

Labor Proposals for 2021 Agreed Bill

1. **Permanent Partial Disability Benefit Maximum Rate:** Increase of \$20 per year from the rate established in negotiations for the 2017 agreed bill, which would result in a maximum rate in 2021 of \$442 per week. For injuries after 1/1/22 the maximum rate would be \$462, and for injuries after 1/1/23 the maximum rate would be \$482. Provide for automatic \$20 increases in the maximum PPD rate per year without the need for inclusion in every agreed bill.
2. **Employer Safety Violation:** Amend Wis. Stat. § 102.57 to state as follows: “If injury is caused by the failure of the employer to comply with any statute, rule, safety standard, or order of the department of safety and professional services, or of the federal Departments of Labor, Health or Transportation or its agencies, where the employer is subject to safety regulation from those federal Departments or agencies, compensation and death benefits provided in this chapter shall be increased by 15 percent of total compensation, medical expense and death benefits paid, but the total increase may not exceed \$15,000. Failure of an employer to reasonably enforce compliance by employees with any statute, rule, safety standard, or order of the department of safety and professional services, or the federal Departments of Labor, Health or Transportation or its agencies, where the employer is subject to safety regulation from those federal Departments or agencies, constitutes failure by the employer to comply with that statute, rule, safety standard or order.”
3. **COVID Causation Presumption for Certain Occupations:** Extend Wis. Stat. § 102.03(6) in four ways: A) To apply to public-facing essential workers [see attached list] in addition to “first responder” as that term is already defined in the statute; B) To apply to any employee whose employer has had 5 or more employees contract an epidemic virus or bacterium; C) To apply indefinitely with regard to COVID-19; and D) To apply in the future to epidemic novel viruses or novel 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.
4. **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.
5. **Permanent Total Disability Supplemental Benefit:** Six year bump in eligible dates/rates. Current law provides for those injured prior to 1/1/2003 a supplement

to max rate of \$669. A six year bump would take it to injuries prior to 1/1/2009, and increase the maximum benefit to \$831

6. **Scholarships:** Provide for a statutory scholarship benefit for injured worker's children, when a parent's injury causes death or permanent total disability. 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.
7. **Statute of Limitations extended by payment of medical expense.** Current law, Wis. Stat. § 102.17(4), provides for a statute of limitations of 6 years for traumatic injuries, measured from the date of injury or the last payment of primary compensation, whichever is later. Payment of medical expense currently does not extend the statute of limitations. 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.
8. **Shoulder Replacement, Spinal Fusions:** Amend Wis. Stat. § 102.17(4) to include shoulder replacement, reverse shoulder replacement, as well as spinal fusions as an additional serious traumatic injury with no statute of limitations.
9. **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 pursuant to DWD 80.03(1)(d) from \$10,000 to \$50,000.
10. **Eliminate Interest Credit on Advancements:** Amend Wis. Stat. § 102.32(6m) to change the interest credit to insurers for advancements of unaccrued compensation from the current 5% to zero %.
11. **Injured Worker Choice of Third Party Settlements:** Amend Wis. Stat. § 102.29 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.
12. **Indexing of Permanent Total Disability Rate:** Indexing with 6 year lag. For injuries beginning 1/1/22, index weekly benefits for permanent total disability to the rate in effect at the time the benefit accrues for periods more than six years after the date of injury.
13. **Posting of Injured Worker WC Rights:** Require all employers to display a DWD approved poster of WC employee rights at the workplace, including information

on opioids and alternative treatments, or on the company's employee-accessible website.

14. **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 dependents if such coverage was provided as of the time of injury, the temporary total disability 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
15. **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.
16. **Amend Wis. Stat. § 102.17(9)(b) to include Emergency Medical Technicians.** Allow EMTs to claim a mental injury that is not accompanied by a physical injury that results in a diagnosis of post-traumatic stress disorder.
17. **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 Wis. Stat. § 102.13 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 Wis. Stat. § 102.13(1)(a), or with one provider other than a provider who performs an IME pursuant to Wis. Stat. § 102.13(1)(a); 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 months, as are IMEs.
18. **Opioids:** See the attached proposal on opioids and alternative treatments.

Labor reserves the right to amend or add to these proposals as may be necessary during the Agreed Bill process.



Wisconsin Compensation Rating Bureau

May 17, 2021

To: Ron Kent
From: Bernie Rosauer
President, WCRB

Dear Ron:

At your request, I performed a brief analysis of potential impact of post-high school tuition/room/board reimbursement under consideration by the WCAC.

I asked DWD for 2019 information and used it as a benchmark for this evaluation. Here's what I found:

- The number of work-related fatalities attributed to the workplace and then deemed compensable by either the insurance carrier and or administrative law judge was 55.
- The number of claims with payments to eligible dependents was 6.
- The number of dependents eligible for Children's Fund payments at the time of death was 11.
- The number of claims with death benefits paid to a surviving spouse was 23.

Here are the assumptions used to estimate premium impact:

- 2019, in terms of fatalities and claim attributes, is about average.
- 70% of surviving children will utilize the offering (40% four-year degree, 30% two-year degree) in any given year.
- Average cost of tuition, room and board at a state university: \$19,739 (collegetuitioncompare.com)
- Average cost of tuition at a community college (no room and board): \$4954 (communitycollegereview.com)

Under this scenario, assuming all 11 dependents eligible for Children's Fund payments were in a position to begin receiving the benefits immediately, the annual cost adds up to **\$127,901** per year.

This is a very rough estimate of ultimate costs. It does not take into account year-to-year claim variances or the reality that annual rate changes are calculated using more than one year of data. It does not take into account the reality that future benefits for some claims will overlap costs from other years and other claims. Still, I believe it is safe to say that the estimate, taking all this into account, provides a useful cost estimate for use for estimating the impact of such a benefit change.

The impact will be barely noticeable if noticeable at all.

Pharmacies and Drug Stores
Offices of Physicians
Offices of Dentists
Offices of Chiropractors
Offices of Optometrists
Offices of Mental Health Practitioners
Offices of Physical, Occupational, and Speech Therapists, and Audiologists
Offices of Podiatrists
Family Planning Centers
Outpatient Mental Health and Substance Abuse Centers
HMO Medical Centers
Kidney Dialysis Centers
Freestanding Ambulatory Surgical and Emergency Centers
Medical Laboratories
Diagnostic Imaging Centers
Home Health Care Services
Ambulance Services
Blood and Organ Banks
General Medical and Surgical Hospitals
Psychiatric and Substance Abuse Hospitals
Specialty (except Psychiatric and Substance Abuse) Hospitals
Nursing Care Facilities (Skilled Nursing Facilities)
Residential Intellectual and Developmental Disability Facilities
Residential Mental Health and Substance Abuse Facilities
Continuing Care Retirement Communities
Assisted Living Facilities for the Elderly
Other Residential Care Facilities
Child and Youth Services
Services for the Elderly and Persons with Disabilities
Funeral Homes and Funeral Services
Cemeteries and Crematories
Emergency and Other Relief Services
Police Protection
Fire Protection
Other Justice, Public Order, and Safety Activities
Correctional Institutions
Agriculture, Forestry, Fishing and Hunting
Food Manufacturing
Beverage Manufacturing
Nursery, Garden Center, and Farm Supply Stores
Veterinary Services
Food and Beverage Stores
General Merchandise Stores, including Warehouse Clubs and Supercenters

Elementary and Secondary Schools
Junior Colleges
Colleges, Universities, and Professional Schools
Business Schools and Computer and Management Training
Technical and Trade Schools
Educational Support Services
Vocational Rehabilitation Services
Child Day Care Servicesc
Administration of Education Programs
Postal Service (Private Companies, not USPS)
Urban Transit Systems
Interurban and Rural Bus Transportation
School and Employee Bus Transportation
Special Needs Transportation
Wood Product Manufacturing
Paper Manufacturing
Petroleum Refineries
Asphalt Paving, Roofing, and Saturated Materials Manufacturing
Other Petroleum and Coal Products Manufacturing
Chemical Manufacturing
Plastics and Rubber Product Manufacturing
Nonmetallic Mineral Product Manufacturing
Primary Metal Manufacturing
Fabricated Metal Product Manufacturing
Industrial Machinery Manufacturing
Computer and Electronic Product Manufacturing
Electrical Equipment, Appliance, and Component Manufacturing
Transportation Equipment Manufacturing
Wood Kitchen Cabinet and Countertop Manufacturinge
Medical Equipment and Supplies Manufacturing
Other Miscellaneous Manufacturing
Industrial Design Services
Other Electronic and Precision Equipment Repair and Maintenance
Commercial and Industrial Machinery and Equipment Repair and Maintenance

Estimated cost of Labor Health Care Proposal

- 1) Per DWD data from 2016 (latest year with 3 years of claims data necessary to make sure cases have adequate time data), 2,660 TTD claimants have continuous TTD periods > 12 weeks in duration. So 2,660 TTD claimants might have a claim for health insurance payment benefit.
- 2) Per BLS 2018 data, roughly 70% of workers in the Midwest have an employer that offers group health insurance coverage. Of those workers, only 71% of workers offered coverage by an employer participate in that employer coverage, so only 50% of the 2,660 potential TTD claimants, 1,330 workers, would be eligible for the benefit.
- 3) Of those 1330 workers, some workers would take family coverage, while some would take single coverage. Assume 85% of the 1330 workers are on family coverage on the D/I, 1,130 workers. 15% would be on single coverage, 200 workers.
- 4) Cost of health insurance. Per 2018 Kaiser Foundation data, the average total cost (employer share plus employee share) of a group health plan in 2018 was \$1,634/month family coverage, \$574 single coverage. Per 2018 Kaiser Foundation data, employer pays for 70% of family coverage cost, 80% of single plan cost. That would be \$1144/month for family coverage, \$574/month for single coverage. That is \$266/wk for family coverage expense to employer, \$106/wk for single coverage expense to employer.
- 5) Thus, total benefit cost per week for 1,130 family coverage workers at \$266/wk = \$300,580. Total benefit cost per week for 200 single coverage workers at \$106/wk = \$21,200. Total cost per week for all eligible workers is therefore \$321,780.
- 6) Per DWD data from 2016, the average duration of the period of TTD paid beyond 12 weeks is 15.81 weeks. **Thus total yearly cost to employers for the benefit would be $15.81 \times \$321,780 = \$5.08M$.**

This estimate of a total cost to employers of \$5.08M assumes that all employers would cut off payment for health insurance coverage at 12 weeks. No reliable data is known that indicates the rate of employer cut off after 12 weeks.

David Weir

07/05/2019

<https://www.bls.gov/news.release/pdf/ebs2.pdf>

<https://www.kff.org/report-section/2018-employer-health-benefits-survey-summary-of-findings/>

Labor Proposal – Opioids/Alternative Treatments

July 13, 2021

Preamble: Labor's Proposals 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 in 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 102.16(2m). 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, physician's 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 Guideline – January 16, 2019", attached, which may be found at <https://dsps.wi.gov/Documents/BoardCouncils/MED/20190116MEBGuidelinesv9.pdf>.
- 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 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 alternatives 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.