an employee, the employee shall, upon the written request of the employee's employer or worker's compensation insurer, submit to reasonable examinations by physicians, chiropractors, psychologists, dentists, physician assistants, advanced practice ~~nurse prescribers~~ registered nurses, or podiatrists provided and paid for by the employer or insurer. No employee who submits to an examination under this paragraph is a patient of the examining physician, chiropractor, psychologist, dentist, physician assistant, advanced practice registered nurse ~~prescriber~~, or podiatrist for any purpose other than

for the purpose of bringing an action under ch. 655, unless the employee specifically requests treatment from that physician, chiropractor, psychologist, dentist, physician assistant, advanced practice registered nurse ~~prescriber~~, or podiatrist.

**Proposed language to amend s. 102.13 (1) (b) (intro.), 1., 3. and 4.:**
s. 102.13 **(1)** (b) (intro.) An employer or insurer who requests that an employee submit to reasonable examination under par. (a) or (am) shall tender to the employee, before the examination, all necessary expenses including transportation expenses. The employee is entitled to have a physician, chiropractor, psychologist, dentist, physician assistant, advanced practice registered nurse ~~prescriber~~, or podiatrist provided by himself or herself present at the examination and to receive a copy of all reports of the examination that are prepared by the examining physician, chiropractor, psychologist, podiatrist, dentist, physician assistant, advanced practice registered nurse ~~prescriber~~, or vocational expert immediately upon receipt of those reports by the employer or worker's compensation insurer. The employee is entitled to have one observer provided by himself or herself present at the examination. The employee is also entitled to have a translator provided by himself or herself present at the examination if the employee has difficulty speaking or understanding the English language. The employer's or insurer's written request for examination shall notify the employee of all of the following:

1. The proposed date, time, and place of the examination and the identity and area of specialization of the examining physician, chiropractor, psychologist, dentist, podiatrist, physician assistant, advanced practice registered nurse ~~prescriber~~, or vocational expert.

3. The employee's right to have his or her physician, chiropractor, psychologist, dentist, physician assistant, advanced practice registered nurse ~~prescriber~~, or podiatrist present at the examination.

4. The employee's right to receive a copy of all reports of the examination that are prepared by the examining physician, chiropractor, psychologist, dentist, podiatrist, physician assistant, advanced practice registered nurse ~~prescriber~~, or vocational expert immediately upon receipt of these reports by the employer or worker's compensation insurer.

**Proposed language to amend s. 102.13 (1) (d) 1., 2., 3. and 4.:**
s. 102.13 **(1)** (d) 1. Any physician, chiropractor, psychologist, dentist, podiatrist, physician assistant, advanced practice registered nurse ~~prescriber~~, or vocational expert who is present at any examination under par. (a) or (am) may be required to testify as to the results of the examination.

2. Any physician, chiropractor, psychologist, dentist, physician assistant, advanced practice registered nurse ~~prescriber~~, or podiatrist who attended a worker's compensation claimant for any condition or complaint reasonably related to the condition for which the claimant claims compensation may be required to testify before the division when the division so directs.

3. Notwithstanding any statutory provisions except par. (e), any physician, chiropractor, psychologist, dentist, physician assistant, advanced practice registered nurse ~~prescriber~~, or podiatrist attending a worker's compensation claimant for any

condition or complaint reasonably related to the condition for which the claimant claims compensation may furnish to the employee, employer, worker's compensation insurer, department, or division information and reports relative to a compensation claim.

4. The testimony of any physician, chiropractor, psychologist, dentist, physician assistant, advanced practice registered nurse ~~prescriber~~, or podiatrist who is licensed to practice where he or she resides or practices in any state and the testimony of any vocational expert may be received in evidence in compensation proceedings.

**Proposed language to amend s. 102.13 (2) (a) and (b):**

s. 102.13 **(2)** (a) An employee who reports an injury alleged to be work-related or files an application for hearing waives any physician-patient, psychologist-patient, or chiropractor-patient privilege with respect to any condition or complaint reasonably related to the condition for which the employee claims compensation. Notwithstanding ss. 51.30 and 146.82 and any other law, any physician, chiropractor, psychologist, dentist, podiatrist, physician assistant, advanced practice registered nurse ~~prescriber~~, hospital, or health care provider shall, within a reasonable time after written request by the employee, employer, worker's compensation insurer, department, or division, or its representative, provide that person with any information or written material reasonably related to any injury for which the employee claims compensation. If the request is by a representative of a worker's compensation insurer for a billing statement, the physician, chiropractor, psychologist, dentist, podiatrist, physician assistant, advanced practice registered nurse ~~prescriber~~, hospital, or health care provider shall, within 30 days after receiving the request, provide that person with a complete copy of an itemized billing statement or a billing statement in a standard billing format recognized by the federal government.

(b) A physician, chiropractor, podiatrist, psychologist, dentist, physician assistant, advanced practice registered nurse ~~prescriber~~, hospital, or health service provider shall furnish a legible, certified duplicate of the written material requested under par. (a) in paper format upon payment of the actual costs of preparing the certified duplicate, not to exceed the greater of 45 cents per page or $7.50 per request, plus the actual costs of postage, or shall furnish a legible, certified duplicate of that material in electronic format upon payment of $26 per request. Any person who refuses to provide certified duplicates of written material in the person's custody that is requested under par. (a) shall be liable for reasonable and necessary costs and, notwithstanding s. 814.04 (1), reasonable attorney fees incurred in enforcing the requester's right to the duplicates under par. (a).

**Proposed language to amend s. 102.17 (1) (d) 1. and 2.:**

s. 102.17 **(1)** (d) 1. The contents of certified medical and surgical reports by physicians, podiatrists, surgeons, dentists, psychologists, physician assistants, advanced practice registered nurse ~~prescriber~~, and chiropractors licensed in and practicing in this state, and of certified reports by experts concerning loss of earning capacity under s. 102.44 (2) and (3), presented by a party for compensation constitute prima facie evidence as to the matter contained in those reports, subject to any rules and limitations the division prescribes. Certified reports of physicians, podiatrists, surgeons, dentists, psychologists, physician assistants, advanced practice registered nurse ~~prescriber~~, and

chiropractors, wherever licensed and practicing, who have examined or treated the claimant, and of experts, if the practitioner or expert consents to being subjected to cross-examination, also constitute prima facie evidence as to the matter contained in those reports. Certified reports of physicians, podiatrists, surgeons, psychologists, and chiropractors are admissible as evidence of the diagnosis, necessity of the treatment, and cause and extent of the disability. Certified reports by doctors of dentistry, physician assistants, and advanced practice ~~nurse prescribers~~ registered nurses are admissible as evidence of the diagnosis and necessity of treatment but not of the cause and extent of disability. Any physician, podiatrist, surgeon, dentist, psychologist, chiropractor, physician assistant, advanced practice registered nurse ~~prescriber~~, or expert who knowingly makes a false statement of fact or opinion in a certified report may be fined or imprisoned, or both, under s. 943.395.

2. The record of a hospital or sanatorium in this state that is satisfactory to the division, established by certificate, affidavit, or testimony of the supervising officer of the hospital or sanatorium, any other person having charge of the record, or a physician, podiatrist, surgeon, dentist, psychologist, physician assistant, advanced registered nurse ~~prescriber~~, or chiropractor to be the record of the patient in question, and made in the regular course of examination or treatment of the patient, constitutes prima facie evidence as to the matter contained in the record, to the extent that the record is otherwise competent and relevant.

**Proposed language to amend s. 102.29 (3):**

s. 102.29 **(3)** Nothing in this chapter shall prevent an employee from taking the compensation that the employee may be entitled to under this chapter and also maintaining a civil action against any physician, chiropractor, psychologist, dentist, physician assistant, advanced practice registered nurse ~~prescriber~~, or podiatrist for malpractice.

**Proposed language to amend s. 102.42 (2) (a)**

s. 102.42 **(2)** (a) When the employer has notice of an injury and its relationship to the employment, the employer shall offer to the injured employee his or her choice of any physician, chiropractor, psychologist, dentist, physician assistant, advanced practice registered nurse ~~prescriber~~, or podiatrist licensed to practice and practicing in this state for treatment of the injury. By mutual agreement, the employee may have the choice of any qualified practitioner not licensed in this state. In case of emergency, the employer may arrange for treatment without tendering a choice. After the emergency has passed the employee shall be given his or her choice of attending practitioner at the earliest opportunity. The employee has the right to a 2nd choice of attending practitioner on notice to the employer or its insurance carrier. Any further choice shall be by mutual agreement. Partners and clinics are considered to be one practitioner. Treatment by a practitioner on referral from another practitioner is considered to be treatment by one practitioner.

**Department Proposal 3**

s. 102.17 (9) (a) 1., 1c., 1e., 1g., 1p.; and (b) (intro)

The proposal makes changes to the conditions of liability for worker's compensation benefits for emergency medical responders, emergency medical services practitioners, volunteer fire fighters, correctional officers, emergency dispatchers, coroners and coroner staff members, and medical examiners and medical examiner staff members who are diagnosed with post-traumatic stress disorder (PTSD).

Under current law, if a law enforcement officer or full-time fire fighter is diagnosed with PTSD by a licensed psychiatrist or psychologist and the mental injury that resulted in that diagnosis is not accompanied by a physical injury, that law enforcement officer or fire fighter can bring a claim for worker's compensation benefits if the conditions of liability are proven by the preponderance of the evidence and the mental injury is not the result of a good faith employment action by the person's employer. Also under current law, liability for such treatment for a mental injury is limited to no more than 32 weeks after the injury is first reported.

Under current law, an injured emergency medical responder, emergency medical services practitioner, volunteer fire fighter, correctional officer, emergency dispatcher, coroner, coroner staff member, medical examiner, or medical examiner staff member who does not have an accompanying physical injury must demonstrate a diagnosis based on unusual stress of greater dimensions than the day-to-day emotional strain and tension experienced by all employees as required under *School District No. 1 v. DILHR*, 62 Wis. 2d 370, 215 N.W.2d 373 (1974) in order to receive worker's compensation benefits for PTSD. Under the bill, such an injured emergency medical responder, emergency medical services practitioner, volunteer fire fighter, correctional officer, emergency dispatcher, coroner, coroner staff member, medical examiner, or medical examiner staff member is not required to demonstrate a diagnosis based on that standard, and instead must demonstrate a diagnosis based on the same standard as law enforcement officers and fire fighters. Finally, under the proposal, an emergency medical responder, emergency medical services practitioner, volunteer fire fighter, correctional officer, emergency dispatcher, coroner, coroner staff member, medical examiner, or medical examiner staff member is restricted to compensation for a mental injury that is not accompanied by a physical injury and that results in a diagnosis of PTSD three times in his or her lifetime irrespective of a change of employer or employment in the same manner as law enforcement officers and fire fighters. Proposed language to amend and renumber s. 102.17 (9) (a) 1. to 102.17 (9) (a) 1m.

**Proposed language to amend and renumber s. 102.17 (9) (a ) 1. to 102.17 (9) (a) 1m.**
s. 102.17 **(9)** (a) 1m. "Fire fighter" means any person employed on a full-time basis by the state or any political subdivision as a member or officer of a fire department, including the 1st class cities and state fire marshal and deputies <u>or an individual who volunteers as a member or officer of such a department</u>.

**Proposed language to create s. 102.17 (9) (a) 1c.**
s. 102.17 **(9)** (a) 1c. "Correctional officer" has the meaning given in s. 102.475 (8) (a).

**Proposed language to create s. 102.17 (9) (a) 1e.**
s. 102.17 **(9)** (a) 1e. "Emergency medical responder" has the meaning given in s. 256.01 (4p).

**Proposed language to create s. 102.17 (9) (a) 1g.**
s. 102.17 **(9)** (a) 1g. "Emergency medical services practitioner" has the meaning given in s. 256.01 (5).

**Proposed language to create s. 102.17 (9) (a) 1p.**
s. 102.17 **(9)** (a) 1p. "Medicolegal investigation staff member" includes a chief deputy coroner, a deputy coroner, a deputy medical examiner, and any individual who assists the office of a coroner or medical examiner with an investigation of a death. "Medicolegal investigation staff member" does not include an individual performing solely administrative functions in the office of a coroner or medical examiner.

**Proposed language to amend s. 102.17 (9) (b) (intro.)**
102.17 **(9)** (b) (intro.) Subject to par. (c), in the case of a mental injury that is not accompanied by a physical injury and that results in a diagnosis of post-traumatic stress disorder in a law enforcement officer, as defined in s. 23.33 (1) (ig), an emergency medical responder, an emergency service practitioner, a correctional officer, a public safety answering point dispatcher, a coroner, a medical examiner, a medicolegal investigation staff member, or a fire fighter, the claim for compensation for the mental injury, in order to be compensable under this chapter, is subject to all of the following:

**Department Proposal 4**
s. 20.445 (1) (ra)

Under current law, insurers are required to pay supplemental benefits to certain employees who were permanently disabled by an injury that is compensable under the worker's compensation law. DWD is authorized to collect up to $5,000,000 from insurers that provide worker's compensation insurance to provide those supplemental benefits. This money must be used exclusively to provide reimbursements to insurers that pay those supplemental benefits and that request reimbursements.

The proposal creates a new, separate appropriation in the worker's compensation operations fund to provide these reimbursements. The proposal does not increase revenue to DWD or collections from insurers.

**Proposed language to amend s. 20.445 (1) (ra)**
s. 20.445 **(1)** (ra) *Worker's compensation operations fund; administration.* From the worker's compensation operations fund, the amounts in the schedule for the administration of the worker's compensation program by the department, for assistance to the department of justice in investigating and prosecuting fraudulent activity related to worker's compensation, for transfer to the uninsured employers fund under s. 102.81

(1) (c), and for transfer to the appropriation accounts under par. (rp) and s. 20.427 (1) (ra). All moneys received under ss. 102.28 (2) (b) and 102.75 (1) shall be credited to this appropriation account. From this appropriation, an amount not to exceed $5,000 may be expended each fiscal year for payment of expenses for travel and research by the council on worker's compensation, an amount
not to exceed $500,000 may be transferred in each fiscal year to the uninsured employers fund under s. 102.81 (1) (c), the amount in the schedule under par. (rp) shall be transferred to the appropriation account under par. (rp), and the amount in the schedule under s. 20.427 (1) (ra) shall be transferred to the appropriation account under s. 20.427 (1) (ra).

**Proposed language to create s. 20.445 (1) (rr)**

s. 20.445 **(1)** (rr) *Worker's compensation operations fund; special assessment insurer reimbursements.* From the worker's compensation operations fund, the amounts in the schedule for providing reimbursement to insurance carriers paying supplemental benefits under s. 102.44 (1) (c). All moneys received under s. 102.75 (1g) shall be credited to this appropriation account.

**Department Proposal 5**

s. 20.445 (1) (sm)

Under current law, the uninsured employers fund (UEF) is used to pay worker's compensation benefits on claims filed by employees who are injured while working for uninsured employers in this state. The money for the UEF comes from, among various sources, penalties assessed against uninsured employers. This proposal changes the appropriation for the UEF from a sum sufficient appropriation to a continuing appropriation.

**Proposed language to amend s. 20.445 (1) (sm)**

s. 20.445 **(1)** (sm) *Uninsured employers fund; payments.* From the uninsured employers fund, ~~a sum sufficient to make~~ all moneys received from sources identified under s. 102.80 (1m) for the purpose of making the payments under s. 102.81 (1) and to obtain reinsurance under s. 102.81 (2). No moneys may be expended or encumbered under this paragraph until the first day of the first July beginning after the day that the secretary of workforce development files the certificate under s. 102.80 (3) (a).

**Department Proposal 6**

s. 102.125 (1m), (2), & (3); s. 943.395 (1) (e)

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 value of the claim or benefit. The bill adds to the list of criminally punishable insurance fraud the following: 1) the presentation of false or fraudulent applications for worker's

compensation insurance coverage and 2) the presentation of applications for worker's compensation insurance coverage that falsely or fraudulently misclassify employees in order to lower premiums.

Also, under current law, if an insurer or self-insured employer has evidence that a worker's compensation claim is false or fraudulent, the insurer or self-insured employer must generally report the claim to DWD. If, on the basis of the investigation, DWD has a reasonable basis to believe that criminal insurance fraud has occurred, DWD must refer the matter to the district attorney for prosecution. DWD may request assistance from DOJ to investigate false or fraudulent activity related to a worker's compensation claim. If, on the basis of that investigation, DWD has a reasonable basis to believe that theft, forgery, fraud, or any other criminal violation has occurred, DWD must refer the matter to the district attorney or DOJ for prosecution. This proposal extends these requirements to insurers that have evidence that an application for worker's compensation insurance coverage is fraudulent or that an employer has committed fraud by misclassifying employees to lower the employer's worker's compensation insurance premiums.

**Proposed language to create 102.125 (1m)**

s. 102.125 **(1m)** APPLICATION AND PREMIUM FRAUD. If an insurer has evidence that an application for worker's compensation insurance coverage is fraudulent or that an employer has committed fraud by misclassifying employees to lower the employer's worker's compensation insurance premiums in violation of s. 943.395, the insurer shall report the claim to the department. The department may require an insurer to investigate an allegedly fraudulent application or alleged fraud by misclassification of employees and may provide the insurer with any records of the department relating to that alleged fraud. An insurer that investigates alleged fraud under this subsection shall report the results of that investigation to the department.

**Proposed language to amend s. 102.125 (2)**

s. 102.125 **(2)** ASSISTANCE BY DEPARTMENT OF JUSTICE. The department of workforce development may request the department of justice to assist the department of workforce development in an investigation under sub. (1) or (1m) or in the investigation of any other suspected fraudulent activity on the part of an employer, employee, insurer, health care provider, or other person related to worker's compensation.

**Proposed language to amend s. 102.125 (3)**

s. 102.125 **(3)** PROSECUTION. If based on an investigation under sub. (1), (1m), or (2) the department has a reasonable basis to believe that a violation of s. 943.20, 943.38, 943.39, 943.392, 943.395, 943.40, or any other criminal law has occurred, the department shall refer the results of the investigation to the department of justice or to the district attorney of the county in which the alleged violation occurred for prosecution.

**Proposed language to create s. 943.395 (1) (e)**

s. 943.395 **(1)** (e) Presents an application for worker's compensation insurance coverage that is false or fraudulent or that falsely or fraudulently misclassifies employees to lower worker's compensation insurance premiums.

**Department Proposal 7**
ss. 102.82 (2) and 102.85; 102.16 (4)

Under current law, an employer who requires an employee to pay for any part of worker's compensation insurance or who fails to provide mandatory worker's compensation insurance coverage is subject to a forfeiture. If the employer violates those requirements, for the first 10 days, the penalty under current law is not less than $100 and not more than $1,000 for such a violation. If the employer violates those requirements for more than 10 days, the penalty under current law is not less than $10 and not more than $100 for each day of such a violation.

Under the proposal, the forfeitures for an employer who requires an employee to pay for worker's compensation coverage or fails to provide the coverage (violation) are as follows:
1. For a first violation, $1,000 per violation or the amount of the insurance premium that would have been payable, whichever is greater.
2. For a second violation, $2,000 per violation or two times the amount of the insurance premium that would have been payable, whichever is greater.
3. For a third violation, $3,000 per violation or three times the amount of the insurance premium that would have been payable, whichever is greater.
4. For a fourth or subsequent violation, $4,000 per violation or four times the amount of the insurance premium that would have been payable, whichever is greater.

Under current law, if an employer who is required to provide worker's compensation insurance coverage provides false information about the coverage to his or her employees or contractors who request information about the coverage, or fails to notify a person who contracts with the employer that the coverage has been canceled in relation to the contract, the employer is subject to a forfeiture of not less than $100 and not more than $1,000 for each such violation.

Under the proposal, the penalty for a first or second such violation remains as specified under current law, the penalty for a third violation is $3,000, and the penalty for a fourth or subsequent violation is $4,000. Currently, an uninsured employer must pay to DWD an amount that is equal to the greater of the following: 1) twice the amount that the uninsured employer would have paid for worker's compensation coverage during periods in which the employer was uninsured in the preceding three years or 2) $750 or, if certain conditions apply, $100 per day. The proposal provides that the amounts an uninsured employer must pay to DWD for a determination of a failure to carry worker's compensation insurance are as follows:
1. For a first or second determination, the amounts specified in current law.
2. For a third determination, the greater of the following: a) three times the amount that

the uninsured employer would have paid for worker's compensation coverage during periods in which the employer was uninsured in the preceding three years or b) $3,000. 3. For a fourth or subsequent determination, the greater of the following: a) four times the amount that the uninsured employer would have paid for worker's compensation coverage during periods in which the employer was uninsured in the preceding three years or b) $4,000.

**Proposed language to amend s. 102.82 (2) (a) (intro.)**
s. 102.82 (2) (a) (intro.) Except as provided in pars. (ag), (am) and (ar), ~~all~~ for a 1st or 2nd determination by the department that an employer was uninsured, an uninsured ~~employers~~ employer shall pay to the department the greater of the following:

**Proposed language to create s. 102.82 (2) (ab)**
s. 102.82 (2) (ab) Except as provided in pars. (ag), (am), and (ar), for a 3rd determination by the department that an employer was uninsured, an uninsured employer shall pay to the department the greater of the following:

1. Three times the amount determined by the department to equal what the uninsured employer would have paid during periods of illegal nonpayment for worker's compensation in the preceding 3-year period, based on the employer's payroll in the preceding 3 years.

2. Three thousand dollars.

**Proposed language to create s. 102.82 (2) (ad)**
s. 102.82 (2) (ad) Except as provided in pars. (ag), (am), and (ar), for a 4th or subsequent determination by the department that an employer was uninsured, an uninsured employer shall pay to the department the greater of the following:

1. Four times the amount determined by the department to equal what the uninsured employer would have paid during periods of illegal nonpayment for worker's compensation in the preceding 3-year period, based on the employer's payroll in the preceding 3 years.

2. Four thousand dollars.

**Proposed language to amend s. 102.82 (2) (am)**
s. 102.82(2)(am) The department may waive any payment owed under par. (a), (ab), or (ad) by an uninsured employer if the department determines that the uninsured employer is subject to this chapter only because the uninsured employer has elected to become subject to this chapter under s. 102.05 (2) or 102.28 (2).

**Proposed language to amend s. 102.82 (2) (ar)**
s. 102.82(2)(ar) The department may waive any payment owed under par. (a), (ab), (ad), or (ag) or sub. (1) if the department determines that the sole reason for the uninsured employer's failure to comply with s. 102.28 (2) is that the uninsured employer was a victim of fraud, misrepresentation or gross negligence by an insurance agent or insurance broker or by a person whom a reasonable person would believe is an insurance agent or insurance broker.

**Proposed language to repeal and recreate ss. 102.85 (1) and (2)**

s. 102.85 (1) (a) If an employer has failed to comply with s. 102.16 (3) or 102.28 (2), the employer shall, for a first violation, forfeit the greater of $1,000 or the amount of the premium that would have been payable for each time the employer failed to comply with s. 102.16 (3) or 102.28 (3).

(b) If an employer has failed to comply with s. 102.16 (3) or 102.28 (2), the employer shall, for a 2nd violation, forfeit the greater of $2,000 or 2 times the amount of the premium that would have been payable for each time the employer failed to comply with s. 102.16 (3) or 102.28 (3).

(c) If an employer has failed to comply with s. 102.16 (3) or 102.28 (2), the employer shall, for a 3rd violation, forfeit the greater of $3,000 or 3 times the amount of the premium that would have been payable for each time the employer failed to comply with s. 102.16 (3) or 102.28 (3).

(d) If an employer has failed to comply with s. 102.16 (3) or 102.28 (2), the employer shall, for a 4th or subsequent violation, forfeit the greater of $4,000 or 4 times the amount of the premium that would have been payable for each time the employer failed to comply with s. 102.16 (3) or 102.28 (3).

(2) (a) No employer who is required to provide worker's compensation insurance coverage under this chapter may give false information about the coverage to his or her employees, the department, or any other person who contracts with the employer and who requests evidence of worker's compensation in relation to that contract.

(b) No employer who is required to provide worker's compensation insurance coverage under this chapter may fail to notify a person who contracts with the employer that the coverage has been canceled in relation to that contract.

(c) 1. An employer who violates par. (a) or (b) shall, except as provided in subds. 2. and 3., forfeit not less than $100 and not more than $1,000.

2. An employer who violates par. (a) or (b) shall forfeit $3,000 for a 3rd violation of par. (a) or (b).

3. An employer who violates par. (a) or (b) shall forfeit $4,000 for a 4th violation of par. (a) or (b).

**Proposed language to amend s. 102.16 (4)**

102.16 (4) The department and the division have jurisdiction to pass on any question arising out of sub. (3) and to order the employer to reimburse an employee or other person for any sum deducted from wages or paid by him or her in violation of that subsection. In addition to ~~the~~ any penalty provided in s. 102.85 (1), any employer violating sub. (3) shall be liable to an injured employee for the reasonable value of the necessary services rendered to that employee under any arrangement made in violation of sub. (3) without regard to that employee's actual disbursements for those services.

## B. 23-25 New Department Proposals (8-11)

**Department Proposal 8**
s. 102.44 (4m) (b)

The spelling of "speciality" is incorrect. The correct spelling is "specialty".

**Proposed language to amend s. 102.44 (4m) (b)**
s. 102.44 **(4m)** (b) In considering an individual for appointment to the medical advisory committee under par. (a), the department shall consider the individual's training and experience, the number of years the individual has been practicing in the individual's area of specialization or treating discipline, any certifications by a recognized medical ~~speciality~~ specialty board or other agency held by the individual, any recommendations made by organizations that regulate or promote professional standard in the area of specialization or treating discipline in which the individual practices, and any other factors that the department determines are relevant to the individual's knowledge and ability to serve as a member of the medical advisory committee board.

**Department Proposal 9**
s. 102.61 (1), (1g) (b), (c) & (1m) (a)

The citations to the Federal rehabilitation law need to be updated since certain provisions have been repealed. Title 29 USC ss. 701 to 796*l* are still in effect. Title 29 USC ss. 797 to 797b were repealed.

**Proposed language to amend s. 102.61 (1), (1g) (b), (c) & (1m) (a)**
s.102.61 (1) Subject to subs. (1g) and (1m), an employee who is entitled to receive and has received compensation under this chapter, and who is entitled to and is receiving instruction under 29 USC 701 to~~797b~~ 796*l*, as administered by the state in which the employee resides or in which the employee resided at the time of becoming physically disabled , shall, in addition to other indemnity, be paid the actual cost and necessary costs of tuition , fees , books, and travel require for the employee's rehabilitation training program and, if the employee receives that instruction elsewhere that at the place of residence , the actual and necessary costs of maintenance, during rehabilitation , subject to the conditions and limitations specified in sub. (1r). The costs of travel under this subsection shall be paid at the same rate as is provided for state officers and employees under s. 20.916 (8).

s. 102.61 (1g) (b) If an employer offers an employee suitable employment as provided in par. (c), the employer or the employer's insurance carrier is not liable for temporary disability benefits under s. 102.43 (5) (b) or for the cost of tuition, fees, books, travel and maintenance under sub. (1). Ineligibility for compensation under this paragraph does not preclude an employee from receiving vocational rehabilitation services under 29 USC 701 to ~~797b~~ 796*l*, if the department determines that the employee is eligible to

receive those services.

s. 102.61 (1g) (c) On receiving notice that he or she is eligible to receive vocational rehabilitation services under 29 USC 701 to ~~797a~~ 796*l*, an employee shall provide the employer with a written report from a physician, chiropractor, psychologist, or podiatrist, stating the employee's permanent work restrictions. Within 60 days after receiving that report, the employer shall provide to the employee in writing an offer of suitable employment, a statement that the employer has no suitable employment for the employee, or a report from a physician, chiropractor, psychologist, or podiatrist showing that the permanent work restrictions provided by the employee's practitioner are in dispute and documentation showing that the difference in work restrictions would materially affect either the employer's ability to provide suitable employment or a vocational rehabilitation counselor's ability to recommend a rehabilitative training program. If the employer and employee cannot resolve the dispute within 30 days after the employee receives the employer's report and documentation, the employer or the employee may request a hearing before the division to determine the employee's work restrictions. Within 30 days after the division determines the employee's work restrictions, the employer shall provide the employee in writing an offer of suitable employment or a statement that the employer has no suitable employment for the employee.

s. 102.61 (1m) (a) If the department has determined under sub. (1) that an employee is eligible for vocational rehabilitation services under 29 USC 701 to ~~797b~~ 796*l*, but that the department cannot provide those services for the employee, the employee may select a private rehabilitation counselor certified by the department to determine whether the employee can return to suitable employment without rehabilitative training and, if that counselor determines that rehabilitative training is necessary, to develop a rehabilitative training program to restore as nearly as possible the employee to his or her preinjury earning capacity and potential.

**Department Proposal 10**
s. 102.81 (1) (c) 1. and 2.

Under current law the additional solvency protection for the Uninsured Employers Fund (UEF) applies to large claims in excess of $1,000,000. The UEF is required to pay claims in excess of $1,000,000 in the first instance. If a large claim is not covered by excess or stop-loss reinsurance, worker's compensation insurance carriers are responsible to pay reimbursement to the UEF for claim payments in excess of $1,000,000. Assessments to worker's compensation insurance carriers for reimbursement are limited to $500,000 per year. Reimbursement over the $500,000 annual limit will be made in the next calendar year or in subsequent calendar years until the amount of reimbursement is paid in full. The amendment will increase the amount of large claims from $1,000,000 to $2,000,000 that require reimbursement from worker's compensation insurance carriers.

**Proposed language to amend s. 102.81 (1) (c) 1. and 2.**
s. 102.81 (1) (c) 1. The department shall pay a claim under par. (a) in excess of ~~$1~~ 2,000,000 from the uninsured employers fund in the first instance. If the claim is not covered by excess or stop-loss reinsurance under sub. (2), the secretary of administration shall transfer from the appropriation account under s. 20.445 (1) (ra) to the uninsured employers fund as provided in subds. 2. and 3. an amount equal to the amount by which payments from the uninsured employers fund on the claim are in excess of ~~$1~~ 2,000,000.

102.81 (1) (c) 2. Each calendar year the department shall file with the secretary of administration a certificate setting forth the number of claims in excess of ~~$1~~2,000,000 in the preceding year paid from the uninsured employers fund, the payments made from the uninsured employers fund on each such claim in the preceding calendar year, and the total payments made from the uninsured employers fund on all such claims and, based on that information, the secretary of administration shall determine the amount to be transferred under subd. 1. in that calendar year.

**Department Proposal 11**
s. 20.445 (1) (rp), (sm) and s. 102.81 (2)

Expenses for retaining an insurance carrier or insurance service organization 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.

**Proposed language to amend s. 20.445 (1) (rp), (sm) and s.102.81 (2)**
s. 20.445(1) (rp) *Worker's Compensation operations fund; ~~uninsured employers program~~; administration*. From the worker's compensation operations fund, the amounts in the schedule for the administration of ss. 102.28 (4). ~~and 102.80 to 102.89.~~ All moneys transferred from the appropriation account under par. (ra) to this appropriation account shall be credited to this appropriation account.

s. 20.445 (1) (sm) *Uninsured employers fund; uninsured employers program administration; payments.* From the uninsured employers fund, a sum sufficient to make payments under s. 102.81 (1) ~~and~~, to obtain reinsurance under s. 102.81 (2), and the administration of ss. 102.80 to 102.89. No moneys may be expended or encumbered under this paragraph until the first day of the first July beginning after the day that the secretary of workforce development files the certificate under s. 102.80 (3) (a).

s. 102.81 (2) The department may retain an insurance carrier or insurance service organization to process, investigate and pay claims under this section and may obtain excess or stop-loss reinsurance with an insurance carrier authorized to do business in

this state in an amount that the secretary determines is necessary for the sound operation of the uninsured employers fund. In cases involving disputed claims, the department may retain an attorney to represent the interests of the uninsured employers fund and to make appearances on behalf of the uninsured employers fund in proceedings under ss. 102.16 to 102.29. Section 20.930 and all provisions of subch. IV of ch.16, except s. 16.753, do not apply to an attorney hired under this subsection. The charges for the services retained under this subsection shall be paid from the appropriation under s. 20.445 (1) ~~(rp)~~ (sm). The cost of any reinsurance obtained under this subsection shall be paid from the appropriation under s. 20.445 (1) (sm).