

Labor Proposals for the Worker's Compensation Agreed Bill – March 12, 2013

Proposal #	Short Title	Brief Description	Current Law	Suggested Statutory Language for the Proposed Change	Rationale
1	Prospective Orders for Retraining	Grant ALJ's the authority to issue a prospective order for proposed periods of retraining.	Under current law, there is no clear authority for an ALJ to issue an order for the respondent employer/carrier to pay for an approved but not yet commenced program of retraining.	Expand existing language in 102.18 (1)(a) (that currently allows ALJ's to issue prospective orders for medical treatment) with: "The department may include in any interlocutory or final award or order an order directing the employer or insurer to pay for any future treatment that may be necessary to necessary to cure and relieve the employee from the effects of the injury, and may include an order directing that the employer or insurer shall pay for the expense of and compensation for a future course of training under an established plan of rehabilitative training under sec. 102.61."	This proposal neither increases nor decreases compensation awarded or denied in any individual case, but allows the parties to have the matter of future vocational training adjudicated by the ALJ. To request a prospective order for vocational retraining benefits, the applicant would have to have either an IPE (Individualized Plan for Employment) from the DVR (for seeking retraining and being served by DVR – "public" program under 102.61.(1)(1g)(c)), or a proposed "rehabilitative training program" (RTP) as developed by a private rehabilitation counselor (for those seeking retraining and not served by DVR – the "private" program described in 102.61 (1m)(a)). These required items (IWP, RTP) are already required by the DWD in the Certificate of Readiness process before a retraining benefit claim can be set for hearing.
2	Electronic medical records	Allow medical providers to provide copies of medical records in electronic format for a fixed per request fee of \$20.	Under current law, established before the onset of electronic records, medical providers are required to furnish copies at a rate of 45 cents per page, with a	Modify existing language in 102.13(2)(b): "[the medical provider] shall furnish a legible, certified duplicate of the written material requested under par. (a) upon payment of the actual costs of preparing the certified duplicate, not	The current WC statute governing the costs of obtaining medical records was created in the late 1980s-early 90s, the electronic stone age, when virtually all medical records were maintained in physical paper format. The Council adopted a statute that established a set, reasonable rate for paper records provided, based on the number of pieces of paper that

			\$7.50 minimum charge, plus postage costs.	to exceed the greater of 45 center per page of printed records or \$7.50 per request, plus the actual costs of postage." <i>"In lieu of providing records in paper form, the records may be provided upon electronic media or other readily available and accessible electronic form at a fixed charge of \$20 per request."</i>	had to be copied, a charging regimen that made sense for a paper world. Some medical providers are now providing records in electronic (CD) form, but charging for the content on the CD on a per page basis, affecting the costs of obtaining needed medical records for both applicants and employers/insurers. The cost for the medical record provider to create a CD of 1 or 1000 PDF pages is identical, but what some medical record providers now attempt to charge is, under current law, set by "pages" of records. Thus, under current law, medical records custodians with 300 pages of records in electronic medical records format can create, with a few mouse clicks, a CD of PDF's of the medical records and attempt to bill the requester \$135. Being allowed to provide records as PDFs, yet billing on a per page basis of \$135 (45 cents per record page) for the CD, shifts the cost of converting the record to paper form for case evidence use (for which the 45 cents per page fee was intended to cover) from the provider receiving the copying fee to the requesting party. This change would restore the cost equity between medical providers and medical record requesters as originally intended, and would also encourage the greater use of electronic medical records.
3	Pharmacy fee schedule applied to medications dispensed by	Payment rate for medications unchanged but repackaged at a medical provider	Under current law, a health care provider may purchase prescription medications for dispensing to the injured	Labor suggests the DWD develop the language in collaboration with individuals experienced with the application of such rules used in other states.	Under current law, prescription medications dispensed by a pharmacy are subject to a pharmacy fee schedule under sec. 102.425. Certain health care providers may dispense prescription medications directly to the injured worker at their offices, repackaging the

	health care providers	facility shall only be paid at the pharmacy fee schedule rate.	employee, with such dispensing/repackaging not being subject to the pharmacy fee schedule.		medications and charging higher prices for the same medication that could be dispensed by the nearby pharmacy and that would be subject to the pharmacy fee schedule. This provision would apply the pharmacy fee schedule to such health care provider office provided medications.
4	Surgical implant fee formula	Payment rate for surgical implants based on actual cost pricing plus appropriate markup.	Under current law, there is no fee schedule or database for surgical implants.	Labor suggests the DWD develop the language in collaboration with individuals experienced with the application of such rules used in other states.	Under current law, there is no process for a "reasonable" fee charged for an implanted device. This would establish a limitation on pricing for such implanted devices based on the provider's invoice cost for the device (after all discounts or rebates applied) plus a 10% markup over the net cost.
5	PTD rate indexing	Provide indexing of PTD benefit rate after 6 years, paid for directly by employer/carrier for injuries occurring after 1/1/2014	Current law provides for the indexing of PTD benefit rates, after a time (subject to biannual negotiations, a currently 12 year lag, but had been as low as 8 years, or as many as 16 years), with any amount paid over and above the date of injury rate paid by the Supplemental Benefit Fund.	Create sec. 102.43(10)(a): <i>"Notwithstanding any other provision of this chapter, for every employee who is receiving compensation under this chapter for permanent total disability or continuous temporary total disability more than 24 months after the date of injury, resulting from injury occurring after January 1, 2014, payment of compensation under this chapter for periods of disability occurring more than 6 years from the date of injury shall be made as provided in par. (b)."</i> Create 102.43(7)(c)1: <i>"If the employee was entitled to maximum weekly benefits at the time of injury, payment for weekly benefits</i>	The current funding source for indexed PTD benefits is the financially troubled Supplemental Benefit Fund. This would shift the cost of future PTD rate indexing increases to the employer/carriers, and would allow carriers to account for such cost in establishing the overall premium charged to the employer. This provision would take effect only for injuries occurring on or after 1/1/2014. The intent is to index the PTD benefits to the rate of current benefits with a 6 year lag. Those with injuries occurring before 01/01/2014 would continue to receive benefits as provided by current law.

				<p><i>occurring more than 6 years after the injury shall be at the maximum rate in effect at the time of accrual of payment of benefits."</i></p> <p>Create 102.43(7)(c)2:</p> <p><i>"If the employee was entitled to less than the maximum rate, the employee shall received the same proportion of the maximum which is in effect at the time of the accrual of payment of benefits."</i></p>	
6	<p>Suspend reimbursements to carriers for supplemental benefit payments, and establish a 6 year time lag between injury and indexing.</p>	<p>Curtail the drain on the Supplemental Benefit Fund by eliminating one outflow of payments. Also establish the long requested goal of a 6 year lag.</p>	<p>Current law provides that the PTD benefits paid to employees are indexed after a time (currently 12 year lag), with supplemental benefits paid in the first instance by the carriers/employers but later reimbursed to the carriers/employers from the Supplemental Benefit Fund.</p>	<p>Amend section 102.44(1)(c) to add: <i>"This subsection is suspended beginning 01/01/2014."</i></p> <p>Amend section 102.44(1)(ag) to read:</p> <p><i>"Notwithstanding any other provision of this chapter, every employee who is receiving compensation under this chapter for permanent total disability or continuous temporary total disability more than 24 months after the date of injury that occurred prior to January 1, 2006, shall receive supplemental benefits that shall be payable in the first instance by the employer or the employer's insurance carrier, or in the case of</i></p>	<p>The current funding source for indexed PTD benefits is the financially troubled Supplemental Benefit Fund (SBF). This proposal would reduce the outflow of monies from the SBF by suspending this reimbursement to carriers for the supplemental benefits paid those PTD by injuries occurring before 1/1/2014. This proposal would help to shore up the finances of the financially troubled SBF. This proposal would also establish the 6 year lag between date of injury and PTD indexing.</p>

				benefits payable to an employee under 102.66, shall be paid by the department out of the fund created under s. 102.65. These weeks of disability shall be paid only for weeks of disability occurring after January 1, 2008, and shall continue during the period of such total disability subsequent to that date. <i>This subsection shall apply only to those employees suffering injury before 01/01/2014.</i>	
7	SSDI offset reduction savings to SBF	Provides that any reduction in benefits rates due to the application of Social Security Disability offset inures to the benefit of the Supplemental Benefit Fund.	Current law limits the employee's combination of WC benefits and SSDI benefits to 80% of the employees prior earnings, with indexing. If the combination of WC and SSDI would exceed 80%, the WC benefit is reduced. (In most states, the SSDI benefit is the one reduced, WI is a "reverse offset state.")	Expand the current SSDI offset statute, sec. 102.44(5) to include: <i>"(h) Any reduction in benefits otherwise payable to the injured employee taken by the employer or self-insured employer by virtue of this section shall be paid to the fund established in sec. 102.565."</i>	Current law allows the employer/carrier to reap a savings from the fact that the work injury has rendered the employee so disabled that the employee qualifies for Social Security Disability Benefits (SSDI). Under this proposal, any savings from a reduction in WC benefits by application of the SSDI offset formula would be paid instead by the carrier to the Supplemental Benefit Fund. This would help to shore up the finances of the financially troubled SBF.
8	PPD max rate increase	Increase Permanent Partial Disability Max rate	Current max PPD rate of injuries occurring in 2012 is \$312, for 2013 it is \$322.	For injuries in 2014, set max PPD rate at \$337. For injuries in 2015, set max PPD rate at \$352.	Keep maximum Permanent Partial Disability (PPD) rates in line with increases in cost of living and at a reasonable proportion of maximum TTD rates. TTD rates are set automatically, PPD rates are negotiated every agreed bill. Not all workers receive max PPD

					rates for their injury, but are limited to 2/3rds of average weekly wage at time of injury, and this proposal does not change that aspect of current law.
9	Index PPD rate for extended periods of PPD	Index PPD rate for increased permanent disability occurring more than 4 years after the date of injury	Under current law, PPD rates are fixed on the date of injury. Under current law, TTD rates are fixed on the date of injury, but current law also provides for TTD rate increases for certain periods of renewed temporary disability more than 2 years post injury. With this proposal, PPD paid more than 4 years after the date of injury would be paid at the PPD rate in effect at the time of payment	To be drafted	Unlike TTD and PTD benefits which are adjusted under current law to reflect inflation, PPD rates under current law remain fixed no matter how long after the injury renewed payments are made. For example, an employee sustaining a knee in 1990, initially suffering a meniscal injury with typical repair, would typically receive 5% PPD at the 1990 rate of \$131 per week, \$2,783.75. Twenty years later, if the employee requires a total knee replacement due to the injury, the additional PPD benefits of 50% at the knee, 212.50 weeks of PPD, are now paid at that \$131 per week, or \$21,875. This proposal would increase the PPD to the rate being paid for current injuries if the renewed period of PPD occurs more than 4 years after the date of injury. Under this example, a knee replacement occurring in 2013 causing a renewed period of entitlement to PPD benefits would be paid at the rate of \$322 per week, or \$68,425.
10	Compensation for loss of medical insurance coverage		Under current law, the TTD rate is set based on the average weekly wage (AWW), and AWW does not account for the value of fringe benefits. Under current WC law, the employer is not required to maintain the	Create sec. 102.43(12) to provide: "If at the time of injury an employer provides or contributes to the payment for general health insurance coverage, or an equivalent self funded insurance plan, which provides medical expense coverage to a worker or the worker and his family members, and during the	Under current law, the employee suffering temporary disability receives 2/3rds of his AWW at the time of injury, a rate historically established to provide the employee with roughly his take home wages at the time of injury, as TTD benefits are not subject to taxation. Historically, the portion of the overall employee compensation package that was the provision of health insurance was relatively small, but in today's world, the cost of the health insurance provided by the employer

			<p>employee's group health insurance while the employee is off work due to the work injury, nor to pay any compensation for this portion of the employee's overall compensation package for employment.</p>	<p>period of temporary disability the employer contribution to such general health insurance or self fund equivalent coverage ceases, the employer and carrier are liable to pay to the employee additional compensation equal to 100% of the amount of the employer's previously provided contribution for such group health insurance or self funded equivalent coverage. Such payment shall be made for as long as the employee remains in a period of temporary disability from the injury. Such compensation is in addition to any temporary disability due, and is not subject to the maximums set forth in sec. 102.11.</p>	<p>makes up a far greater share of the overall employee compensation package. For the lower hourly wage employee, the value of employer provided health insurance may well exceed the value of hourly pay for his work.</p> <p>Some employers, following a work injury, continue to make their typical contributions towards the worker or the worker and his family general group health insurance or equivalent ERISA plan. Some employers, however, cease making such contribution as soon as possible, generally 12 weeks after injury (with 12 weeks of coverage provided under FMLA). Once the employer contribution ends, the employee is left with the "option" of paying out of his TTD benefits the group insurance/ERISA plan premium cost, at a cost that at times can almost equal the full amount of his TTD benefits. This proposal would remedy this inequity by providing additional compensation to the employee for the loss of group health insurance/ERISA coverage during the period of temporary disability. If the employer continues to provide, during the period of temporary disability, the same group health insurance coverage that the employee would have had but for the injury, no additional benefit is triggered. Under this proposal, the employee continues to be responsible for whatever his contribution towards the cost of such group health insurance would have been but for the injury.</p>
11	Medical expense liability equity.	Require DWD hearing awards for	Under current line of LIRC case law, beginning	Create sec. 102.18(1)(bg)4 to provide:	Current LIRC case law gives the insurance carrier/employer the benefit of adjustments to medical

		<p>medical expense to provide the health care provider the same remuneration for medical care whether it is a conceded claim or disputed case won by the applicant at hearing. Provide an attorney for applicant counsel limited to 20% of medical expenses that are unpaid/unadjusted as of the time of hearing.</p>	<p>with <i>Hoefs v. Midway Hotel</i>, WC Claim No. 1999-029146 (LIRC 2003); if the applicant prevails on medical expense at hearing, the amount awarded to the medical provider is less than the amount that would have been paid to the medical provider had the case never been contested. Under <i>Hoefs</i> and subsequent cases, the LIRC has given the respondent the benefit of adjustments/write-offs listed on medical bills.</p>	<p>If the department finds under par. (b) that an insurer or self-insured employer is liable under this chapter for any health services provide to an injured employee by a health service provider, the order shall provide for payments as follows: a) that the employer or self-insured employer shall pay to the health care provider, the total amount charged for the provider's services (or the lesser amount if determined under the provisions of s.102.16(2)), less any amounts previously paid towards the bill by the employee; but if the employee is represented by an attorney at hearing, an additional reduction to the provider equal to 20% of the amount of the healthcare providers bill left unpaid as of the time of hearing, after deductions for group health insurance payments and adjustments; b) that the employer or self-insured employer pay to the employee any amounts the employee previously paid towards the medical expenses; c) that the medical provider shall reimburse to any other entity having previously made payments to the medical</p>	<p>bills on the basis of a medical providers receipt of group health insurance. This creates a financial incentive for an employer/carrier to deny a claim solely to obtain the cost savings of group health adjustments to medical bills. A case in which liability is conceded, and a case in which liability is disputed and lost by the employer at hearing, should result in the employer/WC insurance carrier identical liability, but under current LIRC case law the employer/WC carrier pays out less overall from taking a case to hearing and losing they would have had the claim been conceded. The medical provider is the party that loses out on this inequity. This proposal would restore equity and eliminate the incentive of the employer/carrier to deny claims simply on the expectation of reaping a savings from medical bill adjustments. This proposal would also resolve the long standing debate on awarding attorney fees on unpaid medical expenses.</p>
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12	Remove sunset provision from 102.43(5)(c)	Makes the change enacted allowing for part time work while retraining permanent			The 2012 Agreed Bill provided for no reduction of TTD benefits for part time work while retraining, but provided a two year sunset on the provision. This would remove the sunset, and make the change permanent.