



January 16, 2022

VIA E-MAIL @ WCAdvisoryCouncil@dwd.wisconsin.gov

Steve Peters, Chair
Worker's Compensation Advisory Council
201 E. Washington Avenue, Room C100
Madison, WI 53703

RE: Wisconsin Worker's Compensation Advisory Council – Worker's Compensation Laws Input

Dear Mr. Peters:

Thank you for allowing us the opportunity to submit input as it relates to the next slate of recommended legislative changes to Wisconsin's Worker's Compensation laws.

My name is Mike Pochowski and I am the President and CEO of the Wisconsin Assisted Living Association (WALA). We are a statewide association representing Wisconsin's assisted living profession with over 1,500 member facilities. These facilities employ tens of thousands of caregivers and staff, who care for approximately 20,000 elderly individuals and those with disabilities.

We have a number of suggestions for your consideration.

Statutory Minimum PPD Ratings

We would suggest the removal of the statutory minimum permanent partial disability (PPD) ratings for joint replacements – currently averaging 40%-50%. Due to the medical advancements in joint replacements, we believe these high payouts are incongruent with the rest of Wisconsin's PPD rating methodology, which is based upon individual disability rather than an arbitrary minimum.

Payment of Wages by Employer

Adding "self-insured" into 102.17(4)(c) which would then state, "Payment of wages by the ***self-insured*** employer during disability or absence from work to obtain treatment shall be considered payment of compensation for the purpose of this section if the employer knew of the employee's condition and its alleged relation to the employment." Doing so would help delineate between when an employer makes a payment of wages versus an insurer.

Regulatory Clarification - DWD 80.32(11)

We are hoping for clarification on the Wisconsin Department of Workforce Development (DWD) regulations, in particular, 80.32(11) which states "Compression fractures of vertebrae of such degree to cause permanent disability may be rated 5% and graded upward." It is unclear why this only pertains to compression fractures and where the 5% rating came from.

WALA - Wisconsin Assisted Living Association

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What is “Material” Contributory Causative Factor

There seems to be conflicting information and it would be helpful to define what a “material” contributory causative factor is and how the five percent rule relates. For example, there are multiple Labor & Industry Review Commission (LIRC) rulings that specify job duties only need to contribute 5% toward a condition in order to be considered a material contributory causative factor. Therefore, it would be helpful to have a clear definition of “material” contributory causative factor.

Compromise Agreements – Eliminate the 100 Weeks of Disability in Dispute Requirement

Unfortunately, there can be some discrepancy amongst decisions made by Administrative Law Judge (ALJ), the Office of Worker’s Compensation Hearings (OWCH), and the Department of Workforce Development (DWD). For example, while there is no statutory requirement, settlement agreements are required to include 100 weeks of Disability in Dispute provision. We believe this comes from a previous ALJ ruling and later put into a formalized memorandum. A discrepancy in decisions causes ambiguity and uncertainty with settlement agreements. Therefore, we believe a statute should be implemented that defines the compromise agreement approval process.

Interest Credit for Lump Sum Payments – Undisputed Claims

Allow for “interest credit” for lump sum advancement payments issued by an insurer in undisputed cases. When a claim is undisputed, it should not need approval of OWCH and DWD. Insurers should be able to make agreed upon payments to claimants without regulatory hurdles while including an interest credit.

Employer Directed Care

The statutes should be modified to allow employer directed care for the first 90 days of treatment – not including emergency medical care. In this instance, employers could provide to an injured employee a list of authorized health care providers to provide care for their injury(ies). For example, the list could include at least four health care providers in different specialties who are geographically accessible to the injured employee. The statute could also allow the employee to select a “first choice” treatment provider after 90-day employer directed care is concluded.

Treatment guidelines in lieu of Medical Fee Schedule

Establish medical treatment guidelines for specific injuries in Wisconsin based upon Official Disability Guidelines (ODG) or another appropriate national model. Health care providers would be mandated to follow these guidelines unless pre-authorization is received from the insurer. This would be a seamless process for both the injured employee and the insurer, particularly during employer-directed care for the first 90 days.

Hearing Applications filed Pro Se or by Counsel need to be accompanied with a valid WKC-16B Report from Physician, Podiatrist, Surgeon, Psychologist or Chiropractor (102.17(1)(d)(1))

Requirement that a Hearing Application cannot be filed by a Pro Se Employee or Applicant’s counsel unless accompanied with a valid WKC-16B Report from a treating physician, podiatrist, surgeon, psychologist or chiropractor. Mere certified medical records should not be sufficient support to file a



hearing application. Oftentimes, cases sit for months in litigation with no valid medical support, and many are ultimately dismissed for lack of medical support. Making this change would allow claims to be heard more timely and appropriately.

Thank you for your consideration and please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael S. Pochowski".

Michael S. Pochowski
President & CEO