

**Worker's Compensation Advisory Council**  
**2019 Management proposals for agreed-bill**  
**Submitted May 23, 2019**

Worker's compensation works well in Wisconsin because of the adherence to the agreed-bill process, whereby employers and workers come together to suggest reforms to Wis. Stats. 102 each biennial session, because of the work ethic of Wisconsin workers, because of the commitment to safety by all, and because of the quality of health care in our state.

The management caucus of the Worker's Compensation Advisory Council is proposing reforms that ensure our worker's compensation system remains a well-run operation in the state. Some reforms we are proposing will bring us in line with many other states. Some look at fixing the incredibly high health care costs for worker's compensation claims. Some look to ensure that all parties, employers, workers and the Department of Workforce Development, are playing by a set of rules that make sense and are clear to all parties.

1. **Employer directed care.** Allow employer directed care for the first 90 days of treatment, outside of emergency room care. Allow employers to specify a diverse list of health care providers who are authorized to provide care for injured workers. The list shall include at least 6 health care providers, at least three of whom must be physicians who are geographically accessible and have specialties that are appropriate based on anticipated work-related medical problems of the employees. The list must include contact information and must be posted in a prominent location.
2. **Electronic billing/payments.** Require that all providers caring for worker's compensation patients utilize electronic billing and be able to receive payments electronically.
3. **Electronic medical records.** Require all medical providers caring for worker's compensation patients to transmit medical records electronically.
4. **Treatment guidelines.** Establish treatment guidelines in Wisconsin based on ODG or another appropriate national model. Guidelines must be followed unless pre-authorization is received from insurer.
5. **Fee dispute resolution process.** The Department currently certifies databases for use in the fee dispute resolution process of the amounts health service providers charge for services. We propose instead that the Department certify databases of the average health service fees paid to health service providers. Update Wis. Stat. 102.16 and DWD Administrative Code 80.72 to reflect this database change.
6. **Statute of limitations.** Reduce statute of limitations to 2 years, except that in the case of occupational disease caused by exposure to toxic substances there shall be no statute of limitations, and where an employee's injury that is otherwise undisputed requires a prosthesis or artificial joint, there shall be no statute of limitations as to medically necessary treatment expenses directed to said prosthesis or artificial joint.
7. **Tolling the Statutes.** Past department practice allowed tolling the statutes. This practice was ended by DOA Division of Hearings and Appeals effective March 1, 2017. Amend Wis. Stats. 102 to state that applications will only be accepted by the Department when there is a justiciable controversy.

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8. **Department Policies and Procedures.** Require the Department to update the July 19, 2013 memo entitled "Department Policies and Procedures." Include in the updated memo the Department's statutory authority for each item.
9. **Wage expansion.** Benefits shall be based on actual earnings from the employer where the injury occurred at the time of the injury.
10. **Employee misrepresentation of physical condition.** Prohibit benefits under Wis. Stat. 102 to an injured worker if the worker intentionally made a false statement as to their physical condition after a job offer was made, the employer relied on the misrepresentation and this reliance was a substantial factor in the hiring, and there was a causal connection between the false misrepresentation and the injury.
11. **Worker's compensation denied by another state.** The state of Wisconsin should not accept cases for review that have been denied by other states for cause. Cases that are contesting jurisdiction should be handled by the state, but cases that have been denied in another state for compensability should not be considered in Wisconsin.
12. **No PTD benefits once Social Security old-age assistance benefits begin.** Current law provides for Permanent Total Disability benefits for life. PTD Benefits should be terminated once the injured worker receives Social Security old-age/retirement assistance benefits.
13. **PPD minimum ratings.** Eliminate minimum permanent partial disability ratings from DWD Administrative Code Chapter 80 where surgical treatments have made it such that outcomes result in no permanent disability.
14. **Notice of injury.** All initial reports of injuries must be made by the injured worker to the employer according to the employer's procedures as posted or as outlined in an employee handbook within the current statutorily required timeline of 30 days.
15. **PTD re-evaluation.** An employer or insurer may request an injured worker receiving PTD benefits to have their PTD ratings re-evaluated every three years.
16. **Disability determinations.** Permanent disability determinations must be made by occupational health physicians or other qualified healthcare providers according to statutory guidelines.
17. **Death benefits.** There shall be no death benefit in PTD claims when the death is unrelated to the occupational injury or illness.
18. **Physician Dispensing.** Limit physician dispensing of opioids for a workplace injury to one 7 day supply.
19. **Hearing test.** Require the hearing test completed most proximate to the date of employee removal from a noisy work area as defined by OSHA standards, whether before or after such date and whether the employee is removed by reassignment, quit, termination, or retirement, to be used to establish any loss of hearing claim.
20. **Attorney fees for hearing aids.** Specify that the cost of hearing aids shall be removed from lump sum settlement amounts prior to determining attorney fees.
21. **PEO Reform.** Allow employers to keep their incumbent worker's compensation insurance carrier regardless of their relationship with a PEO for other human resource services.

## Labor Proposals for 2019 Agreed Bill – May 23, 2019

- 1) **Permanent Partial Disability Benefit Maximum Rate:** Increase of approximately 5% per year from the rate established in negotiations for the 2017 agreed bill, which had provided for a maximum rate in 2019 of \$407 per week. That would result in a maximum PPD rate of \$427 for injuries after 1/1/2020, and \$448 for injuries after 1/1/2021.
- 2) **Temporary Disability Benefit:** Increase the rate for Temporary Disability Benefits from 66.67% of Average Weekly Wage to 80% of Average Weekly Wage beginning with dates of injury on or after 01/01/2020.
- 3) **Permanent Total Disability Supplemental Benefit:** Four year bump in eligible dates/rates. Current law provides for those injured prior to 1/1/2003 a supplement to max rate of \$669. A four year bump would take it to injuries prior to 1/1/2007, and increase the maximum benefit to \$777 per week.
- 4) **Scholarships:** Provide for a statutory scholarship benefit for injured worker's children, when a parent's injury causes death or permanent total disability. Scholarship amount for each child would be for the tuition, room and board, and book expense for up to four years at a Wisconsin State University System school, Wisconsin State Technical College System, or certified apprenticeship program of the child's choice.
- 5) **Statute of Limitations extended by payment of medical expense.** Current law, sec. 102.17(4), provides for a statute of limitations of 6 years for traumatic injuries, measured from the date of injury or the last payment of primary compensation (indemnity benefits to worker), whichever is later. Payment of medical expense currently does not extend the statute of limitations. This proposal would add the date of the last payment of medical expense as an additional measurement point for the start of the statute of limitations.
- 6) **Shoulder Replacement, Spinal Fusions:** Amend 102.17(4) to include shoulder replacement (reverse shoulder replacement) as well as spinal fusions as an additional serious traumatic injury with no statute of limitations.
- 7) **Physical Therapy Access:** In order to allow injured workers to go directly to a physical therapist following a work injury and have such treatment paid for under WC, amend 102.17 (1)(d) to allow Physical Therapists to opine on the necessity for PT treatment and causal relationship to injury but would not opine on the extent of disability.
- 8) **Increase Release of Unaccrued Benefits in Compromise Agreements:** Increase the amount of the unaccrued compensation that may be released to the injured worker without restriction in a compromise settlement in pursuant to DWD 80.03(1)(d) from \$10,000 to \$50,000.

- 9) **Eliminate Interest Credit on Advancements:** Amend sec. 102.32(6m) to change the interest credit to insurers for advancements of compensation from the current 5% to zero %.
- 10) **Injured Worker Choice of Third Party Settlements:** Amend sec. 102.29 (third party negligence cases) to change the law from the employer having an equal voice in whether a settlement offer should be accepted to the employee having the right to control the settlement or no settlement decision.
- 11) **Indexing of Permanent Total Disability Rate:** Indexing with 6 year lag. For injuries beginning 1/1/2020, index weekly benefits for permanent total disability or continuous temporary total disability for more than 24 months after the date of injury to the rate in effect at the time the benefit accrues for periods more than six years after the date of injury.
- 12) **Posting of Injured Worker WC Rights:** Require all employers to display a DWD approved poster of WC employee rights at the workplace, including information on opioids and alternative treatments.
- 13) **Continuation of Health Care Coverage:** If during the period of temporary disability an employer fails to continue to provide ongoing group health care coverage for an injured worker, or the injured worker and his dependents if such coverage was provided as of the time of injury, the employee is due an additional benefit equal to 100% of the employer contribution for such group health care that the worker (and his dependents, if applicable) had as of the date of injury. This additional benefit is in addition to any temporary disability benefits due, and is not subject to the maximum TTD rate.
- 14) **Loss of Earning Capacity for Scheduled Injuries:** If a worker suffers a scheduled injury, and if retraining has been attempted but fails to fully restore the injured worker's pre-injury earning capacity, or retraining is not feasible for the injured worker, allow a claim for loss of earning capacity in the same manner as currently allowed for unscheduled injuries.
- 15) **Opioids:** See the attached proposal on opioids and alternative treatments.

Labor reserves the right to amend or add to these proposals as may be necessary during the Agreed Bill process.

# Labor Proposal – Opioids/Alternative Treatments

May 23, 2019

Preamble: Labor's Proposals with respect to Opioids is a two-fold approach: 1) Attempt to manage pain with the best available treatment while trying to minimize the use of opioids when possible; and 2) Deal with the aftermath of the use of opioids in for an injured worker who becomes addicted. Attempting to minimize opioid use without providing for those who have become dependent already on the use of opioids can have disastrous consequences. Labor's proposal discourages the use of hard and fast "rules" and "numbers" with respect to the use and amount of opioids, trusting that a well-informed medical community, guided by caring guidelines for the use of opioids, is the best rule to follow.

- 1) Clarify that no physician/chiropractor referral is needed in WI for treatment with a physical therapist, with current law expanded to allow for a physical therapist able to opine on necessity for treatment and relationship to injury to ensure that the employer/carrier must pay for PT even in the absence of a physician referral.
- 2) Limit physician *dispensing* of opioids for a workplace injury to a 7-day supply per claim. Opioids *dispensed* by a physician beyond a 7-day supply shall be deemed to be unnecessary treatment per 102.16(2m). Note that this limitation is for *dispensing*, but does not limit a physician's ability to *prescribe* opioids for any reasonable and necessary time frame.
- 3) All medical providers should use "good judgment" in the use of opioids. As highlighted by recent medical news, hard and fast "rules" have been used too often to discontinue opioids inappropriately. As the medical community continues to grapple with the opioid issue, physician's are encouraged to carefully review the latest literature and recommendations on the use and discontinuance of opioids, as reflected by the latest "Wisconsin Medical Examining Board Opioid Guideline – January 16, 2019", attached, which may be found at <https://dsps.wi.gov/Documents/BoardCouncils/MED/20190116MEBGuidelinesv9.pdf>
- 4) Educate injured workers that "alternative treatment" for chronic pain, in lieu of or in combination with medication, is a medical expense that may be reasonably required to cure and relieve from the effects of the injury and a covered medical expense under the WC Act.

- a. "Alternative treatments" for chronic pain other than medication may include, but are not limited to, manipulation therapy, electrical stimulation, chiropractic care, massage, trigger point injections, dry needling, acupuncture, acupressure, suction (cupping), virtual reality therapy, and psychological treatment.
  - b. "Alternative treatment" for chronic pain may include, but is not limited to, medication alternatives to opioids, such as Acetaminophen, anticonvulsants, topicals, interventional (epidurals, nerve blocks), lidocaine or ketamine infusions, and medical marijuana.
- 5) If an injured worker is prescribed opioids by a treating physician, and the employer/insurer obtains an IME opinion that opioids are not needed, the following shall apply:
- a. Any IME opinion regarding the cessation of opioid medications MUST contain:
    - i. A discussion of "alternative treatments" other than opioid medication for the treatment of the injured worker's pain, and if opining that "alternative treatments" are also unnecessary, an explanation as to why alternatives are unnecessary;
    - ii. A proposed plan of discontinuation of opioid therapy consistent established medical guidelines. No "cold turkey" discontinuation of opioids is ever a reasonable treatment plan.
    - iii. That if the IME opines that the injured worker has developed behaviors indicative of opioid use disorder, affirmatively offer to pay for, and assist the worker in locating and obtaining, addiction treatment therapy at a facility of the patient's choice.
  - b. The employer/insurer shall advise the employee that currently prescribed opioids will be continued to be paid by the employer/insurer for no less than 30 days from the date the IME opinion is received by the injured worker, or 30 days from the completion of an expedited mediation conference as set forth below, whichever is later;
  - c. The employer/insurer shall advise the employee of the right to have an expedited mediation conference with an ALJ to discuss the employee's options regarding opioid use, including the right to continue to rely upon his treating physician's recommendations for continued opioid use and to have a hearing on the issue of continued opioid therapy, "alternatives treatments" to opioid use, and the injured worker's right, if they elect to discontinue opioid use, to all necessary medical treatment, including medical and psychological treatment for addiction.
    - i. The Department shall expedite all requests by an injured worker for an opioid mediation conference, with a goal of a conference within the 30 day continued prescription payment period. Should a mediation be requested by the employee but is not held within the 30 day period, the employer/insurer

shall continue to pay for prescribed opioids until a mediation is held.

- 6) Educate injured workers regarding opioid therapies, opioid addiction, and alternatives treatments by providing a mailing to injured workers. The mailing should include language that if one becomes addicted to opioid medications due to a work injury, all reasonable and necessary medical care for the injury includes addiction treatment. Provide information regarding opioid treatment and addiction on the posting of WC rights.