

Council on Worker's Compensation
Meeting Minutes
GEF-1 Building
Madison, Wisconsin
October 4, 2017

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

Members present: Ms. Bloomingdale, Mr. Dernbach (Chair) (via telephone), Ms. Frank, Mr. Fugina (via telephone), Mr. Gunderson (via telephone), Ms. Johnson (via telephone), Mr. Kent, Mr. Reader, Mr. Redman, and Mr. Tindall

Excused: Mr. Buchen, Mr. Schwanda, Ms. Seiler, and Ms. Thomas

Staff Present: Mr. Aiello, Mr. Gottfredsen, Mr. Krueger, Ms. McCormick, and Mr. O'Malley (via telephone)

- 1. Call to Order/Introductions:** Mr. Krueger, serving as acting Chair, convened the Worker's Compensation Advisory Council (WCAC) meeting at approximately 10:10 a.m. in accordance with Wisconsin's open meetings law. Mr. Krueger called the roll of the members. Members of the WCAC, the audience, and Worker's Compensation Division (WCD) staff introduced themselves.
- 2. Approval of the Minutes:** A motion was made by Ms. Bloomingdale to approve the minutes of the August 23, 2017 meeting. Mr. Tindall seconded the motion. The minutes were unanimously approved without correction.
- 3. Draft Agreed Upon Bill Review:** The first draft Agreed Upon Bill (LRB-4386/P1) was discussed. Ms. Bloomingdale explained that the members representing Labor proposed to change language on pages 20-21, Section 45, in s. 102.423 (1) (a) 1. from "average payment made" to "average negotiated price" and in s. 102.43 (1) (c) from "payment" and "payments" to "negotiated price." These changes would allow the incorporation of co-payments and deductibles into the price determination. For example, the actual price for a procedure to which the insurance company paid \$100 and the individual paid a \$50 co-payment to the provider would be considered \$150 instead of only the \$100 paid by group health insurance.

Mr. Tindall discussed the proposed changes by the members representing Management to ss. 102.423 (pages 20-22, Section 45) and 102.525 (page 24, Section 53). Management sought additional language to clarify that the Medicare fee schedule was to be used as a baseline and the worker's compensation fee schedule would be based on a percentage over Medicare to mirror group health insurance reimbursement amounts. Management also sought to clarify that medical providers would have one opportunity, through a public hearing, to provide support for the administrative cost factor of 2.5 percent is not sufficient to cover their costs and not be allowed to challenge the cost factor percentage on a claim-by-claim basis.

Management also proposed the language of s. 102.525 should be changed to match the current statutory language regarding the criteria to receive benefits for loss of earning

capacity. The concern was that, as currently drafted, a worker could potentially make a claim for the 15% increase in permanent partial disability benefits based on the loss of his or her job years later regardless of whether the job loss was related to the work injury.

A motion was made by Ms. Bloomingdale for the Labor and Management members to go into closed caucus. The motion was seconded by Mr. Tindall. The motion passed unanimously and the members went into closed caucus at 10:20 a.m. The members returned from caucus at about 1:20 p.m.

Mr. Reader, using the document containing Management's proposed changes as a starting point, set out the specific language agreed to by the members representing Labor and Management to amend the current draft. The proposed changes to Sections 45 and 53 were as follows:

SECTION 45. 102.423 of the statutes is created to read:

102.423 Health service fee schedule. (1) HEALTH SERVICE FEE SCHEDULE. (a) By

January 1, 2019, the department shall establish a schedule of the maximum fees that a health care provider may charge an employer or insurer for health services provided to an injured employee who claims benefits under this chapter. When that schedule is established, the department shall notify the legislative reference bureau and the legislative reference bureau shall publish that notice in the Wisconsin Administrative Register. For the health services in the schedule, the department shall do all of the following:

1. Based on sources obtained by the department, determine the average negotiated price made for group health benefit plans to the extent possible, as defined in s. 632.745 (9), group health plans, as defined in s. 632.745 (10), and self-insured health plans, as defined in s. 632.745 (24).

2. Calculate, as a percentage, the variation of average group insurance negotiated price computed in subd. 1. as compared to the Medicare reimbursement rates set per the federal Centers for Medicare and Medicaid Services.

3. Apply the percentage variance for each Current Procedural Terminology and Healthcare Common Procedure Coding System code to the health services contained in the Medicare billing code system.

4. Set the maximum fee for each health service calculated under subd. 3. above by increasing the amounts determined under subd. 3. by 2.5 percent for administrative costs.

(b) 1. In this paragraph, "consumer price index" means the average of the consumer price index for medical care services over each 12-month period for all urban consumers, U.S. city average, as determined by the bureau of labor statistics of the federal department of labor.

2. On each January 1, beginning with January 1, 2020, the department shall adjust the maximum fees established under par. (a) by the percentage difference between the consumer price index for the 12-month period ending on December 31 of the preceding year and the consumer price index for the 12-month period ending on December 31 of the year before the preceding year.

(c) No less often than every 10 years, the department shall obtain health service negotiated price data from the sources specified in par. (a) 1., redetermine the average negotiated price specified in par. (a) 1., and revise the maximum fees established under par. (a) 3. based on that redetermined average.

(d) The department shall publish the fee schedule established under par. (a) on the department's Internet site.

(e) Prior to the effective date of this section, health care providers may petition the department to hold a public hearing to gather information to be used to determine if the increase under sub. (1) (a) 3. b. for unique administrative costs is sufficient to pay for the unique administrative costs incurred in treating worker's compensation patients versus patients whose bills are paid by other

means. If the department determines, based on the request and information gathered and submitted, that the percentage increase under sub. (1) (a) 3. b. for unique administrative costs is generally insufficient to pay for the unique administrative costs incurred by health care providers for treating worker's compensation patients, the department shall establish and apply an alternative increase for the unique administrative costs that is not more than 10 percent of the cost of the service as determined under sub. (1) (a) 1.

(f) The department shall have the authority to promulgate an emergency rule for purposes of publishing the formula to be used to calculate the medical fee schedule; the emergency rule shall become effective immediately upon promulgation, except the usual rule-making procedures provided under this chapter shall be retroactively applied to the rule as soon as is reasonable possible, but no later than 90 days after the effective date of the emergency rule.

(2) LIABILITY OF EMPLOYER OR INSURER. (a) The liability of an employer or insurer for a health service included in the fee schedule established under sub. (1) is limited to the maximum fee allowed under the schedule for that health service as of the date on which the health service was provided or the health care provider's actual fee for the health service as of that date, whichever is less.

(b) A health care provider that provides health services to an injured employee under this chapter may not collect, or bring an action to collect, from the injured employee any charge that is in excess of the liability of the employer or insurer under this subsection.

(c) This subsection first applies to a health service provided to an injured employee on the date on which the notice under sub. (1) (a) is published in the Wisconsin Administrative Register.

(3) RECORDS. Records related to the collection of any information under sub. (1) (a) 1. are not subject to the right of inspection and copying under s. 19.35 (1).

(4) RULES. Subject to sub. (1) (d), the department shall promulgate rules to implement this section.

SECTION 53. 102.525 of the statutes is created to read:

102.525 Additional payment for permanent partial disability. (1) With respect to an employee who sustains a disability specified under s. 102.52: (a) If during the period set forth in s. 102.17 (4) the employment relationship is terminated by the employer at the time of the injury or by the employee because his or her physical limitations resulting from the work injury prevent his or her continuing in such employment, or if during that period wage loss of 15 percent or more occurs, the number of weeks for which indemnity shall be payable shall be increased by 15 percent.

(b) For the purpose of determining wage loss:

1. The determination of wage loss shall not take into account any period during which benefits are payable for temporary disability.

2. The determination of wage loss shall not take into account any period during which benefits are paid under ch. 108.

3. Payment of benefits for permanent partial disability shall not be considered payment of wages. 4. Wage loss shall be determined on wages, as defined in s. 102.11. Percentage of wage loss shall be calculated on the basis of actual average wages over a period of at least 13 weeks.

(c) For purposes of this subsection, if the employer in good faith makes an offer of employment which is refused by the employee without reasonable

cause, the employee is considered to have returned to work with the earnings the employee would have received had it not been for the refusal.

(2) An increase under sub. (1) shall be applied after the application of any increase under s. 102.53 or 102.54.

Before taking a vote on the amended draft language, Mr. Reader made a motion to read a statement to have memorialized into the record. Ms. Bloomingdale seconded the motion which passed unanimously. Mr. Reader read the following statement:

For the record, as part of the agreed bill for the 2017-2019 legislative session the Worker's Compensation Advisory Council recommends the Legislature adopt a medical fee schedule that sets the maximum chargeable amount for health services for workplace injuries to the average negotiated price for group health plans, as determined by the Department of Workforce Development, plus 2.5 percent for administrative costs health providers face for unique costs specific to worker's compensation cases. The fee schedule is intended to control high medical costs for worker's compensation claims. The members of the Council believe that the high medical costs in Wisconsin for treating injured workers has created an uncompetitive cost situation for employers along with limiting the available money for injured worker benefits. It is the intent of the Council to recommend to the Legislature in future legislative sessions that the savings verified by the WCRB, the Wisconsin Compensation Rating Bureau, that materialize because of the implementation of the fee schedule shall be used in part to increase injured worker benefits beyond the usual and customary increases that typically occur. In addition, it is the Council's intent that a portion of the savings shall be recommended in future sessions to be utilized to reduce workplace injuries by promoting workplace safety.

Mr. Reader made a motion to have the statement included in the record as read. Ms. Bloomingdale seconded the motion. The motion passed unanimously.

Mr. Reader made a motion that the WCAC approve the draft of the Agreed Upon Bill with the amendments to Sections 45 and 53 as stated earlier. Ms. Bloomingdale seconded the motion. The motion passed unanimously.

5. **Adjournment:** A motion was made by Mr. Reader to adjourn the meeting. The motion was seconded by Ms. Bloomingdale. The motion passed unanimously. The meeting was adjourned at approximately 1:30 p.m.

The Worker's Compensation Advisory Council does not have any additional meetings scheduled at this time.