2005 DRAFTING REQUEST

Senate Amendment (SA-SB474)

Received: **02/10/2006**

Received By: **gmalaise**

Wanted: **Soon**

Identical to LRB:

For: **David Hansen (608) 266-5670**

By/Representing: **Eric Genrich**

This file may be shown to any legislator: **NO**

Drafter: **gmalaise**

May Contact:

Addl. Drafters:

Subject: **Employ Priv - worker's comp**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Hansen@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Permanent total disability; proposed legislation for periodic adjustments based on cost of living

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Instructions:

See Attached--rrequire Council on Worker's Compensation to provide for periodic costof living increases for injured employees receiving compensation for permanent total disability.

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
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FE Sent For:

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/?	gmalaise	/1 wlj 2/14	8	8 2/6			

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Malaise, Gordon

From: Genrich, Eric
Sent: Thursday, February 09, 2006 3:48 PM
To: Malaise, Gordon
Subject: Amendment to SB 474

Attachments: PTD Study Committee revised march 23.doc

Hi Gordon,
Can you please draft an amendment to SB 474, which adds a cost-of-living increase for all PTD benefits? I don't know if you then would have to designate where the increased funding would come from, but if it would work to ask the Workers Comp Council to convene a study committee to work out the details please go that route. Thanks.

-Eric

PS This document might help:

PTD Study
mmittee revised ma

Report of the Permanent Total Disability Rate Study Committee

Presented to the

Worker's Compensation Advisory Council

April 4, 2005

Introduction / Statement of the Problem

Under Wisconsin's worker's compensation laws, claimants can be classified permanently and totally disabled due to either a schedule injury (i.e., total impairment of both eyes, or loss of both legs, or both arms, or one arm and one leg), or due to a non-schedule injury (i.e., total loss of earning capacity). Employees who are disabled to this extent are eligible for permanent total disability (PTD) benefits for life and, in some cases, they are also eligible for death benefits. PTD recipients who were injured before 1980 may also receive supplemental benefits up to a maximum of $233.00 per week, from the Work Injury Supplemental Benefits Fund managed by the state.

Currently, there are 739 individuals receiving PTD benefits. Approximately twenty to twenty-five new PTD cases enter the program each year, and about the same number leave the program due to death. In recent years, however, there seems to be a higher rate of attrition out of the program than claimants entering the program.

There is no allowance in the law for beneficiaries to receive cost-of-living increases in the PTD benefits that they are originally awarded. Based on their pre-injury earnings, claimantss receive a percentage of the maximum benefit amount that was established for the year in which they were injured. That benefit amount remains the same for the life of the beneficiary.

Most PTD recipients also receive Social Security Disability benefits, and these benefits are adjusted on a marginal basis every three years (SSDI adjustments have resulted in an average increase of 2.7% over the last 15 years). Also, the Worker's Compensation Advisory Council (WCAC) has periodically increased the maximum rate for supplemental benefits. But the most recent increases affected only the people injured on or before May 13, 1980.

Hence, recipients who were injured prior to June of 1980 are only eligible to receive the maximum weekly amount of $233 in PTD benefits regardless of their earnings or the ratio of their rate to the maximum rate in effect at the time of their injury. Aside from the limited cost of living increases they may have received in Social Security Disability benefits, their worker's compensation benefit has not changed for the past twenty-five years.

The lack, then, of some form of scheduled increases to PTD benefits has raised concerns over the sufficiency of benefits for Wisconsin's injured workers who are permanently and totally disabled.

The Permanent Disability Rate Study Committee

As a starting point for addressing PTD concerns the WCAC authorized the creation of a study committee to look at PTD rates. The mandate of the Committee was set forth as follows:

> The WCAC is creating the Permanent Total Disability Rate Study Committee to review the benefit rates paid to employees who are permanently and totally disabled from work related injuries. Currently, except for supplemental benefits, the benefit rate for employees who are permanently and totally disabled is set by the average weekly wage on the date of injury. This study committee will review the feasibility of recommending a statutory change that will provide for periodic raises for the permanent total disability rate based on cost of living increases.
>
> Recommendations for statutory and rule changes will be submitted to the WCAC and may be included in the next "Agreed Upon Bill."

The Committee was made up of representatives from WCAC, insurance representatives, the Worker's Compensation Rating Bureau, the UW Extension School for Workers, and staff from the state Worker's Compensation Division. To date, seven meetings of the Committee have been held.

To accomplish its mandate, the Committee undertook several study efforts, including:

- Review of the history of existing policies and limits of PTD benefits in the Wisconsin worker's compensation system.
- Analysis of the affect of Social Security Disability Benefits as an offset to worker's compensation payments.
- Examination of Wisconsin's Work Injury Supplemental Benefits Fund, revenues, expenditures and changes in benefit levels in previous years.
- Review of income benefits for totally disabled worker's compensation claimants in other states.

<u>The Committee expressed consensus that it is feasible to periodically and regularly adjust PTD rates; and that such adjustments should be made so that claimants who are truly qualified for such benefits receive an adequate income that is reflective of changing cost of living requirements.</u>

Developing a Range of Options

In discussing the feasibility of a system for making PTD adjustments, the Committee reviewed a range of possible answers to several difficult questions:

- How frequently should PTD benefits be increased? Every year, or two years or three years?
- How much of an increase should be provided, and on what index(es) should the increase be based? Social Security adjustments? Average weekly wage increases? Consumer price indexes or other COLA indexes?
- How should the increases be funded? Premiums could be adjusted to accommodate increased costs for future claimants, but there are no premiums being paid for existing beneficiaries. Should there be special assessments to insurance carriers? To employers?
- In the interest of balancing increased income to beneficiaries with the cost exposure to insurers/employers, should PTD benefits be limited as they are in other states? Currently, for example, PTD benefits in Wisconsin are paid for life. Should future benefits be limited by the age of the recipient (i.e., age 67)? Should there be a limit to the number of payments made?
- Should other features be changed in order to control cost? Should the death benefit, for example, be eliminated or limited to cases where the work injury is the proximal cause of death? Should "Permanent Total Disability" be defined in more precise and restrictive terms?

The Committee determined that the best way to assist WCAC in its consideration of PTD adjustments, would be to provide a continuum of possible methods for making adjustments. The various methods would provide different combinations of frequency, limits, and costs of PTD benefit increases. The remainder of this paper presents alternative methodologies selected by the Committee, along with associated issues and recommendations.

Establishing the Anticipated Number of Beneficiaries

Fundamental to any analysis of PTD benefits is the calculation of the number of beneficiaries receiving benefits now, and the number of future beneficiaries. Additionally, the Committee contemplated that it is possible there will be different benefit programs for existing beneficiaries as compared to future beneficiaries. For example, if benefits are limited in any of the ways described in the previous section, the WCAC may determine that such limitations should be applied only to future beneficiaries.

To address these issues, the Committee decided to conduct an actuarial study that would answer two questions: a) Of the 739 living PTD beneficiaries, what will be the attrition out of the PTD system (i.e., mortality rate), year by year, over the next 15 years? b) In terms of new beneficiaries, what will be the influx of new claims into the system, year by year, over the next 15 years? <u>Attachment I</u> contains the actuary's report.

Based on this report and other information compiled by Worker's Compensation staff, the cost projections for the options described below reflect an annual reduction in the 739 existing cases at a rate of 27 cases per year for the next 15 years; and a net influx of new cases (i.e., cases becoming PTD eligible in 2006 and later) of 23 cases per year.

These numbers are best estimates, with standards of error that could be present due to changes in the Wisconsin job market, medical advancements in work injury treatment, and safety improvements in Wisconsin industry. Also, modifications to LIRC, or other judicial/political entities or actions could have an have an impact on future PTD determination.

Considering the Social Security Offset

Under current law (102.44 (5)), there is allowance for adjusting worker's compensation benefits to reflect Social Security Disability payments that are simultaneously paid to the claimant. The law provides that:

> For each dollar that the total monthly benefits payable under this chapter, excluding attorney fees and costs, plus the monthly benefits payable under the social security act for disability exceed 80% of the employee's average current earnings as determined by the social security administration, the benefits payable under this chapter shall be reduced by the same amount so that the total benefits payable shall not exceed 80% of the employee's average current earnings. However, no total benefit payable under this chapter and under the federal social security act may be reduced to an amount less than the benefit payable under this chapter.

This is referred to as the Social Security Offset. It is considered a "reverse offset" because if the combined social security and worker's compensation payments exceed the maximum allowed benefit, the result is a reduction of the worker's compensation payments rather than a reduction of the social security benefits. In most other states where there is an offset, the reduction is made to the social security payments. Attachment II contains further discussion of the offset and shows the impact of the offset on a sample case.

All WC claims are subject to possible social security offsets if the claimant is receiving SSDI. Normally, the offsets are greatly reduced after the first six years and for the most part are non existent after 10 years given the limitations imposed by social security. However, individual claims can vary in this respect and all claims would have to be reconsidered in light of any rate increases in WC.

In the final analysis, the effect of the offset is not a negative to the claimant. It simply means that the combined benefits from social security and worker's compensation, cannot be more than 80% of the employee's base earnings used to set the Social Security Disability rates. Nor can the amount paid to the claimant be less than what would be required under worker's compensation, if no social security benefits were being paid.

There is an implication, however, to the cost of the proposed options for indexing PTD benefits, which are described below. There is a significant reduction to the worker's compensation burden for the increased benefit costs due to the social security offsets, as will be pointed out in the description explanation of each option.

Establishing a Base for Comparison

A very important consideration for comparing alternative methods for PTD indexing is the question of cost. As will be seen in the presentation of methodologies, below, a great deal of effort has been made to estimate the costs of the different methods. But, as a beginning point, the Committee believed it would be helpful to have a base for comparison by answering the following question: What would be the cost of the current PTD system if nothing was done to create regularly scheduled adjustments to benefits?

This question was answered by creating two "base" models (Note: See table marked Attachment III):

Base 1 This model shows what the cost of PTD benefits would be over the next 15 years if there were no benefit increases, except for the normal increases that occur as a result of changes each year in the average weekly wage calculation (which is used to calculate Temporary Total Disability benefit rates).

To estimate future benefit costs, an average annual increase was calculated based on increases in TTD rates over the past fifteen years. The average annual increase was determined to be 3.5%. A cost calculation was then made based on the number of anticipated claimants for the next fifteen years. As is shown in the Table, the cumulative 15 year cost of PTD payments, with no other increase except TTD increases, would be $223 million. Of this amount, $151,610,000 would be the cost for existing cases (i.e., PTD eligible in 2005 or earlier) over the next 15 years, and $71,390,000 would be the cost of new cases (2006 or later) coming into the system during the next 15 years.

Base 2 This model shows what the cost of PTD benefits would be over the next 15 years if benefits were increased by the WCAC in the same manner as increases were made over the last several years. Periodically, the WCAC has expanded eligibility for supplemental benefits about every two years, resulting in increased costs in PTD benefits. As the Table shows, if WCAC makes the same increases over the next 15 years, the cumulative costs will be $260 million. Of this amount, $188,350,000 would be the cost for existing cases (2005 or earlier), and $79,650,000 for new cases (2006 or later) coming into the system during the next 15 years.

The costs of these base models, then, can be used to compare with the costs of alternative PTD indexing methodologies presented below.

Methodologies for Indexing PTD Benefits

In presenting a range of options, it must be noted that there are numerous possible options to choose from. The options presented here are meant to be a representative sample, with variations in terms of frequency of increase, and amount of increase. The Committee's main intention is to show the cost differentiations among the various options. The options are presented starting with the most costly and moving to the least costly option.

Note: The table in Attachment III provides a side-by-side comparison of the options.

Option 1 "No Lag"

This option would bring an immediate increase in maximum rates for all PTD claims, up to and including 2006. All claims would be brought up to the 2006 maximum TTD rate estimated at $735. Beginning in 2007, all PTD claims would be recomputed annually subject to the most recent maximum rate.

Under this option, a permanently disabled worker injured in 1980 having the maximum rate of $233 would experience a rate increase to $735 per week or an annual increase from $12,116 to $38,220. Considering the length of time from the date of injury, there is not likely to be any social security offset for claims with injury dates prior to 1993.

The impact of social security reductions on claims beginning with dates of disability after 1993 is likely to be greater than under the current system, because of increases to maximum PTD rates. Most individuals within 6 years of the date of their injury will receive some increase in PTD payments but much of the rate increase will not be realized by the worker because of SSDI limitations.

Of the 559 claimants still living with PTD claims prior to 1993, most are at the maximum rate. The average is 87% of maximum rate. Claims after 1993 are estimated to begin at an average of 81% of the maximum rate for the year of injury.

The cumulative cost of Option 1 would be $516 million. Of this amount, $339 million would be the cost for existing (pre-2005) cases, and $177 million for new (post 2005) cases.

Over the course of the projected 15 years, there would be an estimated social security offset of $85 million, reducing the cumulative cost for this option to $431 million. Most of the social security offset with this and all other options would apply more to the new cases than to the existing cases.

In comparing this option to the Base 1 and Base 2 models, the difference in cumulative cost for Option 1 (after the reduction for social security offset) is + $208 million when compared to Base 1, and + $171 million when compared to base 2. The average annual cost difference for Option 1 as compared to Base 1 and Base 2 is $14 million and $11 million , respectively.

<u>Option 2 "Six-Year Lag"</u>

Under this option, there would be an immediate increase in maximum rates for PTD claims with dates of disability prior to year 2001. The increase would allow the existing claims to receive increases up to the 2001 maximum TTD rate of $549. Beginning in 2006, all claims would be recomputed annually beginning with the 6th year after the year of injury. All re-computed claims would be limited to the maximum TTD rate that existed 6 years prior to the date of re-computation. For example claims with injury dates of 2006 would keep their original rate until January of 2012. They would be re-computed in January of 2012 to their proportion of the maximum rate that applied to dates of injury in 2007.

Thus a 6-year lag is created and maintained between the maximum rate applicable in the year of injury and the year of each re-computation.

The typical claim in 2006 for a permanently disabled worker injured in 1980 at the maximum rate of $233 per week would be $549 per week. This would amount to an annual increase from $12,116 to $28,548. The likelihood of increased social security reductions after re-computation would be minimal, and would likely occur only in the first few years in a small number of claims.

About 700 claims would be immediately recomputed in 2006 under this option. The average ratio to maximum rate for these claims is 83% of the maximum wage for the year of injury.

Please refer to the table in <u>Attachment III</u> for cumulative cost comparisons, annual cost comparisons and social security offset for this option.

<u>Option 3 "Incrementally Accelerated Six-Year Lag"</u>

This is similar to Option 2 except the increase to the 6-year lag level would be done over time and take five years to complete.

In 2006, claims with dates of injury prior to 1985 would get an increase in the maximum rate from $233 per week (the 1980 maximum TTD rate) to a maximum rate of $321 per week (the 1985 maximum TTD rate). In 2007, claims with dates of injury prior to 1990 would get an increase in maximum rates to $378 per week.

In 2008, claims with injury dates prior to 1995 would have a maximum rate of $479 per week. In 2009, claims with injury dates prior to year 2000 would have a maximum rate of $549 per week. In 2010, all claims with injury dates prior to 2005 would have a maximum rate of $687 per week.

After 2010, all claims would be recomputed beginning the 6th year after the year of injury, just as in Option 2. The typical claim with a date of injury in 1991 at the maximum rate of $388 in 1991 would be accelerated to $479 in 2008, to $549 in 2009, and to $687 in 2010. In 2011, the claim would be subject to a maximum rate of $711, i.e. beginning in 2011 it would be recomputed to maintain the 6-year lag between the maximum rate in the year of injury and the rate in effect for the year of re-computation.

There are 26 active claims with injury dates in 1991 and 15 are at maximum rate, the average rate for all 26 claims is 87.5% of maximum or $340 per week. Under this option, the increases over 4 to 5 years would bring the rate up to $622 (a $288 per week increase). The increase would accumulate, with an annual increases amounting to about $60 per week, per year.

Please refer to the table in Attachment III for cumulative cost comparisons, annual cost comparisons, and social security offset for this option.

Option 4 "Accelerated Six-Year Lag with Delayed Increases"

This option is the same as option 3 with one variation. Instead of annual increases after six years, increases would be made every other year, similar to how increase in PTD claims are now adjusted, i.e. every two years the maximum rate goes up by two years from the previous increase.

For the typical claim example given in option 3, the claimant with an injury date in 1991 would get the accelerated increases until 2011 as in the previous example. However, in 2011, there would be no increase. In 2012 the claim would be increased to the 2006 level of $735 assuming that's the rate for that year. In 2013, there would be no increase and in 2014, the increase would go to the 2008 level, thus maintaining the 6-year lag every other year.

Please refer to the table in Attachment III for cumulative cost comparisons, annual cost comparisons, and social security offset for this option.

Option 5 and 6 "Six-Year Lag with Increases Based on TTD Rates or Social Security COLA

For both of these options, the typical claim with an injury date in 1980 and at the maximum rate of $233 per week would be immediately increased in 2006 to either 3.5% or 2.7% for each year since the date of injury up to year 2000. Thereafter, these claims and all new claims would get a 3.5% or 2.7% annual increase.

Under these options, the claimant with a 1980 injury date would begin getting $577 per week in year 2006 at the 3.5% rate, $568 per week at the 2.7% rate. Each year after 2006, these claimants would get the same % increase each year. Workers starting new claims in 2006 and thereafter would stay at their original rate for 6 years and then begin a similar 3.5% or 2.7% increase each year. Because initial rates over time do not increase at a steady rate, it is noteworthy that the 1980 claimant under the 3.5% option would have only $5 per week less in 2006 ($577 per week) than an individual at maximum rate who was injured in 2001($582 per week) and has not been in the program 6 years to have an adjustment yet. There is a $33 differential per week between the maximum rates in 2000 and 2001.

Please refer to the table in Attachment III for cumulative cost comparisons, annual cost comparisons, and social security offset for these options.

Separating the Existing Claimants from the New Claimants

The options presented above look at PTD claimants comprehensively, i.e., existing and future claimants. The Committee discussed the possibility that the existing claims may need to be separated and dealt with in the context of the "lag" or "catch up" options described above.

The Committee also discussed the prospect of dealing with the indexing of new claims by simply providing increases every two, three, or four years. The frequency and amount of increases could be determined by the WCAC on an ad hoc basis, or could be put on a set time schedule with an agreed upon COLA index.

The table in Attachment IV shows what the cost increases would be for new cases beginning in 2006, using sample increase of 3.5% and 2.7%. The table does not specify the frequency of increase, but shows what the increases would be over the rate at the year of injury, for adjustment 1, 2, 3, etc. in future years. Annual and cumulative cost comparisons can be made from this chart once the frequency and amount of increase is determined.

Placing Limits on PTD Benefits

As stated earlier, Permanent Total Disability benefits vary from state to state in terms of the limits various states apply to these benefits. Looking at Wisconsin's PTD benefits as weekly rate, the amounts may seem low as compared to other states weekly rates. But Wisconsin pays PTD for life whereas other states may limit payments to a certain age and/or a certain number of payments. Hence, the cumulative benefits paid in Wisconsin may be more on par with other states.

As increases in Wisconsin's PTD benefits are contemplated, the Committee felt it would be helpful to estimate future cost reductions that may result from limiting benefits in certain ways.

The table in Attachment III shows cost reductions in two areas:

> Limit 1 This limit shows the cost reductions if death benefits are eliminated. Reductions are calculated on death benefits for new beneficiaries only (i.e., claimants entering the system in 2006 or later). As is shown, cost reductions for this limit over the next 15 years would amount to $16.7 million. It is estimated that if death benefits were limited only to cases where the worker died as a result of the work injury, cost reductions would amount to about $13.4 million.
>
> Limit 2 This shows the reductions in cost that would occur if benefits were terminated at age 67 or after five years, whichever comes later. Cumulative reductions for this limit over the next 15 years would be $2.6 million.

It should be noted that there was discussion over placing limits on existing claims as well as new claims. However, if the Council wishes to apply limitations on existing claims, there will have to be statutory changes to reflect this under s.102.03(4) , Wis. Statutes.

Other Considerations

In addition to the limits described in the above section, the Committee discussed other modifications in the system that might be made in order to uphold the value of not just assuring adequate PTD benefits, but also assuring that injured workers receive these benefits only if they are truly qualified for them. Much of this discussion focused on the definition of PTD.

The scheduled, or so-called "statutory" PTD cases have a self-evident validity based on the severity of disability prescribed in the schedule. The non-scheduled, or "odd-lot" PTD cases, which are based on loss of earning capacity, do not have the same level of manifest validity.

The criteria for "odd-lot" PTD is based on the 1977 Balczewski v. DIHLR case where it was determined that a person may be classified as PTD when by reason of his physical or mental condition he can perform no services other than those which are so limited in quality, dependability or quantity that a reasonable stable market for them does not exist.

The committee expressed a consensus that, although PTD cases can be periodically reviewed to determine if true PTD continues, the definition of PTD may need to be narrowed and more delimited, but that a separate group should convene to work on this.

The Question of Funding

Based the cost differentiations of the indexing methodologies provided above (Options 1 through 6), the cumulative cost (above Base 1 and Base 2) for increasing benefits for existing PTD claimants would range from $253 million to $339. Only existing cases are considered for cost exposure purposes because new cases will be funded through premium charges to insurers or direct charges to self-insured employers.

The Committee discussed options for funding this cost, such as, a special assessment to insurers, a tax to employers, a tax to employees, and state GPR funding. The focus of discussion was on where the responsibility for funding these cost should rest. Consensus developed that on the whole, payers (i.e., employers, including self-insured employers) should bare the burden of cost The Committee conceded that funding would most appropriately be obtained through a special assessment to insurance companies, with the expectation that this cost would be passed on to employers. In order to spread the cost as equitably as possible, the assessment should be based on either the amount of payroll covered, the amount of premium, or the amount of market share held by the carrier.

It was also the Department's request that the portion of the WISBF that pays supplemental benefits be ended or phased out with the funding of increases for existing claims. Adjustments to the WISBF could be made to reduce revenues into the Supplemental Benefit Fund portion of WISBF at the appropriate time.

Conclusions / Recommendations

The Committee concluded that it is feasible to periodically and regularly adjust PTD rates; and that such adjustments should be made so that claimants who are truly qualified for such benefits receive an adequate income that is reflective of changing cost of living requirements.

The Committee concluded that, although PTD cases can be periodically reviewed to determine if true PTD continues, the odd lot doctrine may need to be revisited and the definition of PTD may need to be narrowed and more restrictive, but that a separate group should convene to work on this. The Committee recommends that the WCAC establish a venue in which the definition of PTD can be reviewed in more detail.

With regard to the Options for increasing PTD benefits, the Committee recommends:

- The Council give close consideration to the optional methodologies outlined in this study for the purpose of scheduling regular adjustments to PTD in order that the Council would not have to address changes to PTD rates every biennium unless it specifically desired to do so. It should be kept in mind that the options outlined can be modified in any number of ways to more precisely meet the Council's desires or cost limitations and that the options are meant to give a sense of possible benefit outlays and costs while maintaining some consistency with past efforts to adjust rates over time.

- The Council labor and management representatives deliberate and develop recommendations, particularly with regard to what the frequency and amount of increases should be.

- The Council secure funding for any agreed upon increases to PTD benefits for existing claimants through a special assessment by insurance carriers to employers with a proportional share assessed to self-insured employers. In order to spread the cost as equitably as possible, the assessment should be based on either the amount of payroll covered, or the amount of employer premium, or market share held by the carrier. The Council should look to the offices of the Wisconsin Rating Bureau along with advisory help from the insurance carrier and self-insurance representatives on the committee to actualize an effective and reasonable administrative methodology to secure funding.

- The Council act to end or phase out the portion of the WISBF that pays supplemental benefits for existing claims. Adjustments to the WISBF could be made to reduce revenues into the Supplemental Benefit Fund portion of the WISBF at the appropriate time.

- The Council request additional information from committee members or the Division as it may feel necessary to understand alternative benefit payment and funding options or carry out its recommendations.

ATTACHMENT I

Example and Explanation of Social Security Offset for PTD Study Committee Members and Estimate of Financial Impact of Social Security Offsets on the Projected Costs of Various Options to Increase PTD Benefits

This is an example of how Social Security Disability and Worker's Compensation interact given the current WC PTD benefit structure and what the effect would be if the benefit structure was changed to allow the maximum rate to be at either a six-year lag point or the most recent maximum of the WC-TTD maximum rate. This is based on a real claim.

Basic data for the worker:
Date of Injury is in 1998.
The WC-TTD rate was set at $523, the maximum rate for 1998.
The claimant began getting $1090 per month or $252.54 weekly in SSDI
The limit set by Social Security for benefits under both programs which applied to weeks of disability in 1998, 1999 and 2000 was $546 per week.
The claimant was eligible for $294.46 in WC after the offset was applied.
Thereby the claimant's WC benefits were decreased from the potential of $523 per week to $294.46 per week or a cut in the amount of $228.54 per week for 1998 through 2000.

For the benefit years of 2001, 2002 and 2003, the limit set by social security for benefits under both programs increased to $606.06 per week from the previous limit of $546 per week. Based on this new limit, the claimant was eligible for $354.52 per week in WC. This was still $168.48/week less than his original 1998 WC rate which did not change.

For the benefit years of 2004, 2005 and 2006, the limit set by social security again increased to $661.99 for benefits under both programs. This resulted in an increase in WC payments to $410.45, still $112.65 below his WC rate.

The next re-computation will take place in 2007 and would apply to 2007, 2008 and 2009. The estimated limit to be set by Social Security will be about $765 per week. This will result in in increase in WC payments to about $513 per week or only a small reduction of about $10 from the claimant's original rate of $523.

The total cumulative reduction in WC benefits for this claimant due to offset is about $80, 000 over at least a 9-year period.

Affect on Cost of Options to Increase PTD Rates

Question 1: What would the claimant have received and what would the offset have been if the claimant's rate had been raised to the maximum rate for each year of claim, i.e. starting in 1999 it would have gone to $538 and in 2000 to $549 etc. through 2009?

Answer to Question 1: The social security limits would have remained the same and thus the amount of WC paid to the claimant per week would have remained the same for the first 9 years regardless of WC rate increases. However the cumulative reduction in WC benefits (benefits that would have otherwise been paid by the insurer) would have increased substantially.

The cumulative total in reductions would have increased from about $80,000 to about $140,000 for just the first nine years.

There is another important consideration. This claimant, while experiencing about 9 years of offset under current rates, would face additional years of offset because his WC rate is increasing at a greater rate than the Social Security limitation increases. For example, lets assume that this claimant claims WC benefits beyond 2009 to 2012 and his WC rate is changes each year. The estimated WC rate in 2010 is $819, in 2011 it is $842 and in 2012 it is $865. His estimated weekly WC payment for those years would be $704 (less than the maximum rate for new claims in 2005) and the offset amounts would be $116 the first year, $139 the second and $161 the third. In his case, he would probably face some offset until about 2011 or about 13 years from the year of injury. The cumulative value of the offsets for the 13 years would be about $205,000.

Question 2: How many PTD claimants would be affected by offsets over the next 15 years and how much would this change the cost estimates of the various options?

Answer to Question 2: All new claims beginning in 2006 are potentially affected by offsets. It is estimated that there will be about 23 new claims each year. This totals 345 claims. For various reasons, not all PTD claimants apply for and receive SSDI at the start of their PTD claim, so the number will be less. Also, for at least the first option, claims that are up to 13 years old in 2006 (1993 claims and later) could also be affected. This amount to another 230 claims that could be affected for at least one year and possibly up to 12 years.

For options that incorporate the 6-year lag concept, existing claims subject to continuing offset would be the claims in 1999 and later. These number about 150 claims.

Of all the approximate 760 claims for living PTD claimants, only 378, or about one half of all living PTD claimants have had some offset during the past 25 years. Some don't claim. In other situations, insurers do not report it. This also has to be taken into consideration when estimating for the future. In the past 25 years there has been about $15M in SS. offsets.

In estimating cost reductions to the estimate for the next 15 years, we could estimate that about half the claims will have an offset. Since not everyone is at max rate, we could also estimate that the cost reduction on the average will be about 81% of that amount that would apply to someone at max. rate. Using the above typical example where the worker injured in 1998 at maximum rate, his claim would have offsets for about 13 years under Option 1 amounting to $205,000 or an average of about $15,000 per year. For an average claim at 81% of the maximum rate, we could say that the average offset for new claims would be about $12,500 per year. Adjusting this for later increases in rates, the average offset during the next 15 years will be about $16,000 per year per claim. Using 350 as the average number of claims, the cost reduction total per year would be about $5.5M or about $85M for the 15 years cumulatively. About two-thirds to three-fourths of that amount, or about or $4M per year and $65M for 15 years is a ball park estimate for reducing each of the cost estimates for the 6-year lag options.

State of Wisconsin
2005 – 2006 LEGISLATURE

Soon

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SENATE AMENDMENT ,

TO 2005 SENATE BILL 474

At the locations indicated, amend the bill as follows:

1. Page 41, line 5: after that line insert:

NONSTAT

"(2m) PERMANENT TOTAL DISABILITY COST–OF–LIVING ADJUSTMENTS. In its recommendations under section 102.14 (2) of the statutes for the 2007–08 legislative session, the council on worker's compensation shall submit proposed legislation providing for periodic adjustments in the weekly indemnity for permanent total disability based on changes in the cost of living. The proposed legislation shall ensure that injured employees who are qualified for worker's compensation based on permanent total disability receive an adequate income that is reflective of the cost of living. In preparing that proposed legislation, the council on worker's compensation shall consider how frequently and in what amount those periodic adjustments should be made, how those adjustments should be funded for injured employees receiving weekly indemnity for permanent total disability on the day before the effective date of the proposed legislation, and whether any worker's compensation benefits under current law should be limited so as to offset part or all of the cost of those adjustments.".

(END)