



State of Wisconsin
2023 - 2024 LEGISLATURE

LRB-5556/1
MED&MIM:skw

2023 SENATE BILL 991

February 7, 2024 - Introduced by COMMITTEE ON LABOR, REGULATORY REFORM, VETERANS AND MILITARY AFFAIRS. Referred to Committee on Labor, Regulatory Reform, Veterans and Military Affairs.

1 **AN ACT** *to repeal* 102.51 (1) (a) 2.; *to renumber and amend* 102.32 (6m); *to*
2 *amend* 102.11 (1) (intro.), 102.13 (1) (a), 102.13 (1) (b) (intro.), 1., 3. and 4.,
3 102.13 (1) (d) 1., 2., 3. and 4., 102.13 (2) (a), 102.13 (2) (b), 102.17 (1) (d) 1. and
4 2., 102.17 (4) (a), 102.29 (3), 102.42 (2) (a), 102.51 (1) (a) 1., 102.61 (1), 102.61
5 (1g) (b), 102.61 (1g) (c), 102.61 (1m) (a), 102.81 (1) (c) 1. and 102.81 (1) (c) 2.; and
6 **to create** 102.18 (1) (b) 1d., 102.18 (1) (b) 1h., 102.18 (1) (b) 1p., 102.18 (1) (b)
7 1t. and 102.32 (6m) (b) of the statutes; **relating to:** various changes to the
8 worker's compensation law.

Analysis by the Legislative Reference Bureau

This bill makes various changes to the worker's compensation law, as administered by the Department of Workforce Development and the Division of Hearings and Appeals (DHA) in the Department of Administration.

Maximum weekly compensation for permanent partial disability

The bill increases the maximum weekly compensation rate for permanent partial disability from \$430 to \$438 for injuries occurring before January 1, 2025, and to \$446 for injuries occurring on or after that date.

Uninsured employers fund

Under current law, DWD administers an uninsured employers fund (UEF), from which DWD pays benefits to injured employees of employers that are not

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insured or self-insured against worker's compensation liability as required under the worker's compensation law. Also under current law, the additional solvency protection for UEF applies to claims of more than \$1,000,000, and is used to pay claims of more than \$1,000,000. If such a claim is not covered by excess or stop-loss reinsurance, worker's compensation insurance carriers are required to reimburse UEF, up to \$500,000 per year, until the amount paid out of UEF is fully paid. Under the bill, the amount of a claim for which UEF is used to pay is increased to \$2,000,000 or more.

Advance payment for permanent partial disability

Under current law, DWD or DHA may direct an advance on a payment of unaccrued compensation for permanent disability or death benefits not more than three payments per calendar year if DWD or DHA determines it is in the best interest of the injured employee or dependents and credits the employer or insurer an interest credit of 5 percent against its liability. Under the bill, an employer or an employer's insurer may make advance payment of unaccrued compensation for permanent partial disability in undisputed cases in the same manner, but without the interest credit to the employer or insurer.

Case closing

The bill clarifies some of the duties of DWD and DHA with respect to closing cases for claims of compensation. The bill requires DHA to return to DWD the case file for any case within 30 days after DHA issues an order on the merits of the case, if there is no pending appeal to a court. The bill also clarifies that DWD has exclusive authority to close a case of a claim for compensation. The bill allows DWD to notify the parties when it closes a case of a claim for compensation. The bill requires DWD to forward to DHA the file for a closed case of a claim for compensation if a hearing is required because a claimant has filed a subsequent application for compensation. Finally, the bill provides the statute of limitations begins to run on the date an order is issued by the division that approves a compromise agreement, and subsequent claims will not be barred except as provided by the applicable statute of limitations.

Advanced practice nurse prescribers

Current law provides for the certification of advanced practice nurses by the Board of Nursing to allow advanced practice nurses to prescribe medication, and the worker's compensation law thus refers to "advanced practice nurse prescribers" in lists of treatment providers in various provisions. The bill changes these references to "advanced practice registered nurses."

Making references in the statutes gender neutral

The bill makes references to spouses under the worker's compensation law gender-neutral, to harmonize it with the holding of the U.S. Supreme Court in *Obergefell v. Hodges*, 135 S. Ct. 2584, 192 L. Ed. 2d 609 (2015), which recognized that same-sex couples have a fundamental constitutional right to marriage.

References to federal law

The bill updates references to the federal Rehabilitation Act of 1973 to account for subsequent amendments to the federal act.

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For further information see the state and local fiscal estimate, which will be printed as an appendix to this bill.

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

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

2 102.11 (1) (intro.) The average weekly earnings for temporary disability,
3 permanent total disability, or death benefits for injury in each calendar year on or
4 after January 1, 1982, shall be not less than \$30 nor more than the wage rate that
5 results in a maximum compensation rate of 110 percent of the state's average weekly
6 earnings as determined under s. 108.05 as of June 30 of the previous year. The
7 average weekly earnings for permanent partial disability shall be not less than \$30
8 and, for permanent partial disability for injuries occurring on or after January 1,
9 2017, and before April 10, 2022, not more than \$543, resulting in a maximum
10 compensation rate of \$362; for permanent partial disability for injuries occurring on
11 or after April 10, 2022, and before January 1, 2023, not more than \$622.50, resulting
12 in a maximum compensation rate of \$415; and for permanent partial disability for
13 injuries occurring on or after January 1, 2023, and before the effective date of this
14 subsection [LRB inserts date], not more than \$645, resulting in a maximum
15 compensation rate of \$430; for permanent partial disability for injuries occurring on
16 or after the effective date of this subsection [LRB inserts date], and before January
17 1, 2025, not more than \$657, resulting in a maximum compensation rate of \$438; and
18 for permanent partial disability for injuries occurring on or after January 1, 2025,
19 not more than \$669, resulting in a maximum compensation rate of \$446. Between
20 such limits the average weekly earnings shall be determined as follows:

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

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1 102.13 (1) (a) Except as provided in sub. (4), whenever compensation is claimed
2 by an employee, the employee shall, upon the written request of the employee's
3 employer or worker's compensation insurer, submit to reasonable examinations by
4 physicians, chiropractors, psychologists, dentists, physician assistants, advanced
5 practice nurse prescribers registered nurses, or podiatrists provided and paid for by
6 the employer or insurer. No employee who submits to an examination under this
7 paragraph is a patient of the examining physician, chiropractor, psychologist,
8 dentist, physician assistant, advanced practice registered nurse prescriber, or
9 podiatrist for any purpose other than for the purpose of bringing an action under ch.
10 655, unless the employee specifically requests treatment from that physician,
11 chiropractor, psychologist, dentist, physician assistant, advanced practice registered
12 nurse prescriber, or podiatrist.

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

15 102.13 (1) (b) (intro.) An employer or insurer who requests that an employee
16 submit to reasonable examination under par. (a) or (am) shall tender to the employee,
17 before the examination, all necessary expenses including transportation expenses.
18 The employee is entitled to have a physician, chiropractor, psychologist, dentist,
19 physician assistant, advanced practice registered nurse prescriber, or podiatrist
20 provided by himself or herself present at the examination and to receive a copy of all
21 reports of the examination that are prepared by the examining physician,
22 chiropractor, psychologist, podiatrist, dentist, physician assistant, advanced
23 practice registered nurse prescriber, or vocational expert immediately upon receipt
24 of those reports by the employer or worker's compensation insurer. The employee is
25 entitled to have one observer provided by himself or herself present at the

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1 examination. The employee is also entitled to have a translator provided by himself
2 or herself present at the examination if the employee has difficulty speaking or
3 understanding the English language. The employer's or insurer's written request
4 for examination shall notify the employee of all of the following:

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

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

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

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

18 102.13 (1) (d) 1. Any physician, chiropractor, psychologist, dentist, podiatrist,
19 physician assistant, advanced practice registered nurse ~~prescriber~~, or vocational
20 expert who is present at any examination under par. (a) or (am) may be required to
21 testify as to the results of the examination.

22 2. Any physician, chiropractor, psychologist, dentist, physician assistant,
23 advanced practice registered nurse ~~prescriber~~, or podiatrist who attended a worker's
24 compensation claimant for any condition or complaint reasonably related to the

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1 condition for which the claimant claims compensation may be required to testify
2 before the division when the division so directs.

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

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

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

16 102.13 (2) (a) An employee who reports an injury alleged to be work-related
17 or files an application for hearing waives any physician-patient,
18 psychologist-patient, or chiropractor-patient privilege with respect to any condition
19 or complaint reasonably related to the condition for which the employee claims
20 compensation. Notwithstanding ss. 51.30 and 146.82 and any other law, any
21 physician, chiropractor, psychologist, dentist, podiatrist, physician assistant,
22 advanced practice registered nurse ~~prescriber~~, hospital, or health care provider
23 shall, within a reasonable time after written request by the employee, employer,
24 worker's compensation insurer, department, or division, or its representative,
25 provide that person with any information or written material reasonably related to

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1 any injury for which the employee claims compensation. If the request is by a
2 representative of a worker's compensation insurer for a billing statement, the
3 physician, chiropractor, psychologist, dentist, podiatrist, physician assistant,
4 advanced practice registered nurse ~~prescriber~~, hospital, or health care provider
5 shall, within 30 days after receiving the request, provide that person with a complete
6 copy of an itemized billing statement or a billing statement in a standard billing
7 format recognized by the federal government.

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

9 102.13 (2) (b) A physician, chiropractor, podiatrist, psychologist, dentist,
10 physician assistant, advanced practice registered nurse ~~prescriber~~, hospital, or
11 health service provider shall furnish a legible, certified duplicate of the written
12 material requested under par. (a) in paper format upon payment of the actual costs
13 of preparing the certified duplicate, not to exceed the greater of 45 cents per page or
14 \$7.50 per request, plus the actual costs of postage, or shall furnish a legible, certified
15 duplicate of that material in electronic format upon payment of \$26 per request. Any
16 person who refuses to provide certified duplicates of written material in the person's
17 custody that is requested under par. (a) shall be liable for reasonable and necessary
18 costs and, notwithstanding s. 814.04 (1), reasonable attorney fees incurred in
19 enforcing the requester's right to the duplicates under par. (a).

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

21 102.17 (1) (d) 1. The contents of certified medical and surgical reports by
22 physicians, podiatrists, surgeons, dentists, psychologists, physician assistants,
23 advanced practice ~~nurse prescribers~~ registered nurses, and chiropractors licensed in
24 and practicing in this state, and of certified reports by experts concerning loss of
25 earning capacity under s. 102.44 (2) and (3), presented by a party for compensation

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1 constitute prima facie evidence as to the matter contained in those reports, subject
2 to any rules and limitations the division prescribes. Certified reports of physicians,
3 podiatrists, surgeons, dentists, psychologists, physician assistants, advanced
4 practice nurse prescribers registered nurses, and chiropractors, wherever licensed
5 and practicing, who have examined or treated the claimant, and of experts, if the
6 practitioner or expert consents to being subjected to cross-examination, also
7 constitute prima facie evidence as to the matter contained in those reports. Certified
8 reports of physicians, podiatrists, surgeons, psychologists, and chiropractors are
9 admissible as evidence of the diagnosis, necessity of the treatment, and cause and
10 extent of the disability. Certified reports by doctors of dentistry, physician
11 assistants, and advanced practice nurse prescribers registered nurses are
12 admissible as evidence of the diagnosis and necessity of treatment but not of the
13 cause and extent of disability. Any physician, podiatrist, surgeon, dentist,
14 psychologist, chiropractor, physician assistant, advanced practice registered nurse
15 ~~prescriber~~, or expert who knowingly makes a false statement of fact or opinion in a
16 certified report may be fined or imprisoned, or both, under s. 943.395.

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

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

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1 102.17 (4) (a) Except as provided in this subsection and s. 102.555 (12) (b), in
2 the case of occupational disease, the right of an employee, the employee's legal
3 representative, a dependent, the employee's employer or the employer's insurance
4 company, or other named party to proceed under this section shall not extend beyond
5 12 years after the date of the injury or death or after the date that compensation,
6 other than for treatment or burial expenses, was last paid, or would have been last
7 payable if no advancement were made, whichever date is latest, and in the case of
8 traumatic injury, that right shall not extend beyond 6 years after that date. The
9 statute of limitations under this subsection begins to run on the date an order is
10 issued by the division approving a compromise agreement. A further claim is not
11 barred except as provided in this subsection, regardless of whether an award is
12 made.

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

14 102.18 (1) (b) 1d. If an application has been filed under s. 102.17 (1) (a) 1. for
15 a claim for compensation, after the division issues an order on the merits of the case
16 of the claim under subd. 1., or an order under sub. (2) (c), if there is no pending action
17 for review by a court, the division shall return to the department the file for the case
18 of the claim within 30 days after issuing the order. The department shall conduct
19 further administrative activities, including closing the case of the claim.

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

21 102.18 (1) (b) 1h. The department has exclusive authority to close a case of a
22 claim for compensation.

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

24 102.18 (1) (b) 1p. If the department determines it is necessary, the department
25 shall notify the parties when it closes a case of a claim for compensation.

SENATE BILL 991**SECTION 12**

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

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

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

7 102.29 (3) Nothing in this chapter shall prevent an employee from taking the
8 compensation that the employee may be entitled to under this chapter and also
9 maintaining a civil action against any physician, chiropractor, psychologist, dentist,
10 physician assistant, advanced practice registered nurse ~~prescriber~~, or podiatrist for
11 malpractice.

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

14 102.32 (6m) (a) The department or the division may direct an advance on a
15 payment of unaccrued compensation for permanent disability or death benefits if the
16 department or the division determines that the advance payment is in the best
17 interest of the injured employee or the employee's dependents. In directing the
18 advance, the department or the division shall give the employer or the employer's
19 insurer an interest credit against its liability. The credit shall be computed at 5
20 percent. An injured employee or dependent may receive no more than 3 advance
21 payments per calendar year under this paragraph.

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

23 102.32 (6m) (b) Notwithstanding par. (a), an employer or an employer's insurer
24 may voluntarily make a lump sum payment of unaccrued compensation for
25 permanent partial disability in undisputed claims to an injured employee or the

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1 employee's dependents with no interest credit against the liability of the employer
2 or the employer's insurer.

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

4 102.42 (2) (a) When the employer has notice of an injury and its relationship
5 to the employment, the employer shall offer to the injured employee his or her choice
6 of any physician, chiropractor, psychologist, dentist, physician assistant, advanced
7 practice registered nurse ~~prescriber~~, or podiatrist licensed to practice and practicing
8 in this state for treatment of the injury. By mutual agreement, the employee may
9 have the choice of any qualified practitioner not licensed in this state. In case of
10 emergency, the employer may arrange for treatment without tendering a choice.
11 After the emergency has passed the employee shall be given his or her choice of
12 attending practitioner at the earliest opportunity. The employee has the right to a
13 2nd choice of attending practitioner on notice to the employer or its insurance carrier.
14 Any further choice shall be by mutual agreement. Partners and clinics are
15 considered to be one practitioner. Treatment by a practitioner on referral from
16 another practitioner is considered to be treatment by one practitioner.

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

18 102.51 (1) (a) 1. A wife married person upon ~~a husband~~ his or her spouse with
19 whom he or she is living at the time of ~~his~~ the spouse's death.

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

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

22 102.61 (1) Subject to subs. (1g) and (1m), an employee who is entitled to receive
23 and has received compensation under this chapter, and who is entitled to and is
24 receiving instruction under 29 USC 701 to ~~797b~~ 796l, as administered by the state
25 in which the employee resides or in which the employee resided at the time of

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

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

9 102.61 (1g) (b) If an employer offers an employee suitable employment as
10 provided in par. (c), the employer or the employer's insurance carrier is not liable for
11 temporary disability benefits under s. 102.43 (5) (b) or for the cost of tuition, fees,
12 books, travel, and maintenance under sub. (1). Ineligibility for compensation under
13 this paragraph does not preclude an employee from receiving vocational
14 rehabilitation services under 29 USC 701 to ~~797b~~ 796l if the department determines
15 that the employee is eligible to receive those services.

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

17 102.61 (1g) (c) On receiving notice that he or she is eligible to receive vocational
18 rehabilitation services under 29 USC 701 to ~~797a~~ 796l, an employee shall provide the
19 employer with a written report from a physician, chiropractor, psychologist, or
20 podiatrist stating the employee's permanent work restrictions. Within 60 days after
21 receiving that report, the employer shall provide to the employee in writing an offer
22 of suitable employment, a statement that the employer has no suitable employment
23 for the employee, or a report from a physician, chiropractor, psychologist, or
24 podiatrist showing that the permanent work restrictions provided by the employee's
25 practitioner are in dispute and documentation showing that the difference in work

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1 restrictions would materially affect either the employer's ability to provide suitable
2 employment or a vocational rehabilitation counselor's ability to recommend a
3 rehabilitative training program. If the employer and employee cannot resolve the
4 dispute within 30 days after the employee receives the employer's report and
5 documentation, the employer or employee may request a hearing before the division
6 to determine the employee's work restrictions. Within 30 days after the division
7 determines the employee's work restrictions, the employer shall provide to the
8 employee in writing an offer of suitable employment or a statement that the
9 employer has no suitable employment for the employee.

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

11 102.61 (**1m**) (a) If the department has determined under sub. (1) that an
12 employee is eligible for vocational rehabilitation services under 29 USC 701 to ~~797b~~
13 796l, but that the department cannot provide those services for the employee, the
14 employee may select a private rehabilitation counselor certified by the department
15 to determine whether the employee can return to suitable employment without
16 rehabilitative training and, if that counselor determines that rehabilitative training
17 is necessary, to develop a rehabilitative training program to restore as nearly as
18 possible the employee to his or her preinjury earning capacity and potential.

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

20 102.81 (**1**) (c) 1. The department shall pay a claim under par. (a) in excess of
21 ~~\$1,000,000~~ \$2,000,000 from the uninsured employers fund in the first instance. If
22 the claim is not covered by excess or stop-loss reinsurance under sub. (2), the
23 secretary of administration shall transfer from the appropriation account under s.
24 20.445 (1) (ra) to the uninsured employers fund as provided in subds. 2. and 3. an

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1 amount equal to the amount by which payments from the uninsured employers fund
2 on the claim are in excess of ~~\$1,000,000~~ \$2,000,000.

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

4 102.81 (1) (c) 2. Each calendar year the department shall file with the secretary
5 of administration a certificate setting forth the number of claims in excess of
6 ~~\$1,000,000~~ \$2,000,000 in the preceding year paid from the uninsured employers
7 fund, the payments made from the uninsured employers fund on each such claim in
8 the preceding year, and the total payments made from the uninsured employers fund
9 on all such claims and, based on that information, the secretary of administration
10 shall determine the amount to be transferred under subd. 1. in that calendar year.

11 (END)