

2007 DRAFTING REQUEST

Bill

Received: 08/23/2007

Received By: gmalaise

Wanted: Soon

Identical to LRB:

For: Workforce Development 7-6704

By/Representing: Jim O'Malley

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: jim.o'malley@dwd.state.wi.us

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Worker's compensation; various changes

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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/P1			pgreensl 08/28/2007	_____	lparisi 08/28/2007		S&L
				_____	lparisi 08/28/2007		
/P2	gmalaise 10/30/2007	jdyer 11/01/2007	rschlue 11/02/2007	_____	mbarman 11/02/2007		S&L

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/1	gmalaise 01/11/2008	wjackson 01/12/2008	pgreensl 01/14/2008	_____	cduerst 01/14/2008	lparisi 01/24/2008	

FE Sent For: "13" @ intro. 2-1-08

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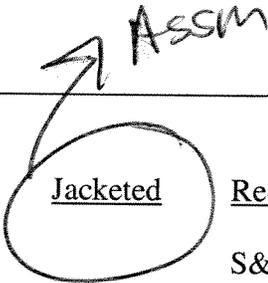
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Vers.      Drafted      Reviewed      Typed      Proofed      Submitted      Jacketed      Required

jdye  
11/02/2007

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wrong!  
State.wi.us

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/?	gmalaise	PI / 8/23/07	PS	PS			

FE Sent For:

<END>

## Malaise, Gordon

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**From:** O'Malley, Jim T - DWD  
**Sent:** Wednesday, July 18, 2007 2:07 PM  
**To:** Malaise, Gordon  
**Subject:** WORKER'S COMPENSATION " AGREED UPON BILL " FOR THIS LEGISLATIVE CYCLE

**Attachments:** DEPARTMENT PROPOSALS FOR WCAC 5.14.07.doc; PEO language ( Final Draft ) 1-29-2007.doc; Christian Science language-Amendment to s. 102.42 (1) & (4).rtf

The Worker's Compensation Advisory Council ( WCAC ) is still discussing /considering proposed statutory changes for the next " WC Agreed Upon Bill ". It may take another month or two before there is an agreement on all proposals. The next meeting is set for August 1, 2007.

The WCAC has tentatively agreed to some amendments to Chapter 102, Wis. Stats. Although the WCAC has preliminarily agreed to some proposals, no official vote has yet been taken. At this time I forwarding the statutory amendments that are likely to be approved. I will forward other proposals after they are approved by the WCAC.

The attachment on the left contains proposals from the Worker's Compensation Division. The attachment in the middle contains the amendments covering the professional employer organizations ( PEOs). The attachment on the right contains draft language for the amendments covering Christian Science treatment.



DEPARTMENT  
PROPOSALS FOR WCAC



PEO language ( Final Draft ) 1...



Christian Science  
language-Ame...

The WCAC tentatively agreed to approve the following proposals for amendments to Chapter 102, Wis. Stats.  
# 1 s. 102.16 (2M) (g) This amendment is to delete reference to the Minnesota WC treatment parameters.

# 3 s. 102.425 (3) (a) 1 This amendment deletes reference to the Blue Book. It has been out of print since @ 1996.

# 4 s. 102.425 (3) This amendment is to create new subsections/paragraphs to establish a dispute resolution process for pharmacy fee disputes.

# 6 s. 102.64 (2 ) This amendment is to give authority for the Att. Gen. Office to represent the WISBF to collect payments due under s. 102.60.

# 7 s. 102.65 (3) This amendment is to delete s. 102. 65 (3) that sets a balance limit in the WISBF since this fund is now nonlapisable.

# 8 S. 102.80 (3) (ag) This amendment eliminates the requirement that Uninsured Employer Fund consider incurred but not reported claims in reserving for purposes of calculating known claims and cash reserves.

The WCAC tentatively agreed to approve the proposal related to PEOs. PEOs are basically employee

leasing companies and that is how we propose to define these types of businesses. This proposal involves amendments to s. 102.31( since we thought this was the best place to put the amendments in ch. 102 ). These amendments are rather complicated. The attachment in the middle includes the draft language agreed to by a special study committee requested by the WCAC as well as the WCAC. The study committee worked on this for about two (2) years with employee leasing companies, trade groups and legislators/staff. The amendments basically requires WC insurers to issue multiple coordinated policies to employee leasing companies & their clients, except for the following exceptions. (1) Master policies may be issued in the future to any employee leasing company when the claims reporting ( unit statistical ) data can be tracked and these approved by OCI and the Wisconsin Compensation Rating Bureau. (2) Master policies may continue to be issued to employee leasing companies with small clients with payroll not large enough to qualify for experience rating. The second exception is in the proposed s. 102.31 (2m) (j) and this proposal was agreed upon to resolve a law suit filed by an employee leasing company against OCI & Wisconsin Compensation Rating Bureau.

The final amendment is to delete s. 102.42 (4) and to amend s. 102.42 (1). This proposal came from the public. This proposal involves Christian Science treatment. Injured employees have been permitted to select Christian Science treatment for their injuries since @ 1919, if the employer did not elect out of this with the department. Christian Science practitioners pray for people with injuries or health problems. The proposal is to deleted the provision that allows employers to elect not to have their employees be able to select Christain Science treatment ( 102.42 (4) ), and provide that employers are liable only for usual and customary charges for the services of Christian Science practitioners. Charges for Christian Science practitioners are not included in certified data bases under s. 102.16 (2). The attachment on the right contains our suggested language.

I will forward any additional amendments approved by the WCAC soon after they are known.

Let me know if you have any questions. Thank you for your assistance.

**WORKER'S COMPENSATION DIVISION  
PROPOSED STATUTORY AND REGULATORY CHANGES 2007-2008  
Updated 5/15/07**

SECTION	TOPIC	PROPOSAL	RATIONALE	STATUS
1. 102.16(2m) (g)	Medical treatment guidelines	Amend §102.16(2m)(g) as follows: (g) The department shall promulgate rules establishing procedures and requirements for the necessity of treatment dispute resolution process under this subsection, including rules setting the fees under par. (f) and rules establishing standards for determining the necessity of treatment provided to an injured employee. The rules establishing these standards shall, to the greatest extent possible, be consistent with Minnesota rules §221.6010 to §221.8900, as amended to January 1, 2006. Before the department may amend the rules establishing those standards, the department shall establish an advisory committee under s. 227.13 composed of health care providers providing treatment under s. 102.42 to advise the department and the council on worker's compensation on amending those rules.	This amendment deletes reference to the Minnesota Rules. The reference to the Minnesota Rules in the original statute is no longer necessary.	2/1/07 introduced at WCAC meeting. 4/5/07 approved by WCAC.
2. 102.29(1)	Third Party proceeds	Amend §102.29(1) as follows: (1) The making of a claim for compensation against an employer or compensation insurer for the injury or death of an employee shall not affect the right of the employee, the employee's personal representative, or other person entitled to bring action, to make claim or maintain an action in tort against any other party for such injury or death, hereinafter referred to as a 3rd party; nor shall the making of a claim by any such person against a 3rd party for damages by reason of an injury to which ss. 102.03 to 102.64 102.66 are applicable, or the adjustment of any such claim, affect the right of the injured employee or the employee's dependents to recover compensation. The employer or compensation insurer who shall have paid or is obligated to pay a lawful claim under this chapter shall have the same right to make	This amendment provides that the Work Injury Supplemental Benefit Fund shares in any third party settlement proceeds. Currently the WISBF is not reimbursed in a third party suit.	2/1/07 introduced at WCAC meeting. 4/5/07 Tabled

claim or maintain an action in tort against any other party for such injury or death. If the department pays or is obligated to pay a claim under ss. 102.81 (1) or 102.66, the department shall also have the right to maintain an action in tort against any other party for the employee's injury or death. However, each shall give to the other reasonable notice and opportunity to join in the making of such claim or the instituting of an action and to be represented by counsel. If a party entitled to notice cannot be found, the department shall become the agent of such party for the giving of a notice as required in this subsection and the notice, when given to the department, shall include an affidavit setting forth the facts, including the steps taken to locate such party. Each shall have an equal voice in the prosecution of said claim, and any disputes arising shall be passed upon by the court before whom the case is pending, and if no action is pending, then by a court of record or by the department. If notice is given as provided in this subsection, the liability of the tort-feasor shall be determined as to all parties having a right to make claim, and irrespective of whether or not all parties join in prosecuting such claim, the proceeds of such claim shall be divided as follows: After deducting the reasonable cost of collection, one-third of the remainder shall in any event be paid to the injured employee or the employee's personal representative or other person entitled to bring action. Out of the balance remaining, the employer, insurance carrier, or, if applicable, uninsured employers fund or work injury supplemental benefit fund shall be reimbursed for all payments made by it, or which it may be obligated to make in the future, under this chapter, except that it shall not be reimbursed for any payments made or to be made under s. 102.18 (1) (bp), 102.22, 102.35 (3), 102.57, or 102.60. Any balance remaining shall be paid to the employee or the employee's personal representative or other person entitled to bring action. If both the employee or the employee's personal representative or other person entitled to bring action, and the employer, compensation insurer, or department, join in the pressing of said claim and are represented by counsel, the attorney fees allowed as a part of the costs of collection shall be, unless otherwise agreed upon,

		<p>divided between such attorneys as directed by the court or by the department. A settlement of any 3rd-party claim shall be void unless said settlement and the distribution of the proceeds thereof is approved by the court before whom the action is pending and if no action is pending, then by a court of record or by the department.</p>		
<p>3. 102.425 (3)(a)1</p>	<p>Pharmacy Fee Schedule</p>	<p>Amend §102.425 (3)(a)1 as follows:          1. The average wholesale price of the prescription drug as of the date on which the prescription drug is dispensed, as quoted in the American Druggist Blue Book, published by Hearst Corporation, Inc. or its successor, or in the Drug Topics Red Book, published by Medical Economics Company, Inc. or its successor; whichever is less.</p>	<p>This amendment deletes reference to the Blue Book, which is out of print.</p>	<p>2/1/07          Introduced at WCAC meeting. 4/5/07          Approved by WCAC.</p>
<p>4. 102.425(3)(r) and (s)</p>	<p>Pharmacy fee disputes</p>	<p>Create §102.425 (3)(r) and (s) as follows:          (r) The department has jurisdiction under this subsection to resolve a dispute between a pharmacist or practitioner and an insurer or self-insured employer over the application of reasonableness of the prescription drug charge for prescriptions provided to an injured employee who claims benefits under this chapter. The pharmacist or practitioner shall file a dispute with the department within 6 months of notice that the insurer or self-insured employer is denying full or partial payment for a prescription drug prescribed to treat the injured employee for the effects of the work injury. The department shall deny payment of a prescription drug charge that the department determines under this subsection is unreasonable. A pharmacist, practitioner, insurer or self-insured employer that are parties to a fee dispute under this subsection are bound by the department's determination under this subsection on the reasonableness of the disputed fee, unless that determination is set aside or modified by the department under s. 102.18(3) or is set aside on judicial review under s.102.23.          (s) Within 30 days after a determination under this subsection, the department may set aside, reverse or modify the determination for any reason that the department considers sufficient. A pharmacist, practitioner, insurer or self-insured employer that is aggrieved by a determination of the department</p>	<p>These new subsections create a dispute resolution process for pharmacy fees disputes.</p>	<p>2/1/07          Introduced at WCAC meeting. 4/5/07          Approved by WCAC.</p>

5.	102.48(2)	Partial Dependency	<p>under this subsection may seek judicial review of that determination in the same manner that compensation claims are reviewed under s. 102.23.</p> <p>Amend §102.48(2) as follows:</p> <p>(2) In all other cases the death benefit shall be such sum as the department shall determine to represent fairly and justify the aid to support which the dependent might reasonably have anticipated from the deceased employee but for the injury. To establish anticipation of support and dependency, it shall not be essential that the deceased employee made any contribution to support. The aggregate benefits in such case shall not exceed twice the average annual earnings of the deceased; or 4 times the contributions of the deceased to the support of such dependents during the year immediately preceding the deceased employee's death, whichever amount is the greater. In no event shall the aggregate benefits in such case exceed the amount which would accrue to a person solely and wholly dependent. Where there is more than one partial dependent the weekly benefit shall be apportioned according to their relative dependency. The term "support" as used in ss. 102.42 to 102.63 shall include contributions to the capital fund of the dependents, for their necessary comfort. Any person claiming partial dependency shall file with submit to the department documentary evidence of financial support by the deceased employee. Such documentary evidence shall may include bank statements, cancelled checks or other financial documentary evidence.</p>	<p>This amendment requires any person claiming death benefits for partial dependency to produce documentary evidence of dependency, rather than submitting testimony only. The WCD has had several death benefit claims compromised by the Attorney General's Office with adult children. The injured worker needs to provide support of his injury, disability or continued treatment. Therefore someone claiming support by the deceased worker should also be required to produce some type of documentation of dependency or support.</p>	<p>2/1/07 Introduced at WCAC meeting. 4/5/07 Tabled. Labor requested redraft on language.</p>
6.	102.64(2)	Attorney General shall represent the state	<p>Amend §102.64(2) as follows:</p> <p>(2) Upon request of the department of administration, the attorney general shall appear on behalf of the state in proceedings upon claims for compensation against the state. The department of justice shall represent the interests of the state in proceedings under s. 102.49, 102.59, 102.60 or 102.66. The department of justice may compromise claims in such proceedings, but the compromises are subject to review by the department of workforce development. Costs incurred by the department of justice in prosecuting or defending any claim for payment into or out of the work injury supplemental benefit fund under s. 102.65,</p>	<p>This amendment provides that the department of justice represents the WISBF for claims payments into the Fund for illegal employment of minors under §102.60.</p>	<p>2/1/07 Introduced at WCAC meeting. 4/5/07 Approved by WCAC.</p>

	<p>including expert witness and witness fees but not including attorney fees or attorney travel expenses for services performed under this subsection, shall be paid from the work injury supplemental benefit fund.</p>	<p>Effective April 1, 2006, §102.65(1) was amended to provide that the WISBF was a nonlapsible fund, and restricted use of the money for Fund benefit payments. The current language in §102.65(3) is no longer necessary.</p>	<p>2/1/07 Introduced at WCAC meeting. 4/5/07 Approved by WCAC.</p>
<p>7. 102.65(3)</p>	<p>Delete §102.65(3) as follows: (3) If the balance in the fund on any June 30 exceeds 3 times the amount paid out of such fund during the fiscal year ending on such date, the department shall, by order, direct an appropriate proportional reduction of the payments into such fund under ss. 102.47, 102.49 and 102.59 so that the balance in the fund will remain at 3 times the payments made in the preceding fiscal year.</p>	<p>This amendment eliminates the requirement to consider incurred but not reported claims. By statute, if the Fund balance becomes 85% encumbered there is no legal liability to accept new claims (those that are incurred but not reported).</p>	<p>2/1/07 Introduced at WCAC meeting. 4/5/07 Approved by WCAC.</p>
<p>8. 102.80(3)(ag)</p>	<p>Amend §102.80(3)(ag) as follows: (ag) The secretary shall monitor the cash balance in, and incurred losses to, the uninsured employers fund using generally accepted actuarial principles. If the secretary determines that the expected ultimate losses to the uninsured employers fund on known claims and on incurred, but not reported, claims exceed 85% of the cash balance in the uninsured employers fund, the secretary shall consult with the council on worker's compensation. If the secretary, after consulting with the council on worker's compensation, determines that there is a reasonable likelihood that the cash balance in the uninsured employers fund may become inadequate to fund all claims under s. 102.81 (1), the secretary shall file with the secretary of administration a certificate attesting that the cash balance in the uninsured employer's fund is likely to become inadequate to fund all claims under s. 102.81 (1) and specifying a date after which no new claims under s. 102.81 (1) will be paid.</p>	<p>This amendment eliminates any bad faith or delayed payment penalty against the UEF's third party administrator. This is in response to the recent WI Supreme Court decision in <u>Aslakson v. Gallagher Bassett Services Inc.</u></p>	<p>5/3/07 Introduced at WCAC meeting. Tabled.</p>
<p>9. 102.81(2)</p>	<p>Amend §102.81(2) as follows (2) The department may retain an insurance carrier or insurance service organization to process, investigate and pay claims under this section and may obtain excess or stop-loss reinsurance with an insurance carrier authorized to do business in this state in an amount that the secretary determines is necessary for the sound operation of the uninsured employers fund. In cases involving</p>		

<p><b>10.</b></p>	<p><b>102.03(2)</b></p>	<p>Exclusive remedy</p>	<p>disputed claims, the department may retain an attorney to represent the interests of the uninsured employers fund and to make appearances on behalf of the uninsured employers fund in proceedings under ss. 102.16 to 102.29. Section 20.930 and all provisions of subch. IV of ch. 16, except s. 16.753, do not apply to an attorney hired under this subsection. The charges for the services retained under this subsection shall be paid from the appropriation under s. 20.445 (1) (rp). The cost of any reinsurance obtained under this subsection shall be paid from the appropriation under s. 20.445 (1) (sm). An insurance carrier or insurance service organization retained by the department under this section, shall not be liable for penalties and interest under ss. 102.18(1) (b) and (bp) and 102.22(1).</p> <p>Amend §102.03(2) as follows:</p> <p>(2) Where such conditions exist the right to the recovery of compensation under this chapter shall be the exclusive remedy against the employer, any other employee of the same employer, and the worker's compensation insurance carrier, the department under s. 102.81 and the insurance carrier or insurance service organization retained by the department. This section does not limit the right of an employee to bring action against any coemployee for an assault intended to cause bodily harm, or against a coemployee for negligent operation of a motor vehicle not owned or leased by the employer, or against a coemployee of the same employer to the extent that there would be liability of a governmental unit to pay judgments against employees under a collective bargaining agreement or a local ordinance.</p>	<p>This amendment clarifies that the exclusive remedy for work-related injuries applies to the UEF's third party administrator. This eliminates any bad faith or delayed payment penalty against the UEF's third party administrator. This is in response to the recent WI Supreme Court decision in <u>Aslakson v. Gallagher Bassett Services Inc.</u></p>	<p>5/3/07 Introduced at WCAC meeting. Tabled.</p>
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**From:** Knutson, Janell  
**Sent:** Wednesday, May 02, 2007 3:20 PM  
**To:** 'John Metcalf'  
**Cc:** O'Malley, Jim  
**Subject:** Christian Science language

**Importance:** High  
Amend 102.42(1)

(1) Treatment of employee. The employer shall supply such medical, surgical, chiropractic, psychological, podiatric, dental and hospital treatment, medicines, medical and surgical supplies, crutches, artificial members, appliances, and training in the use of artificial members and appliances, or, at the option of the employee, ~~if the employer has not filed notice as provided in sub. (4)~~, Christian Science treatment in lieu of medical treatment, medicines and medical supplies, as may be reasonably required to cure and relieve from the effects of the injury, and to attain efficient use of artificial members and appliances, and in case of the employer's neglect or refusal seasonably to do so, or in emergency until it is practicable for the employee to give notice of injury, the employer shall be liable for the reasonable expense incurred by or on behalf of the employee in providing such treatment, medicines, supplies and training. Where the employer has knowledge of the injury and the necessity for treatment, the employer's failure to tender the necessary treatment, medicines, supplies and training constitutes such neglect or refusal. The employer shall also be liable for reasonable expense incurred by the employee for necessary treatment to cure and relieve the employee from the effects of occupational disease prior to the time that the employee knew or should have known the nature of his or her disability and its relation to employment, and as to such treatment subs. (2) and (3) shall not apply. The obligation to furnish such treatment and appliances shall continue as required to prevent further deterioration in the condition of the employee or to maintain the existing status of such condition whether or not healing is completed. Notwithstanding s. 102.16(2), the employer is liable only for the usual and customary charge for Christian Science treatment.

AND

Delete 102.42(4):

~~(4) Christian Science. Any employer may elect not to be subject to the provisions for Christian Science treatment provided for in this section by filing written notice of such election with the department.~~

### **102.31(2m) Employee leasing companies and employee leasing agreements.**

(a) "Employee Leasing Company" for the purpose of the administration of Chapter 102 means an entity who contracts to provide the nontemporary, ongoing employee workforce of a client under a written contract, regardless of whether the entity uses the term professional employee organization, PEO, staff leasing company, registered staff, leasing company, employee leasing company or any other name.

(b) "Client" means an entity that obtains all or part of its workforce through a contract with an employee leasing company.

(bg) "Master policy" means a single worker's compensation policy issued to an employee leasing company in the name of the employee leasing company and which covers the clients of the employee leasing company.

(c) An employee leasing company is liable under s. 102.03 for all compensation payable under this chapter to an employee employed pursuant to its employee leasing agreement, including any payments required under s. 102.16(3), 102.18(1)(b) or (bp), 102.22(1), 102.35(3), 102.57 or 102.60. Except as permitted under s. 102.29, an employee leasing company may not seek or receive reimbursement from another employer for any payments made as a result of that liability.<sup>1</sup>

(d) Except as provided in par. (j), a separate worker's compensation insurance policy as described in s. 102.28(2) shall be obtained for each client of an employee leasing company as defined in par. (a) under a multiple coordinated policy.<sup>2</sup> The policy shall name both parties; the client as a named insured and the employee leasing company as a named insured. The policy shall indicate which named insured is the employee leasing company and which named insured is the client and shall provide the address of each. The insurer shall determine and list either the client or the employee leasing company, but not both, as the first named insured on the policy. The policy shall cover all employees and leased employees of the client except as permitted in par (e).

(dm) Except as provided in par. (j), an insurer may issue a master policy<sup>3</sup> to an employee leasing company for the insurance of compensation under this section at a future date upon the approval of the office of the commissioner of insurance and the Wisconsin compensation rating bureau of a filing authorizing such policies. Approval of a master policy filing shall be contingent upon the technological capacity and operational capability to provide data at the client level including proof of coverage, cancellation of insurance coverage, unit statistical data and any other information that may be required by the Wisconsin compensation rating bureau. A master policy filing shall establish basic manual rules governing divided workforce and cancellation and non-renewal that are consistent with the multiple coordinated policy provisions in ss. 102.31(2m)(e) and 102.31(2)(r).<sup>4</sup>

<sup>1</sup> This clarifies that the employee leasing company also pays the penalties in addition to compensation.

<sup>2</sup> An employee leasing company and its client(s) obtaining coverage for leased workers shall obtain coverage under a multiple coordinated policy. A multiple coordinated policy consists of separate policies issued to the employee leasing company and each client by the same insurer. A separate policy filing and a separate unit statistical filing is filed for each policy.

<sup>3</sup> A master policy is a single worker's compensation policy issued to an employee leasing company in the name of the employee leasing company that covers the clients of the employee leasing company. A single policy is issued in the name of the employee leasing company and that single policy covers all clients of the employee leasing company. To date a master policy filing under par. (dm) has not been approved.

<sup>4</sup> An insurance company that develops the technological and operational capacity to provide the data elements for each client insured under a master policy that are required by the Wisconsin compensation rating bureau for each client under a client level policy, including proof of coverage, cancellation of insurance coverage, unit statistical data, in the required format, may submit a filing with the Wisconsin compensation rating bureau detailing its master policy proposal and specifying how each required data element will be provided to the Wisconsin compensation rating bureau for each client on a client level basis. A master policy filing submitted to the Wisconsin compensation rating bureau that delineates the capacity of the insurance company to provide the same data elements required of a client level policy in the required format, shall be submitted by the Wisconsin compensation rating bureau to the Office of the Commissioner of Insurance for approval.

(e) "Divided-workforce" means consent to the issuance of two (2) policies, as provided in s. 102.31(1), to an entity that obtains part of its workforce through a contract with an employee leasing company, one (1) policy covers the client's leased workforce and one (1) policy covers the client's non-leased workforce, as provided in s. 102.31(1), Stats. An insurer may issue the policy required by this section when only a portion of the client's workforce is leased and the client notifies the department of workforce development of its intent to have a divided-workforce. The notification requirements of a client that employs a divided-workforce are:

1. Submission of a notification to the department of a divided-workforce by the client described in par. (b) on a form available from the department. A copy of the notification form shall be provided to the Wisconsin compensation rating bureau.
2. The notification shall describe the employee leasing company, the effective date of the leasing agreement, the non-leased employees, and such other information as the department prescribes.
3. The notification shall include a copy of the information page or declaration page of the worker's compensation insurance policy or a binder evidencing placement of coverage in the voluntary market that covers the client's non-leased employees, except as provided in subd. 7.
4. In the notification, the client shall agree to assume full responsibility to immediately make all payments required under Chapter 102 as the department may require, pending a final determination as to liability between the insurers under a divided-workforce plan, if a dispute should arise as to which insurance company is responsible for a particular injury or illness sustained during the time a divided-workforce plan is in effect. Nothing in this paragraph shall preclude a client from insuring its responsibility under this section with an insurance carrier.
5. A divided-workforce plan may be terminated by the client by notice to the department on a form available from the department. Termination is not effective until 10 days after the client request for termination is received by the department.
6. Except as provided under subd. 7 regardless of whether a termination notice required under this par. has been given to the department, termination of a divided-workforce plan is effective on the cancellation effective date of the voluntary market worker's compensation insurance policy that covered the client's non-leased workers.<sup>5</sup>
7. A client may submit a copy of the information page or declaration page or a binder evidencing placement of coverage of a Wisconsin worker's compensation insurance pool policy that covers the client's non-leased employees but only if the client also submits a copy of the information page or declaration page of a Wisconsin worker's compensation insurance pool policy that covers the client's leased employees.<sup>6</sup> Regardless of whether a termination notice under this paragraph has been given to the department, termination of a divided-workforce plan is effective on the cancellation effective date of the Wisconsin worker's compensation insurance pool policy that covered the client's leased employees.

<sup>5</sup> Except as provided in subd. 7, this subdivision establishes the following requirements on a client: a client that has both leased employees and non-leased employees is not eligible to insure its non-leased employees through the Wisconsin worker's compensation insurance pool; a client shall insure its non-leased employees through the voluntary insurance market; and a client that is unable to insure its non-leased employees through the voluntary insurance market is not eligible to enter into an employee leasing contract that provides only portion of its workforce. The purpose of this subdivision is to avert the placing of an undesirable portion of a client risk in the Wisconsin worker's compensation insurance pool.

<sup>6</sup> If an employee leasing company insures its risk through the Wisconsin worker's compensation insurance pool, a client may insure its non-leased employees through the Wisconsin worker's compensation insurance pool. If an employee leasing company insured its risk through the voluntary insurance market, a client that has non-leased employees shall insure its risk through the voluntary market.

8. A separate workers compensation policy shall be issued to cover the non-leased employees (direct hired employees) of the employee leasing company.

9. Nothing in this paragraph prohibits an insurer from limiting policy coverage solely to the client's leased employees.

**(em)** Except as provided in subdivision (e)7, a client that has both leased employees and non-leased employees is not eligible to insure its non-leased employees through the Wisconsin worker's compensation insurance pool. A client shall insure its non-leased employees through the voluntary market.

**(f)** An insurer who provides a worker's compensation insurance contract described in s. 102.28(2)(a) and s. 102.31(1)(b) shall file the contract as provided in s. 626.35.<sup>7</sup> Cancellation, termination or nonrenewal of a worker's compensation insurance contract described in s. 102.28(2)(a) and s. 102.31(1)(a) shall be executed as described in s. 102.31(2)(a) and s. 102.31(2)(am). Notice required under s. 102.31(2)(a) shall be given to both the insured client employer and the insured employee leasing company.

**(g)** A sole proprietor, a partner or a member of a limited liability company is not eligible for worker's compensation benefits under a policy issued under this section unless the policy is endorsed naming the sole proprietor, partner or member that has elected coverage under s. 102.075.

**(h)** A corporate officer is a covered employee for worker's compensation benefits under a policy issued under this section unless an officer of a qualified corporation elects by an endorsement on the policy not to be covered under the policy at any time during the period of the policy described in s. 102.076.

**(i)** Nothing in this section prohibits an insurer from any of the following:

1. Collecting premium or other charges due from client employers by means of list billing through an employee leasing company.
2. Requiring an employee leasing company to maintain a letter of credit or other form of security.
3. Issuing policies with a common renewal date to all, or a class of all, client employers of an employee leasing company.
4. Grouping together the clients of an employee leasing company for the purpose of offering dividend eligibility to that group and paying dividends in compliance with s. 631.51, Wis. Stats.
5. Applying a discount to the premium charged client employers of an employee leasing company as permitted by the Wisconsin compensation rating bureau.
6. Applying a retrospective rating option premium to client employers through an employee leasing company. No insurer or employee leasing company may impose on, allocate to or collect from, a client employer a penalty under a retrospective rating option premium arrangement. Nothing in this subsection prohibits an insurer from requiring an employee leasing company to pay a penalty under a retrospective rating option with respect to its client employers.<sup>8</sup>

<sup>7</sup> A separate policy shall be issued for each client of an employee leasing company that leases any of its workers. The policy covers all leased employees of the client. The policy shall be issued and filed in the name of the employee leasing company and in the name of the client.

<sup>8</sup> Retrospective rating plans are available to risks written under the Wisconsin Worker's Compensation Insurance Pool only by mutual agreement between the insured and the servicing carrier and approved by the Wisconsin Worker's Compensation Insurance Pool Committee, or by direction from the Commissioner of Insurance.

(j) *Issuance of master policy to an employee leasing company with small clients.* An insurer is authorized to issue a master policy under this par. in the voluntary market to an employee leasing company covering small clients upon the following conditions:

1. Each client of the employee leasing company covered under the master policy has an unmodified annual premium assignable to its business equal to or less than the current threshold below which employers are not experience rated for worker's compensation insurance, including all commonly owned or controlled entities or organizations, without regard to split workforce. When the unmodified annual premium assignable to the business of the client, including both leased and non-leased employees, exceeds the current threshold below which employers are not experience rated for worker's compensation insurance, the employee leasing company shall notify the insurer and obtain coverage as otherwise provided for under this section.
2. Each covered client shall include all entities or organizations under common control or ownership of the client.
3. A master policy under this paragraph may be issued to an employee leasing company regardless of whether the employee leasing company provides all or only part of a client's workforce.
4. Within 30 days of the effective date of the contract between the employee leasing company and the client, the employee leasing company shall report to the department the identity of each covered client, including all commonly owned or controlled entities, the number of the employees initially covered by the master policy issued under this paragraph, the estimated annual unmodified premium assignable to the client's business without regard to split workforce, and the effective date of the contract between the client and the employee leasing company. The client shall provide the amount of its estimated annual unmodified premium assignable to its business without regard to split workforce to the employee leasing company.
5. An insurer, or if authorized by the insurer, the employee leasing company, shall file proof of coverage of a client covered under the master policy issued under this paragraph with the department within 30 days of the inception of such coverage. Filing of the proof of coverage by the insurer, or if authorized by the insurer, the employee leasing company, binds coverage. Notice of coverage to the client by the insurer, or if authorized by the insurer, the employee leasing company, binds coverage. Nothing in this section requires an employee leasing company or its employees to obtain a license or approval as an appointed agent or otherwise from the Office of Commissioner of Insurance.
6. An insurer may issue a master policy under this paragraph regardless of whether issuance of a master policy has or has not been authorized under par. (dm).
7. An insurer is authorized to issue a master policy to an employee leasing company under this par. notwithstanding the fact that the employee leasing company has a client or clients covered by the Wisconsin insurance pool provided the client or clients covered by the Wisconsin insurance pool are not covered by the master policy issued to the employee leasing company.<sup>9</sup>

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<sup>9</sup> An employee leasing company may obtain a master policy under this paragraph to cover its clients not eligible for experience rating, and simultaneously have a client or clients eligible for experience rating covered by the Wisconsin insurance pool, provided the client or clients covered by the Wisconsin insurance pool are not covered under the master policy.

(k) An employee leasing company is not liable for worker's compensation claims of a client's non-leased workforce.

(L) An insurer providing a worker's compensation insurance policy under this section covering a client's leased workforce is not liable for worker's compensation claims of a client's non-leased workforce unless the carrier has issued a separate policy covering the client's non-leased workforce.

(m) All forms the department requires to facilitate efficient administration of this section shall be available on the effective date of any section requiring such forms.

(n) Cooperative educational service agencies (cesa) defined under ch. 116, Wis. Stats., are exempt from the provisions of 102.31(2m).

**102.31(2m)(r) Cancellation and non-renewal when the employee leasing company is the first named insured on a policy issued under this section. Cancellation and non-renewal when the employee leasing company is the first named insured on a policy issued under this section shall be made as follows:**

1. Voluntary Cancellation or Termination. Voluntary mid-term cancellation of the policy issued under s. 102.31(2m)(d), 102.31(2m)(dm) or 102.31(2m)(j) shall be agreed upon by both the client and the employee leasing company, and shall be confirmed either by the employee leasing company promptly giving written confirmation to the client or by written agreement by the client. An insurer may require any appropriate proof of voluntary cancellation.
2. An insurer may cancel, terminate or non-renew a worker's compensation insurance contract issued under s. 102.31(2m)(d), 102.31(2m)(dm) or 102.31(2m)(j) only as follows or as described in subd. 3.
  - a. Involuntary cancellation, termination or non-renewal by an insurer described in s. 102.28(2)(a), Wis. Stats. and s. 102.31(1)(a), Wis. Stats shall be executed only as described in s. 102.31(2)(a), Wis. Stats. , except as permitted in subd. 3.
  - b. The insurer shall give the notice required under s. 102.31(2)(a), Wis. Stats., to the insured employee leasing company.
  - c. The insurer shall give a 30 day notice of the termination to the insured client. The insurer is not required to state in this notice the facts on which the insurer's decision is based.
  - d. A cancellation, termination or non-renewal is not effective unless the notice is given to the client as required by this paragraph.
3. Termination upon termination of the employee leasing agreement. The insurer may terminate the client's workers compensation contract coverage mid-term if all of the following apply:
  - a. The employee leasing company terminates its employee leasing agreement with the client in its entirety.
  - b. Notice of the termination is given to the wisconsin compensation rating bureau.
  - c. 30 day notice of the termination is given to the insured client identifying that the basis for the termination is that the agreement with the employee leasing company has been terminated in its entirety.
  - d. Termination is not effective until the later of 30 days after notice has been given of the termination to the Wisconsin compensation rating bureau under subd. b and 30 day notice has been given to the insured client under subd. c.
4. An insurer shall obligate only the employee leasing company to pay premium due for a client's workers compensation contract coverage during the period that the employee leasing company is the first named insured or covered under a master policy. An insurer may not recover unpaid premium due during such policy period for a client's workers compensation coverage from the client.

**102.31(2m)(ra) Cancellation and non-renewal if the client is the first named insured on the policy issued under this section. Cancellation and non-renewal if the client is the first named insured on the policy issued under this section shall be made as follows:**

1. Voluntary termination.
  - a. Voluntary mid-term cancellation of the policy shall be agreed upon by both the client and the employee leasing company and shall be confirmed either by the employee leasing company promptly giving written confirmation to the client or by written agreement by the client.
2. Cancellation, termination or non-renewal of a worker's compensation insurance contract by the insurer.
  - a. Cancellation, termination or non-renewal of a worker's compensation insurance contract by the insurer described in s. 102.28(2)(a), Wis. Stats. and s. 102.31(1)(a), Wis. Stats shall be executed only as described in s. 102.31(2)(a), Wis. Stats.
  - b. The insurer shall give the notice required under s. 102.31(2)(a), Wis. Stats. to both the insured client and the insured employee leasing company.
  - c. The insurer may terminate client coverage mid-term, including continued client coverage otherwise required under sub. 3 on any grounds permitted under ss. 102.31(2)(a), Wis. Stats. and 631.26, Wis. Stats.
3. Termination of the employee leasing agreement.
  - a. If the employee leasing relationship is terminated mid-term, the employee leasing company shall be deleted from the policy by endorsement to the policy. Client coverage shall continue as to all employees unless the client's coverage is terminated mid-term as permitted under subd. 2 and s. 102.31(2)(a), Wis. Stats.

**102.29(7m)**

No employee employed pursuant to an employee leasing arrangement who makes a claim for compensation under this chapter may make a claim or maintain an action in tort against the client who accepted the leased employee's services or against an employee leasing company that leased the employee to the client.<sup>10</sup>

<sup>10</sup> No employee employed pursuant to an employee leasing arrangement, may make a claim for negligence against the client with whom they are leased or against the employee leasing company that leased the employee to the client.



State of Wisconsin  
2007 - 2008 LEGISLATURE

LRB-3093/7  
GMM:.....  
jld (PI)

DNOTE  
TH 8/30

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SAF  
7-28 ✓

Gen

- 1 AN ACT ...; relating to: making various changes in the worker's compensation
- 2 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 (DWD). ✓

**Employee leasing companies.** Under current law, a professional employer organization or an employee leasing organization that enters into an employee leasing agreement with a client must submit to DWD, within ten working days after the effective date of the agreement, a report disclosing the identity of the client, the effective date of the agreement, and such other information as DWD prescribes and an employee leasing organization that intends to terminate an employee leasing agreement must notify DWD of that termination no later than 30 days prior to the termination date of the agreement. Currently, when an employee leasing agreement is terminated, termination of the client's coverage under the worker's compensation insurance policy of the employee leasing organization is not effective until 30 days after the employee leasing organization has given notice of the termination of that agreement to DWD. ✓

This bill eliminates those current requirements relating to employee leasing organizations and instead provides that a person that contracts to provide the nontemporary, ongoing employee workforce of a client under an employee leasing agreement (employee leasing company) is the employer of an employee whose services are obtained by the client under the agreement (leased employee) for purposes of worker's compensation, is liable for any worker's compensation payable

to the leased employee, and may not seek or receive reimbursement from the client for any payments made as a result of that liability.

Subject to certain exceptions, the bill requires an employee leasing company to insure its worker's compensation liability by obtaining a contract of insurance under which the insurer issues separate worker's compensation policies to the employee leasing company for each of its clients that are insured by the insurer (multiple coordinated policy). A multiple coordinated policy must name both the employee leasing company and the client as named insureds and must designate either the employee leasing company or the client, but not both, as the first named insured. An insurer may issue a multiple coordinated policy for a client only if all of the employees of the client are leased employees and are covered under the policy, except that an insurer may issue a multiple coordinated policy for a client that has a workforce in which some of the employees are leased employees and some are not leased employees (divided workforce) if DWD has approved a plan under which two policies are issued to cover the employees of the client, one covering the leased employees of the client and the other covering the employees of the client who are not leased employees (divided workforce plan).

Under the bill, an employee leasing company may also insure its worker's compensation liability by obtaining a single policy in its name covering more than one client of the employee leasing company (master policy) that has been approved by the Commissioner of Insurance (Commissioner). The Commissioner may approve the issuance of a master policy if the insurer shows that it has the technological capacity and operational capability to provide to the Wisconsin Compensation Rating Bureau (Bureau) certain information at the client level, including unit statistical data, information concerning proof of coverage and cancellation termination, and nonrenewal of coverage, and any other information that the Bureau may require. A master policy must also establish rules governing the insurance of a divided workforce and the cancellation, termination, and nonrenewal of policies.

Regardless of whether the Commissioner has approved the issuance of a master policy, the bill permits an employee leasing company to insure its worker's compensation liability with respect to a group of clients, each of which has an unmodified annual premium that is equal to or less than the threshold below which employers are not experience rated under the standards and criteria of the Bureau (small clients) by obtaining a master policy in the voluntary market (as opposed to under the state mandatory risk-sharing plan, which is a plan established or approved by the Commissioner under which risks that are unable to obtain coverage in the voluntary market may obtain coverage) insuring that liability. An insurer may issue a master policy covering a group of small clients regardless of whether any of those small clients has a divided workforce. If at any time the unmodified annual premium of a small client that is covered under a master policy exceeds the threshold below which employers are not experience rated, the employee leasing company must notify the insurer and obtain coverage for the small client under a multiple coordinated policy or a master policy that has been approved by the Commissioner.

In addition, the bill permits an insurer to issue a policy covering only the leased employees of a client that has a divided workforce if DWD specifically consents to a divided workforce plan. Under the bill, a client that has a divided workforce must insure its employees who are not leased employees in the voluntary market and may not insure those employees under the state mandatory risk-sharing plan, unless the leased employees of the client are covered under that mandatory plan. A client that has a divided workforce must also agree to assume full responsibility to immediately pay any worker's compensation payable as may be required by DWD should a dispute arise between two or more insurers as to liability for an injury sustained while a divided workforce plan is in effect, pending final resolution of the dispute.

For a multiple coordinated policy in which an employee leasing company is the first named insured, or in which the client is the first named insured and for which premium payments are coordinated under an employee leasing agreement, and for a master policy, the bill permits an insurer to obligate only the employee leasing company to pay premiums due for a client's coverage and prohibits an insurer from recovering any unpaid premiums due for that coverage from the client. The bill, however, does not prohibit an insurer from collecting premiums and charges due with respect to a client by means of list billing through the employee leasing company, requiring an employee leasing company to maintain a letter of credit or other form of security to ensure payment of premiums; issuing policies that have a common renewal date to all, or a class of all, clients of an employee leasing company; grouping together the clients of an employee leasing company for the purpose of offering dividend eligibility and paying dividends to those clients; applying a discount to the premium charged with respect to a client; or applying a retrospective rating option for determining the premium charged with respect to a client.

Finally, the bill provides as follows with respect to the cancellation, termination, or nonrenewal of a multiple coordinated policy or a master policy:

1. That the insureds under the policy may cancel the policy during the policy period only if both the employee leasing company and the client agree to the cancellation, the cancellation is confirmed by the employee leasing company promptly providing written confirmation of the cancellation to the client in writing or by the client agreeing to the cancellation in writing, and notice of the cancellation is provided to the insurer.

2. That the insurer may cancel, terminate, or nonrenew the policy by providing written notice of the cancellation, or nonrenewal to the insured employee leasing company, the insured client, and DWD. Cancellation or termination of a policy by an insurer during a policy period is not effective until 30 days after that notice is provided. Nonrenewal of a policy is not effective until 60 days after that notice is provided.

3. That, if an employee leasing company that is the first named insured on the policy terminates the employee leasing agreement with a client in its entirety, the insurer may cancel or terminate the policy during the policy period by providing written notice of the cancellation or termination to the insured employee leasing company, the insured client, and DWD. Cancellation or termination of a policy by

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an insurer during a policy period for reason of termination of an employee leasing agreement is not effective until 30 days after that notice is provided.

\* 4. That if an employee leasing agreement is terminated during the policy period of a policy in which the client is the first named insured, the insurer must cancel the employee leasing company's coverage by an endorsement to the policy, and coverage of the client under the policy continues, unless the policy providing continued coverage is cancelled for failure of the client to pay premiums or for other grounds stated in the policy.

**Prescription drug treatment.** Under current law, an employer or insurer is liable for providing medicines as may be reasonably required to cure and relieve an injured employee from the effects of an injury sustained while performing services growing out of and incidental to employment. Current laws, however, limits the liability of an employer or insurer for the cost of a prescription drug dispensed for outpatient use by an injured employee to the average wholesale price of the prescription drug as quoted in the American Druggist Blue Book or the Drug Topics Red Book, whichever is less. This bill limits the liability of an employer or insurer for the cost of such a prescription drug to the average wholesale price of the prescription drug, as quoted in the Drug Topics Red Book.

Currently, if an employer denies or disputes liability for the cost of a drug prescribed to an injured employee, the pharmacist or other person licensed to prescribe and administer drugs (practitioner) who dispensed the drug may collect from the injured employee the cost of the prescription drug dispensed. This bill creates a procedure for resolving disputes between a pharmacist or practitioner and an employer or insurer over the reasonableness of the amount charged for a prescription drug dispensed for outpatient use by an injured employee.

Specifically, the bill requires an employer or insurer that disputes the reasonableness of the amount charged for a prescription drug dispensed for outpatient use by an injured employee to provide reasonable notice to the pharmacist or practitioner that the charge is being disputed. After receiving that notice, the pharmacist or practitioner may not collect the cost of the prescription drug from the injured employee and must file the dispute with DWD within six months after receiving the notice. The bill requires DWD to deny payment of a prescription drug charge that DWD determines to be unreasonable and specifies that the parties to a dispute over the reasonableness of a prescription drug charge are bound by DWD's determination unless the determination is set aside on judicial review.

Similarly, the bill also permits DWD to determine the reasonableness of the amount charged for a prescription drug dispensed for outpatient use by an injured employee in all of the following situations:

1. When confirming a compromise or stipulation in which an insurer or self-insured employer concedes liability for the cost of the prescription drug, but disputes the reasonableness of the amount charged for the prescription drug.

2. When finding after hearing that an insurer or self-insured employer is liable for the cost of the prescription drug, but that the reasonableness of the amount charged for the prescription drug is in dispute.

**Christian Science treatment.** Under current law, an employer is liable for providing Christian Science treatment, in lieu of medical treatment, as may be reasonably required to cure and relieve an injured employee who elects that treatment from the effects of an injury growing out of and incidental to employment, unless the employer files a written notice with DWD electing not to be liable for providing that treatment. This bill eliminates the right of an employer to elect not to be liable for providing Christian Science treatment at the option of an injured employee. The bill also provides that the liability of an employer for the cost of Christian Science treatment for an injured employee is limited to the usual and customary charge for that treatment.

**Work injury supplemental benefit fund.** Under current law, there is established a work injury supplemental benefit (WISB) fund, from which DWD makes payments in lieu of worker's compensation when an otherwise meritorious claim is barred by the statute of limitations, when the status or existence of the employer or insurer cannot be determined, or when there is otherwise no adequate remedy. Current law requires an employer to pay into the state treasury for deposit in the WISB fund \$20,000 when an injury results in death or in the loss of or total impairment of a hand, arm, foot, leg, or eye (death or disability payments), up to \$7,500 when a minor is injured while working without a work permit, and up to \$15,000 when a minor is injured while working at employment that is prohibited to the minor (illegally employed minor payments). Currently, the Department of Justice (DOJ) is required to represent the interests of the state in proceedings for death or disability payments, but not in proceedings for illegally employed minor payments. This bill requires DOJ to represent the interests of the state in proceedings for illegally employed minor payments.

Under current law, if the balance in the WISB fund on June 30 of any fiscal year exceeds three times the amount paid out of that fund during that fiscal year, DWD must reduce the death or disability payments made into that fund so that the balance in the fund will remain at three times the amounts paid out of the fund in the preceding fiscal year. This bill eliminates that requirement.

**Uninsured employers.** Under current law, if an employer is not insured or self-insured as required by the worker's compensation law, the employer is liable to DWD for certain payments that are deposited in an uninsured employers fund. DWD uses the uninsured employers fund to administer the laws relating to uninsured employers and to pay to the injured employees of uninsured employers benefits that are equal to the worker's compensation owed by the uninsured employers. Currently, if the secretary of workforce development determines that expected losses on known claims and on incurred, but not reported, claims, exceed 85 percent of the cash balance in the uninsured employers fund, that secretary must file a certificate with the secretary of administration attesting that the cash balance is likely to be inadequate to fund all claims against the fund and specifying a date after which no new claims will be paid.

This bill eliminates the requirement that the secretary of workforce development consider incurred, but not reported, claims in determining whether expected losses on claims exceed 85 percent of the cash balance in the uninsured

employers fund and, therefore, whether that cash balance is likely to be inadequate to fund all claims against that fund. Accordingly, under the bill, the secretary of workforce development is required to consider only expected losses on known claims in determining whether the cash balance in the uninsured employers fund is likely to be inadequate to fund all claims against that fund.

***Necessity of treatment standards.*** Under current law, DWD is required to promulgate rules establishing standards for determining the necessity of treatment provided to an injured employee, which standards must be applied by experts in rendering opinions as to necessity of treatment and by DWD in determining necessity of treatment when there is a dispute between a health care provider and an insurer or self-insured employer over necessity of treatment. Current law requires those rules, to the greatest extent practicable, to be consistent with certain Minnesota rules, as amended to January 1, 2006. This bill eliminates the requirement that the rules establishing necessity of treatment standards be consistent with those Minnesota rules.

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

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

1           **SECTION 1.** 102.16 (1m) (a) of the statutes is amended to read:

2           102.16 **(1m)** (a) If an insurer or self-insured employer concedes by compromise  
3 under sub. (1) or stipulation under s. 102.18 (1) (a) that the insurer or self-insured  
4 employer is liable under this chapter for any health services provided to an injured  
5 employee by a health service provider, but disputes the reasonableness of the fee  
6 charged by the health service provider, the department may include in its order  
7 confirming the compromise or stipulation a determination as to the reasonableness  
8 of the fee or the department may notify, or direct the insurer or self-insured employer  
9 to notify, the health service provider under sub. (2) (b) that the reasonableness of the  
10 fee is in dispute. The department shall deny payment of a health service fee that the  
11 department determines under this paragraph to be unreasonable. A health service  
12 provider and an insurer or self-insured employer that are parties to a fee dispute  
13 under this paragraph are bound by the department's determination under this

1 paragraph on the reasonableness of the disputed fee, unless that determination is  
2 set aside or modified by the department under sub. (1).

History: 1975 c. 147, 200; 1977 c. 195; 1981 c. 92, 314; 1983 a. 98; 1985 a. 83; 1989 a. 64; 1991 a. 85; 1993 a. 81; 1995 a. 117; 1997 a. 38; 1999 a. 14, 185; 2001 a. 37; 2003 a. 144; 2005 a. 172.

3 **SECTION 2.** 102.16 (1m) (b) of the statutes is amended to read:

4 102.16 (1m) (b) If an insurer or self-insured employer concedes by compromise  
5 under sub. (1) or stipulation under s. 102.18 (1) (a) that the insurer or self-insured  
6 employer is liable under this chapter for any treatment provided to an injured  
7 employee by a health service provider, but disputes the necessity of the treatment,  
8 the department may include in its order confirming the compromise or stipulation  
9 a determination as to the necessity of the treatment or the department may notify,  
10 or direct the insurer or self-insured employer to notify, the health service provider  
11 under sub. (2m) (b) that the necessity of the treatment is in dispute. The department  
12 shall apply the Before determining under this paragraph the necessity of treatment  
13 provided to an injured employee, the department may, but is not required to, obtain  
14 the opinion of an expert selected by the department who is qualified as provided in  
15 sub. (2m) (c). The standards promulgated under sub. (2m) (g) shall be applied by an  
16 expert in rendering an opinion as to necessity of treatment under this paragraph and  
17 by the department in determining necessity of treatment under this paragraph. In  
18 cases in which no standards promulgated under sub. (2m) (g) apply, the department  
19 shall find the facts regarding necessity of treatment. The department shall deny  
20 payment for any treatment that the department determines under this paragraph  
21 to be unnecessary. A health service provider and an insurer or self-insured employer  
22 that are parties to a dispute under this paragraph over the necessity of treatment are  
23 bound by the department's determination under this paragraph on the necessity of

1 the disputed treatment, unless that determination is set aside or modified by the  
2 department under sub. (1).✓

History: 1975 c. 147, 200; 1977 c. 195; 1981 c. 92, 314; 1983 a. 98; 1985 a. 83; 1989 a. 64; 1991 a. 85; 1993 a. 81; 1995 a. 117; 1997 a. 38; 1999 a. 14, 185; 2001 a. 37; 2003 a. 144; 2005 a. 172.

3 **SECTION 3.** 102.16 (1m) (c) of the statutes is created to read:

4 102.16 (1m) (c) If an insurer or self-insured employer ✓ concedes by compromise  
5 under sub. (1) ✓ or stipulation under s. 102.18 (1) (a) ✓ that the insurer or self-insured  
6 employer is liable under this chapter for the cost of a prescription drug dispensed  
7 under s. 102.425 (2) ✓ for outpatient use by an injured employee ✓, but disputes the  
8 reasonableness of the amount charged for the prescription drug, the department may  
9 include in its order confirming the compromise or stipulation a determination as to  
10 the reasonableness of the prescription drug charge or the department may notify, or  
11 direct the insurer or self-insured ✓ employer to notify, the ✓ pharmacist or practitioner  
12 dispensing the prescription drug under s. 102.425 (4m) (b) ✓ that the reasonableness  
13 of the prescription drug charge is in dispute. The department shall deny payment  
14 of a prescription drug charge that the department determines under this paragraph  
15 to be unreasonable. ✓ A pharmacist or practitioner and an insurer or self-insured  
16 employer that are parties to a dispute under this paragraph over the reasonableness  
17 of a prescription drug charge are bound by the department's determination under  
18 this paragraph ✓ on the reasonableness of the disputed prescription drug charge,  
19 unless that determination is set aside or modified by the department under ✓ sub. (1).

20 **SECTION 4.** 102.16 (2) (a) of the statutes is amended to read:

21 102.16 (2) (a) Except as provided in this paragraph, the department has  
22 jurisdiction under this subsection, sub. (1m) (a), and s. 102.17 to resolve a dispute  
23 between a health service provider and an insurer or self-insured employer over the  
24 reasonableness of a fee charged by the health service provider for health services

1 provided to an injured employee who claims benefits under this chapter. A health  
 2 service provider may not submit a fee dispute to the department under this  
 3 subsection before all treatment by the health service provider of the employee's  
 4 injury has ended if the amount in controversy, whether based on a single charge or  
 5 a combination of charges for one or more days of service, is less than \$25. After all  
 6 treatment by a health service provider of an employee's injury has ended, the health  
 7 service provider may submit any fee dispute to the department, regardless of the  
 8 amount in controversy. The department shall deny payment of a health service fee  
 9 that the department determines under this subsection, <sup>✓</sup>sub. (1m) (a), or s. 102.18 (1)  
 10 (b) to be unreasonable.

History: 1975 c. 147, 200; 1977 c. 195; 1981 c. 92, 314; 1983 a. 98; 1985 a. 83; 1989 a. 64; 1991 a. 85; 1993 a. 81; 1995 a. 117; 1997 a. 38; 1999 a. 14, 185; 2001 a. 37; 2003 a. 144; 2005 a. 172.

11 **SECTION 5.** 102.16 (2) (am) of the statutes is amended to read:

12 102.16 (2) (am) A health service provider and an insurer or self-insured  
 13 employer that are parties to a fee dispute under this subsection are bound by the  
 14 department's determination under this subsection on the reasonableness of the  
 15 disputed fee, unless that determination is set aside on judicial review as provided in  
 16 par. (f). <sup>↓</sup>~~A health service provider and an insurer or self-insured employer that are~~  
 17 ~~parties to a fee dispute under sub. (1m) (a) are bound by the department's~~  
 18 ~~determination under sub. (1m) (a) on the reasonableness of the disputed fee, unless~~  
 19 ~~that determination is set aside or modified by the department under sub. (1). An~~  
 20 ~~insurer or self-insured employer that is a party to a fee dispute under s. 102.17 and~~  
 21 ~~a health service provider are bound by the department's determination under s.~~  
 22 ~~102.18 (1) (b) on the reasonableness of the disputed fee, unless that determination~~

1 is set aside, reversed, or modified by the department under s. 102.18 (3) or by the  
2 commission under s. 102.18 (3) or (4) or is set aside on judicial review under s. 102.23. ✓

History: 1975 c. 147, 200; 1977 c. 195; 1981 c. 92, 314; 1983 a. 98; 1985 a. 83; 1989 a. 64; 1991 a. 85; 1993 a. 81; 1995 a. 117; 1997 a. 38; 1999 a. 14, 185; 2001 a. 37; 2003 a. 144; 2005 a. 172.

3 SECTION 6. 102.16 (2m) (a) of the statutes is amended to read:

4 102.16 (2m) (a) Except as provided in this paragraph, the department has  
5 jurisdiction under this subsection, sub. (1m) (b), and s. 102.17 to resolve a dispute  
6 between a health service provider and an insurer or self-insured employer over the  
7 necessity of treatment provided for an injured employee who claims benefits under  
8 this chapter. A health service provider may not submit a dispute over necessity of  
9 treatment to the department under this subsection before all treatment by the health  
10 service provider of the employee's injury has ended if the amount in controversy,  
11 whether based on a single charge or a combination of charges for one or more days  
12 of service, is less than \$25. After all treatment by a health service provider of an  
13 employee's injury has ended, the health service provider may submit any dispute  
14 over necessity of treatment to the department, regardless of the amount in  
15 controversy. The department shall deny payment for any treatment that the  
16 department determines under this subsection, ✓ sub. (1m) (b), or s. 102.18 (1) (b) to be  
17 unnecessary.

History: 1975 c. 147, 200; 1977 c. 195; 1981 c. 92, 314; 1983 a. 98; 1985 a. 83; 1989 a. 64; 1991 a. 85; 1993 a. 81; 1995 a. 117; 1997 a. 38; 1999 a. 14, 185; 2001 a. 37; 2003 a. 144; 2005 a. 172.

18 SECTION 7. 102.16 (2m) (am) of the statutes is amended to read:

19 102.16 (2m) (am) A health service provider and an insurer or self-insured  
20 employer that are parties to a dispute under this subsection over the necessity of  
21 treatment are bound by the department's determination under this subsection on the  
22 necessity of ~~that~~ the disputed treatment, unless that determination is set aside on  
23 judicial review as provided in par. (e). ↓ ~~A health service provider and an insurer or~~

1 ~~self-insured employer that are parties to a dispute under sub. (1m) (b) over the~~  
 2 ~~necessity of treatment are bound by the department's determination under sub. (1m)~~  
 3 ~~(b) on the necessity of that treatment, unless that determination is set aside or~~  
 4 ~~modified by the department under sub. (1). An insurer or self-insured employer that~~  
 5 ~~is a party to a dispute under s. 102.17 over the necessity of treatment and a health~~  
 6 ~~service provider are bound by the department's determination under s. 102.18 (1) (b)~~  
 7 ~~on the necessity of that treatment, unless that determination is set aside, reversed~~  
 8 ~~or modified by the department under s. 102.18 (3) or by the commission under s.~~  
 9 ~~102.18 (3) or (4) or is set aside on judicial review under s. 102.23.~~ ✓

History: 1975 c. 147, 200; 1977 c. 195; 1981 c. 92, 314; 1983 a. 98; 1985 a. 83; 1989 a. 64; 1991 a. 85; 1993 a. 81; 1995 a. 117; 1997 a. 38; 1999 a. 14, 185; 2001 a. 37; 2003 a. 144; 2005 a. 172.

10 **SECTION 8.** 102.16 (2m) (c) of the statutes is amended to read:

11 102.16 (2m) (c) Before determining under this subsection the necessity of  
 12 treatment provided for an injured employee who claims benefits under this chapter,  
 13 the department shall obtain a written opinion on the necessity of the treatment in  
 14 dispute from an expert selected by the department. ✓ Before determining under sub.  
 15 (1m) (b) or s. 102.18 (1) (bg) 2. the necessity of treatment provided for an injured  
 16 employee who claims benefits under this chapter, the department may, but is not  
 17 required to, obtain such an expert opinion. ✓ To qualify as an expert, a person must  
 18 be licensed to practice the same health care profession as the individual health  
 19 service provider whose treatment is under review and must either be performing  
 20 services for an impartial health care services review organization or be a member of  
 21 an independent panel of experts established by the department under par. (f). The  
 22 standards promulgated under par. (g) shall be applied by an expert in rendering an  
 23 opinion as to necessity of treatment under this paragraph and by the department in  
 24 determining necessity of treatment under this paragraph. In cases in which no

1 standards promulgated under sub. (2m) (g) apply, the department shall find the facts  
2 regarding necessity of treatment. The department shall adopt the written opinion  
3 of the expert as the department's determination on the issues covered in the written  
4 opinion, unless the health service provider or the insurer or self-insured employer  
5 present clear and convincing written evidence that the expert's opinion is in error.

**History:** 1975 c. 147, 200; 1977 c. 195; 1981 c. 92, 314; 1983 a. 98; 1985 a. 83; 1989 a. 64; 1991 a. 85; 1993 a. 81; 1995 a. 117; 1997 a. 38; 1999 a. 14, 185; 2001 a. 37; 2003 a. 144; 2005 a. 172.

6 **SECTION 9.** 102.16 (2m) (g) of the statutes is amended to read:

7 102.16 (2m) (g) The department shall promulgate rules establishing  
8 procedures and requirements for the necessity of treatment dispute resolution  
9 process under this subsection, including rules setting the fees under par. (f) and rules  
10 establishing standards for determining the necessity of treatment provided to an  
11 injured employee. ~~The rules establishing those standards shall, to the greatest~~  
12 ~~extent possible, be consistent with Minnesota rules 5221.6010 to 5221.8900, as~~  
13 ~~amended to January 1, 2006.~~ ✓ Before the department may amend the rules  
14 establishing those standards, the department shall establish an advisory committee  
15 under s. 227.13 composed of health care providers providing treatment under s.  
16 102.42 to advise the department and the council on worker's compensation on  
17 amending those rules.

18 **Cross Reference:** ~~Cross Reference:~~ ~~Cross Reference:~~ See also s. DWD 80.73, Wis. adm. code. **Cross Reference:**

**History:** 1975 c. 147, 200; 1977 c. 195; 1981 c. 92, 314; 1983 a. 98; 1985 a. 83; 1989 a. 64; 1991 a. 85; 1993 a. 81; 1995 a. 117; 1997 a. 38; 1999 a. 14, 185; 2001 a. 37; 2003 a. 144; 2005 a. 172.

19 **SECTION 10.** 102.16 (3) of the statutes is amended to read:

20 102.16 (3) No employer subject to this chapter may solicit, receive, ✓ or collect  
21 any money from an employee or any other person or make any deduction from their  
22 wages, either directly or indirectly, for the purpose of discharging any liability under  
23 this chapter or recovering premiums paid on a contract described under s. 102.31 (1)  
24 (a) or a policy described under s. 102.315 (3), (4), ✓ or (5) (a); nor may any such ✓ employer

1 subject to this chapter ✓ sell to an employee or other person, or solicit or require the  
 2 employee or other person to purchase, medical, chiropractic, podiatric, psychological,  
 3 dental, or hospital tickets or contracts for medical, surgical, hospital, or other health  
 4 care treatment ~~which~~ that ✓ is required to be furnished by that employer.

**History:** 1975 c. 147, 200; 1977 c. 195; 1981 c. 92, 314; 1983 a. 98; 1985 a. 83; 1989 a. 64; 1991 a. 85; 1993 a. 81; 1995 a. 117; 1997 a. 38; 1999 a. 14, 185; 2001 a. 37; 2003 a. 144; 2005 a. 172.

5 **SECTION 11.** 102.18 (1) (bg) 1. of the statutes is amended to read:

6 102.18 (1) (bg) 1. If the department finds under par. (b) that an insurer or  
 7 self-insured employer is liable under this chapter for any health services provided  
 8 to an injured employee by a health service provider, but that the reasonableness of  
 9 the fee charged by the health service provider is in dispute, the department may  
 10 include in its order under par. (b) a determination as to the reasonableness of the fee  
 11 or the department may notify, or direct the insurer or self-insured employer to notify,  
 12 the health service provider under s. 102.16 (2) (b) that the reasonableness of the fee  
 13 is in dispute. The department shall deny payment of a health service fee that the  
 14 department determines under this subdivision ✓ to be unreasonable. An insurer or  
 15 self-insured ✓ employer and a health service provider that are parties to a fee dispute  
 16 under this ✓ subdivision are bound by the department's determination under this  
 17 subdivision ✓ on the reasonableness of the disputed fee, unless that determination is  
 18 set aside, reversed, or modified by the department under sub. ✓ (3) or by the  
 19 commission ✓ under sub. ✓ (3) or (4) ✓ or is set aside on judicial review under s. ✓ 102.23.

**History:** 1971 c. 148; 1973 c. 150; 1975 c. 147; 1977 c. 29, 195; 1979 c. 89, 278, 355; 1981 c. 92; 1983 a. 98; 1985 a. 83; 1987 a. 179; 1989 a. 64; 1997 a. 38; 1999 a. 14; 2001 a. 37; 2003 a. 144; 2005 a. 172.

20 **SECTION 12.** 102.18 (1) (bg) 2. of the statutes is amended to read:

21 102.18 (1) (bg) 2. If the department finds under par. (b) that an employer or  
 22 insurance carrier is liable under this chapter for any treatment provided to an  
 23 injured employee by a health service provider, but that the necessity of the treatment

1 is in dispute, the department may include in its order under par. (b) a determination  
2 as to the necessity of the treatment or the department may notify, or direct the  
3 employer or insurance carrier to notify, the health service provider under s. 102.16  
4 (2m) (b) that the necessity of the treatment is in dispute. ~~The department shall apply~~  
5 ~~the~~ Before determining under this subdivision the necessity of treatment provided  
6 to an injured employee, the department may, but is not required to, obtain the  
7 opinion of an expert selected by the department who is qualified as provided in s.  
8 102.16 (2m) (c). The standards promulgated under s. 102.16 (2m) (g) shall be applied  
9 by an expert in rendering an opinion as to necessity of treatment under this  
10 subdivision and by the department in determining necessity of treatment under this  
11 paragraph subdivision. In cases in which no standards promulgated under s. 102.16  
12 (2m) (g) apply, the department shall find the facts regarding necessity of treatment.  
13 The department shall deny payment for any treatment that the department  
14 determines under this subdivision to be unnecessary. An insurer or self-insured  
15 employer and a health service provider that are parties to a dispute under this  
16 subdivision over the necessity of treatment are bound by the department's  
17 determination under this subdivision on the necessity of the disputed treatment,  
18 unless that determination is set aside, reversed, or modified by the department  
19 under sub. (3) or by the commission under sub. (3) or (4) or is set aside on judicial  
20 review under s. 102.23.

History: 1971 c. 148; 1973 c. 150; 1975 c. 147; 1977 c. 29, 195; 1979 c. 89, 278, 355; 1981 c. 92; 1983 a. 98; 1985 a. 83; 1987 a. 179; 1989 a. 64; 1997 a. 38; 1999 a. 14; 2001 a. 37; 2003 a. 144; 2005 a. 172.

21 **SECTION 13.** 102.18 (1) (bg) 3. of the statutes is created to read:

22 102.18 (1) (bg) 3. If the department finds under par. (b) that an insurer or  
23 self-insured employer is liable under this chapter for the cost of a prescription drug  
24 dispensed under s. 102.425 (2) for outpatient use by an injured employee, but that

1 the reasonableness of the amount charged for that prescription drug is in dispute,  
2 the department may include in its order under par. (b) a determination as to the  
3 reasonableness of the prescription drug charge or the department may notify, or  
4 direct the insurer or self-insured employer to notify, the pharmacist or practitioner  
5 dispensing the prescription drug under s. 102.425 (4m) (b) that the reasonableness  
6 of the prescription drug charge is in dispute. The department shall deny payment  
7 of a prescription drug charge that the department determines under this subdivision  
8 to be unreasonable. An insurer or self-insured employer and a pharmacist or  
9 practitioner that are parties to a dispute under this subdivision over the  
10 reasonableness of a prescription drug charge are bound by the department's  
11 determination under par. (b) on the reasonableness of the disputed prescription drug  
12 charge, unless that determination is set aside, reversed, or modified by the  
13 department under sub. (3) or by the commission under sub. (3) or (4) or is set aside  
14 on judicial review under s. 102.23.

15 **SECTION 14.** 102.29 (6m) of the statutes is created to read:

16 102.29 (6m) No leased employee, as defined in s. 102.315 (1) (g), who makes  
17 a claim for compensation may make a claim or maintain an action in tort against the  
18 client, as defined in s. 102.315 (1) (b), that accepted the services of the leased  
19 employee.

20 **SECTION 15.** 102.31 (2m) of the statutes is repealed.

21 **SECTION 16.** 102.315 of the statutes is created to read:

22 **102.315 Worker's compensation insurance; employee leasing**  
23 **companies.** (1) DEFINITIONS. In this section:

24 (a) "Bureau" means the Wisconsin compensation rating bureau under s.  
25 626.06.

1 (b) "Client" means a person that obtains all or part of its nontemporary, ongoing  
2 employee workforce through an employee leasing agreement.

3 (c) "Divided workforce" means a workforce in which some of the employees of  
4 a client are leased employees and some of the employees of the client are not leased  
5 employees.

6 (d) "Divided workforce plan" means a plan under which 2 worker's  
7 compensation insurance policies are issued to cover the employees of a client that has  
8 a divided workforce, one policy covering the leased employees of the client and one  
9 policy covering the employees of the client who are not leased employees.

10 (e) "Employee leasing agreement" means a written contract between an  
11 employee leasing company and a client under which the employee leasing company  
12 provides all or part of the nontemporary, ongoing employee workforce of the client.

13 (f) "Employee leasing company" means a person that contracts to provide the  
14 nontemporary, ongoing employee workforce of a client under a written agreement,  
15 regardless of whether the person uses the term "professional employer  
16 organization," "PEO," "staff leasing company," "registered staff leasing company," or  
17 "employee leasing company," or uses any other, similar name, as part of the person's  
18 business name or to describe the person's business. "Employee leasing company"  
19 does not include a cooperative educational service agency.

20 (g) "Leased employee" means a nontemporary, ongoing employee whose  
21 services are obtained by a client under an employee leasing agreement.

22 (h) "Master policy" means a single worker's compensation insurance policy  
23 issued by an insurer authorized to do business in this state to an employee leasing  
24 company in the name of the employee leasing company that covers more than one  
25 client of the employee leasing company.

1 (i) "Multiple coordinated policy" means a contract of insurance for worker's  
2 compensation under which an insurer authorized to do business in this state issues  
3 separate worker's compensation insurance policies to an employee leasing company  
4 for each client of the employee leasing company that is insured under the contract.

5 (j) "Small client" means a client that has an unmodified annual premium  
6 assignable to its business, including the business of all entities or organizations that  
7 are under common control or ownership with the client, that is equal to or less than  
8 the threshold below which employers are not experience rated under the standards  
9 and criteria under ss. 626.11 and 626.12, without regard to whether the client has  
10 a divided workforce.

11 (2) EMPLOYEE LEASING COMPANY LIABLE. An employee leasing company is the  
12 employer of a leased employee whom the employee leasing company has placed with  
13 a client under an employee leasing agreement. An employee leasing company is  
14 liable under s. 102.03 for all compensation payable under this chapter to a leased  
15 employee, including any payments required under s. 102.16 (3), 102.18 (1) (b) or (bp),  
16 102.22 (1), 102.35 (3), 102.57, or 102.60. Except as permitted under s. 102.29, an  
17 employee leasing company may not seek or receive reimbursement from another  
18 employer for any payments made as a result of that liability. An employee leasing  
19 company is not liable under s. 102.03 for any compensation payable under this  
20 chapter to an employee of a client who is not a leased employee.

21 (3) MULTIPLE COORDINATED POLICY REQUIRED. Except as provided in subs. (4) and  
22 (5) (a), an employee leasing company shall insure its liability under sub. (2) by  
23 obtaining a separate worker's compensation insurance policy for each client of the  
24 employee leasing company under a multiple coordinated policy. The policy shall  
25 name both the employee leasing company and the client as named insureds, shall

1 indicate which named insured is the employee leasing company and which is the  
2 client, shall designate either the employee leasing company or the client, but not  
3 both, as the first named insured, and shall provide the mailing address of each  
4 named insured. Except as permitted under sub. (6), an insurer may issue a policy  
5 for a client under this subsection only if all of the employees of the client are leased  
6 employees and are covered under the policy.

7 (4) MASTER POLICY; APPROVAL REQUIRED. An employee leasing company may  
8 insure its liability under sub. (2) by obtaining a master policy that has been approved  
9 by the commissioner of insurance as provided in this subsection. The commissioner  
10 of insurance may approve the issuance of a master policy if the insurer proposing to  
11 issue the master policy submits a filing to the bureau showing that the insurer has  
12 the technological capacity and operation capability to provide to the bureau  
13 information, including unit statistical data, information concerning proof of  
14 coverage and cancellation, termination, and nonrenewal of coverage, and any other  
15 information that the bureau may require, at the client level and in a format required  
16 by the bureau and the bureau submits the filing to the commissioner of insurance for  
17 approval under s. 626.13. A master policy filing under this subsection shall also  
18 establish basic manual rules governing the insurance of a divided workforce that are  
19 consistent with sub. (6) and the cancellation, termination, and nonrenewal of policies  
20 that are consistent with sub. (10). On approval by the commissioner of insurance of  
21 a master policy filing, an insurer may issue a master policy to an employee leasing  
22 company insuring the liability of the employee leasing company under sub. (2).

23 (5) MASTER POLICY; SMALL CLIENTS. (a) Regardless of whether a master policy  
24 has been approved under sub. (4), an employee leasing company may insure its  
25 liability under sub. (2) with respect to a group of small clients of the employee leasing

1 company by obtaining a master policy in the voluntary market insuring that liability.  
2 The fact that an employee leasing company has a small client that is covered under  
3 a mandatory risk-sharing plan under s. 619.01 does not preclude the employee  
4 leasing company from obtaining a master policy under this paragraph so long as that  
5 small client is not covered under the master policy. An insurer may issue a master  
6 policy under this paragraph insuring in the voluntary market the liability under sub.  
7 (2) of an employee leasing company with respect to a group of small clients of the  
8 employee leasing company regardless of whether any of those small clients has a  
9 divided workforce.

10 (b) Within 30 days after the effective date of an employee leasing agreement  
11 with a small client that is covered under a master policy under par. (a), the employee  
12 leasing company shall report to the department all of the following information:

13 1. The name and address of the small client and of each entity or organization  
14 that is under common control or ownership with the small client.

15 2. The number of employees initially covered under the master policy.

16 3. The estimated unmodified annual premium assignable to the small client's  
17 business, including the business of all entities or organizations that are under  
18 common control or ownership with the small client, without regard to whether the  
19 small client has a divided workforce, which information the small client shall report  
20 to the employee leasing company.

21 4. The effective date of the employee leasing agreement.

22 (c) Within 30 days after the effective date of coverage of a small client under  
23 a master policy under par. (a), the insurer or, if authorized by the insurer, the  
24 employee leasing company shall file proof of that coverage with the department.

25 Coverage of a small client under a master policy becomes binding when the insurer

1 or employee leasing company files proof of that coverage under this paragraph or  
2 provides notice of coverage to the small client, whichever occurs first. Nothing in this  
3 paragraph requires an employee leasing company or an employee of an employee  
4 leasing company to be licensed as an insurance intermediary under ch. 628.

5 (d) If at any time the unmodified annual premium assignable to the business  
6 of a small client that is covered under a master policy under par. (a), including the  
7 business of all entities or organizations that are under common control or ownership  
8 with the small client, without regard to whether the small client has a divided  
9 workforce, exceeds the threshold below which employers are not experience rated  
10 under the standards and criteria under ss. 626.11 and 626.12, the employee leasing  
11 company shall notify the insurer and obtain coverage for the small client under sub.  
12 (3) or (4).

13 (6) DIVIDED WORKFORCE. (a) If a client notifies the department as provided  
14 under par. (b) of its intent to have a divided workforce and the department  
15 specifically consents by written order to a divided workforce plan, an insurer may  
16 issue a worker's compensation insurance policy covering only the leased employees  
17 of the client. An insurer that issues a policy covering only the leased employees of  
18 a client is not liable under s. 102.03 for any compensation payable under this chapter  
19 to an employee of the client who is not a leased employee unless the insurer also  
20 issues a policy covering that employee. A client that has a divided workforce shall  
21 insure its employees who are not leased employees in the voluntary market and may  
22 not insure those employees under the mandatory risk-sharing plan under s. 619.01  
23 unless the leased employees of the client are covered under that plan.

1 (b) A client that intends to have a divided workforce shall notify the department  
2 of that intent on a form prescribed by the department that includes all of the  
3 following:

4 1. The names and mailing addresses of the client and the employee leasing  
5 company, the effective date of the employee leasing agreement, a description of the  
6 employees of the client who are not leased employees, and such other information as  
7 the department may require.

8 2. Except as provided in par. (c), evidence that the employees of the client who  
9 are not leased employees are covered in the voluntary market. That evidence shall  
10 be in the form of a copy of the information page or declaration page of a worker's  
11 compensation insurance policy or binder evidencing placement of coverage in the  
12 voluntary market covering those employees.

13 3. An agreement by the client to assume full responsibility to immediately pay  
14 all compensation and other payments payable under this chapter as may be required  
15 by the department should a dispute arise between 2 or more insurers as to liability  
16 under this chapter for an injury sustained while a divided workforce plan is in effect  
17 pending final resolution of that dispute. This subdivision does not preclude a client  
18 from insuring that responsibility in an insurer authorized to do business in this  
19 state.

20 (c) If the leased employees of a client are covered under a mandatory  
21 risk-sharing plan under s. 619.01, the client may, instead of providing the evidence  
22 required under par. (b) 2., provide evidence in its notification under par. (b) that both  
23 the leased employees of the client and the employees of the client who are not leased  
24 employees are covered under that mandatory risk-sharing plan. That evidence shall  
25 be in the form of a copy of the information page or declaration page of a worker's

1 compensation insurance policy or binder evidencing placement of coverage under the  
2 mandatory risk-sharing plan covering both those leased employees and employees  
3 who are not leased employees.

4 (d) When the department receives a notification under par. (b), the department  
5 shall immediately provide a copy of the notification to the bureau.

6 (e) 1. If a client intends to terminate a divided workforce plan, the client shall  
7 notify the department of that intent on a form prescribed by the department.  
8 Termination of a divided workforce plan by a client is not effective until 10 days after  
9 notice of the termination is received by the department.

10 2. If an insurer cancels, terminates, or does not renew a worker's compensation  
11 insurance policy issued under a divided workforce plan that covers in the voluntary  
12 market the employees of a client who are not leased employees, the divided workforce  
13 plan is terminated on the effective date of the cancellation, termination, or  
14 nonrenewal of the policy, unless the client submits evidence under par. (c) that both  
15 the leased employees of the client and the employees of the client who are not leased  
16 employees are covered under a mandatory risk-sharing plan.

17 3. If an insurer cancels, terminates, or does not renew a worker's compensation  
18 insurance policy issued under a divided workforce plan that covers under the  
19 mandatory risk-sharing plan under s. 619.01 the employees of a client who are not  
20 leased employees, the divided workforce plan is terminated on the effective date of  
21 the cancellation, termination, or nonrenewal of the policy.

22 (7) FILING OF CONTRACTS. An insurer that provides a policy under sub. (3), (4),  
23 or (5) (a) shall file the policy as provided in s. 626.35.

24 (8) COVERAGE OF CERTAIN EMPLOYEES. (a) A sole proprietor, a partner, or a  
25 member of a limited liability company is not eligible for worker's compensation

1 benefits under a policy issued under sub. (3), (4), or (5) (a) unless the sole proprietor,  
2 partner, or member elects coverage under s. 102.075 by an endorsement on the policy  
3 naming the sole proprietor, partner, or member who has so elected.

4 (b) An officer of a corporation is eligible for worker's compensation benefits  
5 under a policy issued under sub. (3), (4), or (5) (a), unless the officer elects under s.  
6 102.076 not to be covered under the policy by an endorsement on the policy naming  
7 the officer who has so elected.

8 (c) An employee leasing company shall obtain a worker's compensation  
9 insurance policy that is separate from a policy covering the employees whom it leases  
10 to its clients to cover the employees of the employee leasing company who are not  
11 leased employees.

12 (9) PREMIUMS. (a) An insurer that issues a policy under sub. (3), (4), or (5) (a)  
13 may charge a premium for coverage under that policy that complies with the  
14 applicable classifications, rules, rates, and rating plans filed with and approved by  
15 the commissioner of insurance under s. 626.13.

16 (b) For a policy issued under sub. (3) in which an employee leasing company  
17 is the first named insured or for a master policy issued under sub. (4) or (5) (a), an  
18 insurer may obligate only the employee leasing company to pay premiums due for  
19 a client's coverage under the policy and may not recover any unpaid premiums due  
20 for that coverage from the client.

21 (c) For a policy issued under sub. (3) in which a client is the first named insured  
22 and for which premium payments are coordinated under an employee leasing  
23 agreement, an insurer may obligate only the employee leasing company to pay  
24 premiums due for the client's coverage under the policy and may not recover any  
25 unpaid premiums due for that coverage from the client.

1 (d) This subsection<sup>✓</sup> does not prohibit an insurer from doing any of the following:

2 1. Collecting premiums or other charges due with respect to a client by means  
3 of list billing through an employee leasing company.<sup>✓</sup>

4 2. Requiring an employee leasing company to maintain a letter of credit or  
5 other form of security to ensure payment of a premium.<sup>✓</sup>

6 3. Issuing policies that have a common renewal date to all, or a class of all,  
7 clients of an employee leasing company.<sup>✓</sup>

8 4. Grouping together the clients of an employee leasing company for the  
9 purpose of offering dividend eligibility and paying dividends to those clients in  
10 compliance with s.<sup>✓</sup> 631.51.

11 5. Applying a discount to the premium charged with respect to a client as  
12 permitted by the bureau.<sup>✓</sup>

13 6. Applying a retrospective rating option for determining the premium charged  
14 with respect to a client.<sup>✓</sup> No insurer or employee leasing company may impose on,  
15 allocate to, or collect from a client a penalty under a retrospective rating option  
16 arrangement. This subdivision<sup>✓</sup> does not prohibit an insurer from requiring an  
17 employee leasing company to pay a penalty under a retrospective rating option  
18 arrangement with respect to a client of the employee leasing company.<sup>✓</sup>

19 (10) CANCELLATION, TERMINATION, AND NONRENEWAL OF POLICIES.<sup>✓</sup> (a) 1. A policy  
20 issued under sub. (3)<sup>✓</sup> in which the employee leasing company is the first named  
21 insured and a policy issued under sub. (4)<sup>✓</sup> or (5)<sup>✓</sup> (a) may be cancelled, terminated, or  
22 nonrenewed as provided in subds.<sup>✓</sup> 2. to 4.

23 2. The insureds under a policy described in subd. 1.<sup>✓</sup> may cancel the policy  
24 during the policy period if both the employee leasing company and the client agree  
25 to the cancellation, the cancellation is confirmed by the employee leasing company

1 promptly providing written confirmation of the cancellation to the client or by the  
2 client agreeing to the cancellation in writing, and notice of the cancellation is  
3 provided to the insurer as required under s. 102.31 (2) (a).

4 3. Subject to subd. 4., an insurer may cancel, terminate, or nonrenew a policy  
5 described in subd. 1. by providing written notice of the cancellation, termination, or  
6 nonrenewal to the insured employee leasing company and to the department as  
7 required under s. 102.31 (2) (a) and by providing that notice to the insured client.  
8 The insurer is not required to state in the notice to the insured client the facts on  
9 which the decision to cancel, terminate, or nonrenew the policy is based. Except as  
10 provided in s. 102.31 (2) (b), cancellation or termination of a policy under this  
11 subdivision for any reason other than nonrenewal is not effective until 30 days after  
12 the insurer has provided written notice of the cancellation or termination to the  
13 insured employee leasing company, the insured client, and the department. Except  
14 as provided in s. 102.31 (2) (b), nonrenewal of a policy under this subdivision is not  
15 effective until 60 days after the insurer has provided written notice of the  
16 cancellation or termination to the insured employee leasing company, the insured  
17 client, and the department.

18 4. If an employee leasing company terminates an employee leasing agreement  
19 with a client in its entirety, an insurer may cancel or terminate a policy described in  
20 subd. 1. covering that client during the policy period by providing written notice of  
21 the cancellation or termination to the insured employee leasing company and the  
22 department as required under s. 102.31 (2) (a) and by providing that notice to the  
23 insured client. The insurer shall state in the notice to the insured client that the  
24 policy is being cancelled or terminated due to the termination of the employee leasing  
25 agreement. Except as provided in s. 102.31 (2) (b), cancellation or termination of a

1 policy under this subdivision<sup>✓</sup> is not effective until 30<sup>✓</sup> days after the insurer has  
2 provided written notice of the cancellation or termination to the insured employee  
3 leasing company, the insured client, and the department.

4 (b) 1. A policy issued under sub. (3)<sup>✓</sup> in which the client is the first named insured  
5 may be cancelled, terminated, or nonrenewed as provided in subds. 2. to 4.<sup>✓</sup>

6 2. The insureds under a policy described in subd. 1.<sup>✓</sup> may cancel the policy  
7 during the policy period if both the employee leasing company and the client agree  
8 to the cancellation, the cancellation is confirmed by the employee leasing company  
9 promptly providing written confirmation of the cancellation to the client or by the  
10 client agreeing to the cancellation in writing, and notice of the cancellation is  
11 provided to the insurer as required under s. 102.31 (2) (a).<sup>✓</sup>

12 3. An insurer may cancel, terminate, or nonrenew a policy described in subd.  
13 1.,<sup>✓</sup> including cancellation or termination of a policy providing continued coverage  
14 under subd. 4.<sup>✓</sup> during the policy period for failure of the client to pay a premium due  
15 or on grounds stated in the policy, by providing written notice of the cancellation,  
16 termination, or nonrenewal to the insured employee leasing company and to the  
17 department as required under s. 102.31 (2) (a)<sup>✓</sup> and by providing that notice to the  
18 insured client. Except as provided in s. 102.31 (2) (b),<sup>✓</sup> cancellation or termination of  
19 a policy under this subdivision<sup>✓</sup> for any reason other than nonrenewal is not effective  
20 until 30<sup>✓</sup> days after the insurer has provided written notice of the cancellation or  
21 termination to the insured employee leasing company, the insured client, and the  
22 department. Except as provided in s. 102.31 (2) (b),<sup>✓</sup> nonrenewal of a policy under this  
23 subdivision is not effective until 60<sup>✓</sup> days after the insurer has provided written notice  
24 of the cancellation or termination to the insured employee leasing company, the  
25 insured client, and the department.<sup>✓</sup>

1           4. If an employee leasing agreement is terminated during the policy period of  
2 a policy described in subd. 1.,<sup>✓</sup> an insurer shall cancel the employee leasing company's  
3 coverage under the policy by an endorsement to the policy and coverage of the client  
4 under the policy shall continue as to all employees of the client unless the policy is  
5 cancelled or terminated as permitted under subd. 3.<sup>✓</sup>

6           **SECTION 17.** 102.42 (1) of the statutes is amended to read:

7           102.42 (1) TREATMENT OF EMPLOYEE. The employer shall supply such medical,  
8 surgical, chiropractic, psychological, podiatric, dental, and hospital treatment,  
9 medicines, medical and surgical supplies, crutches, artificial members, appliances,  
10 and training in the use of artificial members and appliances, or, at the option of the  
11 employee, ~~if the employer has not filed notice as provided in sub. (4),~~<sup>✓</sup> Christian  
12 Science treatment in lieu of medical treatment, medicines, and medical supplies, as  
13 may be reasonably required to cure and relieve from the effects of the injury, and to  
14 attain efficient use of artificial members and appliances, and in case of the  
15 employer's neglect or refusal seasonably to do so, or in emergency until it is  
16 practicable for the employee to give notice of injury, the employer shall be liable for  
17 the reasonable expense incurred by or on behalf of the employee in providing such  
18 treatment, medicines, supplies, and training. ~~Where~~<sup>✓</sup> When the employer has  
19 knowledge of the injury and the necessity for treatment, the employer's failure to  
20 tender the necessary treatment, medicines, supplies, and training constitutes such  
21 neglect or refusal. The employer shall also be liable for reasonable expense incurred  
22 by the employee for necessary treatment to cure and relieve the employee from the  
23 effects of occupational disease prior to the time that the employee knew or should  
24 have known the nature of his or her disability and its relation to employment, and  
25 as to such treatment subs. (2) and (3) shall not apply. The obligation to furnish such

1 treatment and appliances shall continue as required to prevent further deterioration  
2 in the condition of the employee or to maintain the existing status of such condition  
3 whether or not healing is completed.

**History:** 1971 c. 61; 1973 c. 150, 282; 1975 c. 147; 1977 c. 195 ss. 24 to 28, 45; 1977 c. 273; 1979 c. 278; 1981 c. 20; 1987 a. 179; 1989 a. 64; 1995 a. 27 ss. 3743m, 3744, 9130 (4); 1997 a. 3, 38; 1999 a. 9; 2001 a. 37; 2003 a. 144; 2005 a. 172.

4 **SECTION 18.** 102.42 (4) of the statutes is amended to read:

5 102.42 (4) CHRISTIAN SCIENCE. Any The liability of an ✓ employer may elect not  
6 to be subject to the provisions for for the cost of ✓ Christian Science treatment provided  
7 for in this section by filing written notice of such election with the department to an  
8 injured employee is limited to the usual and customary charge for that treatment. ✓

**History:** 1971 c. 61; 1973 c. 150, 282; 1975 c. 147; 1977 c. 195 ss. 24 to 28, 45; 1977 c. 273; 1979 c. 278; 1981 c. 20; 1987 a. 179; 1989 a. 64; 1995 a. 27 ss. 3743m, 3744, 9130 (4); 1997 a. 3, 38; 1999 a. 9; 2001 a. 37; 2003 a. 144; 2005 a. 172.

9 **SECTION 19.** 102.425 (3) (a) 1. of the statutes is amended to read:

10 102.425 (3) (a) 1. The average wholesale price of the prescription drug as of the  
11 date on which the prescription drug is dispensed, as quoted in the American Druggist  
12 Blue Book, published by Hearst Corporation, Inc. or its successor, or in the Drug ✓  
13 Topics ✓ Red Book, published by Medical Economics Company, Inc. or its successor,  
14 whichever is less.

**History:** 2005 a. 172.

15 **SECTION 20.** 102.425 (4) (b) of the statutes is amended to read:

16 102.425 (4) (b) If an employer or insurer ✓ denies or disputes liability for the cost  
17 of a drug prescribed to an injured employee under sub. (2), the pharmacist or  
18 practitioner who dispensed the drug may collect, or bring an action to collect, from  
19 the injured employee the cost of the prescription drug dispensed, subject to the  
20 limitations specified in sub. (3) (a). If an employer or insurer concedes liability for  
21 the cost of a drug prescribed to an injured employee under sub. (2) ✓, but disputes the  
22 reasonableness of the amount charged for the prescription drug, the employer or  
23 insurer shall provide reasonable notice under sub. (4m) (b) ✓ to the pharmacist or

1 practitioner that the reasonableness of the amount charged is in dispute and the  
 2 pharmacist or practitioner who dispensed the drug may not collect, or bring an action  
 3 to collect, from the injured employee the cost of the prescription drug dispensed after  
 4 receiving that notice.✓

History: 2005 a. 172.

5 **SECTION 21.** 102.425 (4m)<sup>x</sup> of the statutes is created to read:

6 102.425 (4m) RESOLUTION OF PRESCRIPTION DRUG CHARGE DISPUTES.✓ (a) The  
 7 department has jurisdiction under this subsection<sup>g and</sup> s. 102.16 (1m) (c)<sup>ve</sup> and s. 102.17  
 8 to resolve a dispute between a pharmacist or practitioner and an employer or insurer  
 9 over the reasonableness of the amount charged for a prescription drug dispensed  
 10 under sub. (2)✓ for outpatient use by an injured employee who claims benefits under  
 11 this chapter.✓

12 (b) An employer or insurer that disputes the reasonableness of the amount  
 13 charged for a prescription drug dispensed under sub. (2)✓ for outpatient use by an  
 14 injured employee or the department under sub. (4) (b) or s. 102.16 (1m) (c) or 102.18  
 15 (1) (bg) 3.✓ shall provide reasonable notice to the pharmacist or practitioner that the  
 16 charge is being disputed. After receiving reasonable notice under this paragraph or  
 17 under sub. (4) (b)✓ or s. 102.16 (1m) (c)✓ or 102.18 (1) (bg) 1. that a prescription drug  
 18 charge is being disputed, a pharmacist or practitioner may not collect the disputed  
 19 charge from, or bring an action for collection of the disputed charge against, the  
 20 employee who received the prescription drug.✓

21 (c) A pharmacist or practitioner that receives notice under par. (b) that the  
 22 reasonableness of the amount charged for a prescription drug dispensed under sub.  
 23 (2)✓ for outpatient use by an injured employee is in dispute shall file the dispute with  
 24 the department within 6 months after receiving that notice.✓

1 (d) The department shall deny payment of a prescription drug charge that the  
2 department determines under this subsection<sup>✓</sup> to be unreasonable. A pharmacist or  
3 practitioner and an employer or insurer that are parties to a dispute under this  
4 subsection over the reasonableness of a prescription drug charge are bound by the  
5 department's determination under this subsection on the reasonableness of the  
6 disputed charge, unless that determination is set aside on judicial review as provided  
7 in par. (e).<sup>✓</sup>

8 (e) Within 30 days after a determination under this<sup>✓</sup> subsection, the department  
9 may set aside, reverse, or modify the determination for any reason that the  
10 department considers sufficient. A pharmacist, practitioner, employer, or insurer  
11 that is aggrieved by a determination of the department under this<sup>✓</sup> subsection may  
12 seek judicial review of that determination in the same manner that compensation  
13 claims are reviewed under s. 102.23.<sup>✓</sup>

14 **SECTION 22.** 102.64 (2) of the statutes is amended to read:

15 102.64 (2) Upon request of the department of administration, the attorney  
16 general shall appear on behalf of the state in proceedings upon claims for  
17 compensation against the state. The department of justice shall represent the  
18 interests of the state in proceedings under s. 102.49, 102.59, 102.60<sup>✓</sup>, or 102.66. The  
19 department of justice may compromise claims in such those<sup>✓</sup> proceedings, but the  
20 compromises are subject to review by the department of workforce development.  
21 Costs incurred by the department of justice in prosecuting or defending any claim for  
22 payment into or out of the work injury supplemental benefit fund under s. 102.65,  
23 including expert witness and witness fees but not including attorney fees or attorney

1 travel expenses for services performed under this subsection, shall be paid from the  
2 work injury supplemental benefit fund.

History: 1975 c. 147; 1977 c. 187 s. 134; 1977 c. 195; 1979 c. 110 s. 60 (11); 1981 c. 20; 1983 a. 98; 1995 a. 27 ss. 3745g, 9130 (4); 1997 a. 3.

3 **SECTION 23.** 102.65 (3) of the statutes is repealed.

4 **SECTION 24.** 102.80 (3) (ag) of the statutes is amended to read:

5 102.80 (3) (ag) The secretary shall monitor the cash balance in, and incurred  
6 losses to, the uninsured employers fund using generally accepted actuarial  
7 principles. If the secretary determines that the expected ultimate losses to the  
8 uninsured employers fund on known claims<sup>✓</sup> and on incurred, but not reported, claims  
9 exceed 85% of the cash balance in the uninsured employers fund, the secretary shall  
10 consult with the council on worker's compensation. If the secretary, after consulting  
11 with the council on worker's compensation, determines that there is a reasonable  
12 likelihood that the cash balance in the uninsured employers fund may become  
13 inadequate to fund all claims under s. 102.81 (1), the secretary shall file with the  
14 secretary of administration a certificate attesting that the cash balance in the  
15 uninsured employer's fund is likely to become inadequate to fund all claims under  
16 s. 102.81 (1) and specifying a date after which no new claims under s. 102.81 (1) will  
17 be paid.

History: 1989 a. 64; 1991 a. 85; 1993 a. 81; 1995 a. 117; 2003 a. 139; 2005 a. 172.

18 **SECTION 25.** 626.35 (1) of the statutes is amended to read:

19 626.35 (1) FILING. An insurer who provides a contract under s. 102.31 (1) (a)  
20 or a policy under s. 102.315 (3),<sup>✓</sup> (4),<sup>✓</sup> or (5) (a)<sup>✓</sup> shall file with the bureau a copy of the  
21 contract or policy,<sup>✓</sup> or other evidence of the contract or policy,<sup>✓</sup> as designated by the  
22 bureau, not more than 60 days after the effective date of the contract or policy.<sup>✓</sup>

History: 1989 a. 64 s. 45; 1989 a. 332 ss. 1, 14; Stats. 1989 s. 626.35.

23 **SECTION 26.** 631.37 (3) of the statutes is amended to read:

1           631.37 (3) WORKER'S COMPENSATION INSURANCE. ~~Section~~ Sections 102.31 (2)  
 2   applies and 102.315 (10) ✓ apply to the termination of worker's compensation  
 3   insurance.

History: 1979 c. 102 ss. 165, 166; 1985 a. 83; 1989 a. 187; 1991 a. 315; 1993 a. 363; 2003 a. 302.

4           **SECTION 27.** 632.98 of the statutes is amended to read:

5           **632.98 Worker's compensation insurance.** Sections 102.31, ✓ 102.315, and  
 6   102.62 apply to worker's compensation insurance.

7   Fix components      Initial applicability  
 SECTION 28. ~~Nonstatutory provisions.~~ ✓

8           (1) EMPLOYEE LEASING COMPANY LIABILITY.

9           (a) *Liability.* ✓ The treatment of sections 102.29 (6m) ✓ and 102.315 ✓ (2), ✓ (3), ✓ (4), ✓ (5),  
 10   (6), ✓ and (8) ✓ of the statutes first applies to injuries occurring on the effective date of  
 11   this paragraph. ✓

12           (b) *Premiums.* ✓ the treatment of section 102.315 (9) ✓ of the statutes first applies  
 13   to a worker's compensation insurance policy insuring liability under section ✓ 102.315  
 14   (2) of the statutes issued, or extended, modified, or renewed, on the effective date of  
 15   this paragraph. ✓

16           (c) *Cancellations, terminations, or nonrenewals.* ✓ The treatment of section  
 17   102.315 (10) ✓ of the statutes first applies to a worker's compensation insurance policy  
 18   insuring liability under section 102.315 (2) ✓ of the statutes whose cancellation or  
 19   termination date is ✓ 30 days after the effective date of this paragraph ✓ or whose  
 20   nonrenewal date is 60 ✓ days after the effective date of this paragraph. ✓

21   Fix component      (2) PRESCRIPTION DRUG CHARGE DISPUTE RESOLUTION. ✓

22           (a) *Disputes.* ✓ The treatment of sections 102.425 (4) (b) ✓ and (4m) ✓ of the statutes  
 23   first applies to prescription drug, as defined in section 102.425 (1) (h) ✓ of the statutes,

1 charge disputes submitted to department of workforce development<sup>✓</sup> on the effective  
2 date of this paragraph.<sup>✓</sup>

3 (b) *Orders*.<sup>✓</sup> The treatment of sections 102.16 (1m) (c)<sup>✓</sup> and 102.18<sup>✓</sup>(1) (bg) 3. of  
4 the statutes first applies to orders under section 102.16 (1)<sup>✓</sup> or 102.18 (1) (b)<sup>✓</sup> of the  
5 statutes issued on the effective date of this paragraph.<sup>✓</sup>

6 <sup>Fix component →</sup> (3) CHRISTIAN SCIENCE<sup>✓</sup> TREATMENT. The treatment of section 102.42 (1) and<sup>✓</sup> (4)  
7 of the statutes first applies to Christian Science<sup>✓</sup> treatment provided on the effective  
8 date of this<sup>✓</sup> subsection.

9 <sup>Fix component →</sup> (4) ILLEGALLY<sup>gA</sup> EMPLOYED MINORS. The treatment of section<sup>✓</sup> 102.64 (2) of the  
10 statutes first applies to a proceeding under section<sup>✓</sup> 102.60<sup>✓</sup> commenced on the  
11 effective date of this<sup>✓</sup> subsection. <sup>of the statutes</sup>

12 **SECTION 29. Effective date.**

13 (1) This act takes effect on January 1, 2008,<sup>✓</sup> or on the day after publication,  
14 whichever is later.

15 (END)

d-note  
↓

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-3093/P1dn

GMM:...

date

jld

Jim:

In reviewing this draft, please note all of the following:

- \* 1. *Employee leasing companies*.<sup>NO (S)</sup> You will have to review the provisions created by the draft relating to employee leasing companies with a fine-toothed comb to ensure that any changes I have made in syntax or organization remain true to the Council's intent. As you will see, these lengthy provisions are created in a whole new section, s. 102.315, rather than trying to jam them in to s. 102.31. Also, I was not sure what to do with current s. 102.31 (2m), but because the new language appears to be a comprehensive scheme of regulation, this draft repeals s. 102.31 (2m). In addition, the draft creates numerous definitions in an effort to shorten the length of the language and adds language from the Wisconsin Compensation Rating Bureau manual relating to employee leasing companies, which I was able to access from the Internet, to provide the reader of the statute some context. See, for example, s. 102.315 (9) relating to the employee leasing company's obligation to pay premiums.
2. *Prescription drug charge dispute resolution*. As you will see, the draft in addition to the submitted language authorizes DWD to resolve prescription drug charge disputes when confirming a compromise or stipulation under s. 102.16 (1) and when issuing an order after hearing under s. 102.18 (1) (b). The draft also reorganizes for better placement certain provisions ss. 102.16 (1m), (2), and (2m) and 102.18 (1) (bp) relating to fee disputes and necessity of treatment disputes, but does not change any of the substance of those provisions. In addition, please note that the draft conforms s. 102.425 (4) (b) to the new dispute resolution process by providing that a pharmacist may not collect a charge from the insured when the insurer concedes liability, but disputes the reasonableness of the charge.

If you have any questions about the draft, please do not hesitate to contact me at the phone number or e-mail address listed below.

Gordon M. Malaise  
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Phone: (608) 266-9738  
E-mail: gordon.malaise@legis.wisconsin.gov

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**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-3093/P1dn  
GMM:jld:pg

August 28, 2007

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