

## DEPARTMENT PROPOSALS FOR WCAC CONSIDERATION

### 2025-27 Executive Budget Proposals (1-7)

#### **Department Proposal 1 – Appropriation Changes**

The Department proposes modifying structures for worker's compensation administration appropriations to allow the Department to accurately reflect all expenditures and billings, and account for supporting revenues. Four changes are proposed.

1. Combine the existing worker's compensation operations appropriations; s. 20.445 (1)(ra) and (rp) into a single appropriation, reflecting similar operations functions of these two appropriations and the single revenue source which is the separate non-lapsible worker's compensation operations fund (SEG Fund 227).
2. Make the proposed combined operations appropriation, noted above, a sum sufficient appropriation. This change would allow WC to, under a streamlined process, request budget authority increases as necessary in amounts that reflect anticipated costs included in the annual assessment process used to collect revenue for these costs.
3. Eliminate the requirement in s. 20.445 (1)(ra) to transfer, from worker's compensation operations fund to the Labor and Industry Review Commission, revenue in an amount equal to the Chapter 20 schedule for appropriation s. 20.427 (1)(ra), rather than an amount equal to expenditures. Provide authority to the Commission to fund expenses up to statutory limits directly from the fund.
4. Create a new, separate appropriation in the worker's compensation operations fund, with \$5,000,000 in annual budget authority, to be used exclusively for providing reimbursement to insurance carriers paying supplemental benefits under s. 102.44 (1) (c). The Department is currently authorized to collect up to \$5,000,000 per year from worker's compensation insurers to fund these payments.

**Proposed language to amend s. 20.445 (1) (ra), repeal s. 20.445 (1) (rp), amend 20.427 (1) (ra), create s. 20.445 (1) (rr), and amend s. 102.75 (1m)**

20.445 (1) (ra) *Worker's compensation operations fund; administration.* From the worker's compensation operations fund, a sum sufficient for the administration of the worker's compensation program by the department, for assistance to the department of justice in investigating and prosecuting fraudulent activity related to worker's compensation, for transfer to the uninsured employers fund under s. 102.81 (1) (c). All moneys received under ss. 102.28 (2) (b) and 102.75 (1) shall be credited to this appropriation account. From this appropriation, an amount not to exceed \$5,000 may be expended each fiscal year for payment of expenses for travel and research by the council on worker's compensation, and an amount not to exceed \$500,000 may be transferred in each fiscal year to the uninsured employers fund under s. 102.81 (1) (c).

20.427 (1) (ra) *Worker's compensation operations fund; worker's compensation activities*. From the worker's compensation operations fund, the amounts in the schedule for the worker's compensation activities of the labor and industry review commission.

20.445 (1) (rr) *Worker's compensation operations fund; special assessment insurer reimbursements*. From the worker's compensation operations fund, the amounts in the schedule for providing reimbursement to insurance carriers paying supplemental benefits under s. 102.44 (1) (c). All moneys received under s. 102.75 (1g) shall be credited to this appropriation account.

102.75 (1m) The moneys collected under subs. (1) and (1g) and under ss. 102.28 (2) and 102.31 (7), together with all accrued interest, shall constitute a separate nonlapsible fund designated as the worker's compensation operations fund. Moneys in the fund may be expended only as provided in ss. 20.427 (1) (ra) and 20.445 (1) (ra), (rb), ~~(rp)~~ and (rr) may not be used for any other purpose of the state.

## **Department Proposal 2**

s. 102.125 (1m), (2) and (3)

Worker's compensation insurance fraud continues to be a problem in Wisconsin. Current law specifies criminal penalties for various types of insurance fraud which are punishable as either a Class A misdemeanor or a Class I felony depending on the dollar value of the claim or benefit. The proposal is to add the presentation of false or fraudulent applications for worker's compensation insurance coverage, and the presentation of applications for worker's compensation coverage that falsely or fraudulently misclassify employees to lower insurance premiums as criminally punishable insurance fraud.

### **Proposed language to create s. 102.125 (1m) and amend (2) and (3)**

102.125 (1m) APPLICATION AND PREMIUM FRAUD. If an insurer has evidence that an application for worker's compensation insurance coverage is fraudulent or that an employer has committed fraud by misclassifying employees to lower the employer's worker's compensation insurance premiums in violation of s. 943.395, the insurer shall report the claim to the department. The department may require an insurer to investigate an allegedly fraudulent application or alleged fraud by misclassification of employees and may provide the insurer with any records of the department relating to that alleged fraud. An insurer that investigates alleged fraud under this subsection shall report the results of that investigation to the department.

102.125 (2) ASSISTANCE BY DEPARTMENT OF JUSTICE. The department of workforce development may request the department of justice to assist the department of workforce development in an investigation under sub. (1) or (1m) or in the

investigation of any other suspected fraudulent activity on the part of an employer, employee, insurer, health care provider, or other person related to worker's compensation.

102.125 (3) PROSECUTION. If based on an investigation under sub. (1), (1m), or (2) the department has a reasonable basis to believe that a violation of s. 943.20, 943.38, 943.39, 943.392, 943.395, 943.40, or any other criminal law has occurred, the department shall refer the results of the investigation to the department of justice or to the district attorney of the county in which the alleged violation occurred for prosecution.

### **Department Proposal 3**

s. 102.17 (9)

In 2021 Wisconsin Act 29 law enforcement officers and full-time fire fighters, who were diagnosed with PTSD, were eligible to receive compensation without the requirement of experiencing unusual stress of greater dimension than the day-to-day emotional strain and tension experienced by similarly situated employees. The proposal will also include emergency medical responders, emergency medical services practitioners, part-time fire fighters, volunteer fire fighters, correctional officers, emergency dispatchers, coroners, coroner staff members, medical examiners and medical examiner staff members with the same worker's compensation coverage for PTSD as was previously provided to law enforcement officers and full-time fire fighters.

### **Proposed language to create s. 102.17 (9) (a) 1c, 1e, 1g, and 1p, and amend 1m & (9) (b) (intro)**

102.17 (9) (a) 1m. "Fire fighter" means any person employed on a full-time basis or part-time basis by the state or any political subdivision as a member or officer of a fire department, including the 1st class cities and state fire marshal and deputies, or an individual who volunteers as a member or officer of a fire department.

102.17 (9) (a) 1c. "Correctional officer" has the meaning given in s. 102.475 (8) (a).

102.17 (9) (a) 1e. "Emergency medical responder" has the meaning given in s. 256.01 (4p).

102.17 (9) (a) 1g. "Emergency medical services practitioner" has the meaning given in s. 256.01 (5).

102.17 (9) (a) 1p. "Medicolegal investigation staff member" includes a chief deputy coroner, a deputy coroner, a deputy medical examiner, and any individual who assists the office of a coroner or medical examiner with an investigation of a death. "Medicolegal investigation staff member" does not include an individual performing solely administrative functions in the office of a coroner or medical examiner.

102.17 (9) (b) (intro.) Subject to par. (c), in the case of a mental injury that is not accompanied by a physical injury and that results in a diagnosis of post-traumatic stress disorder in a law enforcement officer, as defined in s. 23.33 (1) (ig), an emergency medical responder, an emergency services practitioner, a correctional officer, a public safety answering point dispatcher, a coroner, a medical examiner, a medicolegal investigation staff member, or a fire fighter, the claim for compensation for the mental injury, in order to be compensable under this chapter, is subject to all of the following:

#### **Department Proposal 4**

s. 102.43 (9) (e)

An employer is not liable for compensation for temporary disability during an employee's healing period if the employee is terminated or suspended from employment due to misconduct or substantial fault connected with the employee's work. The proposal is to delete suspension or termination for substantial fault as a basis for denying liability for compensation for temporary disability during the healing period.

#### **Proposed language to amend s. 102.43 (9) (e)**

102.43 (9) (e) The employee's employment with the employer has been suspended or terminated due to misconduct, as defined in s. 108.04 (5), ~~or substantial fault, as defined in s. 108.04 (5g) (a),~~ by the employee connected to the employment.

#### **Department Proposal 5**

s. 102.81 (2)

Expenses for retaining an insurance carrier or insurance service organization (TPA) for adjusting, processing, investigating and paying claims with the Uninsured Employers Fund (UEF) are currently paid from the fund for worker's compensation operations. Expenses for legal fees and costs involving the UEF are also paid from the worker's compensation operations fund under current law. The amendment will transfer payment for these expenses and costs to the UEF.

#### **Proposed language to amend s. 102.81 (2)**

s. 102.81 (2) The department may retain an insurance carrier or insurance service organization to process, investigate and pay claims under this section and may obtain excess or stop-loss reinsurance with an insurance carrier authorized to do business in this state in an amount that the secretary determines is necessary for the sound operation of the uninsured employers fund. In cases involving disputed claims, the department may retain an attorney to represent the interests of the uninsured employers fund and to make appearances on behalf of the uninsured employers fund in proceedings under ss. 102.16 to 102.29. Section 20.930 and all provisions of subch. IV of ch.16 do not apply to an attorney hired under this subsection. The charges for the

services retained under this subsection shall be paid from the appropriation under s. 20.445 (1) ~~(rp)~~ (sm). The cost of any reinsurance obtained under this subsection shall be paid from the appropriation under s. 20.445 (1) (sm).

### **Department Proposal No. 6**

#### **s. 102.82 (2) (a)**

Some employers who are illegally uninsured for worker's compensation liability continue to operate their businesses without worker's compensation insurance coverage after being assessed payments under s. 102.82 (2), Wis. Stats., multiple times. The current monetary sanctions are not severe enough to be an effective deterrent to some employers who regularly continue business operations without worker's compensation insurance coverage. For these employers the current monetary sanctions are merely a cost of doing business. The proposal is to increase the monetary sanctions for repeat violators.

#### **Proposed language for the repeal and recreation of s. 102.82 (2) (a), (ab) & (ac), and amend (am) and (ar)**

s. 102.82 (2) (a) Except as provided in pars. (ag), (am), and (ar), ~~all~~ for a first or 2<sup>nd</sup> determination by the department that an employer was uninsured, ~~an~~ uninsured employers employer shall pay to the department the greater of the following:

1. Twice the amount determined by the department to equal what the uninsured employer would have paid during periods of illegal nonpayment for worker's compensation insurance in the preceding 3-year period based on the employer's payroll in the preceding 3 years.
2. Seven hundred and fifty dollars.

. 102.82 (2) (ab) Except as provided in pars. (ag), (am), and (ar), for a 3<sup>rd</sup> determination by the department that an employer was uninsured, an uninsured employer shall pay to the department the greater of the following:

1. Three times the amount determined by the department to equal what the uninsured employer would have paid during periods of illegal nonpayment for worker's compensation in the preceding 3-year period based on the employer's payroll in the preceding 3 years.
2. Three thousand dollars.

102.82 (2) (ad) Except as provided in pars. (ag), (am), and (ar), for a 4<sup>th</sup> or subsequent determination by the department that an employer was uninsured, an uninsured employer shall pay to the department the greater of the following:

1. Four times the amount determined by the department to equal what the uninsured employer would have paid during periods of illegal nonpayment for

worker's compensation in the preceding 3-year period based on the employer's payroll in the preceding 3 years.

2. Four thousand dollars.

102.82 (2) (am) The department may waive any payment owed under par. (a), (ab) or (ad) by an uninsured employer if the department determines that the uninsured employer is subject to this chapter only because the uninsured employer has elected to become subject to this chapter under s. 102.05 (2) or 102.28 (2).

102.82 (2) (ar) The department may waive any payment owed under par. (a), (ab) or (ad), or (ag) or sub. (1) if the department determines the sole reason for the uninsured employer's failure to comply with s. 102.28 (2) is that the uninsured employer was a victim of fraud, misrepresentation or gross negligence by an insurance agent or insurance broker or by a person whom a reasonable person would believe is an insurance agent or insurance broker.

### **Department Proposal 7**

s. 102.85 (1) and (2)

Some employers who are illegally uninsured for worker's compensation liability continue to operate their businesses without worker's compensation insurance coverage after being assessed payments under s. 102.82 (2), Wis. Stats., multiple times. The current monetary penalties are not severe enough to be an effective deterrent to employers who regularly continue business operations without worker's compensation insurance coverage. For these employers the current monetary penalties are merely a cost of doing business. The proposal is to increase the monetary penalties for repeat violators.

### **Proposed language to repeal and recreate s. 102.85 (1) and (2)**

102.85 (1) (a) If an employer has failed to comply with s. 102.16 (3) or 102.28 (2), the employer shall, for a first violation, forfeit the greater of \$1,000 or the amount of the premium that would have been payable for each time the employer failed to comply with s. 102.16 (3) or 102.28 (2).

(b) If an employer has failed to comply with s. 102.16 (3) or 102.28 (2), the employer shall, for a 2nd violation, forfeit the greater of \$2,000 or 2 times the amount of the premium that would have been payable for each time the employer failed to comply with s. 102.16 (3) or 102.28 (2).

(c) If an employer has failed to comply with s. 102.16 (3) or 102.28 (2), the employer shall, for a 3rd violation, forfeit the greater of \$3,000 or 3 times the amount of the premium that would have been payable for each time the employer failed to comply with s. 102.16 (3) or 102.28 (2).

(d) If an employer has failed to comply with s. 102.16 (3) or 102.28 (2), the employer shall, for a 4th or subsequent violation, forfeit the greater of \$4,000 or 4 times the amount of the premium that would have been payable for each time the employer failed to comply with s. 102.16 (3) or 102.28 (2).

102.85 (2) (a) No employer who is required to provide worker's compensation insurance coverage under this chapter may give false information about the coverage to his or her employees, the department, or any other person who contracts with the employer and who requests evidence of worker's compensation in relation to that contract.

(b) No employer who is required to provide worker's compensation insurance coverage under this chapter may fail to notify a person who contracts with the employer that the coverage has been canceled in relation to that contract.

(c) 1. An employer who violates par. (a) or (b) shall, except as provided in subds. 2. and 3., forfeit not less than \$100 and not more than \$1,000.

2. An employer who violates par. (a) or (b) shall forfeit \$3,000 for a 3rd violation of par. (a) or (b).

3. An employer who violates par. (a) or (b) shall forfeit \$4,000 for a 4th violation of par. (a) or (b).

## **Other Department Proposals (8-10)**

### **Department Proposal 8**

s. 102.17 (1) (i)

Counselors employed by the Division of Vocational Rehabilitation (DVR) are subpoenaed to worker's compensation hearings to authenticate the DVR records pertaining to employees who claim vocational rehabilitation training. The proposal is to allow the admission of DVR records into evidence at hearings without requiring the presence of a DVR counselor at a hearing to authenticate the file.

### **Proposed language to create s. 102.17 (1) (i)**

s. 102.17 (1) (i) The contents of certified division of vocational rehabilitation records presented by a party for compensation constitute prima facie evidence as to the matter contained in those records, if served upon the parties at least 15 days prior to a hearing, and an appropriate representative of the division of vocational rehabilitation is available for cross-examination.

## **Department Proposal 9**

### **s. 102.27 (2) (a)**

The general rule is that worker's compensation benefits are not assignable to be taken for the debts of the injured employee subject to two (2) exceptions. One of the exceptions provided in s. 102.27 (2) (a), Wis. Stats., is that worker's compensation benefits are assignable for family support. There is an incorrect citation in a cross reference in s. 102.27 (2) (a), Wis. Stats. The incorrect citation was apparently due to a drafting error that occurred a few years ago. The incorrect citation is s. 767.75 (1). The correct citation is s. 102.75 (1f). The proposal is to amend s. 102.27 (2) (a) to correctly cite the cross reference.

### **Proposed language to amend s. 102.27 (2) (a)**

102.27 (2) (a) A benefit under this chapter is assignable under s. 46.10 (14) (e), 49.345 (14) (e), 301.12 (14) (e), 767.225 (1) (L), 767.513 (3), or 767.75 (1f) or (2m).

## **Department Proposal 10**

### **s. 102.44 (1) (c)**

Worker's compensation insurance carriers may request reimbursement for supplemental benefit payments to injured employees under s. 102.44 (1) (c), Wis. Stats. Currently, worker's compensation insurance carriers submit reimbursement request on a hardcopy form (WKC-140) to the Department by mail or fax. The Department's updated Insurer Pending Reports portal includes an application for supplemental benefit reimbursement requests to be made through that portal. The proposal is to require all workers compensation insurance carriers to send requests for claiming supplemental benefit reimbursement to the Department through the updated Insurer Pending Reports portal. Supplemental benefit reimbursement requests will be directly linked to the specific claim by using the portal that will greatly assist the Department's ability to monitor these claims. By insurance carriers using the portal supplemental benefit reimbursement claims will not get lost in the mail, and the Department will be able to operate more efficiently and provide more timely service in processing claims for reimbursement.

### **Proposed language to create s. 102.44 (1) (c) 5**

102.44 (1) (c) 5 To receive reimbursement under this paragraph, an insurance carrier shall file a claim for that reimbursement via electronic, magnetic or other reporting media that is required by the department.