

Worker's Compensation Advisory Council
2019 Management proposals for agreed-bill
Submitted May 23, 2019

Worker's compensation works well in Wisconsin because of the adherence to the agreed-bill process, whereby employers and workers come together to suggest reforms to Wis. Stats. 102 each biennial session, because of the work ethic of Wisconsin workers, because of the commitment to safety by all, and because of the quality of health care in our state.

The management caucus of the Worker's Compensation Advisory Council is proposing reforms that ensure our worker's compensation system remains a well-run operation in the state. Some reforms we are proposing will bring us in line with many other states. Some look at fixing the incredibly high health care costs for worker's compensation claims. Some look to ensure that all parties, employers, workers and the Department of Workforce Development, are playing by a set of rules that make sense and are clear to all parties.

1. **Employer directed care.** Allow employer directed care for the first 90 days of treatment, outside of emergency room care. Allow employers to specify a diverse list of health care providers who are authorized to provide care for injured workers. The list shall include at least 6 health care providers, at least three of whom must be physicians who are geographically accessible and have specialties that are appropriate based on anticipated work-related medical problems of the employees. The list must include contact information and must be posted in a prominent location.
2. **Electronic billing/payments.** Require that all providers caring for worker's compensation patients utilize electronic billing and be able to receive payments electronically.
3. **Electronic medical records.** Require all medical providers caring for worker's compensation patients to transmit medical records electronically.
4. **Treatment guidelines.** Establish treatment guidelines in Wisconsin based on ODG or another appropriate national model. Guidelines must be followed unless pre-authorization is received from insurer.
5. **Fee dispute resolution process.** The Department currently certifies databases for use in the fee dispute resolution process of the amounts health service providers charge for services. We propose instead that the Department certify databases of the average health service fees paid to health service providers. Update Wis. Stat. 102.16 and DWD Administrative Code 80.72 to reflect this database change.
6. **Statute of limitations.** Reduce statute of limitations to 2 years, except that in the case of occupational disease caused by exposure to toxic substances there shall be no statute of limitations, and where an employee's injury that is otherwise undisputed requires a prosthesis or artificial joint, there shall be no statute of limitations as to medically necessary treatment expenses directed to said prosthesis or artificial joint.
7. **Tolling the Statutes.** Past department practice allowed tolling the statutes. This practice was ended by DOA Division of Hearings and Appeals effective March 1, 2017. Amend Wis. Stats. 102 to state that applications will only be accepted by the Department when there is a justiciable controversy.

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8. **Department Policies and Procedures.** Require the Department to update the July 19, 2013 memo entitled "Department Policies and Procedures." Include in the updated memo the Department's statutory authority for each item.
9. **Wage expansion.** Benefits shall be based on actual earnings from the employer where the injury occurred at the time of the injury.
10. **Employee misrepresentation of physical condition.** Prohibit benefits under Wis. Stat. 102 to an injured worker if the worker intentionally made a false statement as to their physical condition after a job offer was made, the employer relied on the misrepresentation and this reliance was a substantial factor in the hiring, and there was a causal connection between the false misrepresentation and the injury.
11. **Worker's compensation denied by another state.** The state of Wisconsin should not accept cases for review that have been denied by other states for cause. Cases that are contesting jurisdiction should be handled by the state, but cases that have been denied in another state for compensability should not be considered in Wisconsin.
12. **No PTD benefits once Social Security old-age assistance benefits begin.** Current law provides for Permanent Total Disability benefits for life. PTD Benefits should be terminated once the injured worker receives Social Security old-age/retirement assistance benefits.
13. **PPD minimum ratings.** Eliminate minimum permanent partial disability ratings from DWD Administrative Code Chapter 80 where surgical treatments have made it such that outcomes result in no permanent disability.
14. **Notice of injury.** All initial reports of injuries must be made by the injured worker to the employer according to the employer's procedures as posted or as outlined in an employee handbook within the current statutorily required timeline of 30 days.
15. **PTD re-evaluation.** An employer or insurer may request an injured worker receiving PTD benefits to have their PTD ratings re-evaluated every three years.
16. **Disability determinations.** Permanent disability determinations must be made by occupational health physicians or other qualified healthcare providers according to statutory guidelines.
17. **Death benefits.** There shall be no death benefit in PTD claims when the death is unrelated to the occupational injury or illness.
18. **Physician Dispensing.** Limit physician dispensing of opioids for a workplace injury to one 7 day supply.
19. **Hearing test.** Require the hearing test completed most proximate to the date of employee removal from a noisy work area as defined by OSHA standards, whether before or after such date and whether the employee is removed by reassignment, quit, termination, or retirement, to be used to establish any loss of hearing claim.
20. **Attorney fees for hearing aids.** Specify that the cost of hearing aids shall be removed from lump sum settlement amounts prior to determining attorney fees.
21. **PEO Reform.** Allow employers to keep their incumbent worker's compensation insurance carrier regardless of their relationship with a PEO for other human resource services.