

Council on Worker's Compensation
Meeting Minutes – WebEx Teleconference
201 E. Washington Avenue, Madison, WI
GEF-1 Building
Madison, Wisconsin
March 30, 2021

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

Members present by telephone or video: Ms. Bloomingdale, Ms. Frank, Mr. Fugina, Ms. Johnson, Mr. Kent, Mr. Nettum, Mr. Peters (Chairperson), Mr. Reader, Mr. Schwanda, Mr. Streff, Ms. Thomas, and Mr. Tindall

Excused: Mr. Buchen, Mr. Redman

Staff Present: Ms. Pechacek, Mr. Aiello, Mr. Brockman, Ms. Brown, Mr. Dipko, Ms. Lake, Ms. McCormick, Mr. Moreth, Mr. O'Malley, and Ms. Weinberger

- 1. Call to Order/Introductions:** Mr. Peters convened the Worker's Compensation Advisory Council (WCAC) meeting at approximately 10:00 a.m. in accordance with Wisconsin's open meetings law and called role of the WCAC members.

Mr. Peters introduced Department of Workforce Development (DWD) Secretary-designee Amy Pechacek. Secretary-designee Pechacek discussed coming to the DWD in September 2020 to assist with the backlog in the Unemployment Insurance Division and recent accomplishments at that agency. At the end of December, 2020 Governor Evers asked her to stay at DWD as the Secretary-designee. She mentioned her past work in the area of risk management, safety and worker's compensation at Milwaukee County. She thanked the WCAC members for their work on behalf of the worker's compensation system.

Mr. Peters expressed his excitement about the upcoming agreed upon bill process. He also thanked the Worker's Compensation Division's (WCD) staff for their continued efforts during the last year as most staff transitioned to work from home without any lapses in productivity. He also acknowledged the staff who remained in GEF-1 during this time and took on yeoman's work in keeping the WCD on task. Staff also successfully conducted two insurance adjuster training sessions while working remotely. Mr. Peters also spoke about the COVID-19 related claims that have been reported to the WCD. He asked that all WCAC members and their organizations re-commit to the agreed upon bill process that preserves the intent of the Grand Bargain.

- 2. Approval of the Minutes:** A motion was made by Mr. Tindall to approve the minutes of the December 18, 2019 meeting. Ms. Bloomingdale seconded the motion. The minutes were unanimously approved without correction.
- 3. PTSD Legislation SB-11 & AB-17:** Mr. O'Malley summarized the provisions contained in the companion bills, 2021 SB-11 and 2021 AB-17. These bills contain amendments to ch. 102, Wis. Stats., that were previously approved by the WCAC in the last Agreed Upon Bill.

Law enforcement officers and full-time firefighters who are diagnosed with post-traumatic stress disorder (PTSD) with no physical injury by a licensed psychiatrist or psychologist will be eligible for worker's compensation benefits when the conditions of liability are proven by a preponderance of evidence and the mental injury is not the result of or first reported during a good faith action on the part of the employer. An employee will no longer be required to establish the PTSD is based on unusual stress of greater dimensions than the day-to-day emotional strain and tension experiences by similarly situated employees. Liability for disability and treatment is limited to no more than 32 weeks after being reported to the employer. SB-11 and AB-17 added the provision that an employee cannot make a claim for PTSD more than three times during his or her lifetime and this was the only requirement that was not included in the earlier version approved by the WCAC. The new PTSD legislation will become effective for injuries reported on and after the date the Office of the Commissioner of Insurance submits to the Legislative Reference Bureau a notice to be published in the Wisconsin Administrative Register on the effective dates for new worker's compensation insurance premium rates.

An employer or client will be allowed to enter into an employee leasing agreement with a Professional Employment Organization (PEO) or employee leasing company and elect to provide worker's compensation insurance coverage for leased employees under the terms of an employee leasing agreement.

Health care providers will be required to provide worker's compensation insurance carriers and their representatives with a copy of the complete itemized billing statement on a standard billing format required by the federal government within 30 days after a request.

The statute of limitations will be amended to clarify that it applies to all parties to a worker's compensation claim including employers, insurance carriers and other entities.

Worker's compensation insurance carriers and self-insured employers will be authorized to make advance or lump sum payments into the Work Injury Supplemental Benefit Fund (WISBF) subject to a 5 percent interest credit.

The WISBF will not be permitted to collect death benefits when there are no surviving dependents and there was a violation of the employer's drug/alcohol policy that was casual to the work injury.

SB-11 was passed by the Wisconsin State Senate in an unanimous vote. SB-11 and AB-17 are currently waiting for scheduling during an upcoming floor period in the Wisconsin State Assembly.

- 4. PTSD Legislation for Stand-Alone EMS:** Mr. Mahlon Mitchell, President of the Professional Fire Fighters of Wisconsin, Inc., noted that but for the COVID-19 pandemic the PTSD legislation would have been passed during the Legislature's last session. He noted that the protective services in Wisconsin are a three legged stool consisting of police departments, fire departments and emergency medical services. There is a need for legislation that covers stand-alone emergency medical service (EMS) providers which are not currently included in SB-11 and AB-17. Mr. Mitchell noted that there have been two suicides of EMS providers since the bill was presented. This bill brings to light the need for more behavioral health services for EMS members. Under worker's compensation, members are unable to get the appropriate help due to the greater dimension requirement.

5. **November 10, 2020 Public Hearing:** Mr. Peters related that the public hearing had little live feedback, but there was the opportunity for the public to submit suggestions during a submissions period after the hearing. A number of suggestions were received following the public hearing.
6. **Correspondence:** Mr. O'Malley reviewed the correspondence received since the last meeting.

An e-mail message dated December 4, 2020 was received from Mr. Louis Busalacchi, President of LTL Services, Inc. Mr. Busalacchi requested that the WCAC consider adopting a medical fee schedule for health providers who treat worker's compensation injuries.

A letter dated December 8, 2020 was received from Mr. Troy Brown, President of Kretz Lumber Co., Inc. Mr. Brown proposed that the WCAC include a fee schedule or other meaningful cost containment measure in its upcoming agreed upon bill.

A letter dated December 9, 2020 was received from Mr. Ronald S. Aplin, Acting Executive Director of the Wisconsin Council of Self-Insurers, Inc. In his letter Mr. Aplin provided the following list of suggestions for the WCAC to consider for the next Agreed Upon Bill:

- Adopt a worker's compensation medical fee schedule
- Do not permit "stacking "of permanent partial disability (PPD)
- Eliminate the expansion of the average weekly wage for part-time employees
- Eliminate the deference to the DVR for vocational rehabilitation training, reduce the number of weeks for a two-year retraining program from 80 to 60, and eliminate the provisions adopted for the "order of selection process."
- End compensation for permanent total disability (PTD) when the injured employee reaches 65 years of age
- Limit worker's compensation compensability to cases where work exposure is the predominant (51% or more) cause of injury
- Re-examine and revise the minimum permanent partial disability (PPD) ratings in the Wisconsin Administrative Code
- Retain "extraordinary stress" legal standard for all non-traumatic mental stress claims, including those by first responder and protective service employees
- Allow group self-insurance for businesses of related industries to join together to self-insure worker's compensation liability as a group.

In a letter dated December 14, 2020 Ms. Sandy Shtab, AVP, Advocacy & Compliance of Health Systems, made the following proposals for legislative change:

- Require prior authorization for outpatient physician dispensed medication
- Permit physician dispensing only during the initial visit within 10 days after a work-related injury
- Limit the days' supply for any physician dispensed medication to seven days allowing the patient ample time to visit a retail pharmacy
- Require prescribers to seek preauthorization for any compounded, co-packaged or convenience pack medications
- Compounded, co-packaged and convenience pack medications would be reimbursable at no more than the fee schedule rate which would be applicable to the individual products contained therein

- Wisconsin Worker's Compensation Act (Act) be updated to reflect the proper citation of Micromedex Redbook Online, published by Truven Health Analytics
- Add MediSpan PriceRx published by Wolters Kluwer as an authorized data source for the average wholesale price for pharmacy fee schedule disputes.

A letter dated December 15, 2020 was received from Attorney John Edmondson of Edmondson Law Office. Attorney Edmondson proposed the following legislative changes to ch. 102, Wis. Stats., for consideration by the WCAC:

- Establish a system to automatically increase benefits for permanent partial disability and supplemental benefits under s. 102.44 (1), Wis. Stats.
- Develop a law that requires an insurance carrier, upon a finding of liability for the medical care, to not only repay Medicare/Medicaid, but to pay the medical provider the remaining amount of any bill that has been written off as a result of accepting Medicare or Medicaid
- Provide for a 20% fee to be paid on that repaid "balance" amount to the successful attorney whose time, efforts and skill produced that additional money for the medical provider would be fair while also acting as an incentive to combating this clear inequity
- Eliminate the interest credit requirement in s. 102.32 (6m), Wis. Stats.

In a letter dated March 23, 2021 Dr. Greg Watchmaker from The Milwaukee Hand Center raised concerns about the original denial of worker-related medical expenses where the payment of those medical bills is made by private health insurance carriers, but the claim is later found to be work-related. Dr. Watchmaker requested the WCAC to consider requesting worker's compensation insurance carriers to accept medical provider claims for processing when injuries are deemed to be work related at the time of care or in a delayed manner. He also mentioned unintended consequences resulting from group health carriers being paid outside the normal claims processing path.

A letter dated March 24, 2021 was received from Mr. Mahlon Mitchell, President of the Professional Fire Fighters of Wisconsin, Inc. Mr. Mitchell requested that "stand-alone EMS" staff be provided the same PTSD treatment that fire-based EMS are provided in SB-11 and AB-17.

- 7. Other Business:** Mr. Reader discussed the high costs within the worker's compensation system and the goal of moving forward quickly with the WC Agreed Upon Bill for this session. Ms. Bloomingdale also indicated an interest in getting a WC Agreed Upon Bill to the legislature. The members agreed that proposals for legislative change would not be exchanged at the next meeting.
- 8. Adjournment:** A motion was made by Mr. Reader to go to a closed session and adjourn the meeting from that session. Ms. Bloomingdale seconded the motion. The motion passed unanimously. The meeting was adjourned at approximately 11:25 a.m.

The Worker's Compensation Advisory Council's next meeting is scheduled for Monday, April 26, 2021.