

State of Wisconsin



2023 Assembly Bill 1073

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2023 WISCONSIN ACT 213

AN ACT *to repeal* 102.51 (1) (a) 2.; *to renumber and amend* 102.32 (6m); *to amend* 102.11 (1) (intro.), 102.13 (1) (a), 102.13 (1) (b) (intro.), 1., 3. and 4., 102.13 (1) (d) 1., 2., 3. and 4., 102.13 (2) (a), 102.13 (2) (b), 102.17 (1) (d) 1. and 2., 102.17 (4) (a), 102.29 (3), 102.42 (2) (a), 102.51 (1) (a) 1., 102.61 (1), 102.61 (1g) (b), 102.61 (1g) (c), 102.61 (1m) (a), 102.81 (1) (c) 1. and 102.81 (1) (c) 2.; and *to create* 102.18 (1) (b) 1d., 102.18 (1) (b) 1h., 102.18 (1) (b) 1p., 102.18 (1) (b) 1t. and 102.32 (6m) (b) of the statutes; **relating to**: various changes to the worker's compensation law.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 102.11 (1) (intro.) of the statutes is amended to read:

102.11 (1) (intro.) The average weekly earnings for temporary disability, permanent total disability, or death benefits for injury in each calendar year on or after January 1, 1982, shall be not less than \$30 nor more than the wage rate that results in a maximum compensation rate of 110 percent of the state's average weekly earnings as determined under s. 108.05 as of June 30 of the previous year. The average weekly earnings for permanent partial disability shall be not less than \$30 and, for permanent partial disability for injuries occurring on or after January 1, 2017, and before April 10, 2022, not more than \$543, resulting in a maximum compensation rate of \$362; for permanent partial disability for injuries occurring on or after April 10, 2022, and before January 1, 2023, not more than \$622.50, resulting in a maximum compensation rate of \$415; and for permanent partial disability for injuries occurring on or after January 1, 2023, and before the effective date of this subsection [LRB inserts date], not more than \$645, resulting in a maximum com-

pensation rate of \$430; for permanent partial disability for injuries occurring on or after the effective date of this subsection [LRB inserts date], and before January 1, 2025, not more than \$657, resulting in a maximum compensation rate of \$438; and for permanent partial disability for injuries occurring on or after January 1, 2025, not more than \$669, resulting in a maximum compensation rate of \$446. Between such limits the average weekly earnings shall be determined as follows:

SECTION 2. 102.13 (1) (a) of the statutes is amended to read:

102.13 (1) (a) Except as provided in sub. (4), whenever compensation is claimed by an employee, the employee shall, upon the written request of the employee's employer or worker's compensation insurer, submit to reasonable examinations by physicians, chiropractors, psychologists, dentists, physician assistants, advanced practice nurse prescribers, registered nurses, or podiatrists provided and paid for by the employer or insurer. No employee who submits to an examination under this paragraph is a patient of the examining physician, chiropractor, psychologist, dentist, physician assistant, advanced practice registered nurse prescriber, or podiatrist.

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

trist for any purpose other than for the purpose of bringing an action under ch. 655, unless the employee specifically requests treatment from that physician, chiropractor, psychologist, dentist, physician assistant, advanced practice registered nurse ~~prescriber~~, or podiatrist.

SECTION 3. 102.13 (1) (b) (intro.), 1., 3. and 4. of the statutes are amended to read:

102.13 (1) (b) (intro.) An employer or insurer who requests that an employee submit to reasonable examination under par. (a) or (am) shall tender to the employee, before the examination, all necessary expenses including transportation expenses. The employee is entitled to have a physician, chiropractor, psychologist, dentist, physician assistant, advanced practice registered nurse ~~prescriber~~, or podiatrist provided by himself or herself present at the examination and to receive a copy of all reports of the examination that are prepared by the examining physician, chiropractor, psychologist, podiatrist, dentist, physician assistant, advanced practice registered nurse ~~prescriber~~, or vocational expert immediately upon receipt of those reports by the employer or worker's compensation insurer. The employee is entitled to have one observer provided by himself or herself present at the examination. The employee is also entitled to have a translator provided by himself or herself present at the examination if the employee has difficulty speaking or understanding the English language. The employer's or insurer's written request for examination shall notify the employee of all of the following:

1. The proposed date, time, and place of the examination and the identity and area of specialization of the examining physician, chiropractor, psychologist, dentist, podiatrist, physician assistant, advanced practice registered nurse ~~prescriber~~, or vocational expert.

3. The employee's right to have his or her physician, chiropractor, psychologist, dentist, physician assistant, advanced practice registered nurse ~~prescriber~~, or podiatrist present at the examination.

4. The employee's right to receive a copy of all reports of the examination that are prepared by the examining physician, chiropractor, psychologist, dentist, podiatrist, physician assistant, advanced practice registered nurse ~~prescriber~~, or vocational expert immediately upon receipt of these reports by the employer or worker's compensation insurer.

SECTION 4. 102.13 (1) (d) 1., 2., 3. and 4. of the statutes are amended to read:

102.13 (1) (d) 1. Any physician, chiropractor, psychologist, dentist, podiatrist, physician assistant, advanced practice registered nurse ~~prescriber~~, or vocational expert who is present at any examination under par. (a) or (am) may be required to testify as to the results of the examination.

2. Any physician, chiropractor, psychologist, dentist, physician assistant, advanced practice registered nurse

~~prescriber~~, or podiatrist who attended a worker's compensation claimant for any condition or complaint reasonably related to the condition for which the claimant claims compensation may be required to testify before the division when the division so directs.

3. Notwithstanding any statutory provisions except par. (e), any physician, chiropractor, psychologist, dentist, physician assistant, advanced practice registered nurse ~~prescriber~~, or podiatrist attending a worker's compensation claimant for any condition or complaint reasonably related to the condition for which the claimant claims compensation may furnish to the employee, employer, worker's compensation insurer, department, or division information and reports relative to a compensation claim.

4. The testimony of any physician, chiropractor, psychologist, dentist, physician assistant, advanced practice registered nurse ~~prescriber~~, or podiatrist who is licensed to practice where he or she resides or practices in any state and the testimony of any vocational expert may be received in evidence in compensation proceedings.

SECTION 5. 102.13 (2) (a) of the statutes is amended to read:

102.13 (2) (a) An employee who reports an injury alleged to be work-related or files an application for hearing waives any physician-patient, psychologist-patient, or chiropractor-patient privilege with respect to any condition or complaint reasonably related to the condition for which the employee claims compensation. Notwithstanding ss. 51.30 and 146.82 and any other law, any physician, chiropractor, psychologist, dentist, podiatrist, physician assistant, advanced practice registered nurse ~~prescriber~~, hospital, or health care provider shall, within a reasonable time after written request by the employee, employer, worker's compensation insurer, department, or division, or its representative, provide that person with any information or written material reasonably related to any injury for which the employee claims compensation. If the request is by a representative of a worker's compensation insurer for a billing statement, the physician, chiropractor, psychologist, dentist, podiatrist, physician assistant, advanced practice registered nurse ~~prescriber~~, hospital, or health care provider shall, within 30 days after receiving the request, provide that person with a complete copy of an itemized billing statement or a billing statement in a standard billing format recognized by the federal government.

SECTION 6. 102.13 (2) (b) of the statutes is amended to read:

102.13 (2) (b) A physician, chiropractor, podiatrist, psychologist, dentist, physician assistant, advanced practice registered nurse ~~prescriber~~, hospital, or health service provider shall furnish a legible, certified duplicate of the written material requested under par. (a) in paper format upon payment of the actual costs of preparing the certified duplicate, not to exceed the greater of 45 cents per

page or \$7.50 per request, plus the actual costs of postage, or shall furnish a legible, certified duplicate of that material in electronic format upon payment of \$26 per request. Any person who refuses to provide certified duplicates of written material in the person's custody that is requested under par. (a) shall be liable for reasonable and necessary costs and, notwithstanding s. 814.04 (1), reasonable attorney fees incurred in enforcing the requester's right to the duplicates under par. (a).

SECTION 7. 102.17 (1) (d) 1. and 2. of the statutes are amended to read:

102.17 (1) (d) 1. The contents of certified medical and surgical reports by physicians, podiatrists, surgeons, dentists, psychologists, physician assistants, advanced practice ~~nurse prescribers~~ registered nurses, and chiropractors licensed in and practicing in this state, and of certified reports by experts concerning loss of earning capacity under s. 102.44 (2) and (3), presented by a party for compensation constitute prima facie evidence as to the matter contained in those reports, subject to any rules and limitations the division prescribes. Certified reports of physicians, podiatrists, surgeons, dentists, psychologists, physician assistants, advanced practice ~~nurse prescribers~~ registered nurses, and chiropractors, wherever licensed and practicing, who have examined or treated the claimant, and of experts, if the practitioner or expert consents to being subjected to cross-examination, also constitute prima facie evidence as to the matter contained in those reports. Certified reports of physicians, podiatrists, surgeons, psychologists, and chiropractors are admissible as evidence of the diagnosis, necessity of the treatment, and cause and extent of the disability. Certified reports by doctors of dentistry, physician assistants, and advanced practice ~~nurse prescribers~~ registered nurses are admissible as evidence of the diagnosis and necessity of treatment but not of the cause and extent of disability. Any physician, podiatrist, surgeon, dentist, psychologist, chiropractor, physician assistant, advanced practice registered nurse ~~prescriber~~, or expert who knowingly makes a false statement of fact or opinion in a certified report may be fined or imprisoned, or both, under s. 943.395.

2. The record of a hospital or sanatorium in this state that is satisfactory to the division, established by certificate, affidavit, or testimony of the supervising officer of the hospital or sanatorium, any other person having charge of the record, or a physician, podiatrist, surgeon, dentist, psychologist, physician assistant, advanced practice registered nurse ~~prescriber~~, or chiropractor to be the record of the patient in question, and made in the regular course of examination or treatment of the patient, constitutes prima facie evidence as to the matter contained in the record, to the extent that the record is otherwise competent and relevant.

SECTION 8. 102.17 (4) (a) of the statutes is amended to read:

102.17 (4) (a) Except as provided in this subsection and s. 102.555 (12) (b), in the case of occupational disease, the right of an employee, the employee's legal representative, a dependent, the employee's employer or the employer's insurance company, or other named party to proceed under this section shall not extend beyond 12 years after the date of the injury or death or after the date that compensation, other than for treatment or burial expenses, was last paid, or would have been last payable if no advancement were made, whichever date is latest, and in the case of traumatic injury, that right shall not extend beyond 6 years after that date. The statute of limitations under this subsection begins to run on the date an order is issued by the division approving a compromise agreement. A further claim is not barred except as provided in this subsection, regardless of whether an award is made.

SECTION 9. 102.18 (1) (b) 1d. of the statutes is created to read:

102.18 (1) (b) 1d. If an application has been filed under s. 102.17 (1) (a) 1. for a claim for compensation, after the division issues an order on the merits of the case of the claim under subd. 1., or an order under sub. (2) (c), if there is no pending action for review by a court, the division shall return to the department the file for the case of the claim within 30 days after issuing the order. The department shall conduct further administrative activities, including closing the case of the claim.

SECTION 10. 102.18 (1) (b) 1h. of the statutes is created to read:

102.18 (1) (b) 1h. The department has exclusive authority to close a case of a claim for compensation.

SECTION 11. 102.18 (1) (b) 1p. of the statutes is created to read:

102.18 (1) (b) 1p. If the department determines it is necessary, the department shall notify the parties when it closes a case of a claim for compensation.

SECTION 12. 102.18 (1) (b) 1t. of the statutes is created to read:

102.18 (1) (b) 1t. The department shall forward to the division a case of a claim for compensation if a hearing is required when a party in interest files a subsequent application under s. 102.17 (1) (a) 1., after an order has been issued under subd. 1. or sub. (2) (c).

SECTION 13. 102.29 (3) of the statutes is amended to read:

102.29 (3) Nothing in this chapter shall prevent an employee from taking the compensation that the employee may be entitled to under this chapter and also maintaining a civil action against any physician, chiropractor, psychologist, dentist, physician assistant, advanced practice registered nurse ~~prescriber~~, or podiatrist for malpractice.

SECTION 14. 102.32 (6m) of the statutes is renumbered 102.32 (6m) (a) and amended to read:

102.32 (6m) (a) The department or the division may direct an advance on a payment of unaccrued compensation for permanent disability or death benefits if the department or the division determines that the advance payment is in the best interest of the injured employee or the employee's dependents. In directing the advance, the department or the division shall give the employer or the employer's insurer an interest credit against its liability. The credit shall be computed at 5 percent. An injured employee or dependent may receive no more than 3 advance payments per calendar year under this paragraph.

SECTION 15. 102.32 (6m) (b) of the statutes is created to read:

102.32 (6m) (b) Notwithstanding par. (a), an employer or an employer's insurer may voluntarily make a lump sum payment of unaccrued compensation for permanent partial disability in undisputed claims to an injured employee or the employee's dependents with no interest credit against the liability of the employer or the employer's insurer.

SECTION 16. 102.42 (2) (a) of the statutes is amended to read:

102.42 (2) (a) When the employer has notice of an injury and its relationship to the employment, the employer shall offer to the injured employee his or her choice of any physician, chiropractor, psychologist, dentist, physician assistant, advanced practice registered nurse ~~prescriber~~, or podiatrist licensed to practice and practicing in this state for treatment of the injury. By mutual agreement, the employee may have the choice of any qualified practitioner not licensed in this state. In case of emergency, the employer may arrange for treatment without tendering a choice. After the emergency has passed the employee shall be given his or her choice of attending practitioner at the earliest opportunity. The employee has the right to a 2nd choice of attending practitioner on notice to the employer or its insurance carrier. Any further choice shall be by mutual agreement. Partners and clinics are considered to be one practitioner. Treatment by a practitioner on referral from another practitioner is considered to be treatment by one practitioner.

SECTION 17. 102.51 (1) (a) 1. of the statutes is amended to read:

102.51 (1) (a) 1. A wife married person upon ~~a husband~~ his or her spouse with whom he or she is living at the time of his the spouse's death.

SECTION 18. 102.51 (1) (a) 2. of the statutes is repealed.

SECTION 19. 102.61 (1) of the statutes is amended to read:

102.61 (1) Subject to subs. (1g) and (1m), an employee who is entitled to receive and has received compensation under this chapter, and who is entitled to and is receiving instruction under 29 USC 701 to ~~797b~~ 796l, as administered by the state in which the employee

resides or in which the employee resided at the time of becoming physically disabled, shall, in addition to other indemnity, be paid the actual and necessary costs of tuition, fees, books, and travel required for the employee's rehabilitation training program and, if the employee receives that instruction elsewhere than at the place of residence, the actual and necessary costs of maintenance, during rehabilitation, subject to the conditions and limitations specified in sub. (1r). The costs of travel under this subsection shall be paid at the same rate as is provided for state officers and employees under s. 20.916 (8).

SECTION 20. 102.61 (1g) (b) of the statutes is amended to read:

102.61 (1g) (b) If an employer offers an employee suitable employment as provided in par. (c), the employer or the employer's insurance carrier is not liable for temporary disability benefits under s. 102.43 (5) (b) or for the cost of tuition, fees, books, travel, and maintenance under sub. (1). Ineligibility for compensation under this paragraph does not preclude an employee from receiving vocational rehabilitation services under 29 USC 701 to ~~797b~~ 796l if the department determines that the employee is eligible to receive those services.

SECTION 21. 102.61 (1g) (c) of the statutes is amended to read:

102.61 (1g) (c) On receiving notice that he or she is eligible to receive vocational rehabilitation services under 29 USC 701 to ~~797a~~ 796l, an employee shall provide the employer with a written report from a physician, chiropractor, psychologist, or podiatrist stating the employee's permanent work restrictions. Within 60 days after receiving that report, the employer shall provide to the employee in writing an offer of suitable employment, a statement that the employer has no suitable employment for the employee, or a report from a physician, chiropractor, psychologist, or podiatrist showing that the permanent work restrictions provided by the employee's practitioner are in dispute and documentation showing that the difference in work restrictions would materially affect either the employer's ability to provide suitable employment or a vocational rehabilitation counselor's ability to recommend a rehabilitative training program. If the employer and employee cannot resolve the dispute within 30 days after the employee receives the employer's report and documentation, the employer or employee may request a hearing before the division to determine the employee's work restrictions. Within 30 days after the division determines the employee's work restrictions, the employer shall provide to the employee in writing an offer of suitable employment or a statement that the employer has no suitable employment for the employee.

SECTION 22. 102.61 (1m) (a) of the statutes is amended to read:

102.61 (1m) (a) If the department has determined under sub. (1) that an employee is eligible for vocational

rehabilitation services under 29 USC 701 to ~~797b~~ 796l, but that the department cannot provide those services for the employee, the employee may select a private rehabilitation counselor certified by the department to determine whether the employee can return to suitable employment without rehabilitative training and, if that counselor determines that rehabilitative training is necessary, to develop a rehabilitative training program to restore as nearly as possible the employee to his or her preinjury earning capacity and potential.

SECTION 23. 102.81 (1) (c) 1. of the statutes is amended to read:

102.81 (1) (c) 1. The department shall pay a claim under par. (a) in excess of ~~\$1,000,000~~ \$2,000,000 from the uninsured employers fund in the first instance. If the claim is not covered by excess or stop-loss reinsurance under sub. (2), the secretary of administration shall transfer from the appropriation account under s. 20.445 (1)

(ra) to the uninsured employers fund as provided in subds. 2. and 3. an amount equal to the amount by which payments from the uninsured employers fund on the claim are in excess of ~~\$1,000,000~~ \$2,000,000.

SECTION 24. 102.81 (1) (c) 2. of the statutes is amended to read:

102.81 (1) (c) 2. Each calendar year the department shall file with the secretary of administration a certificate setting forth the number of claims in excess of ~~\$1,000,000~~ \$2,000,000 in the preceding year paid from the uninsured employers fund, the payments made from the uninsured employers fund on each such claim in the preceding year, and the total payments made from the uninsured employers fund on all such claims and, based on that information, the secretary of administration shall determine the amount to be transferred under subd. 1. in that calendar year.