

Council on Worker's Compensation
Meeting Minutes – Microsoft Teams Teleconference
201 E. Washington Avenue, Madison, WI
GEF-1 Building
Madison, Wisconsin
April 26, 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, Mr. Buchen, Ms. Frank, Mr. Fugina, Ms. Johnson, Mr. Kent, Mr. Large, Mr. Nettum, Mr. Peters (Chairperson), Mr. Reader, Mr. Schwanda, Mr. Streff and Ms. Thomas

Excused: Mr. Tindall

Staff Present: Mr. Aiello, Mr. Brockman, Ms. Brown, Mr. Dipko, Ms. Lake, Ms. McCormick, Ms. McGillivray, 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 roll of the WCAC members.
2. **Approval of the Minutes:** A motion was made by Ms. Bloomingdale to approve the minutes of the March 30, 2021 meeting. Mr. Reader seconded the motion. The minutes were unanimously approved without correction.
3. **Correspondence:** Mr. O'Malley reviewed the correspondence received since the last meeting.

A letter dated March 31, 2021 was received from Mr. Allen De Young, Executive Director of the Wisconsin EMS Association. In his letter, Mr. De Young requested the WCAC to include in the WC Agreed Upon Bill a provision that covers all licensed EMS providers with the same coverage for post-traumatic stress disorder (PTSD) as was provided for law enforcement officers and firefighters in SB-11 and AB-17.

4. **WCRI Medical Fee Schedules:** Ms. Kathleen Fisher, Director of External Relations and Ms. Evelina Radeva, Policy Analyst of the Workers Compensation Research Institute (WCRI) conducted presentations on Medical Cost Containment and Medical Fee Schedules.

The WCRI is an independent not-for-profit research organization with a diverse membership that conducts peer-reviewed studies and provides resources for public officials and stakeholders. The WCRI provides a broad scope of studies that includes Wisconsin on topics including national inventories, payments, price regulation, pharmaceuticals, and workers' outcomes.

Ms. Fisher gave a PowerPoint presentation about medical cost containment. Data from the WCRI study showed medical payments per claim have increased 2-3 times in most study states since 2000. WCRI National Inventories published in 2019-2021 review medical cost

containment inventory, prescription drug regulations inventory, worker's compensation laws, and state policies on treatment guidelines and utilization management.

Medical payments for the treatment of injured employees are based on the price for services plus utilization. Common cost containment strategies used by the states include medical fee schedules, pharmaceutical fee and utilization regulations, limiting provider choice, managed care regulations, bill review, utilization review, preauthorization for nonemergency care, treatment guidelines, treatment limitations, and telehealth regulations.

Most states had four to six (4-6) medical cost containment tools in place as of 2021. Forty-six (46) states have medical fee schedules for professional, hospital or ambulatory surgical center (ASC) services. Twenty-five (25) states require certification for approval of managed care arrangements. Thirty-nine (39) states have regulations for prescription drugs and twenty (20) states have utilization limits for opioid prescriptions. In nineteen (19) states, injured employees can choose the treating medical providers, in sixteen (16) states, injured employees can choose medical providers from an employer-managed care organization, and the employer can choose the medical providers in sixteen (16) states. Utilization of treatment review is used in thirty-five (35) states. The use of treatment guidelines varies among the states with twenty-four (24) states adopting treatment guidelines.

Ms. Radeva gave a PowerPoint presentation on worker's compensation medical fee schedules. Wisconsin ranks highest among study states in prices paid for professional services. A medical fee schedule is a list of maximum allowable reimbursement amounts for medical procedures and treatments. States implement fee schedules to control medical cost growth over time, increase consistency of procedure definitions and revenue neutrality, and reduce medical disputes.

For states implementing a medical fee schedule there are the following considerations: What is the basis? How high or low to set the maximum payment rate? How will payment rates be updated? How to measure impact? There are three (3) categories of fee schedule bases to consider: Medicare RBRVS-based fee schedules, other relative value-based fee schedules, and other fee schedules. For updating fee schedules many states use the most recent version of Medicare RBRVS or a process that is connected to inflation rates. However, some states have more complex updating systems. Examples of worker's compensation fee schedules in Illinois, Virginia and Indiana were discussed.

In adopting a worker's compensation medical fee schedule there are other considerations: How do worker's compensation payments relate to other payors in the system, such as automobile insurers, Medicare and commercial insurers? Possibility for shifting claims to or from worker's compensation? Are there areas in the state where a shortage of medical professionals or access to care become issues for injured workers? What is the input of the local medical community regarding worker's compensation payment policies?

- 5. Wisconsin Open Meetings/Public Records Law:** Ms. Pamela McGillivray, DWD Chief Legal Counsel, gave a PowerPoint presentation about the law related to open meetings and public records in Wisconsin.

Section 19.81, Wis. Stats., is the statute covering the Wisconsin Open Meetings Law, and provides in relevant part, "... the public is entitled to the fullest and most complete information regarding affairs of government ..."

The Wisconsin Open Meetings Law applies to governmental bodies. The WCAC is a governmental body and its meetings must be preceded by public notice at least 24 hours in advance, except for emergencies, with never less than two (2) hours advance notice. Meetings must be held in a public place that is open and reasonably accessible to all members of the public.

A meeting occurs whenever members convene for purpose of conducting governmental business, and the number of members present is sufficient to determine the body's course of action. A "walking quorum" may occur when one-half of the members of the government body are present and then there is a burden to show it was not a meeting.

A "negative quorum" exists when there is not a majority of members present but enough members present to affect the outcome. The number of members needed for a negative quorum is a moving target and may lead to an unlawful meeting. An example is if a government body has ten (10) members, six (6) appear for a meeting, and three (3) members could affect the course of business at the meeting. The best practice is to contact DWD when three (3) or more members have a meeting outside of a formal meeting. Proper notice for the meeting of these members is to be given.

Meetings are presumed to be open to the public. Meetings are to begin in open session. At meetings in open session, citizens have the right to attend and observe. Recording, filming, and photographing a meeting in open session is allowed.

A meeting is permitted to go into closed session by a motion of the WCAC. The chairperson must announce the statutory exemption authorizing the closed session and the nature of the business to be considered.

Section 19.31, Wis. Stats., is the statute covering the Wisconsin Public Record Law. The public records law "shall be construed in every instance with a presumption of complete public access, consistent with the conduct of government business. The denial of public access generally is contrary to the public interest, and only in an exceptional case may access be denied."

The WCAC is required to produce records upon request. "Record" is any material on which written, drawn, printed, spoken, visual or electromagnetic information or electronically generated or stored data is recorded or preserved, regardless of physical form or characteristics, which has been created or is being kept by an authority. s.19.32 (2), Wis. Stats.

A "record" is not a draft, notes, preliminary documents, published material available for sale or at library, purely personal property, or material with limited access rights, such as copyrights or patents. Emails, text messages and documents on private accounts may be records based on content, not the medium format or location. Personal materials on the same private accounts are not subject to disclosure.

Requests to obtain public records may be oral or written. No magic words are required. A request must be reasonably specific as to time and subject matter, and must reasonably describe the information or records requested.

Responses to open records requests must be as soon as practicable without delay by providing the records, full or partial denial of records or a response that no records exist.

The Department of Workforce Development (DWD) will assist with requests. Forward all requests for public records without delay to: OpenRecords@dwd.wisconsin.gov

Mr. Reader had a question about the need to give notice when the members of a caucus meet outside of a regular meeting to work on policy. Ms. McGillivray responded that timely notice for the meeting of caucus members is necessary. For this a meeting is to be noticed, the meeting is to begin in open session, and then following a motion the members of a caucus may go into closed session. The chairperson is required to announce for the record the motion to go into closed session. The minutes of the meeting should include the motion. Ms. McGillivray advised the members to contact Mr. Peters to make arrangements for scheduling a meeting for the caucus members to have a closed session meeting outside of a regular meeting. Mr. Peters requested the members to contact him about making arrangements for a closed session caucus meeting.

6. Other Business: None

- 7. Adjournment:** A motion was made by Mr. Reader 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. Ms. Bloomingdale seconded the motion. The motion passed unanimously. Mr. Peters announced the closed session, statutory authority and the nature of the business to be considered. The open session of the meeting was adjourned at approximately 11:15 a.m.

The Worker's Compensation Advisory Council's next meeting is scheduled for Tuesday, June 8, 2021.