

WORKER'S COMPENSATION DIVISION
PROPOSED STATUTORY AND REGULATORY CHANGES 2011-2012
Updated 1/12/11

	SECTION	TOPIC	PROPOSAL	RATIONALE	STATUS
1.	102.13(2)(c)	Final Medical Reports	Amend §102.13(2)(c) as follows: (c) If an injured employee has a period of temporary disability that exceeds 3 weeks or a permanent disability or if the injured employee has undergone surgery to treat his or her injury, other than surgery to correct a hernia, <u>or if the injured employee sustained an eye injury requiring medical treatment</u> , the department may by rule require the insurer or self-insured employer to submit to the department a final report of the employee's treating practitioner. A treating practitioner may charge a reasonable fee for the completion of the final report, but may not require prepayment of that fee. An insurer or self-insured employer that disputes the reasonableness of a fee charged for the completion of a treatment practitioner's final report may submit that dispute to the department for resolution under s. 102.16 (2).	This amendment provides that if the employee has suffered an eye injury requiring treatment, that a final medical report must be filed by the insurance carrier indicating whether the employee has sustained any permanent partial disability.	1/10/11 Introduced at the WCAC meeting.
2.	102.17(4)	Barred Traumatic claims	Amend §102.17(4) as follows: (4) Except as provided in this subsection and s. 102.555 (12) (b), the right of an employee, the employee's legal representative, or a dependent 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 treatment or burial expenses, was last paid, or would have been last payable if no advancement were made, whichever date is latest. 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	This amendment provides that WISBF will pay benefits or treatment expense for barred traumatic injuries if the statute of limitations ran on the claim before April 1, 2018. This amendment will correct the statute to remove any retroactive application of the statute as amended on April 1, 2006. The Wisconsin Supreme Court in <i>Society Insurance v. LIRC</i> found that the retroactive application of the statute was unconstitutional for a case in which the statute of limitations expired prior to the date of the April 1, 2006 amendment.	1/10/11 Introduced at the WCAC meeting.

			<p>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 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 a traumatic injury becoming due 12 years after that date shall be paid by the employer or insurer. 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. The work injury supplemental benefit fund shall pay benefits and treatment expense for a barred traumatic injury with a date of injury prior to April 1, 2006 if the statute of limitations expired prior to April 1, 2018.</p>		
3.	102.29(1)	Third Party proceeds	<p>Amend §102.29(1) as follows: (1) The making of a claim for compensation against an employer or compensation insurer for the injury or death of an employee shall not affect the right of the employee, the employee's personal representative, or other person entitled to bring action, to make claim or maintain an action in tort against any other party for such injury or death, hereinafter referred to as a 3rd party; nor shall the making of a claim by any such person against a 3rd party for damages by reason of an injury to which ss. 102.03 to 102.64 102.66 are applicable, or the adjustment of any such claim, affect the right of the injured employee or the employee's dependents to recover compensation. The employer or compensation insurer who shall have paid or is obligated to pay a lawful claim under this chapter shall have the same right to make claim or maintain an action in tort against any other party for such injury or death. If the department pays or is obligated to pay a claim under ss. 102.81 (1) or 102.66, the department shall also have the right to maintain an action in tort against any other party for the employee's injury or death. However, each shall give to the other reasonable notice and opportunity to join in the making of such claim or the instituting of an action and to be represented by counsel. If a party entitled to notice cannot be found, the</p>	<p>This amendment provides that the Work Injury Supplemental Benefit Fund shares in any third party settlement proceeds. Currently the WISBF is not reimbursed in a third party suit. The Uninsured Employer's Fund has a similar provision allowing for reimbursement for payments made out of third party proceeds.</p>	<p>1/10/11 Introduced at the WCAC meeting.</p>

			<p>department shall become the agent of such party for the giving of a notice as required in this subsection and the notice, when given to the department, shall include an affidavit setting forth the facts, including the steps taken to locate such party. Each shall have an equal voice in the prosecution of said claim, and any disputes arising shall be passed upon by the court before whom the case is pending, and if no action is pending, then by a court of record or by the department. If notice is given as provided in this subsection, the liability of the tort-feasor shall be determined as to all parties having a right to make claim, and irrespective of whether or not all parties join in prosecuting such claim, the proceeds of such claim shall be divided as follows: After deducting the reasonable cost of collection, one-third of the remainder shall in any event be paid to the injured employee or the employee's personal representative or other person entitled to bring action. Out of the balance remaining, the employer, insurance carrier, or, if applicable, uninsured employers fund <u>or work injury supplemental benefit fund</u> shall be reimbursed for all payments made by it, or which it may be obligated to make in the future, under this chapter, except that it shall not be reimbursed for any payments made or to be made under s. 102.18 (1) (bp), 102.22, 102.35 (3), 102.57, or 102.60. Any balance remaining shall be paid to the employee or the employee's personal representative or other person entitled to bring action. If both the employee or the employee's personal representative or other person entitled to bring action, and the employer, compensation insurer, or department, join in the pressing of said claim and are represented by counsel, the attorney fees allowed as a part of the costs of collection shall be, unless otherwise agreed upon, divided between such attorneys as directed by the court or by the department. A settlement of any 3rd-party claim shall be void unless said settlement and the distribution of the proceeds thereof is approved by the court before whom the action is pending and if no action is pending, then by a court of record or by the department.</p>		
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4.	102.35(1)	Interest on surcharges	<p>Amend §102.35(1) as follows:</p> <p>(1) Every employer and every insurance company that fails to keep the records or to make the reports required by this chapter or that knowingly falsifies such records or makes false reports shall pay a work injury supplemental benefit surcharge to the state of not less than \$10 nor more than \$100 for each offense. The department may waive or reduce a surcharge imposed under this subsection if the employer or insurance company that violated this subsection requests a waiver or reduction of the surcharge within 45 days after the date on which notice of the surcharge is mailed to the employer or insurance company and shows that the violation was due to mistake or an absence of information. A surcharge imposed under this subsection is due within 90 30 days after the date on which notice of the surcharge is mailed to the employer or insurance company. Interest shall accrue on amounts that are not paid when due at the rate of 1 percent per month. All surcharges and interest payments received under this subsection shall be deposited in the fund established under s. 102.65.</p>	<p>This amendment provides that interest on surcharges accrues if the surcharges are not paid within 30 rather than 90 days to synchronize payments with the State's accounting system. This amendment will greatly increase administrative efficiencies.</p>	<p>1/10/11 Introduced at the WCAC meeting.</p>
5.	102.44(1)(c)	Supplemental benefits	<p>Amend §102.44(1)(c) as follows:</p> <p>(c) The employer or insurance carrier paying the supplemental benefits required under this subsection shall be entitled to reimbursement for each such case from the fund established by s. 102.65, commencing one year from the date of the first such payment and annually thereafter while such payments continue. Claims for such reimbursement shall be approved by the department. <u>Claims for such reimbursement shall be requested no later than six months after the close of the year in which supplemental benefits were paid.</u></p>	<p>This amendment requires insurers or self-insured employers have 6 months to request reimbursement from the WISBF for supplemental benefits paid.</p>	<p>1/10/11 Introduced at the WCAC meeting.</p>
6.	102.59(1)	Second Injury Fund claims	<p>Amend §102.59(1) as follows:</p> <p>(1) If an employee has at the time of injury permanent disability which if it had resulted from such injury would have entitled him or her to indemnity for 200 weeks and, as a result of such injury, incurs further permanent disability which entitles him or her to indemnity for 200 weeks, the employee shall be paid from the</p>	<p>This amendment clarifies that an employee may receive benefits only once from the Second Injury Fund.</p>	<p>1/10/11 Introduced at the WCAC meeting.</p>

			<p>funds provided in this section additional compensation equivalent to the amount which would be payable for said previous disability if it had resulted from such injury or the amount which is payable for said further disability, whichever is the lesser. If said disabilities result in permanent total disability the additional compensation shall be in such amount as will complete the payments which would have been due had said permanent total disability resulted from such injury. This additional compensation accrues from, and may not be paid to any person before, the end of the period for which compensation for permanent disability resulting from such injury is payable by the employer, and shall be subject to s. 102.32 (6), (6m), and (7). No compromise agreement of liability for this additional compensation may provide for any lump sum payment. An employee receiving compensation under this subsection shall not receive additional compensation for any further claims under this subsection.</p>		
7.	102.64(2)	Attorney General shall represent the WISBF	<p>Amend §102.64(2)as follows: (2) Upon request of the department of administration, the attorney general shall appear on behalf of the state in proceedings upon claims for compensation against the state. The department of justice shall represent the interests of the state in proceedings under s. 102.49, 102.59, 102.60 or 102.66 unless the department retains an insurance carrier or insurance service organization or the department of administration to process, investigate and pay claims. The department of justice may compromise claims in such proceedings, but the compromises are subject to review by the department of workforce development. Costs incurred by the department of justice in prosecuting or defending any claim for payment into or out of the work injury supplemental benefit fund under s. 102.65, including expert witness and witness fees but not including attorney fees or attorney travel expenses for services performed under this subsection, shall be paid from the work injury supplemental benefit fund. The department may retain an insurance carrier or insurance service organization or the department of administration to process, investigate and pay</p>	<p>This amendment provides that the department may contract with the department of administration or a third party administrator to handle claims involving the Work Injury Supplemental Benefit Fund. Further, that a TPA may retain the services of a private attorney to defend the WISBF and charges for services shall be paid from the WISBF.</p>	<p>1/10/11 Introduced at the WCAC meeting.</p>

			<p><u>claims under s. 102.49, 102.59, 102.60 or 102.66. In cases involving disputed claims, the department may retain an attorney to represent the interests of the work injury supplemental benefit fund and to make appearances on behalf of the work injury supplemental benefit fund in proceedings under ss. 102.16 to 102.29. Section 20.930 and all provisions of subch. IV of ch. 16, except s. 16.753, do not apply to an attorney hired under this subsection. The charges for the services retained under this subsection shall be paid from the appropriation under s. 20.445 (1) (t).</u></p>		
8.	102.65(3)	Work Injury Supplemental Benefit Fund	<p>Create a new subsection §102.65(3) as follows: (3) The secretary shall monitor the cash balance in, and incurred losses to, the work injury supplemental benefit fund using generally accepted actuarial principles. If the secretary determines that the expected ultimate losses to the work injury supplemental benefit fund on known claims exceed 85 percent of the cash balance in the work injury supplemental benefit fund, the secretary shall consult with the council on worker's compensation. If the secretary, after consulting with the council on worker's compensation, determines that there is a reasonable likelihood that the cash balance in the work injury supplemental benefit fund may become inadequate to fund all claims under ss. 102.44 (1)(c), 102.49, 102.59 and 102.66, the secretary shall file with the secretary of administration a certificate attesting that the cash balance in the work injury supplemental benefit fund is likely to become inadequate to fund all claims under ss. 102.44(1)(c), 102.49, 102.59 and 102.66 and specifying the payment of claims from the fund shall be made under the schedule established by department rule or a date after which payments shall be reduced or no new claims will be paid.</p>	<p>This new section is a provision to prioritize or cease payments from the WISBF if the fund is encumbered 85% when considering known claims. The language of this section is based on the provision in s. 102.80 for the Uninsured Employers Fund.</p> <p>NOTE: At this time the Department is not making a proposal for a special assessment; however, this may need to be considered in the future.</p>	1/10/11 Introduced at the WCAC meeting.
9.	80.02(2)(e)	Reports	<p>Amend §DWD 80.02(2)(e) as follows: (e) A report within 30 days after each of the following events occurs, with a copy to the employee, using form WKC-13 indicating all worker's compensation payments to date and the periods of time for which these payments were made <u>or salary continuation is paid during the healing period:</u></p>	<p>This amendment clarifies that WKC13 forms must be filed for injuries with disability beyond 3 days even if salary continued is paid.</p>	1/10/11 Introduced at the WCAC meeting.

10.	80.02(2)(e)1	Reports	Amend §DWD 80.02(2)(e)1 as follows: 1. Payment of compensation is changed from temporary disability <u>or salary continuation</u> to permanent disability.	This amendment clarifies that salary continuation must also be reported.	1/10/11 Introduced at the WCAC meeting.
11.	80.02(2)(e)2	Reports	Amend §DWD 80.02(2)(e)2 as follows: 2. Temporary disability benefits <u>or salary continuation during the healing period</u> are reinstated.	This amendment clarifies that salary continuation must also be reported.	1/10/11 Introduced at the WCAC meeting.
12.	80.02(2)(e)4	Final Medical Reports	Amend §DWD 80.02(2)(e)4 as follows: 4. Final payment of compensation is made <u>or salary continuation paid during the healing period ended</u> . If there are more than 3 weeks of temporary disability or any permanent disability, or if the injured employee has undergone surgery to treat his or her injury, other than surgery to correct a hernia, <u>or if the injured worker sustained an eye injury requiring treatment</u> , the insurance carrier or self-insured employer shall submit a final treating practitioner's report <u>completed by a physician, podiatrist, surgeon, psychologist or chiropractor</u> together with the final WKC-13 or shall explain why the report is not being submitted and shall estimate when the final practitioner's report will be submitted.	This amendment provides that if the employee has suffered an eye injury requiring treatment, that a final medical report must be filed by the insurance carrier indicating whether the employee has sustained any permanent partial disability. This amendment also clarifies that a final medical report must be completed by a physician, podiatrist, surgeon, psychologist or chiropractor.	1/10/11 Introduced at the WCAC meeting.
13.	80.02(2)(e)5	Report of Payments	Create a new subsection, §DWD 80.02(2)(e)5 as follows: 5. <u>Transfer of a claim to a new claims handling office or third party administrator. A copy of the WKC13 shall also be provided to the new claims handling office.</u>	This new subsection requires an updated WKC13 to be filed with the WCD and the new third party administrator whenever there is a change in third party administrators. This will address the problem the WCD has encountered in received updated and current information on permanent total disability claims.	1/10/11 Introduced at the WCAC meeting.
14.	80.02(2)(g)2	Report of Payments	Amend §DWD 80.02(2)(g)24 as follows: 2. A decision to deny liability for payment of compensation <u>or medical expenses</u> for reported claims after a concession of liability is made , giving the reason for the denial and advising the employee of the right to a hearing before the department.	This amendment will clarify the notice of denial requirements. A copy of the letter should be sent to the department if the claim is reported to WCD. This will also clarify that a denial letter is required on medical only cases.	1/10/11 Introduced at the WCAC meeting.

15.	80.02(2)(k)	Report of Payments	Create a new subsection, §DWD 80.02(2)(k) as follows: (g) An annual report of payments made on permanent total disability claims on a form prescribed by the department within six months of the beginning of a new calendar year outlining payments made to the date of the report including payments made in permanent total disability and supplemental benefits during the previous calendar year.	This new subsection requires carriers and self-insured employers to annually submit, on a form prescribed by the department, the PTD payments and supplemental benefit payments made during the previous calendar year.	1/10/11 Introduced at the WCAC meeting.
16.	80.02(2m)(a)1	Required Report	Amend §DWD 80.02(2m)1 as follows: 1. A decision to deny liability for payment of compensation <u>or medical expenses</u> giving the specific reason for the denial and advising the employee of the right to a hearing before the department.	This amendment clarifies that when medical expenses are denied by the carrier or self-insured employer, a copy of the denial letter should be sent to the department if the claim is reported to the WCD.	1/10/11 Introduced at the WCAC meeting.
17.	80.49(7)(a)	Vocational Rehabilitation	Amend §DWD 80.49(7)(a) as follows: (a) At the end of the medical healing period, the self-insured employer or insurance carrier shall notify the <u>employee in writing on a form provided by the department</u> , of the employee's potential eligibility to receive rehabilitation services.	This amendment strikes language referring to a department form. The department does not have a form. It has a brochure that is provided to injured workers on "Getting Back to Work".	1/10/11 Introduced at the WCAC meeting.
18.	80.72(4)(g)	Health Cost Reasonableness of Fee Disputes	Create a new subsection, §DWD 80.72(4)(g) as follows: (g). The department may require that the provider and insurance carrier or self-insured employer submit all information required under this subsection to the department and the other party to the dispute by certified mail when deemed necessary by the department to ensure proper and timely submission and exchange of information .	This amendment allows the department to require that documents be submitted to the department and the other party to the dispute via certified mail. Disputes frequently arise concerning the sending and receipt of documentation related to health cost disputes.	1/10/11 Introduced at the WCAC meeting.
19.	80.73(6)(g)	Health Cost Necessity of Treatment Disputes	Create a new subsection, §DWD 80.73(6)(g) as follows: (g). The department may require that the provider and insurance carrier or self-insured employer submit all information required under this subsection to the department and the other party to the dispute by certified mail when deemed necessary by the department to ensure proper and timely submission and exchange of information.	This amendment allows the department to require that documents be submitted to the department and the other party to the dispute via certified mail. Disputes frequently arise concerning the sending and receipt of documentation related to health cost disputes.	1/10/11 Introduced at the WCAC meeting.
20.	81.06(1)(k)4	Functional Capacity Evaluations	Delete §DWD 81.06(1)(k)4: 4. A health care provider may direct only one completed functional capacity evaluation per injury.	This amendment to the WC Treatment Guidelines is requested by the WC Healthcare Provider Advisory Committee. The provision does not refer to the	1/10/11 Introduced at the WCAC meeting.

				assessment of function done throughout the course of treatment to gauge effectiveness or establish a plan of care.	
21.	Chap. DWD 80	PPD ratings	Several provisions of Chap. DWD 80 relating to PPD ratings need to be reviewed for updating including ratings for eye injuries, thoracic spine fractures, cervical fusion, etc.	The department will consult with physicians concerning rules that should be reviewed and updated and will survey physicians before drafting proposed changes to be submitted to the WCAC for approval.	1/10/11 Introduced at the WCAC meeting.