

State of Wisconsin
Department of Workforce Development
Chapter DWD 80
WORKER'S COMPENSATION

The Wisconsin Department of Workforce Development proposes an order to repeal s. DWD 80.02(2)(h); to renumber ss. DWD 80.02(3m)(a) and 80.02(3m)(b); to amend ss. DWD 80.02(2)(title), 80.02(2)(b), 80.02(2)(g)2., 80.62(7)(a)3., 80.65, 80.72(3)(a), and 80.73(3)(a); and to create ss. DWD 80.02(2m), 80.02(3m)(a)(title), 80.02(3m)(b), 80.02(3m)(b)1., 80.02(3m)(b)2., 80.02(3m)(b)3., and 80.52, relating to worker's compensation.

Analysis Prepared by the Department of Workforce Development

Statutory authority: Sections 102.15(1) and 227.11, Stats.

Statutes interpreted: Sections 102.16(2), 102.16(2m), 102.31(2)(a), 102.32(6), 102.35(1), and 102.82, Stats., as affected by 2003 Wisconsin Act 144, and sections 102.37 and 102.38, Stats.

The proposed rules make the following changes, as agreed to by the Worker's Compensation Advisory Council:

Supplementary reports by employers and insurance companies. Under the current rule self-insured employers and insurance companies are required to submit supplemental reports only if the reported injury meets the definition of lost time under DWD 80.02(1)(a). The proposed amendment to s. DWD 80.02(2)(b) will require self-insured employers and insurance companies to submit supplemental reports for all claims reported whether or not they meet the lost-time definition. The amendment will not require the reporting of no lost time or denied claims but will require the filing of supplemental reports for all claims that are reported.

Written notice by employers and insurance companies. The proposed amendment to s. DWD 80.02(2)(g)2 will require self-insured employers and insurance companies to provide notice of denial to the department and employees for claims that are initially reported and paid but later denied. The current rule is inconsistent with the requirement to report only compensable claims.

Written notice by employers and insurance companies. The proposed rules repeal s. DWD 80.02(2)(h). Under the current rule, self-insured employers and insurance companies are required to provide the department with written notice related to denial or continued investigation of claims with copies of the report provided to employees. This provision is repealed because the requirement for self-insured employers and insurance companies to submit reports about the denial or investigation of claims to the department is eliminated. The newly-created DWD 80.02(2m) replaces this provision and requires self-insured employers and insurance companies to provide notice of denial or investigation of claims to employees only and not to the department.

Notice by employers and insurance companies to employees. The proposed rules amend s. DWD 80.02(2m) to clarify that a notice of denial or investigation of claims is to be sent to the employee along with a statement advising the employee of the right to a hearing before the department. The notice of investigation will specify if additional medical or other information is needed to complete the investigation. This notice must be sent to the employee and is not required to be sent to the department.

Electronic reporting. The proposed amendment to s. DWD 80.02(3m) will permit the department to require self-insured employers and insurance companies to submit all or selected information in reports or amendments to reports to be filed via electronic, magnetic, or other media satisfactory to the department. Under the current rule self-insured employers and insurance companies may request to submit required reports electronically but are not required to do so. This amendment will allow the department discretion to require electronic reporting to help the self-insured employer or insurance company to meet reporting requirements. This amendment also permits the department to grant waivers from the requirement to submit reports by electronic means if the employer, self-insured employer or insurer can establish good cause.

Payment of permanent disability. A new section is created at s. DWD 80.52 to establish when payment for compensation for permanent disability must begin in cases in which the self-insured employer or insurance company concedes liability but disputes the extent of permanent disability. Under this rule payment is to begin (1) within 30 days after the self-insured employer or insurance company receives a report that provides a permanent disability rating or (2) within 30 days after receiving a report from an examination performed under s. 102.13(1)(a), Stats., in the amount of permanent disability found as a result of the examination. If no examination was previously performed, the self-insured employer or insurance company may give notice of a request for an examination within 30 days of receiving a report that establishes permanent disability. If the examining practitioner's report is not available within 90 days of the request for an examination, payment must begin by that date.

Uninsured employers fund. Section DWD 80.62(7)(a)3 is amended to allow the department to seek reimbursement from uninsured employers for payments made by the Uninsured Employers Fund for claims administration expenses.

Notice of cancellation or termination. The proposed rules amend s. DWD 80.65 to permit insurance companies to give notice of cancellation or termination of insurance policies to the Wisconsin Compensation Rating Bureau by facsimile machine transmission, electronic mail, or any electronic, magnetic, or other medium approved by the department. The current rule permits notice only by certified mail or personal service. The rule is amended to authorize notice by different means to comply with a recent amendment to s. 102.31(2)(a), Stats.

Reasonableness of fee disputes. Section DWD 80.72(3)(a) is amended to require self-insured employers and insurance companies to raise disputes over liability or the extent of disability of the underlying claim and give notice within 30 days after receiving a completed bill from a healthcare provider, unless there is good cause for the delay in providing this notice.

Necessity of treatment. Section DWD 80.73(3)(a) is amended to require self-insured employers and insurance companies to raise disputes over liability or the extent of liability of the underlying claim and give notice within 60 days after receiving a bill from the healthcare provider, unless there is good cause for the delay in providing this notice.

SECTION 1. DWD 80.02 (2)(title), 80.02 (2)(b), and DWD 80.02 (2)(g)2. are amended to read:

DWD 80.02 (2)(title) SELF-INSURED EMPLOYERS AND INSURANCE COMPANIES;
REPORTS.

DWD 80.02 (2)(b) A supplementary report with the information required by form WKC-13 on or before the 30th day following the day on which the injury in par. (a) occurred or on or before the 30th day following the day the injury was reported to the department, if the injury was not required to be reported under par. (a).

DWD 80.02 (2)(g)2. A decision to deny liability for payment of compensation for reported claims after a concession of liability is made, giving the reason for the denial and advising the employee of the right to a hearing before the department.

SECTION 2. DWD 80.02 (2)(h) is repealed.

SECTION 3. DWD 80.02 (2m) is created to read:

DWD 80.02 (2m) SELF-INSURED EMPLOYERS AND INSURANCE COMPANIES;
NOTICE TO EMPLOYEE. (a) For all injuries under sub. (1) (a), self-insured employers and insurance companies shall provide written notice to the employee within 14 days of the date of an alleged injury indicating one of the following:

1. A decision to deny liability for payment of compensation giving the specific reason for the denial and advising the employee of the right to a hearing before the department.

2. An explanation that the claim is not paid because the insurance company or self-insured employer is still investigating the claim. The notice shall specify if additional medical or other information is needed to complete the investigation. The notice shall advise the employee of the right to a hearing before the department if the claim is subsequently denied.

(b) If the notice of injury from the employee to the insured employer or from the insured employer to its insurance company was not made within 7 days of the date of the alleged injury, the insurance company shall provide notice under subd. (a)1. or (a)2. within 14 days of receiving notice of the alleged injury from any source.

SECTION 4. DWD 80.02 (3m) (a) and (b) are respectively renumbered DWD 80.02 (3m) (a) 1. and 2.

SECTION 5. DWD 80.02 (3m) (a)(title), (b), and (b) 1., 2., and 3. are created to read:

DWD 80.02 (3m) (a) (title) *Employer or insurer request.*

DWD 80.02 (3m) (b) *Department requirement.* 1. The department may require an employer, self-insured employer, or insurer to submit all or selected information in reports or amendments to reports required to be filed with the department in sub. (1) or (2) via electronic, magnetic, or other media satisfactory to the department. The department may require an employer, self-insured employer, or insurer to use electronic, magnetic, or other reporting media after considering the extent to which it will help the employer, self-insured employer, or insurer meet or exceed the applicable reporting requirements and performance standards in subs. (1) to (3).

2. The directive that requires reporting by electronic, magnetic, or other media shall be in writing and shall set forth terms and conditions that include a deadline for compliance.

3. An employer, self-insured employer, or insurer may request a waiver within 60 days of the date of the department's directive that requires reporting by electronic, magnetic, or other media. The department may grant the waiver if the department is satisfied that the employer, self-insured employer, or insurer has established good cause.

SECTION 6. DWD 80.52 is created to read:

DWD 80.52 Payment of permanent disability where the degree of permanency is disputed. Where injury is conceded, but the employer or the employer's insurer disputes the extent of permanent disability, payment of permanent disability shall begin with the later of sub. (1) or (2):

(1) Within 30 days of a report that provides the permanent disability rating, in the amount of the permanency set forth in the report; or

(2) Within 30 days after the employer or insurer receives a report from an examination performed under s. 102.13 (1) (a), Stats., in the amount of the permanent disability found as a result of that medical examination, if any. If such an examination had not previously been performed, the employer or employer's insurer must give notice of a request for such an examination within 30 days of receiving a report that establishes the permanent disability under sub. (1). If a report from the examination is not available within 90 days of the request

for the examination, the employer and insurer shall begin payment of the permanent disability set forth in the report under sub. (1).

SECTION 7. DWD 80.62 (7)(a)3., 80.65, 80.72 (3)(a)(intro.), and 80.73 (3)(a)(intro.) are amended to read:

DWD 80.62 (7)(a)3. To seek reimbursement from employers under s. 102.82(1), Stats., for payments made from the fund to or on behalf of employees or their dependents and for claims administration expenses.

DWD 80.65 Notice of cancellation or termination of a policy under s. 102.31 (1) (a), Stats., shall be given ~~by certified mail, or personal service~~ to the Wisconsin compensation rating bureau, as defined in s. 626.02 (2), Stats., rather than to the department. The notice may be given by certified mail; personal service; facsimile machine transmission; electronic mail; or any electronic, magnetic, or other medium approved by the department. Whenever the Wisconsin compensation rating bureau receives notice of cancellation or termination pursuant to this section, it shall immediately notify the department of cancellation or termination.

DWD 80.72 (3)(a)(intro.) In a case where liability or the extent of disability is in dispute, an insurer or self-insured employer shall provide written notice of the dispute to the health care provider within 30 days after receiving a completed bill that clearly identifies the provider's name, address and phone number; the patient-employee; the date of service; and the health service procedure, unless there is good cause for delay in providing notice. In a case where liability or the extent of disability is not in issue, and a health care provider charges a fee which an insurer or self-insurer refuses to pay because it is more than the formula amount, the insurer or self-insurer shall, except as provided sub. (6) (b), mail or deliver written notice to the provider within 30 days after receiving a completed bill which clearly identifies the provider's name, address and phone number; the patient-employee; the date of service; the health service procedure; and the amount charged for each procedure. The notice from the insurer or self-insurer to the provider shall specify all of the following:

DWD 80.73 (3) (a)(intro.) In a case where liability or the extent of liability is in dispute, an insurer or self-insured employer shall provide written notice of the dispute to the health care provider within 60 days after receiving a bill that documents the treatment provided to the

worker, unless there is good cause for delay in providing notice. An insurer or self-insurer which refuses to pay for treatment rendered to an injured worker because it disputes that the treatment is necessary shall, in a case where liability or the extent of liability is not an issue, give the provider written notice within 60 days of receiving a bill which documents the treatment provided to the worker. The notice shall specify all of the following:

SECTION 8. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2)(intro.), Stats.