

04/13/09

**Worker's Compensation Advisory Council
Management Proposal
April 13, 2009**

To prevent further confusion, Management restates its proposal of March 27, 2009, which is presented as a comprehensive proposal.

We propose that indemnity rates be raised, on a go-forward basis, for all statutory PTDs. Rates would be raised to the current levels, with a six-year lag and indexed going forward. Benefits would be payable until death.

This would effectively mean that there are no vocational PTDs, as management is supportive of the dignity of work, not the labeling of individuals as being "permanently and totally disabled." Any claims that do not rise to the level of a statutory PTD would be handled as loss of earning claims.

Further, as part of this proposal, that existing PTDs would have their benefits raised from the current rate in a series of increases – five-year increases every two years until such time as a six-year lag with the then-current rate has been established. At such time as the six-year lag has been established, benefits would be increased annually such that the six-year lag is maintained.

We propose that burial expenses be increased to actual expenses not to exceed \$10,000 but clarify that the burial expenses are payable only to those individuals who are currently or may become PTDs and only if the cause of death is a result of the workplace injury.

Management believes that increases in benefits for workers whose injuries are causally linked to the workplace should receive periodic benefit increases. To that end, we propose increases in the PPD rate in the amount of \$10 for each of two years but eliminate payment of medical expenses or hearing aids for cases where there is no compensable hearing loss and further, that 102.17(4) is amended so as to provide that coverage is provided only if the employee had a prosthetic device implanted within the statute of limitations.

In addition, management seeks language that will clarify and restore the intent of the exclusive remedy protection, proposing the following language. We propose that we:

Re-number s. 102.03 (2), Stats., s. 102.03 (2) (a), Stats., and create a new paragraph in that subsection to include this language:

S. 102.03 (2) (b), Stats., is created as follows;

Paragraph (a) shall apply to an employer subject to this chapter notwithstanding a provision in a public or private contract that requires the employer to indemnify, hold harmless, provide additional insurance, or defend a third party. No provision in a public or private contract that requires an employer subject to this chapter to indemnify, hold harmless, provide additional insurance, or defend a third party is valid.

Management has previously stated that it would have a proposal regarding a medical cost containment system. We propose the following:

Institutionalize the treatment guidelines as treatment parameters (similar to their treatment in Minnesota). The guidelines have been medically reviewed so as to ensure the quality of care that has been at the core of Labor's concerns with any proposal on medical costs. We would further recommend that a committee of providers be established and charged with the responsibility to review the parameters on a regular basis so as to ensure that quality of care remains an important element of the WC system in this state.

This proposal also addressed the Department's concern with the number of necessity of treatment reviews that are being conducted, reducing friction costs in the system.

This system would encourage providers and carriers to map out preferred treatment practices before they are offered, rather than after. This is more typically how the system works in private health insurance and increases the probability that a medical provider will be paid, as the treatment is pre-approved.

Any disputes under the system would still be subject to a Department review, in a system to be established by administrative rule.

Management still believes that there is a strong need to look at medical costs in the system, but agrees with Labor that it is unrealistic to have a fully-developed proposal this session. We continue to maintain that medical costs are an issue for both Management *and* Labor and that both parties should be working with medical providers to craft a proposal in 2011/2012 that addresses this issue.

In an effort to reduce friction costs through the exchange of more information, a notion that is contained in several Department proposals, Management proposes that all claims of bad faith state the basis for the claim with reasonable specificity such that the Department can conduct an initial review of such claims to determine whether there is a probable cause for the claim to proceed.

WC is a wage replacement system. As such, Management believes that wages should be replaced only in those instances when the injured worker is, in fact, eligible to work. As such, Management proposes that disability benefits not be allowed for individuals who are not legally eligible to work (e.g., illegal and/or incarcerated individuals). We believe this will put more resources at the disposal of the system to provide both increased benefits for those eligible to receive them and cost savings to employers. Medical benefits would still be provided for workers who are otherwise ineligible for disability benefits. If there are concerns about possible abuses, they exist on *both* sides, and *that* should be the focus of further discussion.