

Council on Worker's Compensation  
Meeting Minutes – Hybrid Meeting (In-Person and via WebEx)  
201 E. Washington Avenue  
GEF-1 Building  
Madison, Wisconsin  
February 23, 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, Ms. Johnson, Mr. Kent, Mr. Large, Mr. Nettum, Mr. Peters (Chairperson), Mr. Schwanda, Mr. Streff, Mr. Tindall, Ms. Ver Velde, and Ms. Zarecki.

**Staff Present:** Mr. Aiello, Ms. Brown, Mr. Dipko, Mr. Moreth, Ms. McCormick, Mr. O'Malley, Ms. Przybylo, Mr. Simon and Mr. Spencer.

1. **Call to Order/Introductions:** Mr. Peters convened the Worker's Compensation Advisory Council (WCAC) meeting at approximately 10:10 a.m. in accordance with Wisconsin's open meetings law and called roll of the WCAC members. Jeremy Simon was introduced as the new Assistant Deputy Secretary of the Department of Workforce Development (DWD).
2. **Approval of the Minutes:** A motion was made by Mr. Buchen to approve the minutes of the December 13, 2021, meeting. Ms. Bloomingdale seconded the motion. The minutes were unanimously approved without correction.
3. **Public Comment:** Mr. Peters asked if there were any members of the public who wished to speak. Steve Abrahamson appeared via WebEx to propose that changes be made to s. 102.43 (9) (a), Wis. Stats., to require that a hearing be held before an insurance carrier is allowed to stop benefits when the employer states that the employee has refused an offer of work during the healing period. He provided his personal experience about having his benefits ended and his employment terminated while he is still in need of surgery. Mr. Abrahamson further proposed that payment to Independent Medical Examiners (IME) be limited to the same rate that the doctor would receive as their usual and customary charge to treat patients in their office. Mr. Abrahamson also expressed concern that third party administrators should not be permitted to do business in Wisconsin.
4. **Wisconsin Worker's Comp Works:** Mr. Josh Morby appeared on behalf of Wisconsin Worker's Comp Works. This organization is a coalition of members representing about 6,000 employers who employ 800,000 employees in Wisconsin. The coalition was formed to draw attention to the WCAC, the WC Agreed Upon Bill process and to emphasize the value the WCAC provides with the goal to educate the 30 new members of the legislature. The coalition believes there are 6 main reasons why the WCAC process works because it:
  - Provides employee protections if injured at work
  - Provides employer protections from lawsuits related to injuries in the workplace
  - Provides broad coverage that insures nearly everyone in Wisconsin
  - Remains up-to-date with proposals, hearings, and opportunities for input
  - Fosters compromise
  - Has a history of providing a level of stability for more than 100 years

- 5. Update on Amendments to chs. DWD 80 & 81:** Mr. O'Malley advised there are several administrative rules that are currently in the process of being amended. Emergency Rule (EmR) 2212 became effective on October 15, 2022, related to changes in ss. DWD 80.02 and 80.51 (4) of the Wis. Admin. Code for the computation of the weekly wage for part-time employees. The final draft of the permanent rule (CR 22-072) was submitted to the legislature on January 27, 2023, and published in the Wisconsin Administrative Register on February 6, 2023.

Statements of Scope for SS 048-21, SS 049-21, and SS 050-21, were approved by Governor Evers on May 13, 2021, and a public hearing was held on June 10, 2021. These Statements of Scope will expire on November 17, 2023.

SS 049-21 relates to minor and technical changes to the worker's compensation program in ss. DWD 80.60 and 80.61 of the Wis. Admin. Code regarding self-insurance and s. DWD 80.72 of the Wis. Admin. Code to update the formula amount to 1.2 deviations for reasonableness of fee health cost disputes.

SS 048-21 relates to minimum permanent partial disability (PPD) ratings in s. DWD 80.32 of the Wis. Admin. Code that are to be reviewed every 8 years. The committee of practitioners is prepared to meet with the WCAC to discuss their proposals to modify the minimum PPD ratings. Mr. Peters advised that a special meeting needs to be scheduled for this purpose.

SS 050-21 relates to the treatment guidelines in ch. DWD 81 of the Wis. Admin. Code used to resolve necessity of treatment dispute resolution requests. The treatment guidelines are factors for a member from an independent panel of experts to consider in rendering opinions to resolve necessity of treatment disputes of employees with compensable worker's compensation injuries and not to be used for utilization review.

- 6. Future Meeting Dates:** The WCAC set the next meeting dates for March 9 and April 11, 2023.
- 7. Open Records & Public Meetings Training in 2023:** Although training was just completed for 2022, Mr. Peters expressed his desire that the WCAC complete the required training early in 2023. Ms. Bloomingdale suggested that the training be provided at future WCAC meeting.
- 8. Correspondence:** Mr. O'Malley reviewed the correspondence received since the last meeting:

Mr. Bob Juul, President, The Motor Company, sent an e-mail message dated December 5, 2022 that recommended establishing a medical fee schedule and allowing employers to select practitioners to treat injured employees.

An e-mail message dated December 8, 2022, was received from Mr. Walter Peterson, EMT-B, President, District One EMS Membership Association, Dane County District One EMS recommending that s. 102.17 (9), Wis. Stats., be amended to provide the same worker's compensation coverage for PTSD to all EMS providers as is currently provided to firefighters and police officers.

A letter was received from Mr. Mahlon Mitchell, President, Professional Fire Fighters of Wisconsin, Inc. accompanying his testimony on December 15, 2022, recommending that s.

102.17 (9), Wis. Stats., be amended to provide worker's compensation coverage for PTSD to all EMS personnel and volunteer firefighters.

A letter was received from Mr. Bob Salov, Wisconsin Emergency Medical Services Association (WEMSA), accompanying his testimony on December 15, 2022, recommending that s. 102.17 (9), Wis. Stats., be amended to provide the same worker's compensation coverage for PTSD to volunteer first responders that is available to full-time fire fighters.

Mr. Erik D. Reichertz, CFO, ATACO Steel Products Corp sent an e-mail message dated December 28, 2022 recommending that worker's compensation reimbursement rates be tied to a formula based on what private insurers pay the health care facility.

An e-mail message dated January 7, 2023, was received from Ms. Katy Frey, Critical Care Paramedic; Co-Chair Wisconsin Emergency Medical Services Association (WEMSA); Allina Health EMS/River Falls recommending that EMS personnel and volunteer fire fighters should have the same worker's compensation coverage for PTSD that full-time fire fighters were given in 2021 Wis. Act 29.

An e-mail message dated January 9, 2023, was received from Mr. Tony Lash, Paramedic, Captain-Rescue Services, Union Grove Yorkville Fire Department; President, Board of Directors, Wisconsin Emergency Medical Services Association (WEMSA) recommending that volunteer fire fighters and EMS personnel should have the same worker's compensation coverage for PTSD that full-time fighters were provided.

In a letter dated January 9, 2023 Mr. Brian Dake, President, Wisconsin Independent Businesses, recommended that the WCAC should include meaningful medical cost containment strategies in the "WC Agreed Upon Bill" for this legislative session including the following:

- Medical fee schedule
- Pharmaceutical fee & utilization regulations
- Limiting provider choice
- Managed care regulations
- Utilization review
- Preauthorization for non-emergency care
- Treatment limitations
- Treatment guidelines

A letter dated January 10, 2023, was received from Mr. Ben Toombs, Director, Trauma, Burn & Emergency Surgery Services, UW Hospital and Clinics; and Mr. Thomas Ellison, Manager, Adult Trauma, UW Hospital and Clinics recommending that EMS personnel should have worker's compensation coverage for PTSD.

Ms. Nilsa Rosado-Jurkiewicz, City of Milwaukee, Department of Employee Relations, sent a letter dated January 11, 2023 recommending against expanding worker's compensation PTSD coverage to dispatchers, and that s. 102.17 (9) (a) 2., Wis. Stats., should be amended to add that a mental injury may not be the result of a "good faith investigation" by the employer.

A letter dated January 11, 2023, was received from Ms. Tiffany Grzybowski, Analyst, Advocacy & Compliance, Healthsystems, LLC, recommending the following:

1. Codify the Opioid Prescribing Guidelines that were established by the Wisconsin Medical Examining Board in 2018.
2. Establish a 50 morphine equivalent dose (MED) threshold limitation for prescribing opioids.
3. Permit physician dispensing only during the initial visit within 10 days following a work-related injury; Limit the days' supply for any physician dispensed medication to seven (7) days; and require prior authorization for physician dispensed medication in an outpatient setting.
4. Adopt the proposed s. 102.425 (3) (am) covering charges for repackaged drugs using the same or similar language that was used in 2014 AB-71 (2013-2014 WCAC WC Agreed Upon Bill).
5. Set reimbursement for compounded drugs, co-packaged drug kits, and convenience packs based on the fee schedule rates applicable to the individual products contained in these. Ingredients with no NDC and supplies that are incidental such as gloves, bandages, and syringes are not considered integral to the package and should not be reimbursed without preauthorization.
6. Amend s. 102.425, Wis. Stats., to reflect the current name and publisher of the Red Book to Merative Micromedex Red Book published by IBM; and add Medi-Span PriceRx published by Wolters Kluwer as another average wholesale price (AWP) drug pricing source.

An undated anonymous letter postmarked on January 13, 2023, related to fraud reporting, investigating, and prosecution recommends the following:

- Require the Department of Workforce Development Worker's Compensation Division (DWD WCD) to create an annual report focused on worker's compensation fraud.
- Require the DWD WCD to report how many results of investigation were referred to the Wisconsin Department of Justice or District Attorneys each year.
- Require worker's compensation insurance carriers to report suspected payroll fraud to the DWD WCD.
- Require DWD WCD to examine claims data for suspected fraud being committed by medical providers.

An undated anonymous letter postmarked on January 14, 2023, recommends:

- Fully reform the compensability standard for mental injuries not accompanied by physical injuries.
- Extend to all employees the compensability standard for mental injuries not accompanied by physical injuries that currently only applies to law enforcement and full-time firefighters.
- Conduct a study to identify workplaces where mental injuries not accompanied by physical injuries are common.
- Do more to make Wisconsin workplaces safer and do more to reduce workplace injuries.

An undated anonymous letter postmarked on January 14, 2023, recommends:

- Create a time standard for conducting worker's compensation hearings.
- Create a faster hearing process for resolving disputed worker's compensation claims.
- Create an online dashboard displaying the current waiting time for a hearing.
- Create an online dashboard that displays the outcomes of disputed worker's compensation hearings.

An undated anonymous letter postmarked on January 14, 2023, recommends:

- Conduct a study to identify which businesses and professions frequently fail to satisfy worker's compensation requirements.
- Conduct a targeted outreach campaign focused on businesses and professions that frequently fail to satisfy worker's compensation requirements.
- Conduct an outreach campaign focused on educating new businesses about worker's compensation requirements.
- Create a safe-harbor rule that allows employers during a limited period of time to prospectively put money in a trust for worker's compensation insurance in exchange for avoiding fines.

An e-mail message was received on January 16, 2023, from Attorney John Edmondson, Edmondson Law Office, Appleton, WI; Attorney John D. Neal, Stafford, Neal and Soule SC, Madison, WI; and Attorney Raymond Clausen, Madison, WI recommending the following:

1. Establish an automatic formula in the statutes for annually increasing permanent partial disability (PPD) benefits.
2. Establish an automatic schedule for bringing an additional number of permanently and totally disabled workers into the supplemental benefit program while also providing for regular periodic increases in those benefits.

An e-mail message was received on January 16, 2023, from Mr. Michael S. Pochowski, President & CEO, Wisconsin Assisted Living Association recommending the following:

1. Remove minimum permanent partial disability (PPD) ratings for joint replacements.
2. Amend s. 102.17 (4) (c), Wis. Stats., to include "self-insured" before employer to help delineate between when an employer makes payment of wages versus an insurance carrier.
3. Clarify in s. DWD 80.32 (11) of the Wis. Admin. Code why this rating only pertains to compression fractures and the source of the 5% rating.
4. Establish a clear definition of "material contributory causative factor".
5. Eliminate the requirement for 100 weeks of permanent disability to be in dispute in a case for approval of a compromise agreement and the compromise agreement approval process should be defined in the statutes.
6. Approval from OWCH and DWD should not be required for worker's compensation insurance carriers to make advance or lump sum payments in undisputed claims including an interest credit.
7. Amend the statutes to allow for employer directed care for the first 90 days of treatment – not including emergency medical care. The employer may provide a list that includes at least four (4) health care providers in different specialties who are geographically accessible to the injured employee. The employee will be permitted to select a "first choice" treatment provider after the 90-day employer directed care is concluded.
8. Establish medical treatment guidelines for specific injuries in Wisconsin based upon Official Disability Guidelines (ODG) or another appropriate national model. Health care providers would be mandated to follow these guidelines unless preauthorization is received by the worker's compensation insurance carrier.
9. Require that a Hearing Application cannot be filed by a claimant's attorney or pro se claimant unless accompanied with a valid WKC-16-B from a treating physician, podiatrist, surgeon, psychologist, or chiropractor. Mere certified medical records will not be sufficient medical support to file a Hearing Application.

A letter dated January 18, 2023, was received from Andrew J. Franken, President, Wisconsin Insurance Alliance recommending the following:

1. Allow employers and worker's compensation insurance carriers to provide options to injured workers and direct medical care for the first 90 days.
2. When all parties are represented by counsel the Division of Hearings and Appeals (DHA) and the Worker's Compensation Division (WCD) shall approve compromise agreements as submitted by the parties subject to the following: the calculation of accrued benefits; the requirement of a restricted account; and the appropriateness of attorney fees and costs.
3. Set a limitation to the maximum number of weeks of eligibility or set a presumptive age of retirement (such as ending eligibility at "old age" Social Security) for ending payments of compensation for permanent total disability (PTD).
4. Adopt appropriate utilization review of treatment standards to address consistent outliers in the medical provider community. An example is Illinois 820 ILCS 305 s. 8.7 that provides a workable solution.

Mr. Steve Abrahamson sent an e-mail message on January 26, 2023, recommending the following:

1. Amend s. 102.43 (9) (a), Wis. Stats., to require a hearing to be conducted to stop payments of compensation for temporary total disability (TTD) or temporary partial disability (TPD).
2. Change the law to prohibit third party administrators from handling worker's compensation claims.
3. Doctors should not be paid more than their typical office charge for conducting IMEs.

An e-mail message was received on February 13, 2023, from Attorney Lisa Pierobon Mays, Mays Law Office, LLC, Middleton, WI recommending that attorneys representing employees be allowed to collect attorney fees for the recovery of unpaid medical bills.

An undated anonymous letter postmarked on February 18, 2023, recommending the following:

1. Support amendments to ch. 102, Wis. Stats., that reduce workplace injuries and deaths.
2. Support amendments to ch. 102, Wis. Stats., that encourage workplace safety.
3. Publicly identify specific problems with ch. 102, Wis. Stats., and find solutions that either solve those problems or make the problems more manageable.
4. Do more to connect with migrant workers in Wisconsin to navigate the worker's compensation system.

**9. Summary of Public Hearing on December 15, 2022:** The following testimony was received:

- Mahlon Mitchell, State President, Professional Firefighters of Wisconsin requested that the law be amended to provide worker's compensation coverage for PTSD to all EMS personnel and volunteer firefighters.
- Senator Andre Jacques, Wisconsin State Senate, District 1, recommended providing 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 was provided by the amendments included in 2021 SB-680 and 2021 SB-681.

- Aaron Lipske, Chief, City of Milwaukee Fire Department recommended that all EMS personnel should be provided the same worker's compensation coverage for PTSD as full-time firefighters.
- Lt. Brent Jones, Milwaukee Fire Department recommended that volunteer and standalone EMS personnel should have the same worker's compensation coverage for PTSD that full-time fire fighters received in 2021 Wis. Act 29.
- Bob Salov, Wisconsin Emergency Medical Services Association (WEMSA) recommended that the law provide the same worker's compensation coverage for PTSD to volunteer first responders that is available to full-time fire fighters.
- Robert Fleege, Green County EMS recommended that volunteer EMS personnel should have the same worker's compensation coverage for PTSD as full-time fire fighters.
- B. J. De Maa, Chief, Waupun Fire and Rescue Department recommended that volunteer fire fighters and EMS personnel should be provided with the same worker's compensation coverage for PTSD that full-time fire fighters received in 2021 Wis. Act 29.
- Alan De Young, Executive Director, Wisconsin Emergency Medical Services Association (WEMSA) recommended that EMS, EMT and EMR personnel should have the same worker's compensation coverage for PTSD that full-time fire fighters received in 2021 Wis. Act 29.
- Donald Richert, Volunteer firefighter and EMS with a small department in Northern Wisconsin recommended that volunteer EMS personnel should have the same worker's compensation coverage for PTSD as full-time fire fighters.

**10. Adjournment:** Ms. Bloomingdale moved that the members of Labor and Management go into closed session to deliberate items on the agenda and adjourn the meeting from closed session. The motion was seconded by Mr. Buchen. The motion passed unanimously. Mr. Peters announced the closed session and the nature of the business to be considered. The open session of the meeting was adjourned at approximately 11:40 a.m. The WCAC's next meeting is scheduled for Thursday, March 9, 2023.

[WCAC 2.23.23 MEETING MINUTES]