

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

LRB-3006/P1dn  
GMM:wlj:pg

July 25, 2003

Jim:

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

1. *Fee dispute and necessity of treatment dispute jurisdictional limit.* The draft clarifies that the \$25 threshold for fee disputes and necessity of treatment disputes applies not only to disputes under s. 102.16 (2) and (2m) but also to disputes under s. 102.16 (1m) and 102.18 (1) (bg). If the council wants the threshold to apply only to disputes under s. 102.16 (2) and (2m), the treatment of ss. 102.16 (1m) and 102.18 (1) (bg) can come out.

2. *Setting aside fee dispute and necessity of treatment dispute determinations.* A comparable provision, s. 102.18 (4) (c), grants LIRC an extended time period in which it may set aside a determination not only on the grounds of mistake but also on the grounds of newly discovered evidence. Would the council be interested in granting DWD an extended time period within which it may set aside a fee dispute or necessity of treatment dispute determination on the grounds of newly discovered evidence?

3. *Waiver of penalties.* The submitted language would permit DWD to rescind a penalty on the grounds of mistake or absence of information. "Rescind," however, usually applies to rescission of a contract or repeal of a statute. See *Black's Law Dictionary*. Accordingly, this draft permits DWD to waive or reduce a penalty. See also s. 102.85 (2m) and (2p), which permits DWD to waive, not rescind, penalties.

4. *Permanent disability payments.* The drafting instructions express the opinion that the provisions relating to permanent disability payments set forth in those instructions are too complex for statutory drafting. With all due respect, I disagree. Accordingly, this draft includes statutory provisions relating to permanent disability payments. Basically, the draft breaks down the universe of permanent disability payments into the following cases:

a. Cases in which the extent of disability can be determined from the minimum disability ratings promulgated by rule without a medical report that provides the basis for a disability rating.

b. Cases in which the extent of disability cannot be determined without a medical report that provides the basis for a minimum disability rating or in which the employer disputes the extent of disability.

c. Cases in which the employer disputes the medical report and requests an independent medical examination.

Please review these provisions carefully to ensure that they express the council's intent. If you have any questions about the draft, please do not hesitate to contact me directly at the phone number or e-mail address listed below.

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