

Department Proposals for WCAC Consideration - March 2019

Department Proposal 1 (Option 1) *

Chapters 20, 227, DWD 80 and HA 4

The Department proposes the transfer of worker's compensation adjudicatory functions and staff currently at the Department of Administration-Division of Hearings and Appeals (DHA) back to the Department of Workforce Development-Worker's Compensation Division (WCD).

2015 Wis. Act 55, effective January 1, 2016, transferred worker's compensation adjudicatory functions from the WCD to the DHA. Since the transfer, considerable confusion has occurred among stakeholders and staff about whether the WCD or the DHA is responsible for performing administrative functions. Cost savings and efficiencies that were contemplated as benefits of the transfer have not been realized.

Although this proposal should be viewed as cost neutral it advances lean government since it will reduce future costs, improve efficiencies and eliminate confusion for worker's compensation stakeholders and staff who administer the program.

*** Note: If this proposal is adopted and is enacted into law, Department Proposals Nos. 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 20, 21, 22 and 23 will not be necessary.**

Department Proposal 2

ss. 20.005 (3), 20.445 (1) (ra) and 20.445 (1) (rc)

This proposal was previously approved by the WCAC and included in 2017 SB-665.

The Department recommends the creation of a new Worker's Compensation Chapter s. 20.445 alpha appropriation. It is recommended that the alpha appropriation be a Segregated Annual Funds appropriation (SEG) with \$5.0 million of annual budget authority within Fund 227.

2015 Wis. Act 55 created s. 102.75 (1g) that authorized the DWD-WCD to collect up to \$5 million per year. This amount is to be used to provide reimbursement to insurers paying supplemental benefits and to pay claims put on hold due to solvency issues with the Work Injury Supplemental Benefit Fund (WISBF). Under the Act the Department will pay claims for reimbursement in the chronological order in which they were received. No reimbursement will be paid to insurers for employees injured beginning on or after January 1, 2016. The Act however did not establish a new alpha appropriation (Separate account within the DWD-WCD's accounting metrics) but did provide for spending authority in Fund 227. This resulted in the Department being authorized to collect the monies, but not pay them out. A workaround has been used, but the budget authority in s. 20.445 (1) (ra) is not high enough in this appropriation. Creation of a new Fund 227 alpha appropriation with \$5.0 million of annual budget authority will permit effective administration of the program in accordance with the intent of 2015 Wis. Act 55. This

proposal will not increase revenue for the DWD-WCD or increase assessments on stakeholders, but rather provide the DWD-WCD with the authority to reimburse carriers for monies it is required to collect.

Proposed language for the amendments.

The Worker's Compensation Division (WCD) suggests using the same language for these amendments as was used in 2017 Senate Bill 665.

Department Proposal 3

s. 20.445 (1) (sm)

This proposal was previously approved by the WCAC and included in 2017 SB-665.

This proposal is to modify the designation of the appropriation in s. 20.445 (1) (sm) involving the Uninsured Employers Fund (UEF) from a Segregated Revenue Sum Sufficient appropriation to a Segregated Revenue Continuing appropriation. The current language contained in s. 20.445 (1) (sm) establishes a SEG Sum Sufficient appropriation and requires revenues to be recorded in a "revenue only" account while payments are made from a different account. To report cash balances the two (2) accounts must be manually merged. The proposed amendment will create efficiencies for accounting, budget transactions and cash balance reporting. The proposed change will not affect assessments or payments from this fund.

Proposed language for the amendment.

The Worker's Compensation Division (WCD) suggests using the same language for this amendment as was used in 2017 Senate Bill 665.

Department Proposal 4

ss. 46.27 (5m), 46.275 (4m), 46.227 (3r), 46.281 (1k), 46.2897 (3) and 46.995 (3)

This proposal was previously approved by the WCAC and included in 2017 SB-665.

This proposal is for technical changes in the law. The language used to amend these subsections in 2015 Wis. Act 180 provided that individuals who perform services for persons receiving long-term care benefits under long-term care programs are employees of entities providing financial management services. The proposed amendments will include specific language in the subsections in ch. 46 that clearly states the individuals performing services for the long-term care programs will be considered to be employees of the financial management services for purposes of worker's compensation coverage.

Proposed language for the amendments.

The Worker's Compensation Division (WCD) suggests using the same language for these amendments as was used in 2017 Senate Bill 665.

Department Proposal 5

s. 102.04 (1) (b) 1. and 2.

This proposal was previously approved by the WCAC and included in 2017 SB-665.

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. The term "usually" is not defined in ch. 102., Wis. Stats., and is open to ambiguity, interpretation and lack of clarity. This proposal 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 the worker's compensation law the day on which the person employs three or more employees for services performed in this state.

Proposed language for s. 102.04 (1) (b) 1 and 2.

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

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

Department Proposal 6

s. 102.15 (1)

This proposal was previously approved by the WCAC and included in 2017 SB-665.

The language used in 2015 Wis. Act 55 to amend s. 102.15 (1) only authorizes the division (DHA) to adopt its own rules of procedure and to change these from time to time. It is also necessary for the Worker's Compensation Division (WCD) to have statutory authority to promulgate administrative rules in ch. 102, Wis. Stats., that are necessary to carry out its duties and functions.

Administrative rules primarily related to worker's compensation adjudicatory functions that were contained in ch. DWD 80 were transferred to the DHA. There are a number of other rules contained in ch. DWD 80 that are not primarily related to adjudicatory functions that also apply to litigated cases. The administrative rules that apply to both adjudicatory and non-adjudicatory functions must be consistently applied for the effective operation of the worker's compensation system.

The Worker's Compensation Advisory Council (WCAC) is concerned about the DHA following the WCD's established administrative rules.

The proposal is for an amendment to s. 102.15, Wis. Stats., that will authorize the WCD to promulgate rules necessary to carry out its duties and functions under ch. 102, Wis. Stats., limit the DHA to promulgating its own rules of procedure, require the DHA to comply with administrative rules promulgated by the WCD and to not promulgate rules that conflict with the WCD's rules.

Proposed language to renumber and amend s. 102.15 (1) to (1r)

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

Proposed language to create s. 102.15 (1g)

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

Department Proposal 7

s. 102.16 (1) (b) 2.

This proposal was previously approved by the WCAC and included in 2017 SB-665.

There is currently no statutory authority in ch. 102, Wis. Stats., that specifically authorizes the WCD to conduct alternative dispute resolution (ADR) activities to resolve disputed worker's compensation cases. Currently, the WCD utilizes Dispute Resolution Specialists on its staff to work with pro se claimants (employees not represented by attorneys), employers and worker's compensation insurance carriers to resolve cases without the need for formal hearings.

The WCD has been very successful in conducting alternative dispute resolution activities in cases where injured employees are not represented by attorneys. With this proposal WCD staff will have specific statutory authority to continue with these alternative dispute resolution activities in cases where hearing applications have been filed regardless of whether the application is ready to be scheduled for a hearing. Resolving worker's compensation cases using alternative dispute resolution activities is less costly to stakeholders, provides resolution in much less time than formal hearings and is considerably more efficient to the stakeholders and the state.

Proposed language to renumber s. 102.16 (1) (b) to s. 102.16 (1) (b) 1. and create s. 102.16 (1) (b) 2.

102.16 (1) (b) 2. The department may conduct alternative dispute resolution activities for a case involving an employee who is not represented by an attorney with respect to which no application has been filed under s. 102.17 (1) (a) 1., or with respect to which an

application has been filed, regardless of whether the application is ready to be scheduled for a hearing.

Department Proposal 8

s. 102.16 (1m) (a)

Following the transfer of worker's compensation adjudicatory functions to the DHA there remains a considerable amount of ambiguity and confusion about the division of regulatory authority between the WCD and DHA. The amendments to ch. 102, Wis. Stats., contained in 2015 Wis. Act 55 provided the WCD is the agency responsible for processing and serving hearing applications and handling activities involving litigated cases up to the point a case is ready to be scheduled for a hearing.

The purpose of this proposal is to further clarify and identify the actions to be taken by the WCD and DHA. The proposed amendment will establish the authority of the WCD to handle administrative matters in litigated cases up to the point where the DHA issues a notice of hearing.

Proposed language to create s. 102.16 (1m) (a)

102.16 (1m) (a) In the case of a claim for compensation with respect to which no application has been filed under s. 102.17 (1) (a) 1., or with respect to which an application has been filed, the department may conduct activities to administer the case of a claim until the division issues notice of hearing under s. 102.17 (1) (a) 2.

Department Proposal 9

s. 102.16 (1m) (b)

Following the transfer of worker's compensation adjudicatory functions to the DHA there remains a considerable amount of ambiguity and confusion about the division of regulatory authority between the WCD and the DHA over when the DHA no longer has authority to take action in cases. The purpose of the proposal is to establish the point when litigation is complete and the DHA no longer has authority to take administrative actions in a case. The proposal will require the DHA to promptly return cases to the WCD after issuing an order on the merits of a case or an order under s. 102.18 (2) (c). The proposal will authorize the WCD to conduct administrative activities including closing a case. The WCD will be given sole authority to close a case.

Proposed language to create s. 102.16 (1m) (b)

102.16 (1m) (b) In the case of a claim for compensation with respect to which an application has been filed under s. 102.17 (1) (a) 1., after the division issues an order on the merits of a case of a claim under s. 102.18 (1) (b) 1., or an order under s. 102.18 (2) (c), the division shall promptly return the case of a claim to the department for any further administrative activities, including closing the case of a claim. The department shall have sole authority to close a case of a claim under s. 102.75 (1). The department shall promptly return the case of a claim to the division if a hearing is required.

Department Proposal 10

s. 102.17 (1) (b)

This proposal was previously approved by the WCAC and included in 2017 SB-665.

This proposal involves a technical change in the law. Both the WCD and the DHA need to have statutory authority to conduct conferences before hearings are scheduled. The language used in the 2015 Wis. Act 55 amendment to this paragraph only authorizes the DHA to conduct these conferences.

Proposed language to amend s. 102.17 (1) (b)

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

Department Proposal 11

s. 102.17 (1) (c), (cg), (cr) and (ct)

This proposal was previously approved by the WCAC and included in 2017 SB-665.

Section 102.17 (1) (c), Wis. Stats., provides statutory authority for the process to allow persons who are not attorneys licensed to practice law in Wisconsin to represent parties at worker's compensation hearings. Under current law the WCD is authorized to grant permission to persons who are not attorneys licensed to practice law in Wisconsin to appear at hearings in representation of the parties. The DHA now conducts worker's compensation hearings and should have statutory authority to regulate the process for authorizing persons not licensed to practice law in Wisconsin to appear at hearings before the DHA in representation of parties and to grant licenses to appear. Section DWD 80.20 of the Wisconsin Administrative Code is the administrative rule covering licenses to appear. Section DWD 80.20 of the Wisconsin Administrative Code could not be transferred to the DHA at the time other rules primarily related to adjudicatory functions were transferred because there is no current provision in ch. 102, Wis. Stats., for the DHA to have authority over this rule.

The proposed amendment to s. 102.17 (1) (c), Wis. Stats., will provide the DHA with statutory authority over the license to appear process and s. DWD 80.20 of the Wisconsin Administrative Code will be transferred to the DHA by a nonstatutory provision

in the WCAC "Agreed Upon Bill". Section 102.17 (1) (cg), (cr) and (ct), Wis. Stats., also need to be amended to reflect the DHA will have statutory authority over approving licenses to appear at worker's compensation hearings.

Proposed language for the amendment to s. 102.17 (1) (c), (cg), (cr) and (ct)

The WCD recommends the same language to amend s. 102.17 (1) (c), (cg), (cr) and (ct) as was used in 2017 Senate Bill 665.

Department Proposal 12

s. 102.17 (1m)

The WCD is the custodian of records for all worker's compensation claims. To maintain complete and accurate records it is necessary for the DHA to provide the WCD with all information, documents and records, including those in electronic format, provided to the parties in litigated cases. The proposal is to require the DHA to simultaneously provide the WCD by electronic format any information, document or notice it provides to a party in a litigated case. The DHA will not be required to provide notice to the WCD when a party to the litigated case provides this to the WCD.

Proposed language to create s. 102.17 (1m)

102.17 (1m) (a) In the case of a claim for compensation with respect to which an application has been filed under sub. (1) (a) 1., the division shall simultaneously provide the department the same notice that was submitted to the division by a party to that case of a claim.

(b) The notice under par. (a) shall include all information and documents included in the notice submitted by a party to that case of the claim.

(c) The division is not required to provide notice under par. (a) to the department when a party to a case of a claim submits the same notice to the department.

Department Proposal 13

s. 102.17 (2)

This proposal was previously approved by the WCAC and included in 2017 SB-665.

This proposal is for a technical change to the law. The language used in the 2015 Wis. Act 55 amendment to this subsection only authorizes the DHA to set hearings on its own motion. Both the WCD and the DHA need to have statutory authority to have cases set for hearing on their own motion.

Proposed language to amend s. 102.17 (2)

102.17 (2) If the division has reason to believe that the payment of compensation has not been made, the division may on its own motion give notice to the parties, in the manner provided for the service of an application, of a time and place when a hearing will be held for the purpose of determining the facts, or if the department has reason to believe that

the payment of compensation has not been made, the department may request the division give such a notice of hearing. The notice shall contain a statement of the matter to be considered. All provisions of this chapter governing proceedings on an application shall apply, insofar as applicable, to a proceeding under this subsection. When the division schedules a hearing ~~on its own motion~~ as provided in this subsection, neither the division does not become nor the department becomes a party in interest, and ~~is not~~ neither the division nor the department shall be required to appear as a party at the hearing.

Department Proposal 14

s. 102.17 (4)

The purpose of this proposal is to change the language used in s. 102.17 (4), Wis. Stats., to clarify that the statute of limitations applies to all parties that are involved in worker's compensation cases. The current language in s. 102.17 (4) only references the right of an employee, the employee's legal representative or dependent to proceed under this section. In several cases where the Uninsured Employers Fund (UEF) made payments 12 to 15 years ago, and the statute of limitations has expired, the employers filed hearing applications to request hearings to dispute the determinations of subjectivity to the Wisconsin Worker's Compensation Act, assessments for being illegally uninsured for worker's compensation liability and the UEF's payment of benefits many years after the fact. The rationale for this amendment is to add language to s. 102.17 (4), to clarify that the statute of limitations applies to all parties to a worker's compensation claim including employers, insurance companies and other entities such as the UEF and WISBF, not just employees, employees' legal representatives or dependents. It is important for all parties to be treated equally under the provisions of the statute of limitations to promote basic fairness in the system. Allowing disputes to arise many years after claims were paid causes problems with presenting evidence at hearings due to fading memories of witnesses, difficulties in locating witnesses and the spoilage of evidence.

Proposed language to amend s. 102.17 (4)

102.17 (4) Except as provided in this subsection and s. 102.555 (12) (b), in case of an occupational disease, the right of an employee, the employee's legal representative, ~~or a~~ the employee's dependent, an employer, an employer's insurance company, or any other party, to proceed under this section shall not extend beyond 12 years after the date of injury or death or after the date that compensation, other than for treatment of burial expense, was last paid, or would have been payable if no advancement were made, whichever date is latest, and in case of traumatic injury, that right shall not extend beyond 6 years after that date."...

Department Proposal 15

s.102.175 (2)

This proposal was previously approved by the WCAC and included in 2017 SB-665.

This is a technical amendment. The language used in the 2015 Wis. Act 55 amendment to this subsection only authorizes DHA to determine which of two (2) or more parties is liable for the payment of compensation. Both the WCD and DHA need to have statutory authority to resolve disputes under this subsection.

Proposed language to amend s. 102.175 (2)

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

Department Proposal 16

s. 102.18 (1) (bp)

This proposal was previously approved by the WCAC and included in 2017 SB-665.

Current law in s. 102.18 (1) (bp), Wis. Stats., provides the DHA may, by rule, define actions that demonstrate malice or bad faith. The actions that constitute malice or bad faith are contained in s. DWD 80.70 of the Wisconsin Administrative Code. Section DWD 80.70 provides that claims for malice or bad faith are penalties that may be imposed on an employer for unreasonably refusing or failing to report an alleged injury to its insurance carrier, or on an employer or insurance carrier who, without credible evidence which demonstrates that payment is fairly debatable, unreasonably fails to make timely payment of compensation or medical expense. Section 102.18 (1) (bp), Wis. Stats., provides the penalty to an employer or insurance carrier for an event or occurrence is the lesser of 200 percent of the compensation due with a maximum of \$30,000 for each event of malice or bad faith.

The language used in the 2015 Wis. Act 55 amendment to this paragraph only authorizes the DHA to make determinations about bad faith and to define by rule actions that demonstrate bad faith. Both the WCD and the DHA need to have statutory authority to make determinations about bad faith. The proposed amendment will also authorize the WCD, not the DHA, to define by rule the actions that demonstrate malice or bad faith. The definition of malice or bad faith is a substantive matter and is best determined by the Worker's Compensation Advisory Council (WCAC) and the WCD. The proposed amendment will not change the requirement for the DHA to conduct hearings on claims for malice or bad faith.

Proposed language to amend s. 102.18 (1) (bp)

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

Department Proposal 17

s. 102.18 (5)

This proposal was previously approved by the WCAC and included in 2017 SB-665.

This is a technical amendment. The language used in the 2015 Wis. Act 55 amendment to this subsection only authorizes the DHA to take action where a mistake may have been made as to the cause of an accidental injury or disease. Both the WCD and DHA need statutory authority because litigated and non-litigated cases will be involved.

Proposed language to amend s. 102.18 (5)

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

Department Proposal 18

s. 102.18 (6)

This proposal was previously approved by the WCAC and included in 2017 SB-665.

This is a technical amendment. The language used in the 2015 Wis. Act 55 amendment to this subsection only authorizes the DHA to review cases caused by occupational disease. Both the WCD and DHA need statutory authority to review cases caused by occupational disease because a number of these cases will not be litigated.

Proposed language to amend s. 102.18 (6)

s. 102.18 (6) In case of disease arising out of employment, the department or the division may from time to time review its findings, order, or award, and make new findings, or a new order or award, based on the facts regarding disability or otherwise as those facts may appear at the time of the review. This subsection shall not affect the application of the limitation in s. 102.17 (4).

Department Proposal 19

s. 102.33 (2) (b) 7.

This proposal was previously approved by the WCAC and included in 2017 SB-665.

Under current law the Worker's Compensation Division may provide limited worker's compensation record information to the Department of Children and Families or a child support agency. The information 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.

The proposed amendment will allow the Worker's Compensation Division to provide limited worker's compensation record information to the Department of Health Services or a county department of social services. The information will be 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.

Proposed language to create s. 102.33 (2) (b) 7.

102.33 (2) (b) 7. The requester is the department of health services or a county department of social services under ss. 46.215, 46.22 or 46.23, the request is made under s. 49.22 (2m), and 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.

Department Proposal 20

s. 102.44 (2)

This proposal was previously approved by the WCAC and included in 2017 SB-665.

This is a technical amendment. The language used in the 2015 Wis. Act 55 amendment to this subsection only authorizes the DHA to find the facts in cases of permanent total disability. Both the WCD and DHA need statutory authority for cases involving permanent total disability because there are some permanent total disability cases that are not litigated.

Proposed language to amend s. 102.44 (2)

s. 102.44 (2) In case of permanent total disability, aggregate indemnity shall be weekly indemnity for the period that the employee may live. Total impairment for industrial use of both eyes, the loss of both arms at or near the shoulder, the loss of both legs at or near the hip, or the loss of one arm at the shoulder and one leg at the hip constitutes permanent total disability. This enumeration is not exclusive, but in other cases the department or the division shall find the facts.

Department Proposal 21

s. 102.44 (6) (b)

This proposal was previously approved by the WCAC and included in 2017 SB-665.

This is a technical amendment. The language used in 2015 Wis. Act 55 only authorizes the DHA to reopen awards and to make redeterminations taking into account loss of earning capacity. Both the WCD and DHA need this statutory authority because some cases will not be litigated.

Proposed language to amend s. 102.44 (6) (b)

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

Department Proposal 22

s. 102.61 (2)

This proposal was previously approved by the WCAC and included in 2017 SB-665.

This amendment is for a technical change. The language used in the 2015 Wis. Act 55 amendment to this subsection only authorizes the DHA to reopen awards and determine the rights and liabilities of the parties on claims for vocational rehabilitation training. The WCD also needs to have statutory authority for this because action may be required on cases that are not litigated.

Proposed language to amend s. 102.61 (2)

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

Department Proposal 23

s. 102.62

This proposal was previously approved by the WCAC and included in 2017 SB-665.

This amendment is for a technical change. The language used in the 2015 Wis. Act 55 amendment to this section only authorizes the DHA to award secondary liability in orders. Both the WCD and the DHA need statutory authority to award secondary liability because the WCD handles a number of cases where secondary liability applies.

Proposed language to amend s. 102.62

s. 102.62 Primary and secondary liability; unchangeable. In case of liability under s. 102.57 or 102.60, the liability of the employer shall be primary and the liability of the insurance carrier shall be secondary. If proceedings are had before the department or the division for the recovery of that liability, the department or the division shall set forth in its award the amount and order of liability as provided in this section. Execution shall not be issued against the insurance carrier to satisfy any judgment covering that liability until execution has first been issued against the employer and has been returned unsatisfied as to any part of that liability. Any provision in any insurance policy undertaking to guarantee primary liability or to avoid secondary liability for a liability under s. 102.57 or 102.60 is void. If the employer has been adjudged bankrupt or has made an assignment for the benefit of creditors, if the employer other than an individual, has gone out of business or has been dissolved, or if the employer is a corporation and its charter has been forfeited or revoked, the insurer shall be liable for the payment of that liability without judgment or execution against the employer, but without altering the primary liability of the employer.

Department Proposal 24

s. 102.81 (4) (b) (c) and (5)

This proposal was previously approved by the WCAC and included in 2017 SB-665.

The language in this paragraph provides the Uninsured Employers Fund (UEF) is to receive all of the proceeds from third party settlements less attorney fees and costs. This creates a disincentive for employees who received benefits from the UEF to bring third party actions and for attorneys to represent them. This proposed amendment will require the distribution of proceeds from third party actions to be made as provided under s. 102.29 (1), Wis. Stats. With this amendment the UEF will be reimbursed and receive

distribution of third party proceeds in a similar manner as worker's compensation insurance carriers and self-insured employers.

Proposed language to amend s. 102.81 (4) (b) and create (4) (c)

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

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

Proposed language to create s. 102.81 (4) (c)

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

Proposed language to amend s. 102.81 (5)

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