

Worker's Compensation Advisory Council
2017 Management proposals for agreed-bill
May 9, 2017

1. **Medicare-based fee schedule.** Establish a Medicare-based fee schedule to bring Wisconsin in line with the majority of states. Set initial fee schedule at 150% of Medicare starting with 2017 Medicare rates. The fee schedule shall adjust annually in line with medical CPI.
2. **Employer directed care.** Allow employers to specify a 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 who 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 displayed in a prominent location.
3. **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.
4. **Electronic billing/payments.** Require that all providers caring for worker's compensation patients utilize electronic billing and be able to receive payments electronically.
5. **Electronic medical records.** Require all medical providers caring for worker's compensation patients to transmit medical records electronically.
6. **Employee misrepresentation of physical condition.** Prohibit indemnity benefits 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.
7. **Worker's compensation denied by another state.** The state of Wisconsin should not accept for review cases 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.
8. **No PTD Benefits once Social Security old-age assistance benefits begin; adjustment to presumption of maximum earnings.** 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. Current law sets PTD benefit rates for injured workers under the age of 27 at the rate they would probably earn once they reach age 27, or the maximum rate if a probable rate cannot be established. This age should be adjusted to 35 years.
9. **Reduction of benefits; amounts paid under another state's worker's compensation law.** Reduce benefits payable under Wisconsin law by any amount received by the employee as worker's compensation benefits under the worker's compensation laws of another state.
10. **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.

11. **Eliminate wage expansion.** Benefits shall be based on actual earnings from the employer where the injury occurred at the time of the injury.
12. **PPD minimum ratings.** Require the medical advisory committee under Wis. Stat. 102.44 (4m) (a) to report its recommendations for revisions of the PPD ratings to the department and the WCAC by the 1st day of the 6th month following the enactment of this law. If a report with recommendations for revisions is not received by the deadline, PPD minimum ratings for surgical procedures shall sunset.
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 30 days of the injury.
14. **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.
15. **Disability determinations.** Permanent disability determinations must be made by occupational health physicians or other qualified healthcare providers according to statutory guidelines.
16. **Death benefits.** There shall be no death benefit in PTD claims when the death is unrelated to the occupational injury or illness.

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- 1) **Permanent Partial Disability Benefit Maximum Rate:** Increase of \$20 per year. That would result in a maximum PPD rate of \$382 for injuries after 1/1/2018, and \$402 for injuries after 1/1/2019.
- 2) **Permanent Total Disability Supplemental Benefit:** Two 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 two year bump would take it to injuries prior to 1/1/2005, and increase the maximum benefit to \$711 per week.
- 3) **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 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.
- 4) **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.
- 5) **Shoulder Replacement:** Amend 102.17(4) to include shoulder replacement (reverse shoulder replacement) as an additional serious traumatic injury with no statute of limitations.
- 6) **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.
- 7) **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 %.
- 8) **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.
- 9) **Indexing of Permanent Total Disability Rate:** Indexing with 6 year lag. For injuries beginning 1/1/18, 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.

- 10) **Posting of Injured Worker WC Rights:** Require all employers to display a DWD approved poster of WC employee rights at the workplace.
- 11) **Continuation of Health Care Coverage:** If an employer fails to continue to maintain group health care coverage for an injured worker during the period of temporary disability, the employee is due an additional benefit equal to 100% of the employer contributions that the employer failed to pay, in addition to any temporary disability benefits under the Act.
- 12) **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.
- 13) **Indexing of Permanent Partial Disability Benefits After 200 Weeks:** An employee receiving PPD benefits after 200 weeks is entitled to the same proportion of the maximum rate of PPD in effect at the time of payment beginning with the 201st week of PPD benefit.
- 14) **Revise Loss of Hearing Measurements:** Current DWD 80.25(4) provides for the calculation of the degree of hearing loss based on the decibel loss at frequencies of 500, 1000, 2000 & 3000 Hz, and allows compensation for loss averaging more than 30 db. This proposal would change the frequencies used for the calculation of average loss to 1000, 2000, 3000, & 4000 hz, and allow for compensation for loss averaging more than 25 db. This would also amend DWD 80.25(8) (Hearing Impairment Table) to access the PPD loss from 25 db (0%) to 88 db (100%).
- 15) **Court Reporters:** Retain the current use of court reporters for all hearings.
- 16) **Preserve LIRC:** Preserve the Labor & Industry Review Commission as currently prescribed by law for all matters (WC, UI, and ERD).
- 17) **Opioids:** Labor requests that interested members of the Wisconsin medical community, as well as the WCAC Medical Liaisons, be invited to address the WCAC on June 13, 2017 on the issue of opioids, bringing to the WCAC any recommendations they may have on this issue. After hearing from the medical community, Labor would reserve the right to then propose, if necessary, any recommendations for changes in the WC Act.

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