

# 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.

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 Servicesa  
Services for the Elderly and Persons with Disabilitiesa  
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 Storesb  
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 Services  
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 Manufacturing  
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