

Workers' Compensation Advisory Committee Update

On October 21, 2015, the Workers' Compensation Advisory Committee (WCAC) met for about 13 hours to negotiate several proposed changes to the Wisconsin Workers' Compensation Program. In the end, several policies were agreed upon. The Department of Workforce Development is working to put these agreed-to policies into a proposed bill draft that will be reviewed by the WCAC at their next meeting in November (exact date to be determined). Once the language in the bill has been agreed to by the Council, it will be forwarded to the Legislature.

Fee Schedule/Medical Cost Management Council Removed from Consideration

At the beginning of the meeting, the Management side announced it was withdrawing from consideration its proposal for a fee schedule and/or medical cost management council. Jeffrey Beiriger, speaking on behalf of Management, indicated that opposition to the fee schedule resulted in no changes to the program last year, and they are delaying the discussion for this session so that other important policies could move forward.

Directed Care Pilot Proposed by Labor

The Labor members of the WCAC proposed a directed care pilot program that would limit choices of providers for employees who are injured on the job.

The pilot would apply to a limited group of workers – highway and other heavy construction, with employers who have a contract with the Department of Transportation, and with employees who are part of a bargaining unit. The program would sunset after 5 years. The bargaining unit and employer would agree on the terms of the directed care. Data on the outcomes of the pilot would be gathered and submitted to WCAC annually to evaluate.

As the project was a fairly new concept, labor agreed to draft language *separate from* the agreed to bill, and management agreed to consider the proposed language further. Labor and management did not agree to include this pilot project in the agreed-to bill language at this time.

Provisions Agreed-to by the WCAC

1. Change the statute of limitations from 12 years to six years, except for injuries caused by exposure to a toxic or hazardous substance. Claims from injuries more than six years prior would be denied.
2. Allow medical providers to charge a fixed rate of \$10 for electronic format of all medical records made in each request. Final medical reports (which are paid by the insurer and are sent to DWD) must be provided timely and at a rate of no more than \$100.
3. Apportion permanent disability based on causation. Any physician who prepares a report on the issue of permanent disability would be required to address the issue of causation of the permanent disability, including determining the approximate percentage of permanent disability caused directly by the work-related injury. Employees would have to disclose any related previous permanent disabilities or physical impairments, upon request. The intention with this provision is for the employer to be responsible only for that portion of the injury directly caused by the work accident.

4. Reconvene the Medical Advisory Committee regularly to update the permanent partial disability ratings.
5. Reimburse medications dispensed outside of a licensed pharmacy to a WC claimant at the existing pharmacy fee schedule. Note that a proposal by the management members of the WCAC to severely limit prescriptions dispensed in a physician's office to 15 days from the date of injury was rejected by the labor members.
6. Specify that the average wholesale price of a prescription drug is as of the date on which the drug is dispensed as quoted in the Drug Topics Red Book. It was agreed that there needs to be language on a successor resource should the red book no longer be available.
7. Do not allow for recovery of indemnity benefits when the employee violates the company's drug and/or alcohol policy and that is causal to the injury. The intent is that this provision would also repeal the 15 percent reduction for employee misconduct. According to the management proposal, someone who has violated the drug and/or alcohol policy is presumed to have deviated from employment and thus wage replacement should be denied.
8. Deny temporary total disability when an employee is released to light duty work and is subsequently termination for good cause (as based on Unemployment Insurance standards).
9. Increase the permanent partial disability rate for the next two years by \$20 each year.
10. Increase for two years the supplement benefit eligible dates/rates. Current law provides supplemental benefits for those with a date of injury occurring before 1/1/2001 with a supplement rate of \$582. This would provide supplemental benefits for those injured before 1/1/2003 at a max rate of \$669.
11. Allow Administrative Law Judges to issue prospective orders directing the insurer to pay for a future course of training or instruction.
12. Reinstate section 102.43(5)(c) of the statutes, which was sunset on 4/30/2014, to provide for no reduction in temporary total disability benefits for vocational retraining for part time work up to 24 hours per week during periods of instruction.
13. Provide funding for one position at the Department of Justice for the investigation and prosecution of fraud by employees, employers, insurers or providers.
14. Allow all Fiscal Employment Agency employers and their employees to be covered under one blanket workers' compensation insurance policy similar to the W-2 law where only the agency is the employer of record for purposes of workers' compensation.

Other

The WCAC asked the Department for information on the supplemental benefits fund and the possible availability of funding for situations where the injured employee works for more than one employer and their injury at one employer prevents them from working at both employers. The Department will share information at the next WCAC.