

Council on Worker's Compensation
Meeting Minutes
201 E. Washington Avenue
GEF-1 Building
Madison, Wisconsin
July 25, 2023

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

Members present: Ms. Bloomingdale, Mr. Buchen, Ms. Frank, Mr. Fugina, Mr. Kent, Ms. Johnson, Mr. Large, Mr. Nettum, Mr. Peters (Chairperson), Mr. Schwanda, Mr. Tindall, and Ms. Ver Velde.

Excused: Mr. Streff and Ms. Zarecki.

Staff Present: Ms. Brown, Ms. Lake, Mr. Moreth, Mr. O'Malley, Ms. Przybylo, and Mr. Spencer.

- 1. Call to Order/Introductions:** Mr. Peters convened the Worker's Compensation Advisory Council (WCAC) meeting at approximately 10:05 a.m. in accordance with Wisconsin's open meetings law and called roll of the WCAC members. Staff and attendees introduced themselves.
- 2. Approval of the Minutes:** A motion was made by Ms. Bloomingdale to approve the minutes of the June 19, 2023, meeting. Ms. Ver Velde seconded the motion. The minutes were unanimously approved without correction.
- 3. Correspondence:** Mr. O'Malley advised there was no correspondence received since the last meeting on June 19, 2023.
- 4. Motion to Caucus:** Ms. Bloomingdale made a motion for the members to convene in closed caucus. Ms. Ver Velde seconded the motion. The members voted unanimously in favor of the motion. Mr. Peters announced the closed session, statutory authority, and the nature of business to be considered. At about 10:20 a.m. the Labor and Management members convened in closed caucus to deliberate topics on the agenda. The closed caucus ended and the meeting reconvened in open session at about 1:00 p.m.
- 5. Labor Proposals:** Ms. Bloomingdale thanked the members of the WCAC for participating in the Agreed Upon Bill Process. The proposals have taken some time to develop but the process is a great one. She recognized that all of the members want an agreed upon bill to submit to the legislature as the worker's compensation system is a good one and should continue to be supported. Ms. Bloomingdale cited the stability of the worker's compensation program and the importance of a program that all stakeholders can rely upon. Wisconsin workers have a high quality of health care afforded to them and Wisconsin has one of the quickest return to work rates in the country. She further stated that the rates for worker's compensation premiums have continued to decrease year after year since 2016. Wisconsin has a superior return to work rate, low litigation levels and a low cost for overall services. Labor's proposals seek to improve the system.

Ms. Bloomingdale present the Labor Proposals to be considered in the next Agreed Upon Bill for 2023-2025, which were as follows:

1. **Permanent Partial Disability (PPD) Benefit Maximum Rate:** Increase the benefit rate \$20 per week for a maximum rate of \$450 week for 2023. For injuries after January 1, 2024 the maximum rate would be \$470. Beginning January 1, 2024 provide for automatic \$20 per week increases in the maximum PPD rate per year until 2030 without the need for inclusion in every agreed bill.
2. **Employer Safety Violation:** Amend s. 102.57, Wis. Stats., to add employer violations of other safety standards from federal agencies including the U.S. Department of Labor, U.S. Department of Health and the U.S. Department of Transportation as a basis for awarding 15% increased compensation for a safety violation by an employer. With this proposal payments for medical expense will also be used in calculation of 15% increased compensation.
3. **Death Benefits:** Revise the death benefit statutes to eliminate the concept of dependency. Death benefits shall be payable to surviving spouses, children, siblings, parents, and other next-of-kin in a manner similar to probate/estate law.
4. **Permanent Total Disability (PTD) Supplemental Benefits:** Adopt a six (6) year bump to advance dates of eligibility and increase benefit rates. Current law provides for employees injured before January 1, 2003 to have a maximum supplement benefit rate of \$669. A six (6) year advance of eligible dates of injury will be prior to January 1, 2009 and will increase the maximum benefit rate to \$831. Amend statute to authorize supplemental benefits to injured workers who are receiving compensation for permanent total disability (PTD) from the Second Injury Fund.
5. **Scholarships:** Provide for a statutory scholarship benefit for injured workers' children when a parent's injury causes death. Scholarship amount for each child would be for the tuition, room and board, and book expense for up to four years at a Wisconsin State University System school, Wisconsin State Technical College System, or certified apprenticeship program of the child's choice.
6. **Statute of Limitations Extended by Payment of Medical Expense.** Under current law, s. 102.17 (4), provides for the statute of limitations to be measured from the date of injury or death, or the last payment of primary compensation, whichever is later. This proposal would add the date of the last payment of medical expense as an additional measurement point for the start of the statute of limitations.
7. **Shoulder Replacement, Spinal Fusions:** Amend s. 102.17(4), Wis. Stats., to include shoulder replacements, reverse shoulder replacements, as well as spinal fusions as additional serious traumatic injuries with no statute of limitations.
8. **Increase Release of Unaccrued Benefits in Compromise Agreements:** Increase the amount of the unaccrued compensation that may be released to the injured worker without restriction in a compromise settlement from \$10,000 to \$50,000 pursuant to s. DWD 80.03 (1)(d) of the Wisconsin Administrative Code.
9. **Injured Worker Choice of Third-Party Settlements:** Amend s. 102.29, Wis. Stats., to change the law from the employer having an equal voice in whether a settlement offer should be accepted to the employee having the right to control the settlement or no settlement decision.

10. **Indexing of Permanent Total Disability (PTD) Rate:** Indexing of PTD with a 6-year lag. For injuries beginning January 1, 2024, index weekly benefits for PTD to the rate in effect at the time the benefit accrues for periods more than six (6) years after the date of injury.
11. **Posting of Injured Worker WC Rights:** Require all employers to display a DWD approved poster of WC employee rights at the workplace or on the employer's employee accessible website, including information on opioids and alternative treatments.
12. **Continuation of Health Care Coverage:** If during the period of temporary disability an employer fails to continue to provide ongoing group health care coverage for an injured worker, or the injured worker and his or her dependents, if such coverage was provided as of the time of injury, the temporary total disability (TTD) rate shall be expanded in an amount equal to 100% of the employer contribution for such group health care that the worker (and his dependents, if applicable) had as of the date of injury. In such a circumstance, the maximum TTD rate does not apply to cap TTD benefits.
13. **Loss of Earning Capacity for Scheduled Injuries:** If a worker suffers a scheduled injury, and if retraining has been attempted but fails to fully restore the injured worker's pre-injury earning capacity, or retraining is not feasible for the injured worker, allow a claim for loss of earning capacity in the same manner as currently allowed for unscheduled injuries.
14. **Limit Number of Medical Record Review Reports:** Under current law, an employer or worker's compensation carrier may commission an unlimited number of medical record reviews by medical providers, and those reports are not required to be disclosed to claimants. Amend s. 102.13, Wis. Stats., to provide that an employer or carrier may only obtain a medical record review with either the provider who has or will later conduct an IME pursuant to s. 102.13(1)(a), Wis. Stats., or with one provider other than a provider who performs an IME pursuant to s. 102.13 (1) (a), Wis. Stats.; that such reports must be disclosed to claimants within a reasonable time of receipt by the employer or carrier; and that record reviews are limited in any event to one every six (6) months, as are IMEs.
15. **Opioids:** Preamble: Labor's Proposal with respect to Opioids is a two-fold approach: 1) Attempt to manage pain with the best available treatment while trying to minimize the use of opioids when possible; and 2) Deal with the aftermath of the use of opioids for an injured worker who becomes addicted. Attempting to minimize opioid use without providing for those who have become dependent already on the use of opioids can have disastrous consequences. Labor's proposal discourages the use of hard and fast "rules" and "numbers" with respect to the use and amount of opioids, trusting that a well-informed medical community, guided by caring guidelines for the use of opioids, is the best rule to follow.
 - 1) Clarify that no physician/chiropractor referral is needed in WI for treatment with a physical therapist, with current law expanded to allow for a physical therapist able to opine on necessity for treatment and relationship to injury to ensure that the employer/carrier must pay for PT even in the absence of a physician referral.

- 2) Limit physician *dispensing* of opioids for a workplace injury to a 7-day supply per claim. Opioids *dispensed* by a physician beyond a 7-day supply shall be deemed to be unnecessary treatment per s. 102.16(2m), Wis. Stats. Note that this limitation is for *dispensing*, but does not limit a physician's ability to *prescribe* opioids for any reasonable and necessary time frame.
- 3) All medical providers should use "good judgment" in the use of opioids. As highlighted by recent medical news, hard and fast "rules" have been used too often to discontinue opioids inappropriately. As the medical community continues to grapple with the opioid issue, physicians are encouraged to carefully review the latest literature and recommendations on the use and discontinuance of opioids, as reflected by the latest "Wisconsin Medical Examining Board Opioid Prescribing Guideline".
- 4) Educate injured workers that "alternative treatment" for chronic pain, in lieu of or in combination with medication, is a medical expense that may be reasonably required to cure and relieve from the effects of the injury and a covered medical expense under the WC Act.
 - a. "Alternative treatments" for chronic pain other than medication may include, but are not limited to, manipulation therapy, electrical stimulation, chiropractic care, massage, trigger point injections, dry needling, acupuncture, acupressure, suction (cupping), virtual reality therapy, and psychological treatment.
 - b. "Alternative treatment" for chronic pain may include, but is not limited to, medication alternatives to opioids, such as Acetaminophen, anticonvulsants, topicals, interventional (epidurals, nerve blocks), lidocaine or ketamine infusions, and medical marijuana.
- 5) If an injured worker is prescribed opioids by a treating physician, and the employer/insurer obtains an IME opinion that opioids are not needed, the following shall apply:
 - a. Any IME opinion regarding the cessation of opioid medications MUST contain:
 - i. A discussion of "alternative treatments" other than opioid medication for the treatment of the injured worker's pain, and if opining that "alternative treatments" are also unnecessary, an explanation as to why alternatives are unnecessary;
 - ii. A proposed plan of discontinuation of opioid therapy consistent established medical guidelines. No "cold turkey" discontinuation of opioids is ever a reasonable treatment plan.
 - iii. That if the IME opines that the injured worker has developed behaviors indicative of opioid use disorder, affirmatively offer to pay for, and assist the worker in locating and obtaining, addiction treatment therapy at a facility of the patient's choice.

- b. The employer/insurer shall advise the employee that currently prescribed opioids will be continued to be paid by the employer/insurer for no less than 30 days from the date the IME opinion is received by the injured worker, or 30 days from the completion of an expedited mediation conference as set forth below, whichever is later;
 - c. The employer/insurer shall advise the employee of the right to have an expedited mediation conference with an ALJ to discuss the employee's options regarding opioid use, including the right to continue to rely upon his or her treating physician's recommendations for continued opioid use and to have a hearing on the issue of continued opioid therapy, "alternatives treatments" to opioid use, and the injured worker's right, if they elect to discontinue opioid use, to all necessary medical treatment, including medical and psychological treatment for addiction.
 - i. The Department shall expedite all requests by an injured worker for an opioid mediation conference, with a goal of a conference within the 30-day continued prescription payment period. Should a mediation be requested by the employee but is not held within the 30-day period, the employer/insurer shall continue to pay for prescribed opioids until a mediation is held.
- 6) Educate injured workers regarding opioid therapies, opioid addiction, and alternative treatments by providing a mailing to injured workers. The mailing should include language that if one becomes addicted to opioid medications due to a work injury, all reasonable and necessary medical care for the injury includes addiction treatment. Provide information regarding opioid treatment and addiction on the posting of WC rights.

16. Communicable Disease Causation for Presumption of Certain Occupations:

Extend s. 102.03 (6), Wis. Stats., in three ways: A) To apply to public-facing essential workers in addition to "first responder" as that term is already defined in the statute; B) To apply to any employee whose employer has had five (5) or more employees contract an epidemic virus or bacterium; C) To apply indefinitely with regard to epidemic viruses or bacterium. For purposes of this section, "epidemic" shall be defined as a virus or bacterium that spreads easily and quickly and affects or tends to affect a disproportionately large number of individuals within a population, community or region at the same time.

17. PTSD Coverage for Emergency Medical Responders: Provide the same worker's compensation coverage for PTSD to emergency medical responders, EMS personnel, volunteer fire fighters, correctional officers, emergency dispatchers, coroners, coroner staff members, medical examiners and medical examiner staff that is currently provided to law enforcement officers and full-time firefighters in s. 102.17 (9), Wis. Stats. (Same proposal as Department Proposal 3).

Ms. Bloomingdale stated that Labor reserves the right to amend, change or reserve any of its proposals.

- 6. Management Proposals:** Ms. Ver Velde thanked the members representing Management and Labor for participating in this process and the Department staff for providing assistance.

Ms. Ver Velde and Mr. Tindall presented the proposals from Management to be considered in the next Agreed Upon Bill for 2023-2024.

Ms. Ver Velde presented the proposal to establish a 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.

- 1. Medical Fee Schedule.** Management proposes the Department develop a medical fee schedule for hospital charges to be in place by January 1, 2025. 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.

Mr. Tindall presented Management's other proposals for this biennium.

- 2. Fee Dispute Resolution Process.** The Department currently certifies databases containing the amounts health care service providers charge for services for use in the fee dispute resolution process. Management proposes the Department certify databases containing the average health service fees paid to health service providers, and update s. 102.16 (2), Wis. Stats., and s. DWD 80.72 of the Wisconsin Administrative Code to reflect this database change.
- 3. Employer Directed Care.** Authorize 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 six (6) health care providers, at least three (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.
- 4. Reduce Statutory Minimums for PPD.** Reduce the current statutory minimum permanent partial disability (PPD) ratings by fifty percent (50%) contained in s. DWD 80.32 of the Wisconsin Administrative Code where surgical treatments have made it such that outcomes result in no permanent functional disability.
- 5. Approval of Compromise Agreements and Case Closure.** The Department of Hearings and Appeals will be required to approve compromise agreements, regardless of the number of weeks in dispute, where both parties are in agreement and are represented by counsel. In the event of a limited compromise agreement, the injured worker, through their counsel, would have the right to refile a new hearing application if additional issues, not included in the previous agreements, were to emerge.
- 6. Lump Sum Payments.** Allow lump sum payments for permanent partial disability (PPD) for unaccrued benefits paid up front in undisputed claims.
- 7. Treatment Guidelines.** Require treatment guidelines, established by the Department, be followed by health care providers for 90 days after a work-related injury unless prior authorization is received from the insurer.

8. **Permanent Total Disability (PTD) Benefit Limitation.** Terminate compensation for permanent total disability (PTD) once the injured worker is eligible to receive Old Age Social Security retirement benefits. If the injured worker at the time of injury was already Old Age Social Security eligible, the sum of all indemnity benefits, in an aggregate to include temporary total disability (TTD), temporary partial disability (TPD), loss of earning capacity (LOEC), PTD, shall be capped at no more than five (5) years, (with a cap of 104 weeks for all TTD/TPD benefits) and will terminate earlier upon the death of the injured worker should that arise within the five (5) year window.
9. **Utilization Review.** Allow employers and worker's compensation insurers to initiate utilization review of health care services by an independent doctor.
10. **Prohibit Stacking of Permanent Partial Disability (PPD).** The Labor and Industry Review Commission (LIRC) and the courts have held that the minimum ratings in s. DWD 80.32 of the Wisconsin Administrative Code are to be stacked for each surgical procedure due to the same injury. This leads to awards that are higher than the amount set by the administrative rule. Require permanent disability (PPD) ratings be based on actual ratings as assessed by medical experts.
11. **Require Work Exposure to be Predominant Cause to Allow Compensability.** Workplace exposure must be the predominant cause of the condition for a non-traumatic injury to be compensable under worker's compensation.
12. **Permanent Total Disability (PTD) Re-evaluation.** Authorize an employer or insurer to request an injured worker receiving PTD benefits to have their PTD ratings re-evaluated every three (3) years.
13. **Death Benefits in Permanent Total Disability (PTD) Claims:** Modification to s. 102.44 (3), Wis. Stats., to lower the threshold of 1,000 weeks to 500 weeks to address the eligibility for death benefits where the death occurs within 500 weeks of the initiation of compensation for permanent total disability (PTD).
This proposal will result in the following:
 - No death benefits will be due when the death occurs after 500 weeks of payment of compensation for PTD.
 - Normal benefits will be due when the death occurs within 500 weeks of payment for PTD when the death was causally linked to a compensable accident or illness.
 - No more than five (5) years of compensation for PTD will be due if the award for PTD was after the assignment of Old Age Social Security benefits.
 - Death benefits and burial expense will not be due if the death was not causally related to a compensable accident or illness.
14. **Statute of Limitations.** Reduce the statute of limitations to two (2) years, except in cases of occupational disease caused by exposure to toxic substances where 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 the prosthesis or artificial joint.
15. **Tolling the Statute of Limitations.** Simplify the process to calculate the date the statute of limitations in s. 102.17 (4), Wis. Stats., will apply.

This proposal includes the following:

- The Department will only accept hearing applications when there is a justiciable controversy.
- Repeal s. 102.17 (2), Wis. Stats.
- Require the judicial body 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, including requests by parties to dismiss or withdraw the application.
- Provide that the statute of limitations 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.
- Provide that consideration paid for a compromise agreement is not an advancement of benefits as provided by s. 102.32 (6m), Wis. Stats.
- Where an indemnity settlement exists, in either a limited compromise or full and final compromise, the date for the statute of limitations will be absolutely calculated from the date of issuance for the last indemnity payment.

16. **Eliminate Safety Offsets.** Eliminate safety offsets under ss. 102.57 and 102.58, Wis. Stats.

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

7. **Other Business:** No other business was addressed.

8. **Adjournment:** A motion was made by Ms. Bloomingdale to go into a closed session under s. 19.85(1) (eg), Wis. Stats., to deliberate items on the agenda and to adjourn the meeting from closed session. The motion was seconded by Ms. Ver Velde. The motion passed unanimously. Mr. Peters announced the closed session, statutory authority, and the nature of business to be considered. The open session of the meeting was adjourned at approximately 1:47 p.m. The Worker's Compensation Advisory Council's next meeting is scheduled for September 26, 2023.