

## WI Worker's Compensation System Update: Applicant Perspective

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### I. Advisory Council Update

#### A. Historical notes.

- Statutorily recognized in 1975, but in existence informally for decades, the Wisconsin Worker's Compensation Advisory Council (WCAC) advises the workers' compensation agencies, both Dept. of Workforce Development (DWD) and Dept. of Administration, Div. of Hearings & Appeals (DHA), and legislature on policy matters concerning the development and administration of the worker's compensation law. (Wis. Stat. § 102.14(2)). The WCAC aims to maintain overall stability of the worker's compensation system for all stakeholders without regard to partisan changes in the legislative or executive branch of government.
- WCAC composition: five management, five labor, and three non-voting insurance members appointed by the secretary of DWD and chaired by employee of the DWD. Public hearings held throughout the state. Historically, WCAC produced a biennial "agreed upon" bill, which is then submitted to legislature, which generally, until 2014, accepted the WCAC bill without exception.

#### B. Recent Challenges for Council Bills.

- **2013-2014** Agreed Bill: *Not* Passed by Legislature (Fee schedule proposed)
  - Among other provisions, 2014 Agreed-Upon bill included a medical expenses fee schedule and health insurance continuation for injured workers. Amidst primary lobbying by medical community, Council bill never passed labor committee, so legislature held no vote.
- **2015 Budget Battle:** Severing of efficient one-stop-shop WC system. Budget proposal *not* submitted to WC Advisory Council.

- Traditionally, WC system was unified “one-stop-shop” within the WC Division of DWD agency. Administrative Law Judges (ALJs) worked within Department and in close connection with claims management, dispute resolution, and all other staff. Judges, trained experienced attorneys in WC, had the benefit of 100+ years of case law and Department policy to guide and direct claims administration.
  - Independent national studies showed WI’s unified WC structure as a major factor in the beneficial metrics of the system compared to the rest of the country.<sup>1</sup>
  - Governor’s 2015 Budget Bill proposal was to remove and break-up the WC Division from the DWD and separate the “adjudicatory” functions (i.e., ALJs) to a new agency and move the “administrative” functions to another agency. Lobbying efforts commenced by various organizations.
  - What happened?: ALJs moved to new agency, while the administrative functions/personnel remained at DWD. Effective January 1, 2016,<sup>2</sup> the majority of ALJs were transferred to the DOA-DHA, Office of Worker’s Compensation Hearings (*OWCH*). These ALJs were tasked with the “adjudicatory” functions and to hear and decide litigated WC cases.
- **2015-2016 Agreed Bill: *Passed* legislature (No fee schedule)**
    - Non-traditional legislative procedure as there were two competing WC legislative proposals in 2015-2016:
      - 1) One bill (2015 AB-724) came from Council and was unanimously agreed to by members of labor and management—which included the WI Manufacturers and Commerce. This bill produced reforms that included increases in compensation benefits to workers, as well as some employer-friendly provisions like benefit denial if an injury is caused by violation of alcohol or drug policy, limiting lost time benefits if there is a termination for misconduct, and PPD apportionment. Notably, the Council bill did *not* include a medical fee schedule.

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<sup>1</sup> See *WCRI: CompScope™ Benchmarks for Wisconsin, 14th Edition* (Belton, 2013); *WCRI: Factors Influencing Return to Work: Lessons from Pennsylvania and Wisconsin* (Belton, 2011); *WCRI: Reducing Litigation: Evidence from Wisconsin* (Boden, 1988).

<sup>2</sup> 2015 Wis. Act 55.

- 2) The other bill (2015 AB-501) had *no* input from the Council and was viewed by many as the “worker’s compensation destruction bill.” Among its extreme provisions (which could have torn down the whole WC system by exponentially increasing litigation):
- Allowing a reduction of benefits by the amount of an employee’s negligence. Such a provision would blow up the “grand bargain” of WC, whereby workers gave up the right to sue in exchange for lesser, defined benefits regardless of having to prove fault.
  - Eliminating employee choice of medical providers and instituting employer directed medical care (along with limitations on the medical expense charges).
  - Shortening the statute of limitations for traumatic injuries from 12 years to two.
- Advisory Council Bill Passed Unanimously. After a period of uncertainty regarding the two separate bills, the Wisconsin legislature—in both the Senate (SB-536) and Assembly (AB-724)—unanimously passed the advisory council bill, which was signed into law by Governor Walker. 2015 Wis. Act 180 became effective March 2, 2016. The non-advisory-council bill never even received a public hearing—theoretically signaling legislative support that any WC changes first go through the Advisory Council’s vetting process.
- **2017 Budget Battle:** Proposed elimination of LIRC and WC court reporters
    - Governor’s Budget proposed elimination of Labor and Industry Review Commission, as well as the use of court reporters in workers’ compensation proceedings. These proposals were not submitted or vetted by the Advisory Council.
    - After extensive lobbying from the vast majority of system stakeholders, both proposals were eliminated from the Budget.
  - **2017-2018 Agreed Bill:** *Not* Passed by Legislature (Included fee schedule)
    - Agreed-Upon Bill (08/23/17) included, among other items, PPD increases, 15% scheduled injury multiplier if unable to return to injury employer, and a proposal for a medical fee schedule. Not passed by legislature. Bill was *not even introduced* in the state Assembly.

- **2019-2020** Agreed Bill: Not fully passed by legislature. COVID impact.
  - Very “limited” bill agreed to by Council. No PPD increase, and no medical fee schedule. Some provisions beneficial to all stakeholders. For labor, there was police officer/firefighter coverage for non-traumatic PTSD claims (note that Council bill had identical language to stand-alone legislation). For insurers, there were clarifications on payments of death benefit claims and on provision of billing records. For employers, the bill included work comp coverage related to employee leasing company arrangements. (2019 SB 673)

Agreed-Upon bill also proposed that the DOA ALJs return to DWD (reversing the 2016 Budget change). Agreed-Upon bill never officially moved out of committee. The proposal regarding ALJ transfer likely was the issue.

- Legislature then ported over some specific Council bill provisions (except ALJ transfer) onto the standalone PTSD bill. Bill did not have a chance to pass legislature before COVID shutdown in March '20.
- NOTE: Bill reintroduced in 2021 and passed by legislature. 2021 WI Act 29 (attached) contained the following provisions:
  - Non-traumatic injury PTSD coverage for police officers/firefighters. Eliminated *School Dist No. 1* standard of showing extraordinary stress for mental stress claims. Diagnosis by psychiatrist (MD) or psychologist (PhD), and claim cannot be result of employment action (i.e., layoff, disciplinary action, termination). However, limits period of “disability” to 32 weeks after 1st reported.
  - Medical providers must provide copy of itemized billing statement within 30 days (in a “standard billing format recognized by federal gov’t”)
  - Provision regarding leased employees and WC coverage (either client or leasing employer can provide WC insurance)
  - No carrier responsibility to State Fund when work-related death due to drug/alcohol use and no dependents
- **2021-2022** Agreed Bill to fail again? [See attached labor and management proposals]
  - Medical fee scheduled proposed by management. Stay tuned?

### C. Declining Work Comp Insurance Rates

- In 2021, Wisconsin Insurance Commissioner again approved rate decrease of 5.44%. Marks the 6<sup>th</sup> straight year of decreases.

[See the release: <https://www.wisbusiness.com/2021/commissioner-of-insurance-approves-workers-compensation-rate-decrease-that-provides-relief-to-businesses-recovering-from-pandemic/> ]

- WC insurance rates have decreased by:
  - 3.19% in 2016
  - 8.46% in 2017
  - 6.03% in 2018
  - 8.84% in 2019
  - 0.93% in 2020
- Over 32% *decrease* in WC premium rates since 2016
  - Q: With declining premium rates, what is basis for a medical fee schedule?

## II. Work Comp System in COVID times and beyond.

### A. Backlog of Hearing-Ready Cases.

- State shutdown: Due to COVID-19 pandemic, state buildings and all in-person hearings stopped as of March 17, 2020. No WC in-person hearings for rest of 2020.
- Settlement conferences were used for hearing-ready cases. Success rate of settlement conferences was marginal. Some cases are not amenable to settlement (e.g., prospective surgery), and settlement conferences lacked the authority and mandate of true hearing date.
- Major backlog in hearing-ready cases occurred. As of September 2021, estimates range from 1500-1700. The relevant backlog is from the date Certificate of Readiness (COR) is filed until receiving a hearing date. These are the “hearing-ready” cases. (Note that certain case types do not need a COR, like Second Injury Fund or refusal to rehire).

B. In-Person and Virtual Hearings.

- **In-person hearings** began again on January 18, 2021. Safety precautions in place, including mask wearing, plexiglass screens, microphones, distancing requirements.
  - Only in Milwaukee and Madison initially.
  - As of summer/fall 2021, other hearing locations slowly reopening, including Appleton, Wausau, and Eau Claire. Unknown how many of the previous 27 total locations will reopen.
    - Note: DHA requiring litigants to bring complete *paper* copy of Exhibits to in-person hearing (See attached notice letter)
  - Limited in-person hearing locations creating further delays and difficulty reducing the case backlog.
- **Virtual Hearings** are available.
  - Very limited use at end of 2020 and now available as an option for litigants.
  - Platform: *Bluejeans.com* [Zoom-like]
  - Exhibits presented as a bookmarked pdf. Exhibits labeled prior to hearing.
  - Issues:
    - i. Unclear on procedure for requesting virtual hearing? Use COR?
    - ii. If both parties mutually consent to virtual hearing, what are criteria for an ALJ to deny virtual hearing request?
    - iii. Are health/safety concerns by one party sufficient to request/grant a virtual hearing?
    - iv. Out-of-state applicants or witnesses?
    - v. In-person hearing allowed with witness testifying virtually?

### C. Pre-Hearings for Represented Litigants?

- The COR process is the method by which represented parties inform DOA that the case is ready for a hearing. COR process implemented in August 2007 in response to a then-increasing backlog in receiving a formal WC hearing date. (DWD Ins Letter 07/16/17) (<https://dwd.wisconsin.gov/wc/letters/insurance/pdf/ins469.pdf>)

For 14 years, the COR process has worked. It is efficient and uses judicial resources well. Without formal discovery, COR process allowed the represented parties and judges to receive adequate notice of the nature and basis for all claims asserted. The COR process ensured judicial efficiency by allowing informal exchange of information following a hearing application and only scheduling a formal hearing when the parties both certified a claim as truly ready to be litigated. The process helped alleviate the prior practice of postponement of cases not ready for a hearing.

- In mid-2021, DOA introduced practice of scheduling “pre-hearing” conferences *before* the COR has been filed. While Section 102.17(1)(b) allows Division to use pre-hearings, such conferences were historically used *only* for unrepresented applicants (or for good cause). Current pre-hearings are being used when both parties are represented for the ostensible purpose of determining whether the case is ready for hearing. This is highly inefficient and wastes judicial resources:
  - Pre-hearings require significant scheduling coordination. Pre-hearings potentially impede formal hearing available “slots,” which would exacerbate (versus alleviate) the existing backlog of cases.
  - Pre-hearings serve limited function for represented parties, who typically move cases along quickly and at the appropriate time without the need for a pre-hearing.

### D. Inter-Agency Issues.

- Since the 2016 reconfiguration of responsibility between Department of Workforce Development (DWD) and the Department of Administration (DOA), hoped-for efficiencies have been slow to be realized. The understood “goal” was to transfer adjudicatory function (ALJs issuing orders in disputed claims) to Div. of Hearings & Appeals (DOA-DHA), while the general administration of the WC

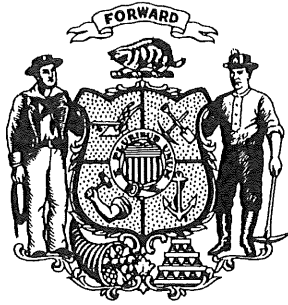
program remained at DWD. Today, confusion and tension exist, as the agencies use competing policies and procedures, conflicting interpretations of administrative rules and file control, and different software/filing protocols.

- Disputes about file control prior to COR verification.
  - Section 102.16(1) indicates DWD jurisdiction over claims (1) where no hearing application has been filed or (2) where hearing application has been filed but the “application is not ready to be scheduled for hearing”. DHA has jurisdiction when the hearing application has been filed and the application is ready to be scheduled for hearing.
    - COR verification = ready to be scheduled for hearing
  - Wis. Admin. Code § HA 4.04: (3) After an application for hearing is served, the division shall manage its caseload by appropriate action including any of the following:
    - (a) Determining whether any answer received is complete, identifies the correct date of injury, and identifies the correct parties for that date of injury.
    - (b) Filing documents or other material received or issued in connection with the claim.
    - (c) Controlling its calendar and scheduling matters for hearing.
    - (d) Notifying the parties of the time and place of hearing, at least 10 days prior to the hearing.
    - (e) Conducting hearings and making findings, orders, and awards that are lawful and just under the circumstances.
  - Memorandum of Understanding (MOU) between agencies to clarify control?



- Technology issues.
  - DWD created web portal for online submission of documents, exhibits, compromise agreements, etc. for both agencies.
    - Recent DHA memorandum, however, requires parties to bring physical copies of all Exhibits to hearings.
  - DHA informing practitioners to submit Compromise Agreements/Exhibits by mail and not via web portal.
  - DHA developing IT system. In future, are DHA and DWD IT systems able to communicate?
  
- Policies & procedures
  - Wis. Admin. Code § HA 4.03(3) states “[s]ubstantive rules of the department [DWD] that implement, interpret, or make specific legislation enforced or administered by the department [DWD] within the meaning of s. 227.01 (13), Stats., have the force and effect of law in proceedings before the division [DHA] under this chapter.” Wis Stat. § 227.01(13) “Rule” means a regulation, standard, statement of policy, or general order of general application that has the force of law and that is issued by an agency to implement, interpret, or make specific legislation enforced or administered by the agency or to govern the organization or procedure of the agency.
  - Compromise Agreements:
    - Where to submit?
    - Timeliness?
    - Policies for ALJ approval?
    - Attorney fee issues?

# State of Wisconsin



2021 Senate Bill 11

Date of enactment: April 27, 2021  
Date of publication\*: April 28, 2021

## 2021 WISCONSIN ACT 29

**AN ACT** to renumber and amend 102.17 (4) and 102.58; to amend 102.04 (2m), 102.13 (2) (a), 102.29 (6m) (a) 3., 102.315 (1) (c), 102.315 (2), 102.42 (1), 102.49 (5) (b), 102.49 (5) (c) and 102.49 (5) (e); and to create 102.04 (2g), 102.17 (9), 102.29 (6m) (a) 1m., 102.315 (2e), 102.315 (2m), 102.315 (2s), 102.42 (1p), 102.44 (7) and 102.49 (5) (cm) of the statutes; relating to: various changes to the worker's compensation law.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**SECTION 1.** 102.04 (2g) of the statutes is created to read:

102.04 (2g) Liability under s. 102.03 with respect to a leased employee, as defined in s. 102.315 (1) (g), shall be determined as provided in s. 102.315 (2) or (2m) (c), whichever is applicable.

**SECTION 2.** 102.04 (2m) of the statutes is amended to read:

102.04 (2m) ~~A- Except as otherwise provided in an employee leasing agreement that meets the requirements of s. 102.315 (2m), a temporary help agency is the employer of an employee whom the temporary help agency has placed with or leased to another employer that compensates the temporary help agency for the employee's services. A- Except as provided in s. 102.315 (2m) (c), a temporary help agency is liable under s. 102.03 for all compensation and other payments payable under this chapter to or with respect to that employee, including any payments required under s. 102.16 (3), 102.18 (1) (b) 3. or (bp), 102.22 (1), 102.35 (3), 102.57, or 102.60. Except as permitted under s. 102.29, a temporary help agency may not seek or receive reimbursement from another~~

employer for any payments made as a result of that liability.

**SECTION 3.** 102.13 (2) (a) of the statutes is amended to read:

102.13 (2) (a) An employee who reports an injury alleged to be work-related or files an application for hearing waives any physician-patient, psychologist-patient, or chiropractor-patient privilege with respect to any condition or complaint reasonably related to the condition for which the employee claims compensation. Notwithstanding ss. 51.30 and 146.82 and any other law, any physician, chiropractor, psychologist, dentist, podiatrist, physician assistant, advanced practice nurse prescriber, hospital, or health care provider shall, within a reasonable time after written request by the employee, employer, worker's compensation insurer, department, or division, or its representative, provide that person with any information or written material reasonably related to any injury for which the employee claims compensation. If the request is by a representative of a worker's compensation insurer for a billing statement, the physician, chiropractor, psychologist, dentist, podiatrist, physician assistant, advanced practice nurse prescriber, hospital, or health care provider shall, within 30 days after receiving

\* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

the request, provide that person with a complete copy of an itemized billing statement or a billing statement in a standard billing format recognized by the federal government.

**SECTION 4.** 102.17 (4) of the statutes is renumbered 102.17 (4) (a) and amended to read:

102.17 (4) (a) Except as provided in this subsection and s. 102.555 (12) (b), in the case of occupational disease, the right of an employee, the employee's legal representative, ~~or a dependent, the employee's employer or the employer's insurance company, or other named party~~ to proceed under this section shall not extend beyond 12 years after the date of the injury or death or after the date that compensation, other than for treatment or burial expenses, was last paid, or would have been last payable if no advancement were made, whichever date is latest, and in the case of traumatic injury, that right shall not extend beyond 6 years after that date.

(b) In the case of occupational disease; a traumatic injury resulting in the loss or total impairment of a hand or any part of the rest of the arm proximal to the hand or of a foot or any part of the rest of the leg proximal to the foot, any loss of vision, or any permanent brain injury; or a traumatic injury causing the need for an artificial spinal disc or a total or partial knee or hip replacement, there shall be no statute of limitations, except that benefits or treatment expense for an occupational disease becoming due 12 years after the date of injury or death or last payment of compensation, other than for treatment or burial expenses, shall be paid from the work injury supplemental benefit fund under s. 102.65 and in the manner provided in s. 102.66 and benefits or treatment expense for such a traumatic injury becoming due 6 years after that date shall be paid from that fund and in that manner if the date of injury or death or last payment of compensation, other than for treatment or burial expenses, is before April 1, 2006.

(c) Payment of wages by the 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.

**SECTION 5.** 102.17 (9) of the statutes is created to read:

102.17 (9) (a) In this subsection:

1. "Fire fighter" means any person employed on a full-time basis by the state or any political subdivision as a member or officer of a fire department, including the 1st class cities and state fire marshal and deputies.

2. "Post-traumatic stress disorder" means that condition, as described in the 5th edition of the Diagnostic and Statistical Manual of Mental Disorders by the American Psychiatric Association.

(b) Subject to par. (c), in the case of a mental injury that is not accompanied by a physical injury and that results in a diagnosis of post-traumatic stress disorder in

a law enforcement officer, as defined in s. 23.33 (1) (ig), or a fire fighter, the claim for compensation for the mental injury, in order to be compensable under this chapter, is subject to all of the following:

1. The mental injury must satisfy all of the following conditions:

a. The diagnosis of post-traumatic stress disorder is made by a licensed psychiatrist or psychologist.

b. The conditions of liability under s. 102.03 (1) are proven by the preponderance of the evidence.

2. The mental injury may not be a result of any of the following actions taken in good faith by the employer:

a. A disciplinary action.

b. A work evaluation.

c. A job transfer.

d. A layoff.

e. A demotion.

f. A termination.

3. The diagnosis does not need to be based on unusual stress of greater dimensions than the day-to-day emotional strain and tension experienced by similarly situated employees.

(c) No individual may receive compensation for a claim of mental injury under this subsection more than 3 times in his or her lifetime. The limitation under this paragraph applies irrespective of whether the individual becomes employed by a different employer or in a different position with the same employer.

**SECTION 6.** 102.29 (6m) (a) 1m. of the statutes is created to read:

102.29 (6m) (a) 1m. The employee leasing company that employs the leased employee.

**SECTION 7.** 102.29 (6m) (a) 3. of the statutes is amended to read:

102.29 (6m) (a) 3. Any employee of the client ~~or any employee of that other an~~ employee leasing company described in subd. 2., or the employee leasing company that employs the leased employee, unless the leased employee who has the right to make a claim for compensation would have a right under s. 102.03 (2) to bring an action against the employee of the client, the employee leasing company that employs the leased employee, or the leased employee of the ~~other~~ employee leasing company described in subd. 2., if the employees and leased employee were coemployees.

**SECTION 8.** 102.315 (1) (c) of the statutes is amended to read:

102.315 (1) (c) "Divided workforce" means a workforce in which some of the employees of a client are leased employees and some of the employees of the client are not leased employees, but does not include a workforce with respect to a client that has elected to provide insurance coverage for leased employees under sub. (2m).

**SECTION 9.** 102.315 (2) of the statutes is amended to read:

102.315 (2) EMPLOYEE LEASING COMPANY LIABLE. ~~An~~ Except as otherwise provided in an employee leasing agreement that meets the requirements of sub. (2m), an employee leasing company is liable under s. 102.03 for all compensation payable under this chapter to a leased employee, including any payments required under s. 102.16 (3), 102.18 (1) (b) 3. or (bp), 102.22 (1), 102.35 (3), 102.57, or 102.60. If a client that makes an election under sub. (2m) (a) terminates the election, fails to provide the required coverage, or allows coverage to lapse, the employee leasing company is liable under s. 102.03 as set forth in this subsection. Except as permitted allowed under s. 102.29, an employee leasing company may not seek or receive reimbursement from another employer for any payments made as a result of that liability. An employee leasing company is not liable under s. 102.03 for any compensation payable under this chapter to an employee of a client who is not a leased employee.

**SECTION 10.** 102.315 (2e) of the statutes is created to read:

102.315 (2e) TERMINATION OF EMPLOYEE LEASING AGREEMENT. If an employee leasing company terminates an employee leasing agreement with a client that has made an election under sub. (2m) (a), the company shall provide notice of the termination of an employee leasing agreement to the department and the client, on a form prescribed by the department, at least 30 days before the termination of the employee leasing agreement. The notice provided under this subsection must contain all of the following information:

- (a) The name, mailing address, and federal employer identification number of the employee leasing company.
- (b) The name, mailing address, and federal employer identification number of the client.
- (c) The effective date of the termination of the employee leasing agreement.
- (d) The signatures of the authorized representatives of the client and the employee leasing company.

**SECTION 11.** 102.315 (2m) of the statutes is created to read:

102.315 (2m) CLIENT ELECTION TO PROVIDE INSURANCE COVERAGE. (a) A client may elect to provide insurance coverage under this chapter for leased employees. Such an election must be provided in an employee leasing agreement, and the leased employees must be insured in the voluntary market and not under a mandatory risk-sharing plan under s. 619.01.

(b) The client shall provide notice of an election or termination of an election under par. (a) to the department and the employee leasing company on a form prescribed by the department at least 30 days before the effective date of the election or termination of the election. The notice provided under this subsection must contain all of the following information:

1. The name, mailing address, and federal employer identification number of the client.

2. The name, mailing address, and federal employer identification number of the employee leasing company.

3. The effective date of the employee leasing agreement.

4. The signatures of the authorized representatives of the client and the employee leasing company.

(c) A client that elects to provide insurance coverage under par. (a) is liable under s. 102.03 for all compensation payable to a leased employee, including any payments required under s. 102.16 (3), 102.18 (1) (b) 3. or (bp), 102.22 (1), 102.35 (3), 102.57, or 102.60.

(d) If a client makes an election under par. (a), the employee leasing company shall include the client's federal employer identification number on any reports to the department for the purposes of administering the worker's compensation program or the unemployment insurance program under ch. 108.

(e) The experience rating under the standards and criteria under ss. 626.11 and 626.12 remain with a client that makes an election under par. (a).

**SECTION 12.** 102.315 (2s) of the statutes is created to read:

102.315 (2s) CLAIM REPORTING. Any claim filed under this chapter for a leased employee shall include the client's federal employer identification number.

**SECTION 13.** 102.42 (1) of the statutes is amended to read:

102.42 (1) TREATMENT OF EMPLOYEE. ~~The Subject to the limitations under sub. (1p),~~ the employer shall supply such medical, surgical, chiropractic, psychological, podiatric, dental, and hospital treatment, medicines, medical and surgical supplies, crutches, artificial members and appliances, and training in the use of artificial members and appliances, or, at the option of the employee, Christian Science treatment in lieu of medical treatment, medicines, and medical supplies, as may be reasonably required to cure and relieve from the effects of the injury, and to attain efficient use of artificial members and appliances, and in case of the employer's neglect or refusal seasonably to do so, or in emergency until it is practicable for the employee to give notice of injury, the employer shall be liable for the reasonable expense incurred by or on behalf of the employee in providing such treatment, medicines, supplies, and training. When the employer has knowledge of the injury and the necessity for treatment, the employer's failure to tender the necessary treatment, medicines, supplies, and training constitutes such neglect or refusal. The employer shall also be liable for reasonable expense incurred by the employee for necessary treatment to cure and relieve the employee from the effects of occupational disease prior to the time that the employee knew or should have known the nature of his or her disability and its relation to employment, and as to such treatment subs. (2) and (3) shall not apply. The obligation to furnish such treatment and appliances shall continue as required to prevent further deterioration in the

condition of the employee or to maintain the existing status of such condition whether or not healing is completed.

**SECTION 14.** 102.42 (1p) of the statutes is created to read:

102.42 (1p) LIABILITY FOR TREATMENT OF CERTAIN MENTAL INJURIES. The employer of an employee whose injury is a mental injury that is compensable under s. 102.17 (9) is liable for the employee's treatment of the mental injury for no more than 32 weeks after the injury is first reported.

**SECTION 15.** 102.44 (7) of the statutes is created to read:

102.44 (7) In the case of an employee whose injury is a mental injury that is compensable under s. 102.17 (9), the period of disability may not exceed 32 weeks after the injury is first reported.

**SECTION 16.** 102.49 (5) (b) of the statutes is amended to read:

102.49 (5) (b) In addition to the payment required under par. (a), in each case of injury resulting in death leaving no person dependent for support, the employer or insurer shall, except as provided in s. 102.58 (2), pay into the state treasury the amount of the death benefit otherwise payable, minus any payment made under s. 102.48 (1). The payment under this paragraph shall, except as provided in par. (cm), be made in 5 equal annual installments, with the first installment due as of the date of death.

**SECTION 17.** 102.49 (5) (c) of the statutes is amended to read:

102.49 (5) (c) In addition to the payment required under par. (a), in each case of injury resulting in death, leaving one or more persons partially dependent for support, the employer or insurer shall, except as provided in s. 102.58 (2), pay into the state treasury an amount which, when added to the sums paid or to be paid on account of partial dependency and under s. 102.48 (1), shall equal the death benefit payable to a person wholly dependent.

**SECTION 18.** 102.49 (5) (cm) of the statutes is created to read:

102.49 (5) (cm) The employer or insurer may make advance payments of amounts owed under par. (b) or (c), up to and including a lump sum payment of the entire amount owed. If an employer or insurer makes an advance payment, the department shall give the employer or the insurer an interest credit against its liabil-

ity for payments made in excess of that required under par. (b) or (c). The credit shall be computed at 5 percent.

**SECTION 19.** 102.49 (5) (e) of the statutes is amended to read:

102.49 (5) (e) The adjustments in liability provided in ss. 102.57, 102.58 (1), and 102.60 do not apply to payments made under this section.

**SECTION 20.** 102.58 of the statutes is renumbered 102.58 (1) and amended to read:

102.58 (1) If injury is caused by the failure of the employee to use safety devices that are provided in accordance with any statute, rule, or order of the department of safety and professional services and that are adequately maintained, and the use of which is reasonably enforced by the employer, or if injury results from the employee's failure to obey any reasonable rule adopted and reasonably enforced by the employer for the safety of the employee and of which the employee has notice, the compensation and death benefit provided in this chapter shall be reduced by 15 percent, but the total reduction may not exceed \$15,000.

(2) If an employee violates the employer's policy concerning employee drug or alcohol use and is injured, and if that violation is causal to the employee's injury, no compensation or death benefits shall be payable to the injured employee or a dependent of the injured employee and no payment under s. 102.49 (5) (b) or (c) shall be payable. Nothing in this section subsection shall reduce or eliminate an employer's liability for incidental compensation under s. 102.42 (1) to (8) or drug treatment under s. 102.425.

**SECTION 21. Nonstatutory provisions.**

(1) WORKER'S COMPENSATION INSURANCE; RATE APPROVAL; NOTICE. The commissioner of insurance shall submit to the legislative reference bureau for publication in the Wisconsin Administrative Register a notice of the effective date of new rates for worker's compensation insurance first approved by the commissioner after the effective date of this subsection.

**SECTION 22. Initial applicability.**

(1) The treatment of ss. 102.17 (9), 102.42 (1) and (1p), and 102.44 (7) first applies to injuries reported on the effective date of rate changes for worker's compensation insurance approved by the commissioner of insurance under s. 626.13 after the effective date of this subsection.

**Worker's Compensation Advisory Council**  
**2021 Management proposals for agreed-bill**  
**7/13/2021**

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. Employers believe reforms are needed in four areas: medical cost reform, disability benefit determination, notice and compensability, and administrative.

**Medical Cost Reforms**

1. **Medical Fee Schedule.** Wisconsin is an extreme outlier in that we do not have a medical fee schedule in place. We propose that the Department shall develop a medical fee schedule for hospital charges to be in place by January 1, 2023. The fee schedule shall strive to keep costs below the national average according to national data from WCRI. The fee schedule may be regional to account for different costs in different regions of the state.
2. **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, and update Wis. Stat. 102.16 and DWD Administrative Code 80.72 to reflect this database change.
3. **Employer directed care.** Without the ability to direct care, employers are unable to bargain with medical providers for meaningful discounts. We propose allowing employer directed care for the first 90 days of treatment, outside of emergency room care. To utilize this, employers must 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.
4. **Electronic billing/payments/medical records.** Require that providers caring for worker's compensation patients utilize electronic billing and be able to receive payments electronically, as well as be able to transmit medical records electronically.
5. **Treatment guidelines.** Establish treatment guidelines in Wisconsin based on ODG or another appropriate national model. Under this proposal, guidelines would be required to be followed by providers unless pre-authorization is received from insurer.

**Disability Benefit Determination Reforms**

6. **Earnings determination.** Benefits shall be based on actual earnings from the employer where the injury occurred at the time of the injury. Wage expansion shall not be allowed.
7. **Disability ratings determinations.** Permanent disability determinations must be made by occupational health physicians or other qualified healthcare providers according to statutory guidelines. Eliminate the 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.
8. **Prohibit PPD-Stacking.** LIRC and courts have held that the minimum awards set forth in Wis. Admin DWD 80.32 can be stacked for each surgical procedure due to the same injury. This leads

**Worker's Compensation Advisory Council**  
**2021 Management proposals for agreed-bill**  
**7/13/2021**

to awards that are higher than the amount set by code. Permanent disability ratings should be based on actual ratings as assessed by medical experts.

9. **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.
10. **Require work exposure be the predominate cause to allow compensability.** Require that for a non-traumatic injury to be compensable under worker's compensation, workplace exposure should be the predominant cause of the condition.
11. **Death benefits.** There shall be no death benefit in PTD claims when the death is unrelated to the occupational injury or illness.

**Notice and Compensability Reforms**

12. **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.
13. **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.
14. **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.
15. **Disallow benefit venue shopping.** Prohibit the state of Wisconsin from accepting 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.
16. **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.

**Administrative Reforms**

17. **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.
18. **Group Self-Insurance.** Require DWD to study, along with OCI, what would be required to allow group self-insurance whereby businesses of related industries would be able to join together to self-insure their worker's compensation liability as a group. Report back to WCAC and the legislature by 1/1/2023.

## Labor Proposals for 2021 Agreed Bill

- 1. Permanent Partial Disability Benefit Maximum Rate:** Increase of \$20 per year from the rate established in negotiations for the 2017 agreed bill, which would result in a maximum rate in 2021 of \$442 per week. For injuries after 1/1/22 the maximum rate would be \$462, and for injuries after 1/1/23 the maximum rate would be \$482. Provide for automatic \$20 increases in the maximum PPD rate per year without the need for inclusion in every agreed bill.
- 2. Employer Safety Violation:** Amend Wis. Stat. § 102.57 to state as follows: “If injury is caused by the failure of the employer to comply with any statute, rule, safety standard, or order of the department of safety and professional services, or of the federal Departments of Labor, Health or Transportation or its agencies, where the employer is subject to safety regulation from those federal Departments or agencies, compensation and death benefits provided in this chapter shall be increased by 15 percent of total compensation, medical expense and death benefits paid, but the total increase may not exceed \$15,000. Failure of an employer to reasonably enforce compliance by employees with any statute, rule, safety standard, or order of the department of safety and professional services, or the federal Departments of Labor, Health or Transportation or its agencies, where the employer is subject to safety regulation from those federal Departments or agencies, constitutes failure by the employer to comply with that statute, rule, safety standard or order.”
- 3. COVID Causation Presumption for Certain Occupations:** Extend Wis. Stat. § 102.03(6) in four ways: A) To apply to public-facing essential workers [see attached list] in addition to “first responder” as that term is already defined in the statute; B) To apply to any employee whose employer has had 5 or more employees contract an epidemic virus or bacterium; C) To apply indefinitely with regard to COVID-19; and D) To apply in the future to epidemic novel viruses or novel bacterium. For purposes of this section, “epidemic” shall be defined as a virus or bacterium that spreads easily and quickly, and affects or tends to affect a disproportionately large number of individuals within a population, community or region at the same time.
- 4. Death Benefits:** Revise the death benefit statutes to eliminate the concept of dependency. Death benefits shall be payable to surviving spouses, children, siblings, parents, and other next-of-kin in a manner similar to probate/estate law.
- 5. Permanent Total Disability Supplemental Benefit:** Six 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 six year bump would take it to injuries prior to 1/1/2009, and increase the maximum benefit to \$831

6. **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.
7. **Statute of Limitations extended by payment of medical expense.** Current law, Wis. Stat. § 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, 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.
8. **Shoulder Replacement, Spinal Fusions:** Amend Wis. Stat. § 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.
9. **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 pursuant to DWD 80.03(1)(d) from \$10,000 to \$50,000.
10. **Eliminate Interest Credit on Advancements:** Amend Wis. Stat. § 102.32(6m) to change the interest credit to insurers for advancements of unaccrued compensation from the current 5% to zero %.
11. **Injured Worker Choice of Third Party Settlements:** Amend Wis. Stat. § 102.29 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.
12. **Indexing of Permanent Total Disability Rate:** Indexing with 6 year lag. For injuries beginning 1/1/22, index weekly benefits for permanent total disability to the rate in effect at the time the benefit accrues for periods more than six years after the date of injury.
13. **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, or on the company's employee-accessible website.

**14. 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 temporary total disability rate shall be expanded in an amount 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. In such a circumstance, the maximum TTD rate does not apply to cap TTD benefits

**15. 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.

**16. Amend Wis. Stat. § 102.17(9)(b) to include Emergency Medical Technicians.** Allow EMTs to claim a mental injury that is not accompanied by a physical injury that results in a diagnosis of post-traumatic stress disorder.

**17. Limit Number of Medical Record Review Reports.** Under current law, an employer or worker's compensation carrier may commission an unlimited number of medical record reviews by medical providers, and those reports are not required to be disclosed to claimants. Amend Wis. Stat. § 102.13 to provide that an employer or carrier may only obtain a medical record review with either the provider who has or will later conduct an IME pursuant to Wis. Stat. § 102.13(1)(a), or with one provider other than a provider who performs an IME pursuant to Wis. Stat. § 102.13(1)(a); that such reports must be disclosed to claimants within a reasonable time of receipt by the employer or carrier; and that record reviews are limited in any event to one every six months, as are IMEs.

**18. 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.



Wisconsin Compensation Rating Bureau

May 17, 2021

To: Ron Kent  
From: Bernie Rosauer  
President, WCRB

Dear Ron:

At your request, I performed a brief analysis of potential impact of post-high school tuition/room/board reimbursement under consideration by the WCAC.

I asked DWD for 2019 information and used it as a benchmark for this evaluation. Here's what I found:

- The number of work-related fatalities attributed to the workplace and then deemed compensable by either the insurance carrier and or administrative law judge was 55.
- The number of claims with payments to eligible dependents was 6.
- The number of dependents eligible for Children's Fund payments at the time of death was 11.
- The number of claims with death benefits paid to a surviving spouse was 23.

Here are the assumptions used to estimate premium impact:

- 2019, in terms of fatalities and claim attributes, is about average.
- 70% of surviving children will utilize the offering (40% four-year degree, 30% two-year degree) in any given year.
- Average cost of tuition, room and board at a state university: \$19,739 ([collegetuitioncompare.com](http://collegetuitioncompare.com))
- Average cost of tuition at a community college (no room and board): \$4954 ([communitycollegereview.com](http://communitycollegereview.com))

Under this scenario, assuming all 11 dependents eligible for Children's Fund payments were in a position to begin receiving the benefits immediately, the annual cost adds up to **\$127,901** per year.

This is a very rough estimate of ultimate costs. It does not take into account year-to-year claim variances or the reality that annual rate changes are calculated using more than one year of data. It does not take into account the reality that future benefits for some claims will overlap costs from other years and other claims. Still, I believe it is safe to say that the estimate, taking all this into account, provides a useful cost estimate for use for estimating the impact of such a benefit change.

The impact will be barely noticeable if noticeable at all.

Pharmacies and Drug Stores  
Offices of Physicians  
Offices of Dentists  
Offices of Chiropractors  
Offices of Optometrists  
Offices of Mental Health Practitioners  
Offices of Physical, Occupational, and Speech Therapists, and Audiologists  
Offices of Podiatrists  
Family Planning Centers  
Outpatient Mental Health and Substance Abuse Centers  
HMO Medical Centers  
Kidney Dialysis Centers  
Freestanding Ambulatory Surgical and Emergency Centers  
Medical Laboratories  
Diagnostic Imaging Centers  
Home Health Care Services  
Ambulance Services  
Blood and Organ Banks  
General Medical and Surgical Hospitals  
Psychiatric and Substance Abuse Hospitals  
Specialty (except Psychiatric and Substance Abuse) Hospitals  
Nursing Care Facilities (Skilled Nursing Facilities)  
Residential Intellectual and Developmental Disability Facilities  
Residential Mental Health and Substance Abuse Facilities  
Continuing Care Retirement Communities  
Assisted Living Facilities for the Elderly  
Other Residential Care Facilities  
Child and Youth Services<sup>a</sup>  
Services for the Elderly and Persons with Disabilities<sup>a</sup>  
Funeral Homes and Funeral Services  
Cemeteries and Crematories  
Emergency and Other Relief Services  
Police Protection  
Fire Protection  
Other Justice, Public Order, and Safety Activities  
Correctional Institutions  
Agriculture, Forestry, Fishing and Hunting  
Food Manufacturing  
Beverage Manufacturing  
Nursery, Garden Center, and Farm Supply Stores  
Veterinary Services  
Food and Beverage Stores<sup>b</sup>  
General Merchandise Stores, including Warehouse Clubs and Supercenters

Elementary and Secondary Schools  
Junior Colleges  
Colleges, Universities, and Professional Schools  
Business Schools and Computer and Management Training  
Technical and Trade Schools  
Educational Support Services  
Vocational Rehabilitation Services  
Child Day Care Services  
Administration of Education Programs  
Postal Service (Private Companies, not USPS)  
Urban Transit Systems  
Interurban and Rural Bus Transportation  
School and Employee Bus Transportation  
Special Needs Transportation  
Wood Product Manufacturing  
Paper Manufacturing  
Petroleum Refineries  
Asphalt Paving, Roofing, and Saturated Materials Manufacturing  
Other Petroleum and Coal Products Manufacturing  
Chemical Manufacturing  
Plastics and Rubber Product Manufacturing  
Nonmetallic Mineral Product Manufacturing  
Primary Metal Manufacturing  
Fabricated Metal Product Manufacturing  
Industrial Machinery Manufacturing  
Computer and Electronic Product Manufacturing  
Electrical Equipment, Appliance, and Component Manufacturing  
Transportation Equipment Manufacturing  
Wood Kitchen Cabinet and Countertop Manufacturing  
Medical Equipment and Supplies Manufacturing  
Other Miscellaneous Manufacturing  
Industrial Design Services  
Other Electronic and Precision Equipment Repair and Maintenance  
Commercial and Industrial Machinery and Equipment Repair and Maintenance

## Estimated cost of Labor Health Care Proposal

- 1) Per DWD data from 2016 (latest year with 3 years of claims data necessary to make sure cases have adequate time data), 2,660 TTD claimants have continuous TTD periods > 12 weeks in duration. So 2,660 TTD claimants might have a claim for health insurance payment benefit.
- 2) Per BLS 2018 data, roughly 70% of workers in the Midwest have an employer that offers group health insurance coverage. Of those workers, only 71% of workers offered coverage by an employer participate in that employer coverage, so only 50% of the 2,660 potential TTD claimants, 1,330 workers, would be eligible for the benefit.
- 3) Of those 1330 workers, some workers would take family coverage, while some would take single coverage. Assume 85% of the 1330 workers are on family coverage on the D/I, 1,130 workers. 15% would be on single coverage, 200 workers.
- 4) Cost of health insurance. Per 2018 Kaiser Foundation data, the average total cost (employer share plus employee share) of a group health plan in 2018 was \$1,634/month family coverage, \$574 single coverage. Per 2018 Kaiser Foundation data, employer pays for 70% of family coverage cost, 80% of single plan cost. That would be \$1144/month for family coverage, \$574/month for single coverage. That is \$266/wk for family coverage expense to employer, \$106/wk for single coverage expense to employer.
- 5) Thus, total benefit cost per week for 1,130 family coverage workers at \$266/wk = \$300,580. Total benefit cost per week for 200 single coverage workers at \$106/wk = \$21,200. Total cost per week for all eligible workers is therefore \$321,780.
- 6) Per DWD data from 2016, the average duration of the period of TTD paid beyond 12 weeks is 15.81 weeks. **Thus total yearly cost to employers for the benefit would be 15.81 x \$321,780 = \$5.08M.**

This estimate of a total cost to employers of \$5.08M assumes that all employers would cut off payment for health insurance coverage at 12 weeks. No reliable data is known that indicates the rate of employer cut off after 12 weeks.

David Weir

07/05/2019

<https://www.bls.gov/news.release/pdf/ebs2.pdf>

<https://www.kff.org/report-section/2018-employer-health-benefits-survey-summary-of-findings/>

# Labor Proposal – Opioids/Alternative Treatments

July 13, 2021

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.

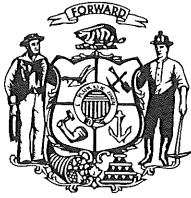
- 1) Clarify that no physician/chiropractor referral is needed in WI for treatment with a physical therapist, with current law expanded to allow for a physical therapist able to opine on necessity for treatment and relationship to injury to ensure that the employer/carrier must pay for PT even in the 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.



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**  
**Brian Hayes, Administrator**

Office of Worker's Compensation  
Hearings  
P.O. Box 7922  
Madison, WI 53707-7922

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July 30, 2021

**Important Announcement Regarding Exhibits  
from the Office of Worker's Compensation Hearings**

For all **in-person hearings** post-dating this notice, parties are required to bring a complete set of the exhibits that they plan to use at the scheduled in-person. Please pre-mark the exhibits, Applicant's A-Z and Respondent's 1-100. Please include an exhibit list. Parties should also either bring a complete copy of their exhibits for opposing counsel, or e-mail a complete copy to opposing party prior to the hearing.

For **virtual hearings** post-dating this notice, parties must file the exhibits that they intend to use at the video hearing electronically via email to OWCH. Parties must pre-mark the exhibits. The applicant's exhibits should be marked sequentially using the alphabet (Exs. A, B, C, D, etc.) and respondent's exhibits should be labeled sequentially labeled using numbers (Exs. 1, 2, 3, 4, etc.). Proposed exhibits should be paginated at the bottom of each page. For example, applicant's exhibit A should be paginated 1-26. Applicant's exhibit B should start on page 27. The applicant and the respondent should each file their respective exhibits as one PDF. If a single PDF document cannot be emailed due to size and/or data constraints, please make each exhibit its own PDF. Each separate PDF must be individually paginated, starting with page No. 1. For example, Exhibit A may be paginated 1-26 and Exhibit B would start over with page 1. A copy of this PDF(s) should be sent to the ALJ, the court reporter (if provided the email), and opposing counsel. This ensures that all parties are all viewing the same exhibit. Exhibits may be offered by the parties at the hearing if attached as a PDF and sent by email to opposing counsel, the court reporter, and ALJ (with the proposed exhibits labeled as set forth above). These procedures allow for the display of exhibits on the screen if needed.

***Please note that this does not alter any statutory or rule requirements for filing documents.***