

Workers Compensation Advisory Council

Management Proposals

7/25/2023

1. Medical Fee Schedule. Wisconsin is an extreme outlier in that we do not have a medical fee schedule in place to control costs for workers compensation medical claims. We propose that the Department develop a medical fee schedule for hospital charges to be in place by January 1, 2025. The fee schedule shall strive to keep costs below the national average according to national data from WCRI. The fee schedule may be regional to account for different costs in various regions of the state.

2. 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, and update Wis. Stat. 102.16 and DWD Administrative Code 80.72 to reflect this database change.

3. Employer Directed Care. We propose allowing employer directed care for the first 90 days of treatment outside of emergency room care. To utilize this, employers must 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 3 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. This list must include contact information and must be posted in a prominent location.

4. Reduce Statutory Minimums for PPD. We propose reducing current statutory minimum permanent partial disability ratings by fifty percent in DWD Administrative Code 80.32 where surgical treatments have made it such that outcomes result in no permanent functional disability.

5. Approval of Compromise Agreements and Case Closure. We propose that the Department of Hearings and Appeals be required to approve compromise agreements, regardless of the number of weeks in dispute, where both parties are in agreement and are represented by counsel. In the event of a limited compromise agreement, the injured worker, through their counsel, would have the right to refile a new hearing application if additional issues, not included in the previous agreements, were to emerge.

6. Lump Sum Payments. We propose allowing lump sum payments for permanent partial disability for unaccrued benefits paid up front in undisputed claims.

7. Treatment Guidelines. We propose requiring treatment guidelines, established by the Department, be followed by health care providers for 90 days after injury unless prior authorization is received from the insurer.

8. PTD Benefit Limitation. We propose terminating Permanent Total Disability Benefits once the injured worker is eligible to receive old age Social Security retirement benefits. If the injured worker at the time of injury was already old age Social Security eligible, then the sum of all indemnity

benefits, in an aggregate to include TTD, TPD, LOEC, PTD, shall be capped at no more than 5 years, (with a cap of 104 weeks for all TTD/TPD benefits) and will terminate earlier upon the death of the injured worker should that arise within the five year window.

9. Utilization Review. We propose allowing employer/insurer to initiate utilization review of health care services by an independent doctor.

10. Prohibit PPD Stacking. LIRC and the courts have held that the minimum awards set forth in Wis. Admin. DWD 80.32 can be stacked for each surgical procedure due to the same injury. This leads to awards that are higher than the amount set by the code. We propose that permanent disability ratings be based on actual ratings as assessed by medical experts.

11. Require Work Exposure to be Predominant Cause to Allow Compensability. We propose that for non-traumatic injury to be compensable under worker's compensation, workplace exposure must be the predominant cause of the condition.

12. PTD Re-evaluation. We propose allowing an employer or insurer to request an injured worker receiving PTD benefits to have their PTD ratings re-evaluated every 3 years.

13. Death Benefits in PTD Claims. We propose modification to 102.44 (3) which would adjust the threshold of 1,000 weeks, to 500 weeks. This addresses the eligibility for death benefits where the death occurs within 500 weeks of the initiation of PTD benefits. In addition:

--If the death occurs after 500 weeks of PTD benefits have been paid, then no death benefit would be owed.

-- If death occurs within the 500 week window, and if the death were causally linked to the industrial accident or illness, a death benefit would be due to the extent of a normal benefit entitlement, but the aggregate of PTD benefits may not exceed 500 weeks.

-- If the PTD award was after assignment of old age Social Security, then no more than 5 years of PTD benefits are payable in the aggregate from the date of the award.

-- If the death was not causally related to the industrial accident or illness, no death or burial allowance would be payable.

14. Statute of Limitations. We propose reducing the 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 the medically necessary treatment expenses directed to said prosthesis or artificial joint.

15. Tolling the Statutes. Past judicial practices allowed for a cleaner process and understanding for when the statute of limitations expired. This practice was disrupted by the adoption of LIRC's interpretations of the VEITH case (1993-0177579). With this consideration, and others related to the statute of limitations, we propose simplifying the process to calculate the date that the statute of limitations will apply by amending Wis. Stat. 102 as follows:

-- Applications will only be accepted by the Department when there is a justiciable controversy.

- Repeal section 102.17(2) of the statutes.
- Require the judicial body to dismiss a pending application for hearing when there are no, or there are no longer, disputed issues for which the parties to the claim are seeking a determination, including requests to dismiss or withdraw by filing parties.
- Provide that the statute of limitations in a worker's compensation case is tolled when an application for hearing is pending but that the statute of limitations shall not be extended as a result of the filing of an application for hearing.
- Provide that consideration paid for a compromise agreement is not an advancement of benefits as provided by section 102.32(6m) of the statute.
- Where an indemnity settlement exists, in either a limited compromise or full compromise and release, the date for the statute of limitations will be absolutely calculated from the date of issuance from which the last indemnity payment was made.

16. Eliminate Safety Offsets. Workers Compensation was intended to be a no-fault system. Therefore, we propose eliminating safety offsets under Wis. Stat 102.57 and 102.58.

17. Third Party Observers. In order to protect patient confidentiality and promote open dialog on issues we propose eliminating the use of third-party observers in psychology IME's