



State of Wisconsin  
2017 - 2018 LEGISLATURE

LRB-4563/1  
AJM&MED:kjf

## 2017 SENATE BILL 665

December 21, 2017 - Introduced by COMMITTEE ON LABOR AND REGULATORY REFORM,  
by request of Department of Workforce Development. Referred to Committee  
on Labor and Regulatory Reform.

1     **AN ACT** *to repeal* 102.39; *to renumber* 102.14; *to renumber and amend*  
2           102.15 (1) and 102.16 (1) (b); *to amend* 20.445 (1) (ra), 20.445 (1) (sm), 46.27  
3           (5m), 46.275 (4m), 46.277 (3r), 46.281 (1k), 46.2897 (3), 46.995 (3), 73.0301 (1)  
4           (d) 3m., 73.0301 (1) (e), 102.04 (1) (b) 1., 102.04 (1) (b) 2., 102.11 (1) (intro.),  
5           102.13 (2) (b), 102.13 (2) (c), 102.14 (title), 102.15 (title), 102.16 (1m) (a), 102.17  
6           (1) (b), 102.17 (1) (c), 102.17 (1) (cg), 102.17 (1) (cr), 102.17 (2), 102.175 (2),  
7           102.18 (1) (bg) 1., 102.18 (1) (bp), 102.18 (2) (a), 102.18 (5), 102.18 (6), 102.44  
8           (1) (ag), 102.44 (1) (am), 102.44 (1) (b), 102.44 (2), 102.44 (6) (b), 102.61 (2),  
9           102.62, 102.75 (1m), 102.80 (1) (d), 102.81 (4) (b) (intro.), 102.81 (4) (b) 2., 102.81  
10          (5), 102.82 (1), 108.227 (1) (f), 108.227 (1m) (intro.), 108.227 (3) (a) 3., 108.227  
11          (5) (a), 108.227 (5) (b) 1. and 108.227 (5) (b) 2.; *to repeal and recreate* 102.17  
12          (1) (ct); and *to create* 20.445 (1) (rc), 73.0301 (1) (d) 15., 102.13 (1) (bm), 102.14  
13          (2m), 102.15 (1g), 102.16 (1) (b) 2., 102.16 (2) (i), 102.33 (1m), 102.33 (2) (b) 7.,  
14          102.423, 102.425 (2m), 102.427, 102.525, 102.81 (4) (c) and 108.227 (1) (e) 16.

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1 of the statutes; **relating to:** various changes to the worker's compensation law,  
2 modifying administrative rules related to worker's compensation, extending  
3 the time limit for emergency rule procedures, providing an exemption from  
4 emergency rule procedures, granting rule-making authority, and making an  
5 appropriation.

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***Analysis by the Legislative Reference Bureau***

This bill makes various changes to the worker's compensation law, as administered by the Department of Workforce Development and the Division of Hearings and Appeals in the Department of Administration.

**PAYMENT OF BENEFITS; OTHER PAYMENTS*****Health service fee schedule***

This bill requires DWD, by January 1, 2019, to establish a schedule of the maximum fees that a health care provider may charge an employer or insurer for health services provided to an injured employee who claims worker's compensation benefits. Under the bill, DWD must, when that schedule is established, notify the Legislative Reference Bureau, and the LRB must publish that notice in the Wisconsin Administrative Register. The reasonableness of the health service fee dispute resolution process under current law does not apply to health services provided on or after the date of the notice. The liability of an employer or insurer for a health service included in the fee schedule is then limited to the lesser of the maximum fee allowed under the schedule or the health care provider's actual fee for that health service as of the date on which the health service was provided.

The bill requires DWD to establish the maximum fees by using a formula that compares the cost for group health plans and self-insured plans with the cost under the federal Medicare program for health services included in the schedule. DWD must first determine the average negotiated price for insured and self-insured group health plans for each health service included in the schedule. Records related to the collection of that information are not subject to disclosure under the public records law. DWD must then determine the payment made under the federal Medicare program for each health service included in the schedule, and then determine the average variance in prices under the group health and self-insured plans and under the federal Medicare program for each health care service included in the schedule. The bill then requires DWD to increase the prices under the federal Medicare program by the average variation in prices. Finally, DWD must increase the cost of each health service by 2.5 percent for administrative costs or by an alternative percentage not to exceed 10 percent if DWD determines, based on information provided by health care providers before the schedule initially takes effect, that the 2.5 percent increase is insufficient to pay for the administrative costs of treating worker's compensation patients.

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The bill requires DWD to adjust those maximum fees annually by the change in the consumer price index for medical care services and, no less often than every ten years, to redetermine the average negotiated prices for group health plans and self-insured plans and payments under the federal Medicare program for the services included in the schedule and revise the maximum fees based on those redetermined amounts.

***Additional payments for permanent partial disability***

The bill specifies certain conditions under which an employee who sustains a disability in the permanent partial disability schedule included in the statutes may receive additional permanent partial disability indemnity payments. Under current law, an injured employee receives a number of weeks of indemnity payments for a permanent partial disability for a period specified in the statutes. Under the bill, the injured employee is entitled to a 15 percent increase in the number of weeks of indemnity payments if the employee experiences wage loss, as determined by DWD, of 15 percent or more upon returning to work, or if the employment relationship is terminated by the employer at the time of the injury or by the employee because his or her physical or mental limitations prevent continued employment. The bill specifies that the determination of wage loss may not account for periods during which the employee receives temporary disability benefits or unemployment insurance benefits or any payments for permanent partial disability.

Under the bill, if the employer makes a good faith offer of employment that the employee refuses without just cause, the employee is considered to have returned to work at the wages the employee would have received had the employee accepted the employment offer.

***Maximum weekly compensation for permanent partial disability***

This bill increases the maximum weekly compensation rate for permanent partial disability from \$362 to \$382 for injuries occurring before January 1, 2019, and to \$407 for injuries occurring on or after that date.

***Supplemental benefits***

This bill provides that an injured employee who is receiving the maximum weekly benefit in effect at the time of the injury for permanent total disability or continuous temporary total disability resulting from an injury that occurred before January 1, 2005, is entitled to receive supplemental benefits for a week of disability beginning after the effective date of the bill in an amount that, when added to the employee's regular benefits, equals \$711. Under current law, supplemental benefits are payable only for an injury occurring prior to January 1, 2003, and the maximum supplemental benefit amount for a week of disability is an amount that, when added to the employee's regular benefits, equals \$669.

***Lump sum payments in compromise agreements***

The bill increases the maximum amount of unaccrued benefits that may be provided to an injured employee as a lump sum in a compromise agreement concerning the employer's liability under the worker's compensation law. Current administrative rules permit an employee and employer to enter into a compromise agreement concerning the employer's worker's compensation liability. The rules

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limit the amount of unaccrued worker's compensation benefits that may be provided as a lump sum to the injured employee in that compromise agreement to \$10,000. Under the bill, that limit is increased to \$50,000.

***Payment of proceeds of claims against third parties***

Current law provides that when an employee sustains a work injury or dies as a result of a work injury and the employee, the employee's personal representative, or other person entitled to bring action maintains an action in tort against a third party for the injury or death, the proceeds of the claim are to be divided pursuant to a formula detailed under current law. Under that formula, after deducting the reasonable cost of collection, one-third of the remainder is in all cases to be paid to the injured employee, personal representative, or other person entitled. Current law also provides that if an injured employee or dependent receives compensation from the employee's employer or a third party in such an action and the employee received payments from DWD due to the employer being an uninsured employer, the employee or dependent must reimburse DWD for the full amount up to the amount recovered from the third party.

This bill modifies the latter provision such that if an injured employee or dependent receives compensation from the employee's employer or a third party in such an action and the employee received payments from DWD due to the employer being an uninsured employer, the employee or dependent must reimburse DWD in accordance with the formula described above.

**REQUIREMENTS AND PROHIBITIONS FOR HEALTH CARE PROVIDERS*****Electronic billing***

The bill requires any health care provider providing care to an injured employee to use an electronic billing system and be able to receive payments electronically.

***Health care records in electronic format***

Current law requires a health care provider, upon request by an injured employee, employer, insurer, or DWD, to provide that person with any written material that is reasonably related to an injury for which the employee claims worker's compensation in paper format upon payment of the actual costs of preparing the certified duplicate, not to exceed the greater of 45 cents per page or \$7.50 per request, plus the actual costs of postage, or in electronic format upon payment of \$26 per request.

This bill requires such material to be provided in electronic format unless the requester is unable to receive the material in electronic format or otherwise specifically requests the material in paper format.

***Dispensing of opiates***

The bill prohibits a practitioner from dispensing more than a seven-day supply of an opiate to treat an injury for which an employer or insurer is liable under the worker's compensation law. The bill provides that a supply greater than a seven-day supply dispensed by a practitioner is considered to be unnecessary treatment without the need for a written opinion on the necessity of the treatment.

**SENATE BILL 665*****Opiates and independent medical examinations***

The bill requires that if a health care provider conducts an independent medical examination and concludes that an employee has sustained a work-related injury but that opiates that have been prescribed to the employee for the injury are not medically necessary, any report prepared by the health care provider that recommends the cessation of those opiates must include certain information, including a discussion of alternative treatments, a proposed plan of discontinuation of opiate therapy consistent with any applicable guidelines issued by a state credentialing board, and a statement regarding coverage for addiction treatment.

***Notice; requirement to post***

The bill requires each employer to post, in each workplace, a notice in a form approved by DWD setting forth employees' rights under the worker's compensation law. DWD must include in the notice information to educate injured employees regarding opiate therapies, opiate addiction, and alternative treatments for pain.

**PROGRAM ADMINISTRATION*****Confidential records; disclosure to certain agencies***

Under current law, subject to a number of exceptions, certain records of DWD, DHA, or the Labor and Industry Review Commission that reveal information about injured employees are confidential and not subject to disclosure under the public records law or a subpoena. The bill creates another exception for records requested by the Department of Health Services, a county department of social services, or a county department of human services, if the request is limited to the name and address of the employee who is the subject of the record, the name and address of the employee's employer, and any financial information about that employee contained in the record.

***Coordination regarding pain management***

The bill requires DWD to coordinate with the Department of Safety and Professional Services and its attached credentialing boards and to educate injured employees about treatments and about devices approved by the federal Food and Drug Administration for chronic pain related to injuries compensable under the worker's compensation law that, in lieu of or in combination with medication, may reasonably be required to cure or provide relief from injured employees' pain and about the fact that such treatments and devices may constitute covered medical expenses under the worker's compensation law.

***Hearing loss calculation***

The bill requires DWD to conduct an analysis regarding the methods of calculation of hearing loss under the worker's compensation law in this state and how they compare to the methods of calculation used in the worker's compensation laws of other states, as well as an analysis of how improvements in technology should guide future decisions regarding how to calculate hearing loss for worker's compensation purposes in this state. DWD must, within six months after the effective date of the bill, issue a report of its findings to the Council on Worker's Compensation.

**SENATE BILL 665*****Minimum permanent partial disability ratings***

The bill requires DWD to report to the Council on Worker's Compensation on DWD's progress in carrying out its duties related to reviewing and revising the minimum permanent partial disability ratings that DWD has promulgated by rule for certain amputation levels, losses of motion, sensory losses, and surgical procedures resulting from injuries for which permanent partial disability is claimed.

***Other changes***

The bill makes various other changes regarding the administration of the worker's compensation law, including:

1. Changes regarding the financing of the worker's compensation law, including creating a separate appropriation to pay for certain reimbursements for supplemental benefit payments.
2. Giving DWD authority to take certain actions under the worker's compensation law with respect to which DHA has authority under current law, including allowing DWD to issue orders or take other action in certain cases.
3. Allowing DWD to conduct alternative dispute resolution activities for certain cases.
4. Granting explicit rule-making authority to DWD to carry out the worker's compensation law.
5. Transferring from DWD to DHA the authority to grant licenses for non-attorneys to appear in worker's compensation cases.
6. Prohibiting DHA from promulgating rules that conflict with DWD's rules and requiring DHA to comply with DWD's rules.

**GENERAL COVERAGE*****Employers subject to worker's compensation law***

Under current law, every person who usually employs three or more employees for services performed in this state is subject to the worker's compensation law. This bill provides that every person who at any time employs three or more employees for services performed in this state is subject to the worker's compensation law and specifies that a person becomes subject to that law on the day on which the person employs three or more employees for services performed in this state.

***Long-term care providers; clarification***

The bill makes clarifications regarding individuals who perform services for persons receiving long-term care benefits under certain long-term care programs and who do not otherwise have worker's compensation coverage for those services to confirm that they are considered to be employees, for worker's compensation purposes, of the entities providing financial management services for the persons receiving the benefits.

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For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1           **SECTION 1.** 20.005 (3) (schedule) of the statutes: at the appropriate place, insert  
2           the following amounts for the purposes indicated:

**2017-18          2018-19**

3           **20.445 Workforce development, department of**

4           (1)    WORKFORCE DEVELOPMENT

5           (rc)   Worker's compensation opera-  
6           tions fund; supplemental bene-  
7           fits

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8           **SECTION 2.** 20.445 (1) (ra) of the statutes is amended to read:

9           20.445 (1) (ra) *Worker's compensation operations fund; administration.* From  
10          the worker's compensation operations fund, the amounts in the schedule for the  
11          administration of the worker's compensation program by the department, for  
12          assistance to the department of justice in investigating and prosecuting fraudulent  
13          activity related to worker's compensation, for transfer to the uninsured employers  
14          fund under s. 102.81 (1) (c), and for transfer to the appropriation accounts under par.  
15          (rp) and s. 20.427 (1) (ra). All moneys received under ss. 102.28 (2) (b) and 102.75  
16          (1) shall be credited to this appropriation account. From this appropriation, an  
17          amount not to exceed \$5,000 may be expended each fiscal year for payment of  
18          expenses for travel and research by the council on worker's compensation, an amount  
19          not to exceed \$500,000 may be transferred in each fiscal year to the uninsured

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1 employers fund under s. 102.81 (1) (c), the amount in the schedule under par. (rp)  
2 shall be transferred to the appropriation account under par. (rp), and the amount in  
3 the schedule under s. 20.427 (1) (ra) shall be transferred to the appropriation account  
4 under s. 20.427 (1) (ra).

5 **SECTION 3.** 20.445 (1) (rc) of the statutes is created to read:

6 20.445 (1) (rc) *Worker's compensation operations fund; supplemental benefits.*

7 From the worker's compensation operations fund, the amounts in the schedule for  
8 providing reimbursement to insurance carriers paying supplemental benefits under  
9 s. 102.44 (1) (c). All moneys received under s. 102.75 (1g) shall be credited to this  
10 appropriation account.

11 **SECTION 4.** 20.445 (1) (sm) of the statutes is amended to read:

12 20.445 (1) (sm) *Uninsured employers fund; payments.* From the uninsured  
13 employers fund, ~~a sum sufficient to make~~ all moneys received from sources identified  
14 under s. 102.80 (1m) for the purpose of making the payments under s. 102.81 (1) and  
15 to obtain reinsurance under s. 102.81 (2). No moneys may be expended or  
16 encumbered under this paragraph until the first day of the first July beginning after  
17 the day that the secretary of workforce development files the certificate under s.  
18 102.80 (3) (a).

19 **SECTION 5.** 46.27 (5m) of the statutes is amended to read:

20 46.27 (5m) **WORKER'S COMPENSATION COVERAGE.** An individual who is  
21 performing services for a person receiving long-term care benefits under this section  
22 on a self-directed basis and who does not otherwise have worker's compensation  
23 coverage for those services is considered, for purposes of worker's compensation  
24 coverage, to be an employee of the entity that is providing financial management  
25 services for that person.

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1           **SECTION 6.** 46.275 (4m) of the statutes is amended to read:

2           46.275 **(4m)** WORKER'S COMPENSATION COVERAGE. An individual who is  
3 performing services for a person receiving long-term care benefits under this section  
4 on a self-directed basis and who does not otherwise have worker's compensation  
5 coverage for those services is considered, for purposes of worker's compensation  
6 coverage, to be an employee of the entity that is providing financial management  
7 services for that person.

8           **SECTION 7.** 46.277 (3r) of the statutes is amended to read:

9           46.277 **(3r)** WORKER'S COMPENSATION COVERAGE. An individual who is  
10 performing services for a person receiving long-term care benefits under this section  
11 on a self-directed basis and who does not otherwise have worker's compensation  
12 coverage for those services is considered, for purposes of worker's compensation  
13 coverage, to be an employee of the entity that is providing financial management  
14 services for that person.

15           **SECTION 8.** 46.281 (1k) of the statutes is amended to read:

16           46.281 **(1k)** WORKER'S COMPENSATION COVERAGE. An individual who is  
17 performing services for a person receiving the Family Care benefit, or benefits under  
18 Family Care Partnership, on a self-directed basis and who does not otherwise have  
19 worker's compensation coverage for those services is considered, for purposes of  
20 worker's compensation coverage, to be an employee of the entity that is providing  
21 financial management services for that person.

22           **SECTION 9.** 46.2897 (3) of the statutes is amended to read:

23           46.2897 **(3)** WORKER'S COMPENSATION COVERAGE. An individual who is  
24 performing services for a person participating in the self-directed services option  
25 and who does not otherwise have worker's compensation coverage for those services

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1 is considered, for purposes of worker's compensation coverage, to be an employee of  
2 the entity that is providing financial management services for that person.

3 **SECTION 10.** 46.995 (3) of the statutes is amended to read:

4 46.995 (3) An individual who is performing services for a person receiving  
5 long-term care benefits under any children's long-term support waiver program on  
6 a self-directed basis and who does not otherwise have worker's compensation  
7 coverage for those services is considered, for purposes of worker's compensation  
8 coverage, to be an employee of the entity that is providing financial management  
9 services for that person.

10 **SECTION 11.** 73.0301 (1) (d) 3m. of the statutes is amended to read:

11 73.0301 (1) (d) 3m. A license or certificate issued by the department of  
12 workforce development under s. ~~102.17 (1) (e)~~, 103.275 (2) (b), 103.34 (3) (c), 103.91  
13 (1), 103.92 (3), 104.07 (1) or (2), or 105.13 (1).

14 **SECTION 12.** 73.0301 (1) (d) 15. of the statutes is created to read:

15 73.0301 (1) (d) 15. A license issued by the division of hearings and appeals  
16 under s. 102.17 (1) (e).

17 **SECTION 13.** 73.0301 (1) (e) of the statutes is amended to read:

18 73.0301 (1) (e) "Licensing department" means the department of  
19 administration; the division of hearings and appeals; the department of agriculture,  
20 trade and consumer protection; the board of commissioners of public lands; the  
21 department of children and families; the ethics commission; the department of  
22 financial institutions; the department of health services; the department of natural  
23 resources; the department of public instruction; the department of safety and  
24 professional services; the department of workforce development; the office of the  
25 commissioner of insurance; or the department of transportation.

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1           **SECTION 14.** 102.04 (1) (b) 1. of the statutes is amended to read:

2           102.04 (1) (b) 1. Every person who usually at any time employs 3 or more  
3 employees for services performed in this state, whether in one or more trades,  
4 businesses, professions, or occupations, and whether in one or more locations. A  
5 person who employs 3 or more employees for services performed in this state becomes  
6 subject to this chapter on the day on which the person employs 3 or more such  
7 employees.

8           **SECTION 15.** 102.04 (1) (b) 2. of the statutes is amended to read:

9           102.04 (1) (b) 2. Every person who usually employs less than 3 employees,  
10 provided the person has paid wages of \$500 or more in any calendar quarter for  
11 services performed in this state. Such ~~employer~~ a person shall become subject to this  
12 chapter on the 10th day of the month next succeeding such quarter.

13           **SECTION 16.** 102.11 (1) (intro.) of the statutes is amended to read:

14           102.11 (1) (intro.) The average weekly earnings for temporary disability,  
15 permanent total disability, or death benefits for injury in each calendar year on or  
16 after January 1, 1982, shall be not less than \$30 nor more than the wage rate that  
17 results in a maximum compensation rate of 110 percent of the state's average weekly  
18 earnings as determined under s. 108.05 as of June 30 of the previous year. The  
19 average weekly earnings for permanent partial disability shall be not less than \$30  
20 and, for permanent partial disability for injuries occurring on or after ~~March 2, 2016,~~  
21 ~~and before January 1, 2017, not more than \$513, resulting in a maximum~~  
22 ~~compensation rate of \$342, and, for permanent partial disability for injuries~~  
23 ~~occurring on or after January 1, 2017, not more than \$543, resulting in a maximum~~  
24 ~~compensation rate of \$362, for permanent partial disability for injuries occurring on~~  
25 or after the effective date of this subsection ... [LRB inserts date], and before January

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1 1, 2019, not more than \$573, resulting in a maximum compensation rate of \$382, and,  
2 for permanent partial disability for injuries occurring on or after January 1, 2019,  
3 not more than \$610.50, resulting in a maximum compensation rate of \$407. Between  
4 such limits the average weekly earnings shall be determined as follows:

5 **SECTION 17.** 102.13 (1) (bm) of the statutes is created to read:

6 102.13 (1) (bm) 1. In this paragraph, "opiate" has the meaning given in s. 961.01  
7 (16).

8 2. If a physician, chiropractor, psychologist, dentist, physician assistant,  
9 advanced practice nurse prescriber, or podiatrist conducts an examination under  
10 par. (a) and concludes that the employee has sustained a work-related injury but  
11 that opiates that have been prescribed to the employee for the injury are not  
12 medically necessary, any report prepared by the physician, chiropractor,  
13 psychologist, dentist, physician assistant, advanced practice nurse prescriber, or  
14 podiatrist that recommends the cessation of those opiates shall include all of the  
15 following:

16 a. A discussion of alternative treatments or medical devices for the injured  
17 employee's pain and, if opining that alternative treatments are also unnecessary, an  
18 explanation as to why such alternative treatments are unnecessary.

19 b. A proposed plan of discontinuation of opiate therapy consistent with any  
20 applicable guidelines concerning opiates issued under s. 440.035 (2m).

21 c. If the physician, chiropractor, psychologist, dentist, physician assistant,  
22 advanced practice nurse prescriber, or podiatrist opines that the injured employee  
23 has developed behaviors indicative of opioid use disorder related to the injury, a  
24 statement to the employee that the employer or insurer will pay for, and assist the  
25 employee in obtaining, a physician referral for addiction treatment. In that case, the

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1 employer or insurer shall advise the employee that opiates prescribed as a result of  
2 the injury will continue to be paid for by the employer or insurer until the employee  
3 is referred for addiction treatment.

4 **SECTION 18.** 102.13 (2) (b) of the statutes is amended to read:

5 102.13 (2) (b) A physician, chiropractor, podiatrist, psychologist, dentist,  
6 physician assistant, advanced practice nurse prescriber, hospital, or health service  
7 provider shall furnish a legible, certified duplicate of the written material requested  
8 under par. (a) in electronic format upon payment of \$26 per request, unless the  
9 requester is unable to receive the material in electronic format or otherwise  
10 specifically requests the material in paper format, in which case the physician,  
11 chiropractor, podiatrist, psychologist, dentist, physician assistant, advanced  
12 practice nurse prescriber, hospital, or health service provider shall furnish a legible,  
13 certified duplicate of the written material requested under par. (a) in paper format  
14 upon payment of the actual costs of preparing the certified duplicate, not to exceed  
15 the greater of 45 cents per page or \$7.50 per request, plus the actual costs of postage,  
16 or shall furnish a legible, certified duplicate of that material in electronic format  
17 upon payment of \$26 per request. Any person who refuses to provide certified  
18 duplicates of written material in the person's custody that is requested under par. (a)  
19 shall be liable for reasonable and necessary costs and, notwithstanding s. 814.04 (1),  
20 reasonable attorney fees incurred in enforcing the requester's right to the duplicates  
21 under par. (a).

22 **SECTION 19.** 102.13 (2) (c) of the statutes is amended to read:

23 102.13 (2) (c) Except as provided in this paragraph, if an injured employee has  
24 a period of temporary disability that exceeds 3 weeks or a permanent disability, if the  
25 injured employee has undergone surgery to treat his or her injury, other than surgery

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1 to correct a hernia, or if the injured employee sustained an eye injury requiring  
2 medical treatment on 3 or more occasions off the employer's premises, the  
3 department may by rule require the insurer or self-insured employer to submit to  
4 the department a final report of the employee's treating practitioner. The  
5 department may not require an insurer or self-insured employer to submit to the  
6 department a final report of an employee's treating practitioner when the insurer or  
7 self-insured employer denies the employee's claim for compensation in its entirety  
8 and the employee does not contest that denial. A treating practitioner shall complete  
9 a final report on a timely basis and may charge a reasonable fee for the completion  
10 of the final report, not to exceed \$100, but may not require prepayment of that fee.  
11 ~~An~~ Subject to s. 102.16 (2) (i), an insurer or self-insured employer that disputes the  
12 reasonableness of a fee charged for the completion of a treatment practitioner's final  
13 report may submit that dispute to the department for resolution under s. 102.16 (2).

14 **SECTION 20.** 102.14 (title) of the statutes is amended to read:

15 **102.14 (title) Jurisdiction, powers, and duties of department and**  
16 **division; advisory committee council.**

17 **SECTION 21.** 102.14 of the statutes is renumbered 102.14 (1m).

18 **SECTION 22.** 102.14 (2m) of the statutes is created to read:

19 **102.14 (2m)** The department of workforce development shall coordinate with  
20 the department of safety and professional services and credentialing boards, as  
21 defined in s. 440.01 (2) (bm), and shall educate injured employees about treatments  
22 and about devices approved by the federal food and drug administration for chronic  
23 pain related to injuries compensable under this chapter that, in lieu of or in  
24 combination with medication, may reasonably be required to cure or provide relief

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1 from injured employees' pain and about the fact that such treatments and devices  
2 may constitute covered medical expenses under this chapter.

3 **SECTION 23.** 102.15 (title) of the statutes is amended to read:

4 **102.15 (title) Rules of procedure; transcripts.**

5 **SECTION 24.** 102.15 (1) of the statutes is renumbered 102.15 (1r) and amended  
6 to read:

7 102.15 (1r) ~~Subject to this chapter, the~~ The division may adopt its own  
8 promulgate rules as necessary to carry out its duties and functions under this  
9 chapter, except that notwithstanding s. 227.11, the division may only promulgate  
10 rules of procedure and may change the same from time to time. The division may not  
11 promulgate any rule that conflicts with, and shall comply with, rules promulgated  
12 by the department under this chapter.

13 **SECTION 25.** 102.15 (1g) of the statutes is created to read:

14 102.15 (1g) The department may promulgate rules as necessary to carry out  
15 its duties and functions under this chapter. The provisions of s. 103.005 relating to  
16 the adoption, publication, modification, and court review of rules or general orders  
17 of the department shall apply to all rules promulgated or general orders adopted  
18 under this chapter.

19 **SECTION 26.** 102.16 (1) (b) of the statutes is renumbered 102.16 (1) (b) 1. and  
20 amended to read:

21 102.16 (1) (b) 1. In the case of a claim for compensation with respect to which  
22 no application has been filed under s. 102.17 (1) (a) 1. or with respect to which an  
23 application has been filed, but the application is not ready to be scheduled for a  
24 hearing, the department may review and set aside, modify, or confirm a compromise  
25 of the claim within one year after the date on which the compromise is filed with the

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1 department, the date on which an award has been entered based on the compromise,  
2 or the date on which an application for the office department to take any of those  
3 actions is filed with the department.

4 **SECTION 27.** 102.16 (1) (b) 2. of the statutes is created to read:

5 102.16 (1) (b) 2. The department may conduct alternative dispute resolution  
6 activities for a case involving an employee who is not represented by an attorney with  
7 respect to which no application has been filed under s. 102.17 (1) (a) 1. or with respect  
8 to which an application has been filed, regardless of whether the application is ready  
9 to be scheduled for a hearing.

10 **SECTION 28.** 102.16 (1m) (a) of the statutes is amended to read:

11 102.16 (1m) (a) If an insurer or self-insured employer concedes by compromise  
12 under sub. (1) or stipulation under s. 102.18 (1) (a) that the insurer or self-insured  
13 employer is liable under this chapter for any health services provided to an injured  
14 employee by a health service provider, but disputes the reasonableness of the fee  
15 charged by the health service provider, the department or the division may include  
16 in its order confirming the compromise or stipulation a determination made by the  
17 department under sub. (2) as to the reasonableness of the fee or, if such a  
18 determination has not yet been made, the department or the division may notify, or  
19 direct the insurer or self-insured employer to notify, the health service provider  
20 under sub. (2) (b) that the reasonableness of the fee is in dispute. The department  
21 or the division shall deny payment of a health service fee that the department  
22 determines under sub. (2) to be unreasonable. A health service provider and an  
23 insurer or self-insured employer that are parties to a fee dispute under this  
24 paragraph are bound by the department's determination under sub. (2) on the  
25 reasonableness of the disputed fee, unless that determination is set aside, reversed,

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1 or modified by the department under sub. (2) (f) or is set aside on judicial review as  
2 provided in sub. (2) (f). This paragraph does not apply to a health service provided  
3 to an injured employee beginning on the date on which the notice under s. 102.423  
4 (1) (a) is published in the Wisconsin Administrative Register.

5 **SECTION 29.** 102.16 (2) (i) of the statutes is created to read:

6 102.16 (2) (i) This subsection does not apply to a health service provided to an  
7 injured employee beginning on the date on which the notice under s. 102.423 (1) (a)  
8 is published in the Wisconsin Administrative Register.

9 **SECTION 30.** 102.17 (1) (b) of the statutes is amended to read:

10 102.17 (1) (b) In any dispute or controversy pending before the department or  
11 the division, the department or the division may direct the parties to appear before  
12 an examiner for a conference to consider the clarification of issues, the joining of  
13 additional parties, the necessity or desirability of amendments to the pleadings, the  
14 obtaining of admissions of fact or of documents, records, reports, and bills that may  
15 avoid unnecessary proof, and such other matters as may aid in disposition of the  
16 dispute or controversy. After that conference, the department or the division may  
17 issue an order requiring disclosure or exchange of any information or written  
18 material that the department or the division considers material to the timely and  
19 orderly disposition of the dispute or controversy. If a party fails to disclose or  
20 exchange that information within the time stated in the order, the department or the  
21 division may issue an order dismissing the claim without prejudice or excluding  
22 evidence or testimony relating to the information or written material. The  
23 department or the division shall provide each party with a copy of any order issued  
24 under this paragraph.

25 **SECTION 31.** 102.17 (1) (c) of the statutes is amended to read:

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1           102.17 (1) (c) 1. Any party shall have the right to be present at any hearing,  
2 in person or by attorney or any other agent, and to present such testimony as may  
3 be pertinent to the controversy before the division. No person, firm, or corporation,  
4 other than an attorney at law who is licensed to practice law in the state, may appear  
5 on behalf of any party in interest before the division or any member or employee of  
6 the division assigned to conduct any hearing, investigation, or inquiry relative to a  
7 claim for compensation or benefits under this chapter, unless the person is 18 years  
8 of age or older, does not have an arrest or conviction record, subject to ss. 111.321,  
9 111.322 and 111.335, is otherwise qualified, and has obtained from the department  
10 division a license with authorization to appear in matters or proceedings before the  
11 division. Except as provided under pars. (cm), (cr), and (ct), the license shall be  
12 issued by the department division under rules promulgated by the department  
13 division. The ~~department~~ division shall maintain in its office a current list of persons  
14 to whom licenses have been issued.

15           2. Any license issued under subd. 1. may be suspended or revoked by the  
16 ~~department~~ division for fraud or serious misconduct on the part of an agent, may be  
17 denied, suspended, nonrenewed, or otherwise withheld by the ~~department~~ division  
18 for failure to pay court-ordered payments as provided in par. (cm) on the part of an  
19 agent, and may be denied or revoked if the department of revenue certifies under s.  
20 73.0301 that the applicant or licensee is liable for delinquent taxes or if the  
21 department ~~determines~~ of workforce development certifies under ~~par. (ct)~~ s. 108.227  
22 that the applicant or licensee is liable for delinquent unemployment insurance  
23 contributions. Before suspending or revoking the license of the agent on the grounds  
24 of fraud or misconduct, the ~~department~~ division shall give notice in writing to the  
25 agent of the charges of fraud or misconduct and shall give the agent full opportunity

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1 to be heard in relation to those charges. In denying, suspending, restricting, refusing  
2 to renew, or otherwise withholding a license for failure to pay court-ordered  
3 payments as provided in par. (cm), the ~~department~~ division shall follow the  
4 procedure provided in a memorandum of understanding entered into under s.  
5 49.857.

6 3. Unless otherwise suspended or revoked, a license issued under subd. 1. shall  
7 be in force from the date of issuance until the June 30 following the date of issuance  
8 and may be periodically renewed by the ~~department from time to time~~ division, but  
9 each renewed license shall expire on the June 30 following the issuance of the  
10 renewed license.

11 **SECTION 32.** 102.17 (1) (cg) of the statutes is amended to read:

12 102.17 (1) (cg) 1. Except as provided in subd. 2m., the ~~department~~ division shall  
13 require each applicant for a license under par. (c) who is an individual to provide the  
14 ~~department~~ division with the applicant's social security number, and shall require  
15 each applicant for a license under par. (c) who is not an individual to provide the  
16 ~~department~~ division with the applicant's federal employer identification number,  
17 when initially applying for or applying to renew the license.

18 2. If an applicant who is an individual fails to provide the applicant's social  
19 security number to the ~~department~~ division or if an applicant who is not an  
20 individual fails to provide the applicant's federal employer identification number to  
21 the ~~department~~ division, the ~~department~~ division may not issue or renew a license  
22 under par. (c) to or for the applicant unless the applicant is an individual who does  
23 not have a social security number and the applicant submits a statement made or  
24 subscribed under oath or affirmation as required under subd. 2m.

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1           2m. If an applicant who is an individual does not have a social security number,  
2 the applicant shall submit a statement made or subscribed under oath or affirmation  
3 to the ~~department~~ division that the applicant does not have a social security number.  
4 The form of the statement shall be prescribed by the ~~department~~ division. A license  
5 issued in reliance upon a false statement submitted under this subdivision is invalid.

6           3. The ~~department of workforce development~~ division may not disclose any  
7 information received under subd. 1. to any person except to the department of  
8 revenue for the sole purpose of requesting certifications under s. 73.0301, the  
9 department of workforce development for the sole purpose of requesting  
10 certifications under s. 108.227, or the department of children and families for  
11 purposes of administering s. 49.22.

12           **SECTION 33.** 102.17 (1) (cr) of the statutes is amended to read:

13           102.17 (1) (cr) The ~~department~~ division shall deny an application for the  
14 issuance or renewal of a license under par. (c), or revoke such a license already issued,  
15 if the department of revenue certifies under s. 73.0301 that the applicant or licensee  
16 is liable for delinquent taxes. Notwithstanding par. (c), an action taken under this  
17 paragraph is subject to review only as provided under s. 73.0301 (5) and not as  
18 provided in ch. 227.

19           **SECTION 34.** 102.17 (1) (ct) of the statutes is repealed and recreated to read:

20           102.17 (1) (ct) The division shall deny an application for the issuance or  
21 renewal of a license under par. (c), or revoke such a license already issued, if the  
22 department certifies under s. 108.227 that the applicant or licensee is liable for  
23 delinquent contributions, as defined in s. 108.227 (1) (d). Notwithstanding par. (c),  
24 an action taken under this paragraph is subject to review only as provided under s.  
25 108.227 (5) and not as provided in ch. 227.

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1           **SECTION 35.** 102.17 (2) of the statutes is amended to read:

2           102.17 (2) If the division has reason to believe that the payment of  
3           compensation has not been made, the division may on its own motion give notice to  
4           the parties, in the manner provided for the service of an application, of a time and  
5           place when a hearing will be held for the purpose of determining the facts, or if the  
6           department has reason to believe that the payment of compensation has not been  
7           made, the department may request that the division give such a notice of hearing.  
8           The notice shall contain a statement of the matter to be considered. All provisions  
9           of this chapter governing proceedings on an application shall apply, insofar as  
10          applicable, to a proceeding under this subsection. When the division schedules a  
11          hearing ~~on its own motion, as provided in this subsection, neither~~ the division does  
12          not become nor the department becomes a party in interest, and is not neither the  
13          division nor the department shall be required to appear as a party at the hearing.

14          **SECTION 36.** 102.175 (2) of the statutes is amended to read:

15          102.175 (2) If after a hearing or a prehearing conference the department or the  
16          division determines that an injured employee is entitled to compensation but that  
17          there remains in dispute only the issue of which of 2 or more parties is liable for that  
18          compensation, the department or the division may order one or more parties to pay  
19          compensation in an amount, time, and manner as determined by the department or  
20          the division. If the department or the division later determines that another party  
21          is liable for compensation, the department or the division shall order that other party  
22          to reimburse any party that was ordered to pay compensation under this subsection.

23          **SECTION 37.** 102.18 (1) (bg) 1. of the statutes is amended to read:

24          102.18 (1) (bg) 1. If the division finds under par. (b) that an insurer or  
25          self-insured employer is liable under this chapter for any health services provided

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1 to an injured employee by a health service provider, but that the reasonableness of  
2 the fee charged by the health service provider is in dispute, the division may include  
3 in its order under par. (b) a determination made by the department under s. 102.16  
4 (2) as to the reasonableness of the fee or, if such a determination has not yet been  
5 made, the division may notify, or direct the insurer or self-insured employer to notify,  
6 the health service provider under s. 102.16 (2) (b) that the reasonableness of the fee  
7 is in dispute. This subdivision does not apply to a health service provided to an  
8 injured employee beginning on the date on which the notice under s. 102.423 (1) (a)  
9 is published in the Wisconsin Administrative Register.

10 **SECTION 38.** 102.18 (1) (bp) of the statutes is amended to read:

11 102.18 (1) (bp) If the department or the division determines that the employer  
12 or insurance carrier suspended, terminated, or failed to make payments or failed to  
13 report an injury as a result of malice or bad faith, the department or the division may  
14 include a penalty in an award to an employee for each event or occurrence of malice  
15 or bad faith. That penalty is the exclusive remedy against an employer or insurance  
16 carrier for malice or bad faith. If the penalty is imposed for an event or occurrence  
17 of malice or bad faith that causes a payment that is due an injured employee to be  
18 delayed in violation of s. 102.22 (1) or overdue in violation of s. 628.46 (1), the  
19 department or the division may not also order an increased payment under s. 102.22  
20 (1) or the payment of interest under s. 628.46 (1). The department or the division may  
21 award an amount that the department or the division considers just, not to exceed  
22 the lesser of 200 percent of total compensation due or \$30,000 for each event or  
23 occurrence of malice or bad faith. The department or the division may assess the  
24 penalty against the employer, the insurance carrier, or both. Neither the employer  
25 nor the insurance carrier is liable to reimburse the other for the penalty amount. The

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1 ~~division~~ department may, by rule, define actions that demonstrate malice or bad  
2 faith.

3 **SECTION 39.** 102.18 (2) (a) of the statutes is amended to read:

4 102.18 (2) (a) The department shall have and maintain on its staff such  
5 examiners as are necessary to hear and decide claims for compensation described in  
6 s. 102.16 (1) (b) 1. and to assist in the effective administration of this chapter.

7 **SECTION 40.** 102.18 (5) of the statutes is amended to read:

8 102.18 (5) If it appears to the department or the division that a mistake may  
9 have been made as to cause of injury in the findings, order, or award upon an alleged  
10 injury based on accident, when in fact the employee was suffering from an  
11 occupational disease, within 3 years after the date of the findings, order, or award  
12 the department or the division may, upon its own motion, with or without hearing,  
13 set aside the findings, order, or award, or the department or the division may take  
14 that action upon application made within those 3 years. After an opportunity for  
15 hearing, the division may, if in fact the employee is suffering from disease arising out  
16 of the employment, make new findings, and a new order or award, or the division may  
17 reinstate the previous findings, order, or award. The department may, if in fact the  
18 employee is suffering from disease arising out of the employment, make new  
19 findings, and a new order or award, or the department may reinstate the previous  
20 findings, order, or award when no hearing is requested.

21 **SECTION 41.** 102.18 (6) of the statutes is amended to read:

22 102.18 (6) In case of disease arising out of employment, the department or the  
23 division may from time to time review its findings, order, or award, and make new  
24 findings, or a new order or award, based on the facts regarding disability or otherwise

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1 as those facts may appear at the time of the review. This subsection shall not affect  
2 the application of the limitation in s. 102.17 (4).

3 **SECTION 42.** 102.33 (1m) of the statutes is created to read:

4 102.33 (1m) Each employer shall post, in each workplace, a notice in a form  
5 approved by the department setting forth employees' rights under this chapter. The  
6 department shall, in conjunction with its activities under s. 102.14 (2m), include in  
7 the notice information to educate injured employees regarding opiate therapies,  
8 opiate addiction, and alternative treatments for pain.

9 **SECTION 43.** 102.33 (2) (b) 7. of the statutes is created to read:

10 102.33 (2) (b) 7. The requester is the department of health services, a county  
11 department of social services under s. 46.215 or 46.22, or a county department of  
12 human services under s. 46.23, and the request is limited to the name and address  
13 of the employee who is the subject of the record, the name and address of the  
14 employee's employer, and any financial information about that employee contained  
15 in the record.

16 **SECTION 44.** 102.39 of the statutes is repealed.

17 **SECTION 45.** 102.423 of the statutes is created to read:

18 **102.423 Health service fee schedule. (1) HEALTH SERVICE FEE SCHEDULE.**

19 (a) By January 1, 2019, the department shall establish a schedule of the maximum  
20 fees that a health care provider may charge an employer or insurer for health  
21 services provided to an injured employee who claims benefits under this chapter.  
22 When that schedule is established, the department shall notify the legislative  
23 reference bureau and the legislative reference bureau shall publish that notice in the  
24 Wisconsin Administrative Register. For the health services in the schedule, the  
25 department shall do all of the following:

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1           1. Based on sources obtained by the department, determine, to the extent  
2 possible, the average negotiated price made for group health benefit plans, as defined  
3 in s. 632.745 (9), group health plans, as defined in s. 632.745 (10), and self-insured  
4 health plans, as defined in s. 632.745 (24).

5           2. Determine the rates under the program under 42 USC 1395 et seq. for health  
6 services using the Medicare billing code system, including Current Procedural  
7 Terminology codes, as maintained by the American Medical Association, and  
8 Healthcare Common Procedural Coding System codes.

9           3. Set the maximum fee for each health service included in the schedule by  
10 doing all of the following:

11           a. Using the rates for health services determined under subd. 2., determine as  
12 a percentage the average variance between those amounts and the amounts under  
13 subd. 1.

14           b. Increase the rates for health services determined under subd. 2. by the  
15 percentage determined under subd. 3. a.

16           c. Subject to subd. 4., increase the amounts determined under subd. 3. b. by 2.5  
17 percent for administrative costs.

18           4. Prior to the date on which the notice is published in the Wisconsin  
19 Administrative Register under this paragraph, one or more health care providers  
20 may petition the department to hold a public hearing to gather information to be used  
21 to determine if the increase under subd. 3. c. for administrative costs is sufficient to  
22 pay for the unique administrative costs incurred in treating worker's compensation  
23 patients as compared to patients whose bills are paid by other means. If the  
24 department determines, based on the request and information gathered and  
25 submitted, that the percentage increase under subd. 3. c. for unique administrative

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1 costs is generally insufficient to pay for the unique administrative costs incurred by  
2 health care providers for treating worker's compensation patients, the department  
3 shall establish and apply an alternative increase for the unique administrative costs  
4 that is not more than 10 percent of the cost of the service as determined under subd.  
5 3. b.

6 (b) 1. In this paragraph, "consumer price index" means the average of the  
7 consumer price index for medical care services over each 12-month period for all  
8 urban consumers, U.S. city average, as determined by the bureau of labor statistics  
9 of the federal department of labor.

10 2. On each January 1, beginning with January 1, 2020, the department shall  
11 adjust the maximum fees established under par. (a) by the percentage difference  
12 between the consumer price index for the 12-month period ending on December 31  
13 of the preceding year and the consumer price index for the 12-month period ending  
14 on December 31 of the year before the preceding year.

15 (c) No less often than every 10 years, the department shall obtain health service  
16 negotiated price data from the sources specified in par. (a) 1., redetermine the  
17 average negotiated prices specified in par. (a) 1., and revise the maximum fees  
18 established under par. (a) based on that redetermined average.

19 (d) The department shall publish the fee schedule established under par. (a) on  
20 the department's Internet site.

21 **(2) LIABILITY OF EMPLOYER OR INSURER.** (a) The liability of an employer or insurer  
22 for a health service included in the fee schedule established under sub. (1) is limited  
23 to the maximum fee allowed under the schedule for that health service as of the date  
24 on which the health service was provided or the health care provider's actual fee for  
25 the health service as of that date, whichever is less.

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1 (b) A health care provider that provides health services to an injured employee  
2 under this chapter may not collect, or bring an action to collect, from the injured  
3 employee any charge that is in excess of the liability of the employer or insurer under  
4 this subsection.

5 (c) This subsection first applies to a health service provided to an injured  
6 employee on the date on which the notice under sub. (1) (a) is published in the  
7 Wisconsin Administrative Register.

8 **(3) RECORDS.** Records related to the collection of any information under sub.  
9 (1) (a) 1. are not subject to the right of inspection and copying under s. 19.35 (1).

10 **(4) RULES.** The department shall promulgate rules to implement this section.

11 **SECTION 46.** 102.425 (2m) of the statutes is created to read:

12 102.425 **(2m) OPIATES AND PAIN RELIEF.** (a) In this subsection, “opiate” has the  
13 meaning given in s. 961.01 (16).

14 (b) No practitioner may dispense more than a 7-day supply of an opiate to treat  
15 an injury for which an employer or insurer is liable under this chapter.  
16 Notwithstanding s. 102.16 (2m) (c), a supply greater than a 7-day supply shall be  
17 considered to be unnecessary treatment for purposes of s. 102.16 (2m) without the  
18 need for a written opinion under s. 102.16 (2m) (c).

19 **SECTION 47.** 102.427 of the statutes is created to read:

20 **102.427 Electronic billing.** Any health service provider that provides care  
21 to an injured employee under this chapter shall use an electronic billing system and  
22 be able to receive payments electronically.

23 **SECTION 48.** 102.44 (1) (ag) of the statutes is amended to read:

24 102.44 **(1) (ag)** Notwithstanding any other provision of this chapter, every  
25 employee who is receiving compensation under this chapter for permanent total

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1 disability or continuous temporary total disability more than 24 months after the  
2 date of injury resulting from an injury that occurred prior to January 1, ~~2003~~ 2005,  
3 shall receive supplemental benefits that shall be payable by the employer or the  
4 employer's insurance carrier, or in the case of benefits payable to an employee under  
5 s. 102.66, shall be paid by the department out of the fund created under s. 102.65.  
6 Those supplemental benefits shall be paid only for weeks of disability occurring after  
7 January 1, ~~2005~~ 2007, and shall continue during the period of such total disability  
8 subsequent to that date.

9 **SECTION 49.** 102.44 (1) (am) of the statutes is amended to read:

10 102.44 (1) (am) If the employee is receiving the maximum weekly benefits in  
11 effect at the time of the injury, the supplemental benefit for a week of disability  
12 occurring after ~~March 2, 2016~~ the effective date of this paragraph .... [LRB inserts  
13 date], shall be an amount that, when added to the regular benefit established for the  
14 case, shall equal ~~\$669~~ \$711.

15 **SECTION 50.** 102.44 (1) (b) of the statutes is amended to read:

16 102.44 (1) (b) If the employee is receiving a weekly benefit that is less than the  
17 maximum benefit that was in effect on the date of the injury, the supplemental  
18 benefit for a week of disability occurring after ~~March 2, 2016~~ the effective date of this  
19 paragraph .... [LRB inserts date], shall be an amount sufficient to bring the total  
20 weekly benefits to the same proportion of ~~\$669~~ \$711 as the employee's weekly benefit  
21 bears to the maximum in effect on the date of injury.

22 **SECTION 51.** 102.44 (2) of the statutes is amended to read:

23 102.44 (2) In case of permanent total disability, aggregate indemnity shall be  
24 weekly indemnity for the period that the employee may live. Total impairment for  
25 industrial use of both eyes, the loss of both arms at or near the shoulder, the loss of

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1 both legs at or near the hip, or the loss of one arm at the shoulder and one leg at the  
2 hip constitutes permanent total disability. This enumeration is not exclusive, but in  
3 other cases the department or the division shall find the facts.

4 **SECTION 52.** 102.44 (6) (b) of the statutes is amended to read:

5 102.44 **(6)** (b) If during the period set forth in s. 102.17 (4) the employment  
6 relationship is terminated by the employer at the time of the injury or by the  
7 employee because his or her physical or mental limitations prevent his or her  
8 continuing in such employment, or if during that period a wage loss of 15 percent or  
9 more occurs, the department or the division may reopen any award and make a  
10 redetermination taking into account loss of earning capacity.

11 **SECTION 53.** 102.525 of the statutes is created to read:

12 **102.525 Additional payment for permanent partial disability.** (1) If any  
13 of the following applies during the period set forth in s. 102.17 (4) with respect to an  
14 employee who sustains a disability specified under s. 102.52, the number of weeks  
15 for which indemnity shall be payable shall be increased by 15 percent:

16 (a) The employment relationship is terminated by the employer at the time of  
17 the injury or by the employee because his or her physical or mental limitations  
18 prevent his or her continuing in the employment.

19 (b) The percentage of wage loss during the period is 15 percent or more.

20 **(2)** For the purpose of determining the percentage of wage loss under sub. (1)  
21 (b), all of the following apply:

22 (a) Wage loss shall be determined based on wages as determined under s.  
23 102.11.

24 (b) The percentage wage loss shall be determined using actual average wages  
25 over a period of at least 13 weeks following the employee's injury.

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1 (c) The determination of wage loss may not take into account any of the  
2 following:

3 1. Any period during which benefits are payable for temporary disability under  
4 s. 102.43 (5).

5 2. Any period during which the employee received benefits under ch. 108.

6 3. Any payments for permanent partial disability under s. 102.52.

7 **(3)** For the purposes of sub. (1), if an employer makes a good faith offer of  
8 employment that is refused by the employee without just cause, the employee is  
9 considered to have returned to work at the amount of wages the employee would have  
10 received but for the employee's refusal of employment.

11 **(4)** An increase under sub. (1) shall be applied after the application of any  
12 increase under s. 102.53 or 102.54.

13 **SECTION 54.** 102.61 (2) of the statutes is amended to read:

14 102.61 **(2)** The department, the division, the commission, and the courts shall  
15 determine the rights and liabilities of the parties under this section in like manner  
16 and with like effect as the department, the division, the commission, and the courts  
17 determine other issues under this chapter. A determination under this subsection  
18 may include a determination based on the evidence regarding the cost or scope of the  
19 services provided by a private rehabilitation counselor under sub. (1m) (a) or the cost  
20 or reasonableness of a rehabilitative training program developed under sub. (1m) (a).

21 **SECTION 55.** 102.62 of the statutes is amended to read:

22 **102.62 Primary and secondary liability; unchangeable.** In case of  
23 liability under s. 102.57 or 102.60, the liability of the employer shall be primary and  
24 the liability of the insurance carrier shall be secondary. If proceedings are had before  
25 the department or the division for the recovery of that liability, the department or the

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1 division shall set forth in its award the amount and order of liability as provided in  
2 this section. Execution shall not be issued against the insurance carrier to satisfy  
3 any judgment covering that liability until execution has first been issued against the  
4 employer and has been returned unsatisfied as to any part of that liability. Any  
5 provision in any insurance policy undertaking to guarantee primary liability or to  
6 avoid secondary liability for a liability under s. 102.57 or 102.60 is void. If the  
7 employer has been adjudged bankrupt or has made an assignment for the benefit of  
8 creditors, if the employer, other than an individual, has gone out of business or has  
9 been dissolved, or if the employer is a corporation and its charter has been forfeited  
10 or revoked, the insurer shall be liable for the payment of that liability without  
11 judgment or execution against the employer, but without altering the primary  
12 liability of the employer.

13 **SECTION 56.** 102.75 (1m) of the statutes is amended to read:

14 102.75 (1m) The moneys collected under subs. (1) and (1g) and under ss. 102.28  
15 (2) and 102.31 (7), together with all accrued interest, shall constitute a separate  
16 nonlapsible fund designated as the worker's compensation operations fund. Moneys  
17 in the fund may be expended only as provided in ss. 20.427 (1) (ra) and 20.445 (1) (ra),  
18 (rb), (rc), and (rp) and may not be used for any other purpose of the state.

19 **SECTION 57.** 102.80 (1) (d) of the statutes is amended to read:

20 102.80 (1) (d) Amounts collected from employees or dependents of employees  
21 under s. 102.81 (4) (b) and (c).

22 **SECTION 58.** 102.81 (4) (b) (intro.) of the statutes is amended to read:

23 102.81 (4) (b) (intro.) If the employee or dependent receives compensation from  
24 the employee's employer ~~or a 3rd party liable under s. 102.29~~, pay to the department  
25 the lesser of the following:

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1           **SECTION 59.** 102.81 (4) (b) 2. of the statutes is amended to read:

2           102.81 (4) (b) 2. The amount after attorney fees and costs that the employee  
3 or dependent received from the employer ~~or 3rd party~~.

4           **SECTION 60.** 102.81 (4) (c) of the statutes is created to read:

5           102.81 (4) (c) If the employee or dependent receives compensation from a 3rd  
6 party that is liable under s. 102.29, pay to the department the proceeds as specified  
7 under s. 102.29 (1) (b).

8           **SECTION 61.** 102.81 (5) of the statutes is amended to read:

9           102.81 (5) The department of justice may bring an action to collect the a  
10 payment under sub. (4) (b) or (c).

11           **SECTION 62.** 102.82 (1) of the statutes is amended to read:

12           102.82 (1) Except as provided in sub. (2) (ar), an uninsured employer shall  
13 reimburse the department for any payment made under s. 102.81 (1) to or on behalf  
14 of an employee of the uninsured employer or to an employee's dependents and for any  
15 expenses paid by the department in administering the claim of the employee or  
16 dependents, less amounts repaid by the employee or dependents under s. 102.81 (4)  
17 (b) or (c). The reimbursement owed under this subsection is due within 30 days after  
18 the date on which the department notifies the uninsured employer that the  
19 reimbursement is owed. Interest shall accrue on amounts not paid when due at the  
20 rate of 1 percent per month.

21           **SECTION 63.** 108.227 (1) (e) 16. of the statutes is created to read:

22           108.227 (1) (e) 16. A license issued by the division of hearings and appeals  
23 under s. 102.17 (1) (c).

24           **SECTION 64.** 108.227 (1) (f) of the statutes is amended to read:

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1           108.227 (1) (f) “Licensing department” means the department of  
2           administration; the division of hearings and appeals; the department of agriculture,  
3           trade and consumer protection; the board of commissioners of public lands; the  
4           department of children and families; the ethics commission; the department of  
5           financial institutions; the department of health services; the department of natural  
6           resources; the department of public instruction; the department of revenue; the  
7           department of safety and professional services; the office of the commissioner of  
8           insurance; or the department of transportation.

9           **SECTION 65.** 108.227 (1m) (intro.) of the statutes is amended to read:

10           108.227 (1m) GENERAL PROVISIONS. (intro.) The department shall promulgate  
11           rules specifying procedures to be used before taking action under sub. (3) (b) or s.  
12           ~~102.17 (1) (et)~~, 103.275 (2) (bt), 103.34 (10) (d), 103.91 (4) (d), 103.92 (8), 104.07 (7),  
13           or 105.13 (4) with respect to a person whose license or credential is to be denied, not  
14           renewed, discontinued, suspended, or revoked, including rules with respect to all of  
15           the following:

16           **SECTION 66.** 108.227 (3) (a) 3. of the statutes is amended to read:

17           108.227 (3) (a) 3. Upon the request of any person whose license or certificate  
18           has been previously revoked or denied under s. ~~102.17 (1) (et)~~, 103.275 (2) (bt), 103.34  
19           (10) (d), 103.91 (4) (d), 103.92 (8), 104.07 (7), or 105.13 (4), reinstate the license or  
20           certificate if the applicant is not liable for delinquent contributions.

21           **SECTION 67.** 108.227 (5) (a) of the statutes is amended to read:

22           108.227 (5) (a) The department of workforce development shall conduct a  
23           hearing requested by a license holder or applicant for a license or license renewal or  
24           continuation under sub. (2) (b) 1. b., or as requested under s. ~~102.17 (1) (et)~~, 103.275  
25           (2) (bt), 103.34 (10) (d), 103.91 (4) (d), 103.92 (8), 104.07 (7), or 105.13 (4), to review

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1 a certification or determination of contribution delinquency that is the basis of a  
2 denial, suspension, or revocation of a license or certificate in accordance with this  
3 section or an action taken under s. ~~102.17 (1) (et)~~, 103.275 (2) (bt), 103.34 (10) (d),  
4 103.91 (4) (d), 103.92 (8), 104.07 (7), or 105.13 (4). A hearing under this paragraph  
5 is limited to questions of mistaken identity of the license or certificate holder or  
6 applicant and of prior payment of the contributions that the department of workforce  
7 development certified or determined the license or certificate holder or applicant  
8 owes the department. At a hearing under this paragraph, any statement filed by the  
9 department of workforce development, the licensing department, or the supreme  
10 court, if the supreme court agrees, may be admitted into evidence and is prima facie  
11 evidence of the facts that it contains. Notwithstanding ch. 227, a person entitled to  
12 a hearing under this paragraph is not entitled to any other notice, hearing, or review,  
13 except as provided in sub. (6).

14 **SECTION 68.** 108.227 (5) (b) 1. of the statutes is amended to read:

15 108.227 (5) (b) 1. Issue a nondelinquency certificate to a license holder or an  
16 applicant for a license or license renewal or continuation if the department  
17 determines that the license holder or applicant is not liable for delinquent  
18 contributions. For a hearing requested in response to an action taken under s. ~~102.17~~  
19 ~~(1) (et)~~, 103.275 (2) (bt), 103.34 (10) (d), 103.91 (4) (d), 103.92 (8), 104.07 (7), or 105.13  
20 (4), the department shall grant a license or certificate or reinstate a license or  
21 certificate if the department determines that the applicant for or the holder of the  
22 license or certificate is not liable for delinquent contributions, unless there are other  
23 grounds for denying the application or revoking the license or certificate.

24 **SECTION 69.** 108.227 (5) (b) 2. of the statutes is amended to read:

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1           108.227 (5) (b) 2. Provide notice that the department of workforce development  
2           has affirmed its certification of contribution delinquency to a license holder; to an  
3           applicant for a license, a license renewal, or a license continuation; and to the  
4           licensing department or the supreme court, if the supreme court agrees. For a  
5           hearing requested in response to an action taken under s. ~~102.17 (1) (et)~~, 103.275 (2)  
6           (bt), 103.34 (10) (d), 103.91 (4) (d), 103.92 (8), 104.07 (7), or 105.13 (4), the department  
7           of workforce development shall provide notice to the license or certificate holder or  
8           applicant that the department of workforce development has affirmed its  
9           determination of contribution delinquency.

10           **SECTION 70.** DWD 80.03 (1) (d) of the administrative code is amended to read:

11           DWD 80.03 (1) (d) No compromise agreement may provide for a lump sum  
12           payment of more than the incurred medical expenses plus sums accrued as  
13           compensation or death benefits to the date of the agreement and \$10,000 \$50,000 in  
14           unaccrued benefits where the compromise settlement in a claim other than for death  
15           benefits involves a dispute as to the extent of permanent disability. Lump sum  
16           payments will be considered after approval of the compromise in accordance with s.  
17           DWD 80.39.

18           **SECTION 71. Nonstatutory provisions.**

19           (1) The department of workforce development shall conduct an analysis  
20           regarding the methods of calculation of hearing loss under chapter 102 of the  
21           statutes and how they compare to the methods of calculation used in the worker's  
22           compensation laws of other states, as well as an analysis of how improvements in  
23           technology should guide future decisions regarding how to calculate hearing loss for  
24           worker's compensation purposes in this state. The department shall, within 6

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1 months after the effective date of this subsection, issue a report of its findings to the  
2 council on worker's compensation.

3 (2) The department of workforce development shall, within 3 months after the  
4 effective date of this subsection, report to the council on worker's compensation on  
5 the department's progress in carrying out its duties under section 102.44 (4m) of the  
6 statutes.

7 (3) All rules promulgated by the department of workforce development in effect  
8 on the effective date of this subsection that are primarily related to licenses issued  
9 under section 102.17 (1) (c) of the statutes, as determined by the secretary of  
10 administration, remain in effect until their specified expiration dates or until  
11 amended or repealed by the administrator of the division of hearings and appeals in  
12 the department of administration.

13 (4) Using the procedure under section 227.24 of the statutes, the department  
14 of workforce development may promulgate rules required under section 102.423 (4)  
15 of the statutes. Notwithstanding section 227.24 (1) (c) and (2) of the statutes,  
16 emergency rules promulgated under this subsection remain in effect until July 1,  
17 2020, or the date on which permanent rules take effect, whichever is sooner.  
18 Notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department is not  
19 required to provide evidence that promulgating a rule under this subsection as an  
20 emergency rule is necessary for the preservation of the public peace, health, safety,  
21 or welfare and is not required to provide a finding of emergency for a rule  
22 promulgated under this subsection.

**SECTION 72. Fiscal changes.**

23  
24 (1) In the schedule under section 20.005 (3) of the statutes for the appropriation  
25 to the department of workforce development under section 20.445 (1) (ra) of the

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1 statutes, the dollar amount for fiscal year 2017-18 is increased by \$630,000 for costs  
2 associated with the health service fee schedule under section 102.423 of the statutes.  
3 In the schedule under section 20.005 (3) of the statutes for the appropriation to the  
4 department of workforce development under section 20.445 (1) (ra) of the statutes,  
5 the dollar amount for fiscal year 2018-19 is increased by \$100,000 for costs  
6 associated with the health service fee schedule under section 102.423 of the statutes.

7 (2) On the effective date of this subsection, there is transferred from the  
8 appropriation account under section 20.445 (1) (t) of the statutes to the appropriation  
9 account under section 20.445 (1) (rc) of the statutes the unencumbered balance of the  
10 amount collected under section 102.75 (1g) of the statutes.

**SECTION 73. Initial applicability.**

11  
12 (1) The treatment of sections 102.80 (1) (d), 102.81 (4) (b) (intro.) and 2. and (c)  
13 and (5), and 102.82 (1) of the statutes first applies to actions filed under section  
14 102.29 of the statutes on the effective date of this subsection.

15 **SECTION 74. Effective dates.** This act takes effect on the day after publication,  
16 except as follows:

17 (1) The treatment of sections 102.11 (1) (intro.) and 102.44 (1) (ag), (am), and  
18 (b) of the statutes takes effect on January 1, 2018, or on the day after publication,  
19 whichever is later.

20 (2) The treatment of sections 102.13 (2) (b), 102.33 (1m), and 102.427 of the  
21 statutes, the renumbering of section 102.14 of the statutes, the amendment of section  
22 102.14 (title) of the statutes, and the creation of section 102.14 (2m) of the statutes  
23 take effect on January 1, 2019.

24 (3) The treatment of section 102.525 of the statutes takes effect on the first day  
25 of the 7th month beginning after publication.

