

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

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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.