From: Bob Juul <juulford@gmail.com>
Sent: Monday, December 5, 2022 2:52 PM
To: DWD MB WC Advisory Council <WCAdvisoryCouncil@dwd.wisconsin.gov>
Subject: small business comments for work comp advisory council

Dear Worker's compensation Advisory Council:

My name is Robert Juul president of The Motor Company a Ford dealer in Marinette WI with around 36 full time employees

I have been frustrated with our state's work comp premiums for more years than I care to count. We have significantly higher work comp premiums than MI, IL, and IA according to a study I found online done by the state of Oregon which can be found at https://www.oregon.gov/dcbs/cost/Pages/premium-index-rates.aspx. In fact that study shows that from 2020 to 2022 we went from the 11th highest costs to the 8th highest costs. So the Wisconsin Hospital Association can say all they want about our state's costs falling, in the end we are not doing a good job controlling our work comp rates.

I strongly believe the biggest reasons for this are as follows:

1. The lack of a rate schedule for work comp claims. We are paying the hospital's chargemaster rate for all medical care covered. You ever wonder why when you go to a facility in WI the first question you get asked is whether this is work related. I might be wrong but i am guessing the rates charged to work comp insurance is highest charged to anybody and anyone period. The WHA says Wisconsin gets their employees back to work quicker and i am thinking the reason is employers doing everything they can in their limited capacity to get the employee back to work. Finally, this program penalizes small employers who do not have a nurse or NP on staff to help control costs. With an employer like myself we send the employee to the hospital run (Aurora or Belin) worker triage center. I honestly believe their mandate is to squeeze as much business as possible from every person who walks thru that door. We had a minor wrist sprain that the hospital set up for nine PT visits. Thankfully the employee decided he did not need all those visits. My question is would the providers have said that too.

2. The employer has no control at all regarding the care choices the providers make. The example above illustrates that point perfectly. The rare times we have workplace injuries I am almost always frustrated with the providers just in my personal opinion doing everything they can to maximize the number of billable lines. We had a back injury case years ago where one of the doctors was also diagnosing and

billing for carpal tunnel syndrome. That is a perfect example of the excessiveness we see with the current system.

In closing, workers compensation insurance is in large part medical insurance. So then why can we not get a medical fee schedule. The only reason that makes sense is the providers not wanting to lose this gravy train. I think it will discourage the temptation to maximize procedures performed and probably increase the success rate of recovery for the patient.

Thank you,

Bob Juul
The Motor Company, Inc.
P 715-735-7474
F 715-735-0301

Sent: Thursday, December 8, 2022 12:51 PM
To: DWD MB WC Advisory Council <WCAdvisoryCouncil@dwd.wisconsin.gov>
Subject: Workers Comp for EMTs with PTSD

I have been a volunteer EMT-Basic for 43 years, volunteering with our local EMS service. Our service is not affiliated with a fire department. It is my understanding that because of this our members are not eligible for coverage for PTSD-related issues that may arise due to our providing this essential service to our community. I believe this is wrong. ALL EMS providers should be treated the same as firefighters and police officers when it comes to PTSD.

Our problems are real, perhaps more so than career firefighters and paramedics. Serving a small community that we live in, we are much more likely to know our patients than a career firefighter / paramedic who may not live in the service area where they work. Here are a few examples from my career:

I have responded to many motor vehicle crashes, some more memorable than others. One that occurred many years ago was a single car vs tree. On arrival we found two occupants deceased in the front seat and two seriously injured in the back seat. I spent nearly an hour in the back seat stabilizing an open femur fracture which was bleeding into my boot. Extrication was difficult because the patient's foot was pinned backwards between the door, the rocker panel, and the front seat, with the car lodged against the tree immediately outside where the foot was pinned. The car had to be pulled away from the tree before the patient could be extricated. One of the front seat passengers was a brother of one of our EMTs – she was not on the scene but I did accompany the police officer and coroner when she was notified.

At another crash there were two deceased high school students in the front seat, in addition to three injured patients in the rear seat. I remember clearly pulling the driver away from the steering wheel so I could check him, finding a beer bottle between his legs.

About six years ago we were dispatched to a report of a male having a seizure. Enroute we were advised that the wife was doing CCR. I recognized the address as the home of long-time friends of my wife and me. My wife has known both the patient and his wife her whole life. The patient had served as an EMT with our service for many years. My EMT partners on this call were our district director and a young woman who had just become an EMT. She has since committed suicide. She had other issues as well, but did this call exacerbate her issues? Paramedics arrived about 25 minutes after we were dispatched: together we worked this patient for close to an hour, in front of the wife as well as their pastor and the patient's daughter and son-in-law, who I've known for years. Do you think this was stressful? Do you think that I and our fellow responders might have some PTSD from this?

I've responded to gunshot wounds, some fatal, some self-inflicted. I've done CPR on a second fellow EMT. I've done CPR on neighbors. I've done CPR on infants; in one case I knew the parents, in another case the parents were convicted of killing their son. I was the first to testify at their trial. All of these incidents happened some years ago and I remember them like yesterday. But under current law, I'm not eligible for workers comp coverage for PTSD because I'm not affiliated with a fire department, only a separate public EMS agency. Please, all EMTs should be treated the same, regardless of what type of agency we work or volunteer for.

Thank you for your consideration.
Walter Peterson, EMT-B, President, District One EMS Membership Association
Dane County District One EMS

PROFESSIONAL FIRE FIGHTERS OF WISCONSIN, INC.
321 EAST MAIN STREET, SUITE 200, MADISON, WI 53703-2840
PHONE: (608) 251-5832/ EMAIL: PFFWOFFICE@GMAIL.COM
MEMBER OF INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS
MEMBER OF WISCONSIN STATE AFL-CIO

MAHLON MITCHELL, STATE PRESIDENT
MICHAEL WOODZICKA, STATE VICE-PRESIDENT
STEVE WILDING, STATE SEC. / TREAS.

Testimony of Mahlon Mitchell
State President, Professional Fire Fighters of Wisconsin
Before The
Wisconsin Workers Compensation Advisory Council (WCAC)
December 15, 2022

Good afternoon, I am Mahlon Mitchell, State President of the Professional Fire Fighter of Wisconsin (PFFW). Our organization represents over 4,000 members in more than 100 municipalities across the state. Our members are the full-time career men and women who work for fire departments and public EMS services across the state. While some of our members are fire fighters only, most work for combination departments that provide both fire service and EMS. In addition, we have some members that only work for public EMS services. Those include cities like Fitchburg/Verona, Sun Prairie, and Deer Grove all here in Dane County. In addition, some of our members work for county-wide EMS like in Door County and Waushara County.

I am pleased to appear before you today for two reasons. First to thank you, the Workers Compensation Advisory Council, for your support of legislation that passed the Legislature and signed by Governor Evers in 2021 providing Workers Compensation coverage for most of our members in the career fire service and those in law enforcement that might be diagnosed with PTSD. That legislation, Act 29, has been well received by our members knowing they will have the treatment they need so they can get back to their families and their jobs.

Fortunately to date there has been little utilization of Workers Comp for this purpose but we know it is there when and if needed.

My second reason to appear is to remind you that some members of the public safety community were not included in Act 29. For the PFFW, it is our members who work for services that only provide EMS service. We call them "stand alone EMS". While we were trying to make sure everyone was included at the time Act 29 was being developed, we were told by elected officials that some would be left out. We made it clear to them, state legislators, and this Advisory Council, that we would be asking for legislation to ensure inclusion of all our members in the upcoming session.

There are many more EMS personnel that are not covered by Act 29 than just our "stand alone" members and we are here to support efforts to make sure all EMS personnel are

covered. We are not aware of any studies that conclude that "stand alone EMS" personnel are less likely to develop PTSD than those that are a combination of both fire and EMS. It is probably safe to assume that the more tragic accidents an individual experiences, the greater the likelihood is for PTSD to develop; but we also know that it might be just experiencing one incident. The point is, there should be no distinction as there currently is in state statutes.

So as the Workers Comp Advisory Council moves forward, we ask that you include in your recommendations expanding Workers Comp-PTSD coverage to all those in EMS and to volunteer firefighters.

Your consideration of this will be greatly appreciated.

Good afternoon, Chairman Peters, and members of the Wisconsin Workman's Compensation Advisory Council. I am Bob Salov, representing the Wisconsin Emergency Medical Services Association (WEMSA) and recently retired Director of the Cambridge Community Emergency Medical Services. I have raised 5 children, married a Cambridge native, and have resided on our farm in the Town of Christiana for 52 years. In addition to my career as the CEO and COO of numerous private businesses, municipal, and not for profit organizations. I served on the Dane County Board of Supervisor for 24 years and was honored to serve as the Chairman of the Dane County EMS Commission. I volunteered with the Cambridge Area Emergency Medical Services (CAEMS) for 30 years and was then hired for 10 additional years as the Director until early 2022.

As Director, I was unable to maintain a full roster of volunteers and had to hire career paramedics to cover 24-7-365 days per year.

Currently 79% of services in this state are staffed by volunteers. A study by the Office of Rural Health will produce the data that quantifies this crisis. With all this pressure on our volunteers, their inclusion in the Workman's Compensation Insurance specifically for Post-Traumatic Stress Disorder (PTSD) medical services will provide them with available medical help to cope with the personal exposure and pressure of being a first responder. While providing an essential service to their residents and visitors to their communities the EMTs accumulate many experiences in the field.

After 40 years of service, I have many images in my mind and heart of gruesome, terribly sad, and haunting ambulance calls that stay with me. My thoughts, reflections and angst for my family, relatives and friends and possibilities of something happening to them. We have lost many of our EMTs to PTSD which we can address in your deliberations.

Having the Worker's Compensation Insurance assist volunteers in addition to other first responders will be a welcomed show of support and thanks for a very worthy large group of EMT volunteers who give and give beyond what we can imagine. Open a door to recognize and assist the volunteer's role in staffing most of the services in rural Wisconsin by inclusion of all first responder volunteers in the Workman's Compensation Insurance program.

From my heart I beseech you to take our sincere message to the Wisconsin legislature with a unanimous vote in favor of having Workman's Compensation to include PTSD treatment for volunteer first responders.

Thank you for your attention and consideration,

Bob Salov

Stories:

Pager alerted that there was a “roll over” with multiple patients. We responded to the scene on a rural town road and discovered a car that had rolled over multiple times. There were six teenagers – same ages as my own kids.

Driving on the I94 I came upon a crash, got out of my car, and assessed the scene. Mom and Dad screaming in pain and loss. Their newborn baby 10 yards from the crashed car – no crying, no movement.

Responding to a page of a tree vs man. Assessed upon arrival that a man my age was hit by a falling tree trunk on his unprotected head. Family was there. We tried but there was no chance to revive this father.

There are many more.

How do you think an individual can cope with these images? Hopefully they will seek help internally among their colleagues and externally with a facilitator, therapist, or counsellor. Given that volunteers are paid a very nominal amount – they may not be able to afford seeing a PTSD professional for help.

From: Erik Reichertz <ereichertz@atacosteel.com>
Sent: Wednesday, December 28, 2022 1:55 PM
To: DWD MB WC Advisory Council <WCAdvisoryCouncil@dwd.wisconsin.gov>
Subject: Worker's Compensation Advisory Council Holds Public Hearing - Request for comment email

Hi Workers Compensation,

I would suggest that workers compensation tie to medical reimbursement rates to some sort of formula based on what private insurers pay the facility. We have seen facilities charge multiple time the price for the same procedure when they are billing workers compensation vs billing our private insurance.

Thank you,

Erik D. Reichertz, CFO
ATACO Steel Products Corp
6809 Hwy 60
PO Box 270
Cedarburg, WI 53012-0270

Phone: 262-546-4980

To: Worker's Compensation Advisory Council
Chairman Steve Peters
Division Administrator
Workman's Compensation Division
608 266-6841
Stevem.peters@dwd.wisconsin.gov

Worker's Compensation Advisory Council
WCAdvisoryCouncil@dwd.wisconsin.gov

Date: January 7, 2023
Re: Inclusion of Volunteer EMTs in Worker's Compensation for PTSD care.

My name is Katy Frey. I live at 505 Heller Rd Menomonie, WI 54751. I've been an Emergency Medical Technician (EMT) for 14 years, 13 of those years in the state of Wisconsin. In that time, I have progressed from volunteer, combination of paid and volunteer, and now to an all-career personnel department. I can speak from experience that the dedication of the volunteer workforce has in Emergency Medical Services (EMS) is above and beyond. Because the compensation is nominal, the force that drives them is their passion for helping others. Volunteer EMS agencies make up most of the Wisconsin's EMS responses. I am asking you all, as the Workers Compensation Advisory Council to recommend to the legislature to introduce a bill that includes EMS volunteers to give them access to Workers Compensation Insurance. This will allow them the help they need when they develop mental ailments as a direct result of simply doing their job. A survey in 2017 put out by the University of Phoenix reported that 84% of first responders had experienced a traumatic event on the job and 34% had received a formal diagnosis of PTSD. Although there is new awareness and research around mental health in EMS, we still have a lot of work to do.

Act 29 which passed the last legislative session excluded nearly 50% of all EMS departments (over 9,300+ EMS providers) in Wisconsin and excluded 92% of all fire departments (over 21,000+ firefighters) in Wisconsin. Don't leave these responders behind.

Passing a bill this upcoming legislative session to include EMT volunteers in the Workers Compensation Insurance will have many positive results. According to the Office of Rural Health, 594 departments within Wisconsin will be affected by your recommendation to the legislature. Your support for including volunteer EMTs in Workers Compensation will be a very positive move towards taking better care of those who dedicate their lives to taking care of others in their communities.

Katy Frey | Critical Care Paramedic
Co-Chair WI Emergency Medical Services Assoc (WEMSA), Political Action Committee
Allina Health EMS | River Falls
katy.frey@allina.com
175 E Cedar St. River Falls, WI
(715) 308-0721 (direct)

To: Worker's Compensation Advisory Council
Chairman Steve Peters
Division Administrator
Workman's Compensation Division
608 266-6841
Stevem.peters@dwd.wisconsin.gov

Worker's Compensation Advisory Council
WCAdvisoryCouncil@dwd.wisconsin.gov

Date: January 9, 2023
Re: Inclusion of Volunteer EMTs in Worker's Compensation for PTSD care.

My name is Tony Lash. I live at . I've been involved in EMS for 20 years, 15 of those years as a Paramedic. All my time has been as a volunteer/paid on call provider with the Union Grove Yorkville Fire Department. In that time, I have progressed in the ranks and currently serve as Captain of Rescue Services in the department. I also currently serve as President of the Board of Directors of the Wisconsin EMS Association. I can speak from experience that the dedication of the volunteer workforce has in Emergency Medical Services (EMS) is above and beyond. Because the compensation is nominal, the force that drives them is their passion for helping others.

There are two events that our department has recently had that show the stress that is experienced within the ranks of our volunteer providers. The first example happened in the fall of 2019. We had a Personal Injury Motor Vehicle Collision on the interstate in our service area to which we responded and provided care. While packing up our gear, one of our firefighters (39 years old) developed chest pain. We transported him to the hospital where he was treated for a MI. He was released home several days later. About two weeks later, our department was dispatched to his home. We arrived to find him pulseless and not breathing. We provided ACLS to him, but we were not able to resuscitate him. He left behind his wife and three children under 4 years old.

The second event was a motorcycle accident that was dispatched last July. Our first responding ambulance staffed with several of our youngest department members. They arrive to find that the patient was one of our firefighters/EMTs (18 years old). Our department, along with one of our neighboring departments and Flight for Life provided care. The patient was transported to the Level One Trauma Center where he succumbed to his injuries.

These two examples are representative of the stressful incidents that our volunteer department has responded to. In our smaller community we treat many individuals that we cross paths with on a regular basis. .

I personally know of two individuals who have taken their own lives due to stress related to their volunteer Fire/EMS service. As a department we attempt to provide crisis counseling and debriefing to these members. We use Critical Incident Stress Management, Psychological First Aid, and "just being there" strategies to assist individuals in coping with these types of incidents. These programs have an impact, but we have a difficult time providing extensive psychological interventions that are sometimes needed.

Volunteer EMS agencies make up most of the Wisconsin's EMS responses. I am asking you all, as the Workers Compensation Advisory Council to recommend to the legislature to introduce a bill that includes EMS volunteers to give them access to Workers Compensation Insurance. This will allow them the help they need when they develop mental ailments as a direct result of simply doing their job. A survey in 2017 put out by the University of Phoenix reported that 84% of first responders had experienced a traumatic event on the job and 34% had received a formal diagnosis of PTSD. Although there is new awareness and research around mental health in EMS, we still have a lot of work to do.

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Passing a bill this upcoming legislative session to include EMT volunteers in the Workers Compensation Insurance will have many positive results. According to the Office of Rural Health, 594 departments within Wisconsin will be affected by your recommendation to the legislature. Your support for including volunteer EMTs in Workers Compensation will be a very positive move towards taking better care of those who dedicate their lives to taking care of others in their communities.

Tony Lash Paramedic
Captain – Rescue Services, Union Grove Yorkville Fire Department
President, Board of Directors WI Emergency Medical Services Assoc (WEMSA),

January 9, 2023

Mr. Steve Peters
Chair
Wisconsin Worker's Compensation Advisory Council
201 East Washington Avenue, Room C100
Madison, Wisconsin 53703

Dear Mr. Peters:

Wisconsin Independent Businesses (WIB) proudly represent thousands of small, independent businesses throughout Wisconsin. Nearly all our members own and\or operate businesses which must provide worker's compensation coverage to their employees.

We respectfully request the Worker's Compensation Advisory Council (WCAC) include meaningful medical cost containment provisions in the "agreed-upon" bill for the 2023-2024 legislative session. To support our position, we call to your attention an April 26, 2021, report provided to the Council by the non-partisan Workers Compensation Research Institute (WCRI) on medical cost containment for the treatment of injured workers. The noteworthy highlights from the report were:

- Between 2000 and 2019, the average medical payment per worker's compensation claim in Wisconsin rose from slightly more than $5,000 to over $20,000. Over this period, the rate of increase and the amount of the average medical payment per worker's compensation claim were the highest among eighteen states included in the WCRI analysis; and

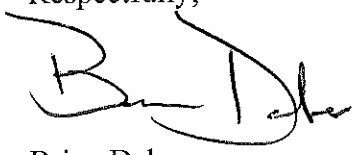
- The most common medical cost containment strategies used by states are medical fee schedules, pharmaceutical fee and utilization regulations, limiting provider choice, managed care regulations, utilization review, preauthorization for non-emergency care, treatment limitations, and treatment guidelines. As of 2021, most states have implemented between four and six of these medical cost containment strategies. By comparison, Wisconsin has only implemented one of these strategies.

Medical costs for the treatment of injured workers are driving up the cost of worker's compensation insurance in Wisconsin. To keep premiums in check, Wisconsin small employers have made significant investments in workplace safety and training. While these investments have led to fewer workplace injuries, small employers have not seen a commensurate reduction in their worker's compensation premiums.

From our perspective, meaningful medical containment provisions within Wisconsin's Worker's Compensation law would help lower worker's compensation premiums for small employers.

Thank you in advance for your consideration.

Respectfully,



Brian Dake
President
Wisconsin Independent Businesses

UWHealth

Connie Schulze
Director, Government Affairs
Madison, WI
Phone: 608/516-2552
Email: cschulze@uwhealth.org

January 10, 2023

Dear Members of the Workers Comp' Advisory Council:

We are writing to support the current request to add post-traumatic stress disorder (PTSD) coverage for Emergency Medical Services (EMS) providers to Wisconsin Worker's Compensation coverage. As a major health care provider in Wisconsin, we rely upon EMS to be first on the scene of traumatic events to provide emergency treatment and transport the most seriously injured individuals, from 0 to 100 years of age, across 72 counties. EMS providers respond to traumatic events to find WI residents with injuries that occur in the home (older adult falls, child poisoning, domestic violence), on the job (farm accidents, constructions sites), caused by natural disaster (tornado, snow and ice storms), and traffic accidents or recreational activities (hunting, snowmobiling, drowning, boating). They are immersed -daily- in the suffering and loss of young children, adolescents, and adults with the hope of saving lives, limbs, and livelihoods: our families and communities. In addition to being exposed to the suffering of others, EMS providers themselves are often at-risk of injury and harm. This constant exposure to high-risk situations and traumatizing events and injuries experienced by others, places EMS providers at high risk for secondary or vicarious trauma and PTSD.

Research continues to show that the physical and emotional depletion resulting from helping or wanting to help those injured or in danger can result in compassion fatigue, burnout and PTSD which poses serious personal and professional consequences for EMS providers, their colleagues and patients. Examples include decreased morale, cohesion, communication, and quality of services; staff turnover; risk of injury to team members and more. Secondary and vicarious trauma are occupational hazards for EMS providers. While organizations recognize these challenges and are taking steps protect their staff and prevent and recognize vicarious trauma and PTSD, there must be more for individuals who need additional care. Providing worker's compensation coverage for PTSD may make it possible for highly skilled and valued EMS providers to obtain physical and behavioral health care and return to work.

For these reasons we ask for your support for EMS providers by adding PTSD coverage to worker's comp' coverage. Thank you for your consideration. Don't hesitate to contact our Director of Government Affairs, Connie Schulze if you have any questions regarding this letter.

Sincerely,

Ben Toombs, MBA, BSN
Director, Trauma, Burn & Emergency General Surgery Services
UW Health University of Wisconsin Hospital and Clinics

Thomas Ellison, MS, RN, CCRN-K, TCRN.
Manager, Adult Trauma.
UW Health University of Wisconsin Hospital and Clinics

Cavalier Johnson
Mayor

Harper Donahue IV
Director

Renee Joos
Employee Benefits
Director

Nicole M. Fleck
Labor Negotiator

Department of Employee Relations

January 11, 2023

Steve Peters, Chair
Worker's Compensation Advisory Council
201 E. Washington Ave. Room 100
Madison, WI 53703

City of Milwaukee is submitting comments regarding the Amendment of State Statute 102.17(9)(a) (b) changing the conditions of liability for worker's compensation benefits to include presumptive PTSD benefits without meeting the extraordinary stress standard for emergency medical services, medical responders, volunteer firefighters, correctional officers, emergency dispatchers, coroners, coroner staff and medical examiner staff that is currently proposed. Currently, the law states a mental claim for PTSD which is not accompanied by a physical injury must demonstrate unusual stress of greater dimensions than the day-to-day emotional strain and tension experienced by all similarly situated employees.

The City of Milwaukee shares your commitment in providing ongoing health and wellbeing services to our employees. Specifically, the emergency dispatchers for both the Milwaukee Fire Department and the Milwaukee Police Department – Telecommunications Division. In our commitment to support the dispatchers, the following access to supportive services have been provided in the past and continue on an ongoing basis with our wellness partners:

1. Extensive training and scripting of the most frequent types of emergency calls and how to best respond to them.
2. Incremental breaks scheduled to allow for mental decompression (approximately 10 minutes each hour in addition to a 20-30-minute lunch break).
3. A quiet room with a window, blinds and door for privacy, a sofa, couch, TV, blankets, and phone. Rest or naps are available when appropriate to the dispatchers. A separate full kitchen break area is also available.
4. Shifting assignments from call takers (managing calls with the public) to dispatchers (managing staff assignments, resources and support of first responders in the field).
5. Availability to Employee Resources Program Services with dedicated staff who offer counsel and support and provide on-site services and benefits to dispatchers and first responders. Wellness sessions and presentations are routinely offered and customized to the unit that requests that type of support and service.
6. Access to departmental Peer to Peer programs in which representatives of all units support one another through stressful and unexpected encounters.
7. Critical incident debriefings with first responders are offered. Command staff or Inspectors contact the dispatcher to participate in the debriefing. The Safety and Health Officer and Peer Fitness Trainer also meet with dispatchers to review and discuss mental health wellness and options for additional services within the organization.

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Department of Employee Relations

Cavalier Johnson
Mayor

Harper Donahue IV
Director

Renee Joos
Employee Benefits
Director

Nicole M. Fleck
Labor Negotiator

8. MPD has an onsite departmental psychologist who is available to meet with and support the dispatchers.
9. UnitedHealthcare has an onsite nurse liaison available for confidential consultations.
10. The Wellness Program, staffed by Medical College of Wisconsin and Froedtert, provide onsite wellness options and coaching to encourage work life balance and a sense of wellbeing. This includes health coaching sessions as well as various health and stress management programs and services.

We acknowledge, many employees work in a high stress environment in which the standard is not being adjusted.

In a recent review of archived City of Milwaukee worker's compensation claims, we found no stress or PTSD claims reported by a dispatcher for the last 20 plus years. While there have been no claims filed for PTSD for dispatchers, this amendment would encourage or advance filing these types of claims in the future. The PTSD standard for first responders is appropriately different since they are dealing with crisis intervention on the front lines and in the presence of the public and our community. Whereas, dispatchers are typically functioning in support of the first responder activities.

It is unclear what fiscal and organizational impact this would have on the day to day operations of managing the emergency services lines that support City of Milwaukee communities. However, at the very least, the City of Milwaukee anticipates this change will contribute to difficulties staffing and supporting this critical operation. In addition, given the comprehensive internal support provided to these positions and the past claim history, the City does not feel this change is warranted.

Of note, this is an expansion to an existing bill providing additional unfunded employee benefits to this job classification.

We formally request that the same employment exception apply to this bill. There are exclusions built into the language which would impact the "presumptive" PTSD stress claim. This includes mental injury which may not be in result of the following actions taken in good faith by the employer:

1. Disciplinary action
2. Work evaluation
3. Job transfer
4. Layoff
5. Demotion
6. Termination

The City of Milwaukee requests that the language regarding "good faith investigation" added to this bill.

For additional questions, contact Nilsa Rosado-Jurkiewicz at 414.286.3510.

January 11, 2023

Steve Peters, Chair
Workers' Compensation Advisory Council
201 E Washington Ave, Room C100
Madison, WI 53703
WCAdvisoryCouncil@dwd.wisconsin.gov

RE: Possible Statute Changes | Workers' Compensation Act

Dear Mr. Peters,

Thank you for allowing Healthesystems the opportunity to submit comments on possible changes to the Wisconsin Workers' Compensation Act for the upcoming agreed bill. We are a pharmacy and ancillary medical benefits manager supporting large national carriers, regional insurers, self-insureds, state insurance funds, and third-party administrators. To support the Workers' Compensation Advisory Council (WCAC), we would like to submit feedback on issues that remain top cost drivers for the workers' compensation system. Our comments will focus on opioids and physician dispensing while providing reimbursement strategies for repackaged drugs, compounds, and co-packaged drug kits.

Opioids

Opioid utilization has seen a downward trend in the last few years because of successful policies, prevention, and education used to help combat the opioid epidemic. Contributing reasons include the many states that have reduced the threat by adopting opioid prescribing guidelines, mandatory access of Prescription Drug Monitoring Programs and limitations on daily supply and morphine equivalent dose (MED). Wisconsin's Medical Examining Board established Opioid Prescribing Guidelines that were published in April 2018[1]; however, these are not contained within the agency rules and are non-binding on workers' compensation claims. Since these policies are already vetted and accepted by the Wisconsin Medical Board, we recommend implementing the same guidelines which relate to opioid limits including morphine equivalent thresholds at 50 MED that could help further reduce opioid utilization and improve overall patient outcomes and return to work.

Physician Dispensing

Adopting payment policies that set reasonable limits on physician dispensing go a long way to improving patient safety and controlling costs. Healthesystems aims to ensure injured workers have broad access to medications from the start of their claim and understands it is convenient for an injured worker to leave the physician's office with medications in hand. However, there are significant concerns related to patient safety when physician dispensing happens beyond the initial visit, and this is the primary reason to limit physician dispensing. Physician office-based dispensing systems often lack the built-in safeguards offered by retail pharmacies and the pharmacy benefit managers (PBMs) that connect with

[1] https://dsps.wi.gov/Documents/BoardCouncils/MED/MEBGuideline.pdf

those pharmacies. This connectivity is where the pharmacist and the payer, through their PBM, are best equipped to catch drug-drug and drug-disease interactions, drug duplications and state specific limits on medication quantities. The use of a pharmacy also ensures an alert is received if refills are dispensed too soon, a red flag which signals the patient may be using the medications improperly. These checks and balances occur before the medication is in the patient's hand, but only when medications are dispensed in a pharmacy. Considering this, we would like to propose the following policies:

1. Require prior authorization for physician dispensed medication in an outpatient setting.
2. Permit physician dispensing only during the initial visit within 10 days following a work injury.
3. Limit the days' supply for any physician dispensed medication to 7 days.

We feel these recommendations would allow an injured worker ample time to visit a retail pharmacy and allow patients to receive medications with the oversight of a pharmacist in a retail pharmacy setting. Physician dispensing may make sense in very specific situations such as when a patient lives in a rural area or there is an emergency; however, these are the exceptions rather than the rule. With more than 1200 retail chain and independent pharmacies in the state, injured workers have no shortage of places to get their medications. Many states such as Arizona, Colorado, Oklahoma, Tennessee, and Texas have already adopted these policies to help improve patient care and reduce costs.

Repackaged Drugs

Another industry concern is the abusive billing and reimbursement practices related to repackaged medications. These types of medications are taken from their original packaging and then repackaged into uncommon unit sizes with a new National Drug Code (NDC) and new average wholesale price (AWP) assigned to them. These drugs are then subject to a significant mark-up from the original labelers' AWP price. Trade publications and industry groups have reported extensively on these often-inflated costs and most states have now adopted some legislation, regulation, or guidance to help stamp out abusive practices related to these drugs. The most common approach taken by states is to apply an AWP based reimbursement formula and to tie it to the original manufacturer's NDC for repackaged drugs. We would like to recommend that WCAC adopt a policy that will help to clarify and explicitly state how repackaged drugs should be reimbursed. This change could help serve the payer and provider communities by reducing payment disputes and administrative costs associated with resubmissions and appeals on repackaged medication bills. We would like to recommend same or similar language that was originally proposed in AB-711 WC Agreed Bill for 2014 that states:

> "If a prescription drug dispensed for outpatient use by an injured employee is a repackaged prescription drug, the liability of the employer or insurer for the cost of the repackaged prescription drug is limited to the average wholesale price of the prescription drug set by the original manufacturer of the prescription drug, except that if the National Drug Code number of the prescription drug as packaged by the original manufacturer cannot be determined from the billing statement submitted to the employer or insurer, that liability is limited to the average wholesale price of the lowest−priced drug product equivalent. That limitation of liability, however, does not apply to a repackaged prescription drug dispensed from a retail, mail−order, or institutional pharmacy."

Compounds | Co-Packaged Drug Kits/Convenience Packs

Compound medications can drive up medical costs without any evidence of reported medical benefit to the injured worker. They are not FDA approved and are not tested for safety or efficacy. These factors

present risks to patients and why compounds are never recommended as a first line treatment. All private, public and government health plans, including BadgerCare, specifically exclude compounded drugs from coverage where there is a commercially manufactured drug product available. It is well documented in reports from WCRI and NCCI studies on workers' compensation medical costs, that compounded products are excessively priced in comparison to their FDA-approved equivalents and are an unnecessary cost driver.

Another cost driver we see in workers' comp is for co-packaged drug kits/convenience packs. These kits/packs are two or more products packaged together and sold as a convenience item which makes them another highly marked up item which is being exploited by a lack of guidance. They are not the same as a repackaged drug; however, they are similar because they begin with one or more original medications and are placed into a new box. They can be paired with a medical supply or a second medication. Once they are newly packaged, they are assigned a new NDC and a new marked up AWP price and often, this new price is 200-1000% above the cost of the two items inside the box. For example, a $120 tube of diclofenac tablets is packaged in a kit with a $20 tube capsaicin cream and is priced at $3,600. Many times, a single medication is boxed with an application swab or a sterile gauze pad which costs pennies to produce.

To help manage costs for compounds and co-packaged drug kits/convenience packs, Healthesystems recommends requiring prescribers to first seek preauthorization. When medically necessary, they would be reimbursed at no more than the rate established by §102.425 (3)(a) which would be applicable to the individual products contained therein. Ingredients with no NDC and/or supplies that are incidental to the package, such as gloves, gauze, bandages, and syringes would not be integral to the medication itself and should not be separately reimbursed. We do recognize that some injured workers may have unique medical needs which might require them to need a compounded drug or convenience drug kit; however, with a preauthorization requirement, injured employees will still be able to get those medically necessary drugs, while insulating the employer from the often-inflated costs associated with these items.

Prescription Drug Pricing Source

Our last comment pertains to the data source for Average Wholesale Price (AWP) data. Currently, section §102.425 Prescription and nonprescription drug treatment of the Worker's Compensation Act, limits the liability cost of an employer/insurer to AWP as quoted in Red Book. While we support the use of Red Book, this language has not been amended in many years and we recommend the citation be updated to reflect the current name and publisher; Merative Micromedex Red Book, published by IBM. We also recommend including Medi-Span PriceRx, published by Wolters Kluwer as an authorized data source for AWP pricing. AWP data is self-reported from the manufacturer to both publishers, the drug prices are identical between the two sources; however, Medi-Span is more widely used by pharmacies, PBMs, and bill review systems for claim adjudication and clinical support. Medi-Span has a proprietary generic product indicator which helps PBMs and pharmacies to standardize drugs by class, provides support for generic and therapeutic substitutions as is required in §102.425 (2)(a) and other clinical utilization management tools used by both the pharmacist and the payer. For this reason, Healthesystems recommends the inclusion of Medi-Span PriceRx and Red Book as the official data sources for AWP.

As always, Healthesystems would like to thank you for the opportunity to submit recommendations for changes to the Workers' Compensation Act. We fully support the agreed bill process and the Council's mission to establish a stable and widely supported workers' compensation system that serves injured workers, employers, and other stakeholders that facilitate the injured worker's needs.

Sincerely,

Tiffany Grzybowski

Tiffany Grzybowski
Analyst, Advocacy & Compliance
Healthesystems, LLC.

Worker's Compensation Advisory Council - Public Hearing

To: Steve Peters, Chair

Worker's Compensation Advisory Council

201 E Washington Avenue, Room C100

Madison, WI 53703

Problem:

Worker's compensation fraud.

The State of Wisconsin does not seem too concerned about worker's compensation fraud.

There are few to zero prosecutions for worker's compensation fraud.

Suggestions:

Examine Wis. Stat. s. 102.125 Fraud reporting, investigation, and prosecution.

Require DWD WC to create an annual report focused on worker's compensation fraud.

Require DWD WC to report how many results of investigations were referred to WI DOJ or district attorneys each year.

Require insurance carriers to report suspected payroll fraud to DWD WC.

Require DWD WC to examine claims data for suspected fraud being committed by medical providers.

SPECIAL INTERESTS SHOULD NOT RECEIVE UNIQUE WORKER'S COMPENSATION BENEFITS.

FULLY REFORM THE COMPENSABILITY STANDARD FOR MENTAL INJURIES NOT ACCOMPANIED BY PHYSICAL INJURIES.

EXTEND TO ALL EMPLOYEES THE COMPENSABILITY STANDARD FOR MENTAL INJURIES NOT ACCOMPANIED BY PHYSICAL INJURIES THAT CURRENTLY ONLY APPLIES TO LAW ENFORCEMENT OFFICERS AND FULL-TIME FIRE FIGHTERS.

CONDUCT A STUDY TO IDENTIFY WORKPLACES WHERE MENTAL INJURIES NOT ACCOMPANIED BY PHYSICAL INJURIES ARE COMMON.

DO MORE TO MAKE WI WORKPLACES SAFER.

DO MORE TO REDUCE WORKPLACE INJURIES.

PEOPLE ARE SUFFERING IN SILENCE.

IT TAKES MANY MONTHS TO HAVE A HEARING ON A DISPUTED WORKER'S COMPENSATION CLAIM.

THIS WAITING PERIOD UNJUSTLY BURDENS THE INJURED WORKER, WHO NEEDS INCOME TO SURVIVE.

THIS WAITING PERIOD UNJUSTLY BENEFITS THE INSURANCE CARRIER, WHO AVOIDS PAYING COMPENSATION.

CREATE A TIME STANDARD FOR CONDUCTING HEARINGS.

CREATE A FASTER HEARING PROCESS FOR RESOLVING DISPUTED WORKER'S COMPENSATION CLAIMS.

CREATE AN ONLINE DASHBOARD DISPLAYING THE CURRENT WAITING TIME FOR A HEARING.

CREATE AN ONLINE DASHBOARD THAT DISPLAYS THE OUTCOMES OF DISPUTED CLAIMS HEARINGS.

TOO MANY WI EMPLOYERS DO NOT CARE ABOUT WORKER'S COMPENSATION REQUIREMENTS.

DWD MAILS OUT TENS OF THOUSANDS OF LETTERS TO UNINSURED EMPLOYERS EACH YEAR.

MAILING TENS OF THOUSANDS OF LETTERS EACH YEAR IS INEFFICIENT AND EXPENSIVE.

CONDUCT A STUDY TO IDENTIFY WHICH BUSINESSES AND PROFESSIONS FREQUENTLY FAIL TO SATISFY WORKER'S COMPENSATION REQUIREMENTS.

CONDUCT A TARGETED OUTREACH CAMPAIGN FOCUSED ON BUSINESSES AND PROFESSIONS THAT FREQUENTLY FAIL TO SATISFY WORKER'S COMPENSATION REQUIREMENTS.

CONDUCT AN OUTREACH CAMPAIGN FOCUSED ON EDUCATING NEW BUSINESSES ABOUT WORKER'S COMPENSATION REQUIREMENTS.

CREATE A SAFE-HARBOR RULE THAT ALLOWS EMPLOYERS DURING A LIMITED PERIOD OF TIME TO PROSPECTIVELY PUT MONEY IN A TRUST FOR WORKER'S COMPENSATION INSURANCE IN EXCHANGE FOR AVOIDING FINES.

From: john edmondson <je@ntd.net>
Sent: Monday, January 16, 2023 10:02 PM
To: Peters, Steve M - DWD <steveM.peters@dwd.wisconsin.gov>
Cc: john@staffordneal.com; ay.clausen@clausenandseverson.com
Subject: 2023 WCAC Proposals

January 16, 2023

Mr. Steve Peters
Administrator
Wisconsin Worker's Compensation Division
201 E. Washington Ave.
Madison WI 53702

re: 2023 WCAC Proposals

Dear Mr Peters:

Please present this proposal to the WCAC for their consideration:

The 2017 WCAC *Agreed Bill* provided for increase in the maximum weekly compensation rate for permanent partial disability (PPD) from $362 to $382 for injuries occurring before January 1, 2019, and to $407 for injuries occurring on or after that date. Our Republican controlled legislature failed to pass that bill. Instead the PPD rate remained static for an unprecedented 6.3 years (Jan.1, 2017 - April 10, 2022), then only rising to $415 as of April 10, 2022.

The 2017 WCAC *Agreed Bill* also provided for bringing an additional two years worth of permanently and totally disabled workers into the supplemental benefit program and increase the index number therein from $669 to $711. Since the failure of that bill to become law, the WCAC has also failed multiple times to propose reviving that increased benefit to permanently and totally disabled workers.

However, there has been some great news for businesses / employers during this time frame! In July of 2022, the Department of Workforce Development announced that " Wisconsin companies will pay 8.47 percent less in worker's compensation insurance rates starting October 1, 2022." This latest reduction in premiums is expected to save Wisconsin employers around $146 million during the next year. This reduction is the 7th straight year in a row where rates decreased and an overall rate decrease during that time period of 35%! The total savings to Wisconsin employers during these seven years has to easily run in excess of a billion dollars.

It seems apparent to even the casual observer that a fair amount (or more accurately…an *unfair* amount) of this billion dollars in savings has come at the expense of the injured workers of this state who have failed to obtain years and years of modest increases in benefits that would have historically been provided. Those modest increases were routinely provided by the WCAC when it was operating as a fair arbiter between the needs and wants of employers and injured workers.

Something is terribly wrong within our State to allow these unprecedented inequities to now become the norm for our system that develops and produces our worker's compensation laws. Changes must be made.

We propose that the WCAC provide for: (1), an automatic formula for annually increasing PPD benefits and (2), an automatic schedule bringing an additional number of permanently and totally disabled workers into the supplemental benefit program while also providing for regular periodic increases in those benefits.

We do not know what can be done to remedy the wrong done to the tens of thousands of permanently disabled Wisconsin workers from the past decade, but a WCAC with a true conscience would give serious consideration to finding a way to right that wrong. Those people are more than mere statistics; they are actual people with real lives and families, real problems, and real pains and real disabilities incurred while doing their best to make their employers successful and profitable. They have been treated unfairly. Please do not allow that to become the new Wisconsin tradition.

Sincerely,

Attorney John Edmondson
Edmondson Law Office
Appleton, WI

Attorney John D. Neal
Stafford, Neal and Soule SC
Madison, WI

Attorney Raymond Clausen
Madison, WI

WISCONSIN ASSISTED LIVING ASSOCIATION

January 16, 2022

VIA E-MAIL @ WCAdvisoryCouncil@dwd.wisconsin.gov

Steve Peters, Chair
Worker's Compensation Advisory Council
201 E. Washington Avenue, Room C100
Madison, WI 53703

RE: Wisconsin Worker's Compensation Advisory Council – Worker's Compensation Laws Input

Dear Mr. Peters:

Thank you for allowing us the opportunity to submit input as it relates to the next slate of recommended legislative changes to Wisconsin's Worker's Compensation laws.

My name is Mike Pochowski and I am the President and CEO of the Wisconsin Assisted Living Association (WALA). We are a statewide association representing Wisconsin's assisted living profession with over 1,500 member facilities. These facilities employ tens of thousands of caregivers and staff, who care for approximately 20,000 elderly individuals and those with disabilities.

We have a number of suggestions for your consideration.

Statutory Minimum PPD Ratings

We would suggest the removal of the statutory minimum permanent partial disability (PPD) ratings for joint replacements – currently averaging 40%-50%. Due to the medical advancements in joint replacements, we believe these high payouts are incongruent with the rest of Wisconsin's PPD rating methodology, which is based upon individual disability rather than an arbitrary minimum.

Payment of Wages by Employer

Adding "self-insured" into 102.17(4)(c) which would then state, "Payment of wages by the ***self-insured*** employer during disability or absence from work to obtain treatment shall be considered payment of compensation for the purpose of this section if the employer knew of the employee's condition and its alleged relation to the employment." Doing so would help delineate between when an employer makes a payment of wages versus an insurer.

Regulatory Clarification - DWD 80.32(11)

We are hoping for clarification on the Wisconsin Department of Workforce Development (DWD) regulations, in particular, 80.32(11) which states "Compression fractures of vertebrae of such degree to cause permanent disability may be rated 5% and graded upward." It is unclear why this only pertains to compression fractures and where the 5% rating came from.

What is "Material" Contributory Causative Factor

There seems to be conflicting information and it would be helpful to define what a "material" contributory causative factor is and how the five percent rule relates. For example, there are multiple Labor & Industry Review Commission (LIRC) rulings that specify job duties only need to contribute 5% toward a condition in order to be considered a material contributory causative factor. Therefore, it would be helpful to have a clear definition of "material" contributory causative factor.

Compromise Agreements – Eliminate the 100 Weeks of Disability in Dispute Requirement

Unfortunately, there can be some discrepancy amongst decisions made by Administrative Law Judge (ALJ), the Office of Worker's Compensation Hearings (OWCH), and the Department of Workforce Development (DWD). For example, while there is no statutory requirement, settlement agreements are required to include 100 weeks of Disability in Dispute provision. We believe this comes from a previous ALJ ruling and later put into a formalized memorandum. A discrepancy in decisions causes ambiguity and uncertainty with settlement agreements. Therefore, we believe a statute should be implemented that defines the compromise agreement approval process.

Interest Credit for Lump Sum Payments – Undisputed Claims

Allow for "interest credit" for lump sum advancement payments issued by an insurer in undisputed cases. When a claim is undisputed, it should not need approval of OWCH and DWD. Insurers should be able to make agreed upon payments to claimants without regulatory hurdles while including an interest credit.

Employer Directed Care

The statutes should be modified to allow employer directed care for the first 90 days of treatment – not including emergency medical care. In this instance, employers could provide to an injured employee a list of authorized health care providers to provide care for their injury(ies). For example, the list could include at least four health care providers in different specialties who are geographically accessible to the injured employee. The statute could also allow the employee to select a "first choice" treatment provider after 90-day employer directed care is concluded.

Treatment guidelines in lieu of Medical Fee Schedule

Establish medical treatment guidelines for specific injuries in Wisconsin based upon Official Disability Guidelines (ODG) or another appropriate national model. Health care providers would be mandated to follow these guidelines unless pre-authorization is received from the insurer. This would be a seamless process for both the injured employee and the insurer, particularly during employer-directed care for the first 90 days.

Hearing Applications filed Pro Se or by Counsel need to be accompanied with a valid WKC-16B Report from Physician, Podiatrist, Surgeon, Psychologist or Chiropractor (102.17(1)(d)(1))

Requirement that a Hearing Application cannot be filed by a Pro Se Employee or Applicant's counsel unless accompanied with a valid WKC-16B Report from a treating physician, podiatrist, surgeon, psychologist or chiropractor. Mere certified medical records should not be sufficient support to file a

hearing application. Oftentimes, cases sit for months in litigation with no valid medical support, and many are ultimately dismissed for lack of medical support. Making this change would allow claims to be heard more timely and appropriately.

Thank you for your consideration and please let me know if you have any questions.

Sincerely,

Michael S. Pochowski
President & CEO

WIA

Wisconsin Insurance Alliance
44 East Mifflin Street • Suite 901
Madison, Wisconsin 53703
(608) 255-1749 FAX (608) 255-2178
www.wisinsalliance.com

January 18, 2023

Steve Peters, Administrator
Worker's Compensation Division
201 E. Washington Avenue
Madison, WI 53702

Dear Mr. Peters:

The Wisconsin Insurance Alliance (WIA) is a state trade association of property and casualty insurance companies. Our membership ranges from some of the largest property and casualty insurers in the country to some of the smaller Wisconsin town mutual insurance companies.

In preparation for the 2023-24 legislative session, we present the following items to be considered by the Worker's Compensation Advisory Council.

As has been the case for the past two decades, total medical costs continue to be a challenge in what is arguably one of the nation's best worker's compensation systems and markets. The council has in the past proposed medical cost containment measures, only to have the state legislature reject those important and meaningful reforms. In addition to continuing to support broad medical cost containment initiatives, we offer the following proposals:

- If there is no cost containment, allow employers/carriers the ability to provide options to injured workers and direct medical care for the first 90 days, thus providing proper and immediate work injury expertise to injured workers by the many qualified medical providers in the state.
- If both parties are represented by counsel, the Department and Division of Hearings and Appeals shall approve compromise agreements as submitted by the parties, subject to the following: the calculation of accrued benefits; the requirement of a restricted account and appropriateness of attorney fees and costs.
- Amend Permanent and Total Disability payments by setting a limitation to the number of weeks or set a presumptive age of retirement, such as ending eligibility at "old age" social security.
- Adopt appropriate utilization review standards to address consistent outliers in the medical provider community. As an example, Illinois 820 ILCS 305/8.7 provides a workable solution (included).

The Wisconsin Insurance Alliance appreciates the opportunity to submit matters for consideration by the council and we remain committed to WCAC "agreed bill" process to ensure a balanced worker's compensation system.

Sincerely,

Andrew J. Franken

Andrew J. Franken
President

§ 8.7. Utilization review programs.

(a) As used in this Section:

"Utilization review" means the evaluation of proposed or provided health care services to determine the appropriateness of both the level of health care services medically necessary and the quality of health care services provided to a patient, including evaluation of their efficiency, efficacy, and appropriateness of treatment, hospitalization, or office visits based on medically accepted standards. The evaluation must be accomplished by means of a system that identifies the utilization of health care services based on standards of care of nationally recognized peer review guidelines as well as nationally recognized treatment guidelines and evidence-based medicine based upon standards as provided in this Act. Utilization techniques may include prospective review, second opinions, concurrent review, discharge planning, peer review, independent medical examinations, and retrospective review (for purposes of this sentence, retrospective review shall be applicable to services rendered on or after July 20, 2005). Nothing in this Section applies to prospective review of necessary first aid or emergency treatment.

(b) No person may conduct a utilization review program for workers' compensation services in this State unless once every 2 years the person registers the utilization review program with the Department of Insurance and certifies compliance with the Workers' Compensation Utilization Management standards or Health Utilization Management Standards of URAC sufficient to achieve URAC accreditation or submits evidence of accreditation by URAC for its Workers' Compensation Utilization Management Standards or Health Utilization Management Standards. Nothing in this Act shall be construed to require an employer or insurer or its subcontractors to become URAC accredited.

(c) In addition, the Director of Insurance may certify alternative utilization review standards of national accreditation organizations or entities in order for plans to comply with this Section. Any alternative utilization review standards shall meet or exceed those standards required under subsection (b).

(d) This registration shall include submission of all of the following information regarding utilization review program activities:

(1) The name, address, and telephone number of the utilization review programs.

(2) The organization and governing structure of the utilization review programs.

(3) The number of lives for which utilization review is conducted by each utilization review program.

(4) Hours of operation of each utilization review program.

(5) Description of the grievance process for each utilization review program.

(6) Number of covered lives for which utilization review was conducted for the previous calendar year for each utilization review program.

(7) Written policies and procedures for protecting confidential information according to applicable State and federal laws for each utilization review program.

(e) A utilization review program shall have written procedures to ensure that patient-specific information obtained during the process of utilization review will be:

(1) kept confidential in accordance with applicable State and federal laws; and

(2) shared only with the employee, the employee's designee, and the employee's health care provider, and those who are authorized by law to receive the information. Summary data shall not be considered confidential if it does not provide information to allow identification of individual patients or health care providers.

Only a health care professional may make determinations regarding the medical necessity of health care services during the course of utilization review.

When making retrospective reviews, utilization review programs shall base reviews solely on the medical information available to the attending physician or ordering provider at the time the health care services were provided.

(f) If the Department of Insurance finds that a utilization review program is not in compliance with this Section, the Department shall issue a corrective action plan and allow a reasonable amount of time for compliance with the plan. If the utilization review program does not come into compliance, the Department may issue a cease and desist order. Before issuing a cease and desist order under this Section, the Department shall provide the utilization review program with a written notice of the reasons for the order and allow a reasonable amount of time to supply additional information demonstrating compliance with the requirements of this Section and to request a hearing. The hearing notice shall be sent by certified mail, return receipt requested, and the hearing shall be conducted in accordance with the Illinois Administrative Procedure Act.

(g) A utilization review program subject to a corrective action may continue to conduct business until a final decision has been issued by the Department.

(h) The Department of Insurance may by rule establish a registration fee for each person conducting a utilization review program.

(i) Upon receipt of written notice that the employer or the employer's agent or insurer wishes to invoke the utilization review process, the provider of medical, surgical, or hospital services shall submit to the utilization review, following accredited procedural guidelines.

(1) The provider shall make reasonable efforts to provide timely and complete reports of clinical information needed to support a request for treatment. If the provider fails to make such reasonable efforts, the charges for the treatment or service may not be compensable nor collectible by the provider or claimant from the employer, the employer's agent, or the employee. The reporting obligations of providers shall not be unreasonable or unduly burdensome.

(2) Written notice of utilization review decisions, including the clinical rationale for certification or non-certification and references to applicable standards of care or evidence-based medical guidelines, shall be furnished to the provider and employee.

(3) An employer may only deny payment of or refuse to authorize payment of medical services rendered or proposed to be rendered on the grounds that the extent and scope of medical treatment is excessive and unnecessary in compliance with an accredited utilization review program under this Section.

(4) When a payment for medical services has been denied or not authorized by an employer or when authorization for medical services is denied pursuant to utilization review, the employee has the burden of proof to show by a preponderance of the evidence that a variance from the standards of care used by the person or entity performing the utilization review pursuant to subsection (a) is reasonably required to cure or relieve the effects of his or her injury.

(5) The medical professional responsible for review in the final stage of utilization review or appeal must be available in this State for interview or deposition; or must be available for deposition by telephone, video conference, or other remote electronic means. A medical professional who works or resides in this State or outside of this State may comply with this requirement by making himself or herself available for an interview or deposition in person or by making himself or herself available by telephone, video conference, or other remote electronic means. The remote interview or deposition shall be conducted in a fair, open, and cost-effective manner. The expense of interview and the deposition method shall be paid by the employer. The deponent shall be in the presence of the officer administering the oath and recording the deposition, unless otherwise agreed by the parties. Any exhibits or other demonstrative evidence to be presented to the deponent by any party at the deposition shall be provided to the officer administering the oath and all other parties within a reasonable period of time prior to the deposition. Nothing shall prohibit any party from being with the deponent during the deposition, at that party's expense; provided, however, that a party attending a deposition shall give written notice of that party's intention to appear at the deposition to all other parties within a reasonable time prior to the deposition.

An admissible utilization review shall be considered by the Commission, along with all other evidence and in the same manner as all other evidence, and must be addressed along with all other evidence in the determination of the reasonableness and necessity of the medical bills or treatment. Nothing in this Section shall be construed to diminish the rights of employees to reasonable and necessary medical treatment or employee choice of health care provider under Section 8(a) or the rights of employers to medical examinations under Section 12.

(j) When an employer denies payment of or refuses to authorize payment of first aid, medical, surgical, or hospital services under Section 8(a) of this Act, if that denial or refusal to authorize complies with a utilization review program registered under this Section and complies with all other requirements of this Section, then there shall be a rebuttable presumption that the employer shall not be responsible for payment of additional compensation pursuant to Section 19(k) of this Act and if that denial or refusal to authorize does not comply with a utilization review program registered under this Section and does not comply with all other requirements of this Section, then that will be considered by the Commission, along with all other evidence and in the same manner as all other evidence, in the determination of whether the employer may be responsible for the payment of additional compensation pursuant to Section 19(k) of this Act.

The changes to this Section made by this amendatory Act of the 97th General Assembly apply only to health care services provided or proposed to be provided on or after September 1, 2011.

From: Steve Abrahamson
Sent: Thursday, January 26, 2023 12:36 PM
To: DWD MB WC Advisory Council <WCAdvisoryCouncil@dwd.wisconsin.gov>; Steve Abrahamson
Subject: State statute 102.43(9)(a) needs change

I am contacting you in regards to statute 102.43(9)(a). At the present moment, employers can just cut off TTD/ TPD payments by simply sending in a letter to the state. This HAS to change. Yes, the victim can apply for an appeal that takes months to possibly overturn the employers determination. I whole heartedly believe the employer should go through the same process as the victim and have a judicial hearing to grant the stopping of TTD/TPD payments. This needs to be done so that there are more checks and balances on the employer/third-party handlers/ insurance company lawyers to help prevent a great financial crisis for the injured worker .

Here is my story:

October 30, 2021 I sustained a rotator cuff tear and herniated all discs in my neck while performing work as a grocery selector for capstone logistics. In March of 2022, one of the treating doctors gave me work restrictions of not reaching forward to move or grasp items greater than 48 minutes a day and two lines later stated no restrictions driving. I questioned the employer and doctor about this because the drive one way to work is 25 to 30 minutes so 50 to 60 minutes round trip.
Anyone with common sense can conclude that the doctor is contradictory with the work restrictions but, the employer denies that there is any shoulder functions within the ability to drive thus they claimed that I refused work and cut off TTD/TPD payments.
I was trying to talk sense with their attorney and he refused to return calls and emails. I was using the company call in policy until I was fired April 4, 2022. I continued to try to talk sense to their attorney to no avail. I then researched the law and found I could appeal the employers determination so in September I started the appeal process. There was finally a pre hearing phone conference on December 20, 2022. During that call, the attorney did nothing to remedy the situation. I am still waiting for the actual hearing.
So here I am, defaulting on financial obligations, selling off all prized possessions to make sure there in a roof over my head. Because of the financial stress, my wife contemplated filing for divorce. With all the added stress on top of the injuries, it is hampering the healing process greatly.
In closing, I am willing to come before your council and the DWD committee to testify that the way employers can just stop TTD/TPD payments needs to change. The employer needs to go through a hearing process to be able to stop those payments.

I will be looking forward to your response.

PS

These are long shots but the third party handlers system needs to be outlawed in Wisconsin as well as way over paid IME doctors. The IME doctors should not be paid more than their typical charge when they are at their own office and not the $3000.00 to $6000.00 per injured . If an IME doctor sees 4

people per hour for an 8 hour day at the $3k rate is $96k..... Who do you think will side with? The insurance company that pays him well or the injured who doesn't pay?

From: Lisa Pierobon Mays <lpmays@mayslaw.net>
Sent: Monday, February 13, 2023 4:21 PM
To: Lake, Cathy A - DWD <CathyA.Lake@dwd.wisconsin.gov>
Subject: Advisory Council 2/23/2023

Judge Lake, please pass this request to the February 2023 Advisory Council meeting.

The request for attorney's fee to applicant attorneys for the recovery of unpaid medical bills is not a new idea but it needs to be revisited.

Too many applicants are unrepresented in claims where the lion share of the claim involves unpaid medical bills. Consider the heavy duty mechanic who is diagnosed with bilateral carpal tunnel requiring surgeries, yet suffers no PPD and only a few weeks of TTD until returned to work on restrictions. The medical bills for such surgeries will easily hit $25,000. Under our current law, no applicant attorney will take on this claim for representation because the attorney fee is too minimal on only a few weeks of disputed TTD.

The reality is that **the workers compensation insurance industry wants a more effective system too.** I have spoken to a partner in one of the largest workers compensation defense firms in the State who indicated that it would be welcomed by his insurance clients to have a better system for resolution for unpaid medical bills. This attorney estimated that he alone spends approximately 10hrs monthly @ $170/hr. dealing with pro se applicants and their medical providers trying to resolve unpaid medical bills. Now multiply this out over the other 10 attorneys in his firm practicing workers compensation defense. Compounding this cost, he indicated that he usually only gets the outstanding medical bills reduced by 20% because he does not have the standing and financial knowledge to negotiate on behalf the applicant. He believes that the insurance industry would support an applicant attorney fee for a more efficient resolution of outstanding medical bills because the applicant attorney would have personal knowledge of the applicant's finances if the attorney-client relationship existed.

In sum, I would be happy to present workers compensation counsel representing applicants and respondents to speak further on this issue and answer questions. The time has come to have resolution on this issue. Its costing the insurance industry, and the injured worker too much where an easy resolution can be achieved.

Attorney Lisa Pierobon Mays
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lpmays@mayslaw.net
www.mayslaw.net

Proudly representing Wisconsin's injured worker

Attn: Steve Peters, Chair

Worker's Compensation Advisory Council

201 E. Washington Ave., Room C100

Madison, WI 53703

February 2023

Dear Worker's Compensation Advisory Council,

The worker's compensation system in Wisconsin is not perfect.

Every day employees get hurt on the job in Wisconsin, and far too many employees die on the job in Wisconsin.

The US Bureau of Labor Statistics (BLS) reported that fatal work injuries for Wisconsin totaled 113 in 2019, 108 in 2020, and 105 in 2021. BLS reported that 77 in 2008 was the low and 138 in 1993 was the high for Wisconsin. BLS also reported that fatal work injuries for Minnesota totaled 80 in 2019, 67 in 2020, and 80 in 2021. BLS reported that 60 in 2011 was the low and 113 in 1993 was the high for Minnesota.

Why do so many people die in the workplace in Wisconsin?

Please support amendments to ch. 102 that (1) reduce workplace injuries and deaths, (2) encourage workplace safety, and (3) make Wisconsin a better place for everyone – both to run a business and to work at a business. Please publicly identify specific problems with ch. 102 and find solutions that either solve those problems or make those problems more manageable.

Also, please do more to connect migrant workers in Wisconsin to the worker's compensation system. Many migrant workers are unaware of their rights, do not speak English, and are unfamiliar with navigating complex health systems. If migrant workers are injured on the job, health systems and medical providers should not be forced to categorize provided care as charity care simply because the migrant worker cannot successfully navigate the worker's compensation system.

You have the opportunity to make Wisconsin a better place. Don't waste it.