



State of Wisconsin
2023 - 2024 LEGISLATURE

LRB-5292/1
MED&MIM:emw

2023 BILL

1 **AN ACT** *to renumber and amend* 102.17 (9) (a) 1. and 102.44 (2); *to amend*
2 102.03 (4), 102.13 (2) (c), 102.16 (1m) (a), 102.17 (9) (b) (intro.) and 102.18 (1)
3 (bg) 1.; and *to create* 102.16 (2) (i), 102.17 (9) (a) 1e., 102.17 (9) (a) 1g., 102.423
4 and 102.44 (2) (a) 2. of the statutes; **relating to:** various changes to the worker's
5 compensation law, extending the time limit for emergency rule procedures,
6 providing an exemption from emergency rule procedures, and granting
7 rule-making authority.

Analysis by the Legislative Reference Bureau

This bill makes various changes to the worker's compensation law, as administered by the Department of Workforce Development and the Division of Hearings and Appeals in the Department of Administration.

Health service fee schedule

This bill requires DWD, by July 1, 2025, to establish a schedule of the maximum fees that a health care provider may charge an employer or insurer for health services provided to an injured employee who claims worker's compensation benefits. Under the bill, DWD must, when that schedule is established, send a notice to the Legislative Reference Bureau, and the LRB must publish that notice in the Wisconsin Administrative Register. The reasonableness of the health service fee dispute resolution process under current law does not apply to health services

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provided on or after the date specified in the notice. The liability of an employer or insurer for a health service included in the fee schedule is then limited to the maximum fee allowed under the schedule for the health service as of the date on which the health service was provided, any fee agreed to by contract between the employer or insurer and health care provider for the health service as of that date, or the health care provider's actual fee for the health service as of that date, whichever is less.

The bill requires DWD, in determining those maximum fees, to divide the state into five regions based on geographical and economic similarity, including similarity in the cost of health services, and, for each region, to do the following: 1) determine the average payment made by insured and self-insured group health plans, and the average copayment, coinsurance, and deductible payment made by persons covered under those plans, for each health service included in the schedule and 2) set the maximum fee for each health service included in the schedule at 110 percent of the sum of that average payment and that average copayment, coinsurance, and deductible payment.

The bill also requires DWD to adjust those maximum fees annually by the change in the consumer price index for medical care services and, no less often than every two years, to redetermine the average payment made by group health plans for the services included in the schedule and revise those maximum fees based on that redetermined average.

The bill provides, however, that DWD may not implement the initial fee schedule or a revised fee schedule unless the schedule or revised schedule is approved by the Council on Worker's Compensation.

Indexing of permanent total disability benefits

Under current law, subject to certain exceptions, the amount of an injured employee's worker's compensation benefits is determined in accordance with the law that is in effect as of the date of injury, regardless of the length of time that has elapsed since that date. For permanent total disability benefits, the amount of benefits is determined based upon the employee's average weekly earnings, up to a maximum that is determined based upon 110 percent of the state's average weekly earnings. This determination of the state's overall average weekly earnings is revised each calendar year.

This bill provides for the indexing of the weekly benefit for permanent total disability resulting from an injury that occurs on or after January 1, 2024. Specifically, under the bill, the benefits for an injured employee who is receiving worker's compensation for permanent total disability resulting from an injury that occurs on or after January 1, 2024, are, beginning with the sixth anniversary of the date of injury and then annually thereafter, increased to a corresponding higher rate for that year.

Expansion of PTSD coverage for first responders

This bill makes changes to the conditions of liability for worker's compensation benefits for emergency medical responders, emergency medical services practitioners, and volunteer and part-time fire fighters who are diagnosed with post-traumatic stress disorder (PTSD).

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Under current law, if a law enforcement officer or full-time fire fighter is diagnosed with PTSD by a licensed psychiatrist or psychologist, and the mental injury that resulted in that diagnosis is not accompanied by a physical injury, that law enforcement officer or fire fighter can bring a claim for worker's compensation benefits if the conditions of liability are proven by the preponderance of the evidence and the mental injury is not the result of a good faith employment action by the person's employer. Also under current law, liability for such treatment for a mental injury is limited to no more than 32 weeks after the injury is first reported.

Under current law, an injured emergency medical responder, emergency medical services practitioner, or volunteer or part-time fire fighter who does not have an accompanying physical injury must demonstrate a diagnosis based on unusual stress of greater dimensions than the day-to-day emotional strain and tension experienced by all employees as required under *School District No. 1 v. DILHR*, 62 Wis. 2d 370, 215 N.W.2d 373 (1974), in order to receive worker's compensation benefits for PTSD. Under the bill, such an injured emergency medical responder, emergency medical services practitioner, or volunteer or part-time fire fighter is not required to demonstrate a diagnosis based on that standard and instead must demonstrate a diagnosis based on the same standard as law enforcement officers and full-time fire fighters. Finally, under the bill, an emergency medical responder, emergency medical services practitioner, or volunteer or part-time fire fighter is restricted to compensation for a mental injury that is not accompanied by a physical injury and that results in a diagnosis of PTSD three times in his or her lifetime irrespective of a change of employer or employment in the same manner as law enforcement officers and full-time fire fighters.

For further information see the state and local fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 102.03 (4) of the statutes is amended to read:
2 102.03 (4) The right to compensation and the amount of the compensation shall
3 in all cases be determined in accordance with the provisions of law in effect as of the
4 date of the injury except as to employees whose rate of compensation is changed as
5 provided in s. 102.43 (5) (c) or (7) or 102.44 (1), (2) (a) 2., or (5) and employees who
6 are eligible to receive private rehabilitative counseling and rehabilitative training
7 under s. 102.61 (1m) and except as provided in s. 102.555 (12) (b).

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1 **SECTION 2.** 102.13 (2) (c) of the statutes is amended to read:

2 102.13 **(2)** (c) Except as provided in this paragraph, if an injured employee has
3 a period of temporary disability that exceeds 3 weeks or a permanent disability, if the
4 injured employee has undergone surgery to treat his or her injury, other than surgery
5 to correct a hernia, or if the injured employee sustained an eye injury requiring
6 medical treatment on 3 or more occasions off the employer's premises, the
7 department may by rule require the insurer or self-insured employer to submit to
8 the department a final report of the employee's treating practitioner. The
9 department may not require an insurer or self-insured employer to submit to the
10 department a final report of an employee's treating practitioner when the insurer or
11 self-insured employer denies the employee's claim for compensation in its entirety
12 and the employee does not contest that denial. A treating practitioner shall complete
13 a final report on a timely basis and may charge a reasonable fee for the completion
14 of the final report, not to exceed \$100, but may not require prepayment of that fee.
15 An Subject to s. 102.16 (2) (i), an insurer or self-insured employer that disputes the
16 reasonableness of a fee charged for the completion of a treatment practitioner's final
17 report may submit that dispute to the department for resolution under s. 102.16 (2).

18 **SECTION 3.** 102.16 (1m) (a) of the statutes is amended to read:

19 102.16 **(1m)** (a) If an insurer or self-insured employer concedes by compromise
20 under sub. (1) or stipulation under s. 102.18 (1) (a) that the insurer or self-insured
21 employer is liable under this chapter for any health services provided to an injured
22 employee by a health service provider, but disputes the reasonableness of the fee
23 charged by the health service provider, the department or the division may include
24 in its order confirming the compromise or stipulation a determination made by the
25 department under sub. (2) as to the reasonableness of the fee or, if such a

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1 determination has not yet been made, the department or the division may notify, or
2 direct the insurer or self-insured employer to notify, the health service provider
3 under sub. (2) (b) that the reasonableness of the fee is in dispute. The department
4 or the division shall deny payment of a health service fee that the department
5 determines under sub. (2) to be unreasonable. A health service provider and an
6 insurer or self-insured employer that are parties to a fee dispute under this
7 paragraph are bound by the department's determination under sub. (2) on the
8 reasonableness of the disputed fee, unless that determination is set aside, reversed,
9 or modified by the department under sub. (2) (f) or is set aside on judicial review as
10 provided in sub. (2) (f). This paragraph does not apply to a health service provided
11 to an injured employee beginning on the date specified in the notice published in the
12 Wisconsin Administrative Register under s. 102.423 (1) (a).

13 **SECTION 4.** 102.16 (2) (i) of the statutes is created to read:

14 102.16 (2) (i) This subsection does not apply to a health service provided to an
15 injured employee beginning on the date specified in the notice published in the
16 Wisconsin Administrative Register under s. 102.423 (1) (a).

17 **SECTION 5.** 102.17 (9) (a) 1. of the statutes is renumbered 102.17 (9) (a) 1m. and
18 amended to read:

19 102.17 (9) (a) 1m. "Fire fighter" means any person employed on a full-time or
20 part-time basis by the state or any political subdivision as a member or officer of a
21 fire department, including the 1st class cities and state fire marshal and deputies,
22 or an individual who volunteers as a member or officer of such a department.

23 **SECTION 6.** 102.17 (9) (a) 1e. of the statutes is created to read:

24 102.17 (9) (a) 1e. "Emergency medical responder" has the meaning given in s.
25 256.01 (4p).

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1 **SECTION 7.** 102.17 (9) (a) 1g. of the statutes is created to read:

2 102.17 (9) (a) 1g. “Emergency medical services practitioner” has the meaning
3 given in s. 256.01 (5).

4 **SECTION 8.** 102.17 (9) (b) (intro.) of the statutes is amended to read:

5 102.17 (9) (b) (intro.) Subject to par. (c), in the case of a mental injury that is
6 not accompanied by a physical injury and that results in a diagnosis of
7 post-traumatic stress disorder in a law enforcement officer, as defined in s. 23.33 (1)
8 (ig), an emergency medical responder, an emergency medical services practitioner,
9 or a fire fighter, the claim for compensation for the mental injury, in order to be
10 compensable under this chapter, is subject to all of the following:

11 **SECTION 9.** 102.18 (1) (bg) 1. of the statutes is amended to read:

12 102.18 (1) (bg) 1. If the division finds under par. (b) that an insurer or
13 self-insured employer is liable under this chapter for any health services provided
14 to an injured employee by a health service provider, but that the reasonableness of
15 the fee charged by the health service provider is in dispute, the division may include
16 in its order under par. (b) a determination made by the department under s. 102.16
17 (2) as to the reasonableness of the fee or, if such a determination has not yet been
18 made, the division may notify, or direct the insurer or self-insured employer to notify,
19 the health service provider under s. 102.16 (2) (b) that the reasonableness of the fee
20 is in dispute. This subdivision does not apply to a health service provided to an
21 injured employee beginning on the date specified in the notice published in the
22 Wisconsin Administrative Register under s. 102.423 (1) (a).

23 **SECTION 10.** 102.423 of the statutes is created to read:

24 **102.423 Health service fee schedule. (1) ESTABLISHMENT OF SCHEDULE.** (a)
25 By July 1, 2025, the department shall establish a schedule of the maximum fees that

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1 a health care provider may charge an employer or insurer for health services
2 provided to an injured employee who claims benefits under this chapter. When the
3 schedule is established, the department shall send a notice to the legislative
4 reference bureau for publication in the Wisconsin Administrative Register of the
5 date that the schedule will be effective. In determining the maximum fees, the
6 department shall divide the state into 5 regions based on geographical and economic
7 similarity, including similarity in the cost of health services, and, for each region,
8 shall do all of the following:

9 1. Determine the average payment made by group health benefit plans, as
10 defined in s. 632.745 (9), group health plans, as defined in s. 632.745 (10), and
11 self-insured health plans, as defined in s. 632.745 (24), and the average copayment,
12 coinsurance, and deductible payment made by persons covered under those plans,
13 for each health service included in the schedule based on health service payment
14 data obtained from the Wisconsin Health Information Organization, the Workers
15 Compensation Research Institute, health insurers and health plan sponsors, the
16 group health insurance plan under subch. IV of ch. 40, and other sources determined
17 by the department to be credible.

18 2. Set the maximum fee for each health service included in the schedule at 110
19 percent of the sum of the average payment for the health service and the average
20 copayment, coinsurance, and deductible payment for the health service, as
21 determined under subd. 1.

22 (b) 1. In this paragraph, “consumer price index” means the average of the
23 consumer price index for medical care services over each 12-month period for all
24 urban consumers, U.S. city average, as determined by the bureau of labor statistics
25 of the federal department of labor.

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1 2. On each July 1, beginning on July 1, 2026, the department shall adjust the
2 maximum fees established under par. (a) by the percentage difference between the
3 consumer price index for the 12-month period ending on December 31 of the
4 preceding year and the consumer price index for the 12-month period ending on
5 December 31 of the year before the preceding year.

6 (c) No less often than every 2 years, the department shall redetermine the
7 schedule of maximum fees using the procedures specified in par. (a), subject to par.
8 (d).

9 (d) Notwithstanding pars. (a) to (c), the department may not implement the fee
10 schedule established under par. (a) or revise the schedule under par. (c) unless the
11 schedule or revised schedule is approved by the council on worker's compensation.

12 (e) The department shall publish the current fee schedule established under
13 this subsection on the department's website. Notwithstanding s. 227.10 (1), the fee
14 schedule need not be promulgated as a rule.

15 **(2) LIABILITY OF EMPLOYER OR INSURER.** (a) The liability of an employer or insurer
16 for a health service included in the fee schedule established under sub. (1) is limited
17 to the maximum fee allowed under the schedule for the health service as of the date
18 on which the health service was provided, any fee agreed to by contract between the
19 employer or insurer and health care provider for the health service as of that date,
20 or the health care provider's actual fee for the health service as of that date,
21 whichever is less.

22 (b) A health care provider that provides health services to an injured employee
23 under this chapter may not collect, or bring an action to collect, from the injured
24 employee any charge that is in excess of the liability of the employer or insurer under
25 this subsection.

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1 (c) A schedule of maximum fees establish under sub. (1) first applies to a health
2 service provided to an injured employee on the date specified in the notice published
3 under sub. (1) (a).

4 **(3) RULES.** The department shall promulgate rules to implement this section.

5 **SECTION 11.** 102.44 (2) of the statutes is renumbered 102.44 (2) (a) 1. and
6 amended to read:

7 102.44 **(2)** (a) 1. In case of permanent total disability, aggregate indemnity shall
8 be weekly indemnity for the period that the employee may live, subject to increase
9 under subd. 2.

10 (b) 1. Total impairment for industrial use of both eyes, the loss of both arms at
11 or near the shoulder, the loss of both legs at or near the hip, or the loss of one arm
12 at the shoulder and one leg at the hip constitutes permanent total disability. This

13 2. The enumeration under subd. 1. is not exclusive, but in other cases the
14 division shall find the facts.

15 **SECTION 12.** 102.44 (2) (a) 2. of the statutes is created to read:

16 102.44 **(2)** (a) 2. For injuries occurring on or after January 1, 2024, weekly
17 indemnity for permanent total disability shall, beginning with the 6th anniversary
18 of the date of injury and then annually thereafter on that anniversary, be increased
19 as follows:

20 a. If the employee was receiving the maximum compensation rate, the
21 employee's weekly indemnity shall be increased to the maximum compensation rate
22 then in effect for that year, as determined under s. 102.11 (1).

23 b. If the employee was receiving less than the maximum compensation rate, the
24 employee's weekly indemnity shall be increased to an amount that bears the same
25 proportion to the maximum compensation rate then in effect for that year, as

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1 determined under s. 102.11 (1), as the employee's compensation rate bore to the
2 maximum compensation rate that was in effect at the time of the injury.

3 **SECTION 13. Nonstatutory provisions.**

4 (1) EMERGENCY RULES; HEALTH SERVICE FEE SCHEDULE. Using the procedure under
5 s. 227.24, the department of workforce development may promulgate rules required
6 under s. 102.423 (3) as emergency rules. Notwithstanding s. 227.24 (1) (c) and (2),
7 emergency rules promulgated under this subsection remain in effect until July 1,
8 2026, or the date on which permanent rules take effect, whichever is sooner.
9 Notwithstanding s. 227.24 (1) (a) and (3), the department is not required to provide
10 evidence that promulgating a rule under this subsection as an emergency rule is
11 necessary for the preservation of the public peace, health, safety, or welfare and is
12 not required to provide a finding of emergency for a rule promulgated under this
13 subsection.

14 (END)