

DRAFT
Council on Worker's Compensation
Meeting Minutes – Hybrid Meeting (In-person and WebEx)
201 E. Washington Avenue
GEF-1 Building
Madison, Wisconsin
February 11, 2025

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

Members present in-person and via video: Ms. Bloomingdale, Mr. Buchen, Ms. Frank, Mr. Fugina, Mr. Kent, Ms. Kosnicki, Mr. Large, Ms. Meidl, Mr. Nettum, Mr. Dipko (Chairperson), Mr. Reese, Mr. Schwanda, and Ms. Ver Velde.

Excused: Mr. Tindall

Staff Present: Mr. Aiello, Mr. Brockman, Ms. Brown, Ms. Driese, Mr. Gennrich, Ms. Halsey, Ms. Lake, Ms. McCormick, Mr. O'Malley, Dr. Przybylo, Ms. Przybylo, Dr. Salvi, and Mr. Spencer.

- 1. Call to Order/Introductions:** Mr. Dipko convened the Worker's Compensation Advisory Council (WCAC) meeting at approximately 10:04 a.m. in accordance with Wisconsin's open meetings law and called roll of the WCAC members.
- 2. Approval of the Minutes:** A motion was made by Ms. Bloomingdale to approve the minutes of the November 19, 2024 meeting. Ms. Ver Velde seconded the motion. The minutes were unanimously approved without correction.
- 3. Public Hearing/Correspondence:** Mr. O'Malley reviewed comments from the Public Hearing on December 10, 2024 and correspondence received since the last meeting.

An e-mail message dated June 5, 2024 was received from Mr. Phil McQuillen, Claims Manager, Workers' Compensation, Sentry Insurance, in which he proposed amending s. 102.17 (1) (d), Wis. Stats., to authorize PAs (physician assistants) and APNPs (advanced practice nurse prescribers) to provide opinions on causation and extent of disability.

Mr. Brad Harrell, Mr. Bob Hurley, Mr. John Eiden, and Mr. Tim Moore sent a letter dated June 24, 2024 to Governor Tony Evers requesting a law change to ensure supplemental benefits are increased on a regular periodic basis and to regularly include additional employees into the supplemental benefit program. They also requested the appointment of an economist to study the value of the savings resulting from decreased worker's compensation insurance premiums over the last nine years.

Mr. Robert Hurley sent an e-mail message dated December 4, 2024 that recommended providing a cost-of-living adjustment (COLA) each year for employees receiving compensation for permanent total disability.

Dr. Veronica Heide, Au.D, President, and Dr. Meredy Hase, Au.D, Board Member, Wisconsin Academy of Audiology, sent a letter dated November 15, 2024 and appeared at the Public Hearing on December 10, 2024 to request that audiologists, Doctors of Audiology

(Au.D), be authorized to sign WKC-16-B forms for worker's compensation hearing loss cases.

In a letter dated December 4, 2024 Attorney John D. Neal requested a change in the law to authorize employees receiving compensation for permanent total disability from the Second Injury Fund under s. 102.59 (1), Wis. Stats., to also be eligible to receive supplemental benefits under s. 102.44 (1), Wis. Stats.

Mr. Stefan Benson sent an e-mail message dated December 5, 2024 to recommend creating protection for employers and worker's compensation insurance carriers from fraudulent claims by employees with pre-existing conditions, and to establish a legal process for hiring disclosures from employees to protect employers.

Dr. Kelly Von-Schilling Worth appeared at the Public Hearing on December 10, 2024, submitted a Worker's Compensation Feedback Form on January 4, 2025, and sent an e-mail message on January 8, 2025 to propose the following statutory and administrative rule changes:

- All IME examinations must be performed by doctors licensed in Wisconsin.
- All doctors who perform IME examinations must practice at least 50% of their time in Wisconsin.
- Prohibit file review IME examinations or limit benefit denials based on these.
- Prohibit IME examinations more than 90 days following the injury date.
- Prohibit IME examinations more than 90 days after an injured employee is released from care.
- Authorize an employee's friend, family member or attorney to be present during IME examinations.
- Limit charges for IME examinations and file reviews to \$1,500.
- Do not allow retroactive directives after IME examinations.
- Benefit denials should only be allowed from the IME examination date going forward.
- When the examining doctor's opinion denies eligibility there should be a way for the employee to contest the opinion such as the State appointing a doctor under s. 102.13 (3), Wis. Stats.
- When two (2) or more doctors have the same opinion, the preponderance of evidence controls over another doctor with a different opinion.
- The updates to the minimum permanent partial disability (PPD) ratings developed by the Health Care Provider Advisory Committee (HCPAC) should be approved by the WCAC.
- Injured employees must be allowed to have the choice to select their own treating practitioner.
- Authorize letters of protection to be issued to health care providers.
- Employees cannot be fired for preserving their right to see their own doctor. If this occurs the DWD or State of Wisconsin should appoint legal counsel for the employee, notice is issued to the employer, an investigation is conducted, employers are fined \$10,000 for violation and attorney fees will be paid by the employer.
- Employees cannot be fired for preserving their rights to file a worker's compensation claim. If this occurs the DWD or State of Wisconsin should appoint legal counsel for the employee, notice is issued to the employer, an investigation is conducted, a bad faith claim is filed, employers are fined \$10,000 for violation and attorney fees will be paid by the employer.
- Nurse case managers should not be allowed to self-direct treatment for injured employees. If this occurs sanctions for fines to be imposed such as \$500 per violation.

- Nurse case managers should not be allowed to visit injured employees at their homes, especially when visits are unannounced.
- Claims adjusters cannot be permitted to direct treatment for injured employees. If this occurs based on evidence from voice mail messages, text or written statements from injured employees following an investigation, sanctions may be imposed under bad faith for a \$5,000 penalty.
- Establish worker's compensation treatment guidelines for lower extremities that the Health Care Provider's Advisory Committee has been working on to develop.
- Create a process for injured employees to dispute unreasonable denials of treatment and to have treatment resumed.

Mr. Chanse Kaczmariski, Fitch-Rona EMS, Board of Directors, Wisconsin EMS, appeared at the Public Hearing on December 10, 2024 to propose that EMS personnel should have the same worker's compensation coverage for PTSD that law enforcement and full-time fire fighters received in 2021 Wis. Act 29.

Lt. Deven Anders, Deer-Grove EMS, appeared at the Public Hearing on December 10, 2024 to proposed that EMS personnel, part-time firefighters, and volunteer firefighters should receive the same worker's compensation coverage for PTSD that full-time firefighters were provided in 2021 Wis. Act 29.

Mr. Ron Hampton, Chief, Cassville Volunteer Fire Department, and Member, Board of Directors, Wisconsin State Fire Fighters Association, appeared at the Public Hearing on December 10, 2024 to propose volunteer EMT personnel and volunteer fire fighters should receive the same worker's compensation coverage for PTSD as full-time fire fighters were provided in 2021 Wis. Act 29.

Mr. Alan DeYoung, Executive Director, Wisconsin EMS Association, appeared at the Public Hearing on December 10, 2024, sent an e-mail message on December 11, 2024, and sent a letter dated January 10, 2025 to recommend expanding PTSD coverage as the law currently applies to law enforcement, full-time fire fighters, and EMTs affiliated with a fire department, to all emergency medical service professionals, similar to what the WCAC proposed in 2023 SB-992 and AB-1074, but to be include in only one agreed upon bill.

Mr. Willard T. Walker, CEO, Walker Forge, Inc., in an e-mail message sent December 18, 2024 recommended adopting a medical fee schedule to control health care costs within the worker's compensation system.

Mr. Douglas Fearing, CEO, Fearing's Audio Video Security, in an e-mail message dated December 18, 2024, expressed his concerns about healthcare costs and the lack of cost controls and recommended use of medical fee schedules to limit what health care providers can charge to treat injured workers.

In an e-mail message dated December 19, 2024 Mr. Rob Peaslee, CEO, Manitowoc Grey Iron Foundry, requested action to mitigate high health care and Worker's Compensation costs that make it difficult to compete with foundries operating in surrounding states.

Senator André Jacque, Wisconsin State Senate, District 1, sent a letter dated January 3, 2025 requesting the WCAC's formal endorsement to extend the same worker's compensation coverage for PTSD to emergency medical service practitioners and fire

fighters, regardless of their level of employment or volunteer status, and allow legislation to move forward as both a standalone bill and for inclusion in an omnibus package. Senator Jacque thanked the WCAC for consideration of his request and advised he would be happy to address the Council on this topic at a future WCAC meeting or at any time by telephone.

In a letter dated January 6, 2025, Ms. Nicole Gullickson, NRP, CCCEMT-P, EMS Director, Northwestern Municipal EMS, Inc., recommended extending worker's compensation coverage for PTSD to all emergency medical services (EMS) practitioners and firefighters including volunteers.

Mr. Bur Zeratsky, President, National Rivet, sent an e-mail message dated January 7, 2025 to encourage any and all efforts to gain control of rising costs, especially medical costs, in worker's compensation.

An e-mail message dated January 7, 2025 was received from Mr. George Forish, VP, Precision Pattern Co., Inc., to advocate for the inclusion of a medical fee schedule in the Wisconsin Worker's Compensation system.

Ms. Tiffany Grzybowski, Analyst, Advocacy and Compliance, Healthe Systems, sent a letter dated January 9, 2025 recommending the following:

- Limit physician-dispensed opioids at the lowest effective dose to a seven (7) day supply per claim. Opioids dispensed beyond this limit should be deemed unnecessary treatment under s. 102.16 (2m), Wis. Stats.
- Encourage adherence to the Wisconsin Medical Board Guidelines for opioid prescribing.
- Educate injured workers on alternative therapies for chronic pain to supplement or replace opioids.
- Provide guidance on discontinuing opioid medications after an IME recommendation that opioids are no longer necessary.
- Limit physician-dispensed medications to a seven (7) day supply during the initial visit and within the first 10 days following a work-related injury:
- Require prior authorization for physician-dispensed medications in outpatient settings.
- Reimbursement for repackaged drugs should be tied to the AWP of original manufacturer's National Drug Code (NDC), or if original NDC cannot be determined, payment to be based on the lowest priced therapeutic equivalent drug. The language for this proposal is similar to that contained in the 2014 WC Agreed Bill (AB-711).
- Require preauthorization for compounded drugs and co-packaged kits and limit reimbursement to rates established based on the original National Drug Code (NDC).
- Exclude reimbursement for incidental items such as gloves or gauze.
- Amend s. 102.425, Wis. Stats., to include Medi-Span as another Average Wholesale Price (AWP) source.
- Prohibit auto-shipping and billing of Durable Medical Equipment (DME) and include the following language in a new section of ch. 102, Wis. Stats., "The auto-shipping of monthly DME supplies is prohibited. An affirmative request from the injured worker or prescribing provider is required."

Mr. Chris Klahn, President, Wisconsin State Firefighters Association, sent an e-mail message on January 9, 2025 to support extending worker's compensation coverage for PTSD to volunteer firefighters, emergency medical responders and emergency medical services practitioners as was previously provided to full-time fire fighters.

Mr. Andrew Franken, President, Wisconsin Insurance Alliance, sent a letter dated January 10, 2025 proposing the following law changes:

- Amend s. 102.44 (4m) (a), Wis. Stats., as follows, "~~At least once every 8 years~~ The department shall review and revise those minimum permanent partial disability ratings at the direction of the Worker's Compensation Advisory Council as necessary to reflect advances in the science of medicine."
- Set a limitation on 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 compensation payment for permanent total disability (PTD).
- Use the American Medical Association (AMA) Guidelines for permanent disability which are periodically updated, managed on a much broader scale and used by 40 states.
- The parties that agree to a full and final compromise settlement should not be restricted by an unwritten threshold that a dispute exceeding 100 weeks is necessary to achieve approval of a full and final compromise settlement. If the WCAC believes it is appropriate, the Council should establish language to codify a threshold number of weeks in the statutes.
- Adopt appropriate utilization of treatment review standards to address outliers in the medical provider community. An example of utilization of review standard is Illinois 820 ILCS 305/8.7 that provides a workable solution.

In an e-mail message dated January 9, 2025, Ms. Julie Schatz, Risk Management Consultant, Roberts & Crow, Inc., recommended the adoption of a worker's compensation medical fee schedule in Wisconsin.

Ms. Renae Langel, Vice President HR & Risk Management, Midwest Carriers, sent an e-mail message on January 10, 2025 proposing the establishment of a medical fee schedule in Wisconsin.

Ms. Rachel Lockwood, BSN, RN, Health Services & Benefits Manager, Waupaca Foundry, Inc., sent an e-mail message on January 10, 2025 to recommend the implementation of a worker's compensation medical fee schedule over concerns that false WC claims are being filed by employees to avoid deductibles and costs under their personal health insurance and that primary care providers are not appropriately referring care of injured employees to occupational health providers for financial reasons.

Attorney William R. Sachse, Jr. sent an e-mail message dated February 6, 2025 recommending removal of the language from s. DWD 80.32 (2) of the Wisconsin Administrative Code that allows for compensation for permanent partial disability (PPD) equivalent to amputation at the midpoint between the two (2) nearest joints where there is a functional prosthesis for upper or lower extremities because it is not consistent with s. 102.55, Wis. Stats.

4. **Minimum PPD Ratings Briefing:** Mr. Dipko spoke about the recommendations related to the proposed minimum permanent partial disability (PPD) ratings in s. DWD 80.32 of the Wisconsin Administrative Code that were presented to the WCAC in 2023. He advised that an actuarial analysis was recently completed for the potential financial impact of the proposed changes. A copy of the actuarial analysis was distributed at the meeting. Additionally, staff from the Worker's Compensation Division (WCD) prepared a summary covering the proposed changes. A copy of the summary was also distributed at the meeting.

Mr. O'Malley explained the purpose for the summary is to provide a high-level quick reference to summarize details for the proposed PPD minimum rating changes.

Mr. Buchen inquired about the reason for all the ratings on pages 11-13 of the summary to be increased. Mr. O'Malley explained these were new ratings being recommended and not increases to the already established ratings. He further explained the list included losses or procedures for which doctors frequently assign permanency but that currently do not have a minimum rating. Mr. Buchen mentioned that doctors should establish whether there is permanency or not and then inquire as to why minimum ratings are needed.

Ms. Ver Velde inquired as to whether the department made any changes to the recommendations offered by the HCPAC. Mr. O'Malley responded that DWD had done no substantive work on the proposed rule changes.

Ms. Bloomingdale requested a brief history on the process related to this rule. Mr. O'Malley explained the 2016 Agreed Upon Bill included the enactment of s.102.44 (4m), Wis. Stats. In that provision, the law codified the requirement for establishing minimum permanent partial disability (PPD) ratings that have been in the Department's administrative rule since at least the early 1970s. In July 1994, there was an expansive revision of the minimum PPD ratings. From 1994 to the present date, there has been only one change in the minimum PPD ratings and that was the creation of a seven and a half percent rating to the body as a whole for implantation of a spinal disc.

Mr. O'Malley explained s.102.44 (4m), Wis. Stats., required the Department to appoint a medical advisory committee composed of physicians practicing in one or more areas of specialization or treating disciplines within the medical profession to recommend revision of those ratings based on typical loss of function to the Department and the WCAC. The Department appointed the physicians on the Health Care Provider Advisory Committee to recommend revisions for changes to the minimum PPD ratings. The Department sent out a lengthy survey of almost two hundred questions to medical providers. The survey explained the current minimum PPD ratings, and asked whether the ratings should be increased, decreased or remain the same, and whether new minimum ratings should be established. Based on the language in s. 102.44 (4m), Wis. Stats., the Department is tasked with accomplishing the process of revising the minimum ratings once every eight (8) years. It has been a time-consuming process to update the minimum PPD ratings. That is why the proposals are being brought forth at this time. Mr. Buchen commented that a review of the new ratings seems to be based on the severity of the condition.

Ms. Kosnicki noted that the permanency ratings closely mirror the structure of the AMA Guidelines. She inquired why Wisconsin does not use the AMA guidelines. Mr. O'Malley responded that a number of years ago, a presentation was given to the WCAC on the AMA Guidelines that included some examples with comparisons between the AMA Guidelines and the minimum PPD ratings. Following the presentation, it was the consensus of the WCAC to continue with the existing minimum PPD ratings and to not adopt the AMA Guidelines. It is unknown if there are any differences between the current minimum PPD ratings and the AMA Guidelines.

Dr. Salvi explained that the AMA Guidelines are contained in a rather large book that takes time to learn. The Department has a small pamphlet that can be provided to physicians to explain how to rate disability. All doctors in Wisconsin can evaluate and rate disability. He

stated that it is easier to make a disability determination with the Wisconsin rules than under the AMA Guidelines.

Ms. Kosnicki noted that Wisconsin's treating doctors are reluctant to offer PPD ratings. Dr. Salvi mentioned that in states where a panel system is used, the medical providers have a vested interest in that process.

Dr. Salvi was introduced to the WCAC members. He explained that when disability results from a work injury that disability is to be assigned a rating. The goal is to make things more digestible for doctors to make it easier for them to make their determination about disability.

Ms. Kosnicki stated that based on her experience more and more doctors are unwilling to deal with permanency because it is not cut and dried. She asked whether the doctors may be more willing to offer opinions if the AMA Guidelines were used. This can result in the need to obtain an independent medical evaluation (IME) on the issue of PPD. She recounted her experience with injured workers who are rated with no permanency or restrictions who are not savvy enough to advocate for themselves. These workers may end up retaining a lawyer to assist them. They may also seek a second opinion on the issue of permanency.

Mr. Dipko expressed his appreciation of Dr. Salvi's input and the overall discussion but stated that the purpose of the meeting was to ensure the WCAC had the most up-to-date information. He directed the WCAC to the actuarial study prepared for the Wisconsin Compensation Rating Bureau (WCRB) and introduced Attorney Paul Riegel, appearing on behalf of the WCRB.

Mr. Riegel explained that in September 2024, the Department requested the WCRB to review the permanent partial disability (PPD) ratings proposal from the standpoint of the impact it may have on worker's compensation insurance premiums for employers in Wisconsin. The WCRB sent this request to their actuarial firm, Milliman, Inc. (Milliman), for review. Milliman issued a report and limited the findings to the impact based on additional permanent partial disability paid on an annual basis. Milliman projected a conservative estimate that the total increase in worker's compensation insurance premiums would be in the range of 1.5% to 3.1% for policy year 2025. In actual dollars these percentages equate to between \$26.7 and \$56.25 million. These figures pertain only to the adoption of the permanent partial disability changes that have been proposed. One of the proposed additions included a 2% rating related to herniated discs. Per the report the biggest overall increase in the report's numbers was due to this newly proposed rating. The worker's compensation insurance premium in Wisconsin is about \$2 billion dollars per year. With an increase of 3.1% projected, the cost from an insurance carrier's standpoint is unknown. There will likely be increased litigation with adoption of the proposed 2% rating for herniated discs.

There was a discussion regarding the decrease in overall worker's compensation rates not necessarily translating into a reduction in premiums for employers. Ms. Kosnicki explained that employers are charged differently for medical only claims versus indemnity claims. Mr. Riegel clarified that medical only claims are bundled for the purposes of the experience rating. Mr. Nettum provided insight into how rates drive the market for insurance. He mentioned that the WCAC should have overall awareness of the impact the changes could have on the system.

Mr. Riegel stated that there was a 10% decrease in rates in 2024 and an overall decrease of 55% in rates in the last 10 years. The Milliman report indicated there will be a probable increase in rates if the proposal is adopted.

Mr. Nettum stated that payroll, classification codes and experience rating are considered when setting premiums.

There was a discussion about factors considered in establishing worker's compensation insurance premiums, the effect of a 2% rating for disc herniations only if there was disability, and the difference between a herniated disc compared to a disc protrusion. Ms. Kosnicki asked whether asymptomatic people were considered by the committee in revising the proposed minimum permanent partial disability (PPD) ratings. Mr. O'Malley replied that the committee did not consider asymptomatic people in revising the minimum ratings.

Ms. Ver Velde noted that the statute provides that the Department review and revise the rule as necessary but does not have to revise the ratings. Ms. Bloomingdale noted the statute states that every eight (8) years the Department shall review and revise the ratings as necessary.

- 5. Rulemaking Status Update:** Mr. O'Malley explained there was a hearing draft for amendments to ss. DWD 80.40, 80.60, 80.61, and 80.72 of the Wisconsin Administrative Code included in the written materials distributed for the meeting. The public hearing will be held on March 5, 2025. The proposed rule changes primarily affect the self-insurance program due to amendments to s. 102.28 (2) (bm) and (7), Wis. Stats. The Self-Insurers Council was advised of the proposed amendments and agreed with the proposed changes.

The process for governmental units with independent taxing authority to become self-insured for worker's compensation liability was codified in the statutes a few years ago. The proposed rule changes will conform the language in the statutes with the administrative rules.

Initial assessments for the Self-Insured Employers Liability Fund (SIELF) are no longer for equal amounts for all self-insured employers, but pro rata based on the self-insured employer's gross payroll in Wisconsin. Governmental units with independent taxing authority are not required to pay assessments to fund the SIELF and employees of the governmental units are not eligible to receive payments from this fund.

For reasonableness of health care service fee disputes the statute was amended to provide that a fee was reasonable if the fee was at or below the mean fee in a certified database plus 1.2 standard deviations from the mean. The current administrative rule provides for 1.4 standard deviations from the mean.

Mr. O'Malley stated that the proposed amendments to the administrative rules involve no major changes and the purpose of the amendments is to ensure the language in the rules conforms to the current statutory provisions and the statutes and rules are correctly cross-referenced.

Ms. Ver Velde asked whether these proposed rule changes were discussed with the WCAC. Mr. O'Malley stated that the Department's proposed administrative rule amendments were presented and explained to the WCAC at previous meetings. Ms. Ver Velde indicated that the WCAC should vote to approve the rulemaking process.

Ms. Ver Velde moved to approve the rulemaking process for the proposed amendments to ss. DWD 80.40, 80.60, 80.61, and 80.72 of the Wisconsin Administrative Code. Ms. Bloomingdale seconded the motion. The motion passed unanimously.

6. **Other Business of the Council:** Mr. Dipko explained upcoming consolidation of workspace at the Department and that continued meeting space will be available following the move on March 25, 2025.
7. **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. Dipko announced the closed session, statutory authority, and the nature of business to be considered. The open session of the meeting was adjourned at approximately 12:00 p.m. The Worker's Compensation Advisory Council's next meeting is scheduled for March 19, 2025.

[WCAC 2.11.25 MEETING MINUTES DRAFT 1]