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Joint Committee on Finance

Paper #735

Transfer of Worker's Compensation Division Functions to OCI and DHA (DWD -- Worker's Compensation)

[LFB 2015-17 Budget Summary: Page 548, #1, Page 34, #5, and Page 258, #3]

CURRENT LAW

Under current law, DWD performs administrative responsibilities relating to worker's compensation (WC) including enforcement of the requirement that employers are insured for their worker's compensations liability; granting exemptions from that duty to insure to self-insured employers; administering the self-insured employers fund; administering the uninsured employers fund; and administering the work injury supplemental benefits fund. Also under current law, DWD performs certain adjudicatory functions relating to worker's compensation. Those functions include hearing disputed worker's compensation claims, adjudicating disputes over the reasonableness of fees charged for health services provided to an injured employee and of the amount charged for prescription drugs dispensed to an injured employee (reasonableness of fees), and hearing disputes over the necessity of treatment provided to an injured employee (necessity of treatment).

GOVERNOR

Transfer administrative responsibilities of DWD relating to worker's compensation to the Office of the Commissioner of Insurance (OCI) and transfer the adjudication responsibilities of DWD relating to disputed worker's compensation claims to the Division of Hearings and Appeals (DHA) in the Department of Administration (DOA).

Under the bill, there would be a net reduction of 5.0 vacant worker's compensation related positions (funding for these positions would not be eliminated) and approximately \$3.2 million in available resources. The bill would also reduce the number of DWD unclassified division administrators from nine to eight.

	Funding (2016-17)			Positions		
	<u>DWD</u>	<u>OCI</u>	<u>DHA</u>	<u>DWD</u>	<u>OCI</u>	<u>DHA</u>
GPR	-\$525,000	\$525,000	\$0	0.00	0.00	0.00
PR	-115,200	120,300	3,686,300*	-2.70	0.70	33.00
SEG	<u>-30,066,800</u>	<u>26,817,000</u>	<u>0</u>	<u>-103.30</u>	<u>67.30</u>	<u>0.00</u>
Total	-\$30,707,000	\$27,462,300	\$3,686,300	-106.00	68.00	33.00

*Program revenue funding provided to DHA reflects the level of charges expected to be assessed to OCI for hearing costs.

Create a new subsection in OCI's appropriation section entitled, worker's compensation administration. In this section, three separate appropriations would be created: auxiliary services, local agreements, and interagency and intra-agency agreements. Also in this subsection, all existing worker's compensation appropriations would be transferred from DWD to OCI. In addition, the self-insured employers liability fund, uninsured employers fund; payments, work injury supplemental benefit fund, and special death benefit fund would all transfer to OCI.

Fund the Labor and Industry Review Commission (LIRC) from the newly created worker's compensation operations fund; administration appropriation under OCI. LIRC would remain an independent agency and would remain attached to DWD for limited administrative purposes.

Transfer the Worker's Compensation Advisory Council (WCAC) from DWD to OCI. The WCAC would be appointed by the Commissioner of Insurance (rather than DWD Secretary currently) to consist of a designated employee of OCI as chairperson. The Council would continue to consist of five employer and five employee representatives, and three representatives of insurers authorized to do worker's compensation insurance business in Wisconsin as nonvoting members of the Council. The bill specifies that the WCAC advise OCI (rather than DWD) in matters concerning Chapter 102 of the Wisconsin statutes (workers compensation). The bill would also transfer the Self-Insurers Council and Health Care Provider Advisory Committee from DWD to OCI.

Transfer the adjudicatory functions of DWD relating to disputed worker's compensation claims to the Division of Hearings and Appeals in DOA (DHA). Under the bill, disputes over the reasonableness of fees charged by health service providers, the reasonableness of charges for prescription drugs, as well as disputes over the necessity of treatment, would be decided by OCI.

Create a forfeiture provision within OCI for a violation of a statute or rule where the violator shall forfeit to the state not more than \$1,000 for each infraction. Specify that OCI may levy such penalties on whoever violates, intentionally aids a person in violating, or knowingly permits a person over whom he or she has authority to violate an insurance statute which prohibits employers from discriminating against an employee or refusing to rehire an employee because of a claim or attempt to claim compensation benefits. Under current law, the forfeiture range for this infraction is not less than \$50 nor more than \$500.

DISCUSSION POINTS

The Administration's Errata to the Bill

1. The administration submitted numerous erratum to the workers compensation transfer provisions in the bill. All erratum pertaining to this transfer have been incorporated in LRB draft b0001/P2, which include the following.

2. The budget bill would transfer administrative functions of DWD relating to worker's compensation to OCI and the adjudicatory functions of DWD relating to worker's compensation to DHA. The administration's erratum alters several provisions in the bill to provide that OCI would adjudicate uncontested worker's compensation claims and DHA would adjudicate contested claims. The administration's note to the errata report explains that several statutory sections within the state's Worker's Compensation Act (Chapter 102) refer to both litigated and nonlitigated worker's compensation claims and that language would need to state that these sections would apply to both OCI ("office") and DHA ("division"). Under the corrected bill, both DHA and OCI would be authorized to issue orders, make determinations, approve fees, award compensation, file complaints, and review, set aside, modify or confirm a compromise or any other stipulation of settlement of a worker's compensation claim.

3. The administration's erratum also would direct OCI to "have and maintain on its staff such examiners as are necessary to decide undisputed claims and to assist in the effective administration of this chapter (Chapter 102)." No additional funding or position authority is provided to OCI under the corrected bill to reflect the mandate that the office maintain a necessary level of examiner positions.

4. Under the bill, there would be a net reduction in available resources of approximately \$1.6 million in FY16 and \$3.2 million in FY17. According to the administration, the decrease in available resources was because the supplies and services line under OCI was not fully funded in the budget bill. The errata would increase OCI's SEG funding \$1,622,300 in FY16 and \$3,244,700 in FY17. After accounting for the errata, the transfer of worker's compensation functions to OCI and DHA would be revenue neutral.

	2016-17 Funding (Budget Bill)			Funding, as corrected		
	<u>DWD</u>	<u>OCI</u>	<u>DHA</u>	<u>DWD</u>	<u>OCI</u>	<u>DHA</u>
GPR	-\$525,000	\$525,000	\$0	-\$525,000	\$525,000	\$0
PR	-115,200	120,300	3,686,300*	-115,200	120,300	3,686,300*
SEG	<u>-30,066,800</u>	<u>26,817,000</u>	<u>0</u>	<u>-30,066,800</u>	<u>30,061,700</u>	<u>0</u>
Total	-\$30,707,000	\$27,462,300	\$3,686,300	-\$30,707,000	\$30,707,000	\$3,686,300

*Program revenue funding provided to DHA reflects the level of charges expected to be assessed to OCI for hearing costs.

5. Under the bill, the transfer of worker's compensation is effective January 1, 2016. However, all funds are transferred from DWD to OCI and DHA on July 1, 2015. According to the

administration, January 1, 2016 was intended. The errata would credit the following from OCI back to DWD for FY16 (\$262,500 GPR, \$57,700 PR, and \$15,353,500 SEG).

6. Under the bill, the Worker's Compensation Advisory Council (WCAC) would have the authority to advise DHA on workers compensation matters. The administration's errata would require the WCAC to advise DHA, as well as OCI, in carrying out the purposes of the worker's compensation law.

7. Under the bill, DHA would have the right to review, set aside, modify or confirm compromise agreements on its own motion. The administration's errata would stipulate DHA would have the right to review, set aside, modify or confirm compromise agreements for litigated cases (compromise cases where the application is ready to be scheduled for a hearing), while OCI would have the right to review, set aside, modify or confirm compromise agreements for nonlitigated cases (compromise cases where the application is not ready to be scheduled for a hearing).

8. The remainder of this paper describes the budget bill provisions, as corrected by the administration's erratum.

Organization of Wisconsin's Worker's Compensation System

9. DWD's Division of Worker's Compensation administers the worker's compensation law for the State of Wisconsin. The Division monitors payments made to injured workers, resolves disputes between the injured employee and insurer, investigates severe or multiple-worker injuries, enforces employer insurance requirements, reimburses supplemental payments to certain injured workers or their dependents, promotes safety in the workplace and regulates self-insurance for those employers that are self-insured for purposes of worker's compensation coverage. The majority of Division staff are located at the central office in Madison, with two regional offices, located in Appleton and Milwaukee. Division funding is generated by an annual administrative assessment on insurance carriers and self-insured employers.

10. The activities and responsibilities of the Worker's Compensation Division are codified within three statutes and codes. Chapter 102 of the Wisconsin statutes and DWD 80 of the Wisconsin administrative code set forth the rules for worker's compensation cases, including claims monitoring and the administration of claims, granting of self-insurance status, allowing special "wrap-up" insurance policies for large construction projects, adjudicating necessity of medical treatment and reasonableness of fees, and administering the Uninsured Employers Fund and the Work Injury Supplemental Benefit Fund. DWD 81 of the administrative code establishes medical treatment guidelines which are utilized by medical experts in rendering opinions on necessity of treatment disputes.

11. The Division has three statutorily based advisory bodies: the Worker's Compensation Advisory Council, the Self-Insurers Advisory Council, and the Healthcare Providers Advisory Committee. These bodies advise the Division on policy matters concerning the worker's compensation law.

12. The Division has three administrative Bureaus: Legal Services, Claims Management,

and Insurance Programs.

13. The DWD Bureau of Legal Services manages all of those cases disputed by the insurance carriers and self-insured employers including compensability or the nature and extent of disability when an application for hearing is filed. The Bureau of Legal Services receives over 5,300 applications for hearings per year, which are currently handled by 24 administrative law judges (ALJs), 2.5 legal associates, 2.0 legal secretaries, 7.0 stenographic reporters, 3.0 office operations associates, and 1.0 bureau director.

14. The Bureau of Insurance Programs investigates employers' compliance with requirements to carry WC insurance and administer the collection of penalty amounts and claim costs from uninsured employers. The Bureau administers enforcement methods to bring employers into compliance with worker's compensation insurance laws and the payment of legally due benefits through a third party claims administrator to injured workers employed by uninsured employers, through the Uninsured Employers Fund, which is funded by collection of penalties assessed against employers illegally operating without worker's compensation. The Bureau also oversees new insurance coverage for Wisconsin employers and administer the Self-Insurance program. According to DWD, there are over 120,000 insured employers in the state, and about 200 are self-insured. The Bureau also administers the owner controlled construction "wrap-up" insurance program for large construction projects with a single policy covering all contractors (such as the Lambeau Field renovation or Marquette Interchange project).

15. The Bureau of Claims Management oversees dispute resolution, lost time claims, and claims administration. Annually, 55,000 to 60,000 worker's compensation claims (both new and existing lost time claims) are managed by the Bureau. The Bureau's dispute resolution functions include assisting in the resolution of unrepresented claim disputes to avoid litigation, assisting employees in timely return to work, including vocational rehabilitation services (historically, 75% of unrepresented claims are resolved without a hearing), and assist employers, employees, attorneys – all parties to a claim – in resolution of disputes, questions and clarifications. In regards to claims administration, Bureau staff monitors the accuracy and promptness of benefit payments to injured workers, provides information and assistance to employers, employees, insurance adjusters and attorneys, and ensures that data on claims are properly entered onto the claim management system, as well as educating employers, insurance carriers and third party administrators on proper claim reporting.

16. Wisconsin is a controlled pricing state for workers compensation premiums, meaning that OCI in conjunction with the Workers Compensation Ratings Bureau (WCRB) set the rate for all 560 classes of employers on an annual basis. WCRB is the licensed rate service organization for WC insurance in Wisconsin and is a statutorily created body regulated by the State of Wisconsin and OCI. The WCRB is not a state agency; instead, the Bureau is an unincorporated association of insurers, who by law must be members of the Bureau. The Bureau is responsible for the classification of employers, the rates and rating plans used, all policy forms and endorsements and the collection and analysis of all statistical and other data needed to meet its responsibilities. All rates, rating plans, and forms must be filed with and approved by OCI before insurers can use them. WCRB assists DWD's WC Division in its enforcement activities and, as by law, the Bureau receives

needed information on every worker's compensation policy issued to every employer with operations in Wisconsin and every termination thereof and transmits this information to DWD.

17. OCI licenses the Wisconsin Compensation Rating Bureau, all insurance companies who transact worker's compensation business and all agents or intermediaries who sell worker's compensation insurance in Wisconsin. OCI examines the Bureau and insurers to ensure that all are meeting their obligations under the law. All worker's compensation rules, rates, and forms developed by the WCRB must be approved by OCI before insurers can use them.

Performance of Wisconsin's Worker's Compensation System

18. In general, Wisconsin's worker's compensation system compares favorably to other states based on the most recent metrics available from Worker's Compensation Research Institute (WCRI). WCRI is an independent, not-for-profit research organization that provides information about public policy issues involving state workers' compensation systems. WCRI's annual benchmark report focuses on the performance of the benefit delivery system. The 2014 edition of the report compares Wisconsin with 15 other mostly large states that were selected because they are geographically diverse, represent a range of system features, and represent the range of states that are higher, medium, and lower on costs per claim.

19. In Wisconsin, overall costs per all paid claims were 25 percent lower than the median and were the sixth lowest when compared with the 16 study states (based on 2010 claims). One contributing factor to lower costs per claim in Wisconsin is that, compared with the other study states, fewer Wisconsin workers lost more than seven days of work as a result of their injury - 17 percent versus 20 percent in the median state for 2010 claims.

20. Of claims with more than seven days of lost time, Wisconsin's average cost per claim was \$35,911 or eight percent lower when compared to the other study states. Costs per claim are comprised of three factors: (a) medical payments to health care providers, (b) indemnity payments to the worker and (c) benefit delivery expenses (the cost of delivering medical and indemnity expenses to injured workers).

a. Medical payments per claim were \$21,384 or 31 percent higher than the median study state. Higher than average medical payments in Wisconsin were driven by higher medical prices. In two earlier studies, WCRI found Wisconsin's nonhospital and hospital outpatient prices to be 130% and 75% higher, respectively, than the median study state for common medical procedures used in worker's compensation cases. Partially offsetting substantially higher medical prices in Wisconsin is a lower utilization of medical services. On average, providers billed 17 visits per claim in Wisconsin compared with 23 in the typical state in 2012/13. WCRI worker outcomes studies have shown that while employers in Wisconsin paid higher-than-average medical payments per claim, injured workers in Wisconsin reported better-than-average outcomes related to recoveries of health and functioning, return to work, access to care, and satisfaction with care. Researchers note that the strong return-to-work outcomes in Wisconsin are important for understanding the context of higher-than-typical medical payments per claim and higher-than-typical prices for medical services in Wisconsin.

b. Indemnity payments (payments to injured workers) per claim were \$10,847 or 39 percent lower than the median study state. Previous WCRI studies have highlighted Wisconsin's lower-than-typical indemnity benefits per claim and have documented various features of the state's worker's compensation system which encourages faster return to work and, therefore, lower payments. For 2011 claims, Wisconsin workers had three fewer weeks of temporary disability benefits compared with the 17-state median (10.5 weeks versus 13.4 weeks). On average, Wisconsin workers returned to work faster than any other state in the study, including Iowa (10.9 weeks), Illinois (18.4 weeks), Minnesota (13.3 weeks), Florida (12.2 weeks), and Texas (15.4 weeks).

c. Benefit delivery expenses per claim were \$3,668 or 30 percent lower than the median study state. "Benefit delivery expenses" measures the efficiency of a state's benefit delivery system, as measured by allocated expenses per claim, such as defense attorney fees, medical-legal expenses, costs associated with medical management of the claim ("medical cost containment"), and administrative fees. Medical cost containment expenses were 36 percent lower in Wisconsin than the study average. Average defense attorney payments per claim were 14 percent lower in Wisconsin as compared to the 17-state median. Comparatively low defense attorney payments can be attributed to the fact that Wisconsin's worker's compensation litigation rate is among the lowest in the nation. Attorney involvement, as measured by the percentage of claims with defense attorney payments greater than \$500, was 14 percent in Wisconsin as compared to 30 percent for the state median. According to a 2011 report from WCRI, "Wisconsin's system is characterized by multiple features that help minimize or resolve disputes without the need for formal litigation." According to the study, DWD uses administrative processes with specially trained personnel for resolving disputes about temporary disability benefit termination, without the need for a hearing or attorney representation. The study cites experts who state that these system features can result in the faster resolution of issues, narrowing the scope of disputes, and a faster return to work for those whose issues are resolved without the need for a formal hearing. In a Department presentation to a joint informational hearing of the Legislature on July 31, 2013, the Department highlighted its efficient delivery system for making payments as well as having a fair and timely dispute resolution process. In the presentation, the Department highlighted WCRI data "which consistently ranks the state at or near the top nationally with over 80% of claims paid within 14 days after a notice of injury" and findings that the state has "nationally, among the shortest waiting periods to hold a worker's compensation hearing on a disputed case at 15 weeks." Finally, the Department highlighted to the Legislature research which found that "the low levels of litigation in Wisconsin are due to the design of the administrative and adjudicative systems, not simply to a climate of cooperation that does not exist in more litigious systems."

21. Workers compensation rate increases paid by employers in Wisconsin have been moderate and average rates when compared against other states are close to the median. From 2009 to 2014, workers compensation insurance premium rates charged to employers increased three of six years (increases ranging from 3.19% to 4%) and decreased three of six years (decreases ranging from -0.01% to -1.73%). According to the 2014 Oregon Department of Business and Services, which releases a ranking of state workers compensation premium rates every two years, Wisconsin had the 23rd highest WC premium rate of the 50 states plus the District of Columbia, or 4 percent higher than the study median. Of Wisconsin's neighboring states, Michigan and Iowa had lower

rates and Minnesota and Illinois had higher rates.

The Role of the Workers Compensation Advisory Council

22. The state's WC law establishes a Workers Compensation Advisory Council (WCAC) to advise the Department. The Council membership is comprised of five voting representatives from organized labor; five voting management representatives; three non-voting representatives from the insurance industry; and one representative from the Department. The Council also has liaison representatives from the medical community.

23. The WCAC is statutorily required [Wis. Stat. 102.14(2)] to advise DWD in carrying out the purpose of the Workers Compensation Act (Chapter 102 of Wisconsin statutes). The Council can submit its recommendations for changes in WC law to the Legislature in an "agreed bill" and report its views on any other pending legislation which relates to WC. According to the Department, the "agreed bill" concept is a long-standing tradition of the Council. As the name implies, Council members come to a consensual agreement to support the Council's proposed changes in the Legislature and not to individually seek any changes to those proposals. Likewise, the Council members agree not to support any worker's compensation law changes that have not been vetted through the "agreed bill" process.

24. The WCAC process begins with public hearings throughout the state. Testimony regarding possible changes to the current statutes is taken from any interested sources. The testimony is summarized and presented to the Council in the form of specific amendments. The Council's voting members from organized labor and management negotiate the final amendments. In order for any amendment to be accepted in the process, it must be accepted unanimously by all voting members of the Council. In July of odd-numbered years, the "agreed bill" is usually submitted to the labor committees of the Senate and Assembly. These committees hold hearings and discuss the amendments with the leaders of the Council before forwarding the bill to the full Legislature. Typically, the Legislature has unanimously endorsed the recommended amendments. The Governor's recommendation to modify WC law through the budget process is a significant departure from the process, as described above, for how the Council's recommended changes to WC law have historically been presented to the Legislature.

25. According to the Department, "One of the most important and enduring principles of the Council is maintaining the overall stability of the worker's compensation system without regard to partisan changes in the legislative or executive branches of government. The Council provides a vehicle for labor and management representatives to play a direct role in recommending changes in the worker's compensation law to the Legislature."

26. The budget provision is a major administrative change with the potential to impact the delivery of workers compensation services to workers, employers, medical providers, and insurers. Because of the scope of this change and the complexity of statutorily dividing responsibilities between OCI and DHA, additional review may be warranted. The Committee could delete the provision and allow the WCAC to consider programmatic changes through the traditional process [Alternative 3].

Transfer of Worker's Compensation Division to OCI

27. The administration has argued that worker's compensation is primarily an insurance program. Furthermore, it has argued that OCI has experience managing insurance funds because it currently administers the State Life Insurance Fund, the Local Government Property Insurance Fund, and the Injured Patients and Families Compensation Fund. OCI has argued that consolidating insurance programs under the umbrella of one agency is a "common-sense step to streamline and clarify government services and that the change would provide employees, employers, and insurers a one-stop shop."

28. From the perspective of DWD, the Department argues that the transfer of workers compensation would allow it to sharpen its focus on workforce training. The transfer would leave the Department with five administrative divisions, two of which are directly related to job training - the Division of Employment and Training and the Division of Vocational Rehabilitation. However, DWD's involvement with worker's compensation would continue after the transfer of the WC Division on January 1, 2016. A memorandum of understanding (MOU) is expected to be developed between DWD, OCI, and DOA where, at least initially, DWD would remain responsible for all financial transactions related to the WC program. In addition, the document scanning service would also need to be continued by DWD under an MOU for scanning services. In 2014, according to DWD, just over 27,840 fax batches were electronically processed by the Bureau of Claims Management staff from its fax importation application. DWD would charge OCI for financial, scanning, and related administrative services provided for an undetermined period of time. Interdepartmental meetings have been underway since February, 2015, regarding the proposed transfer, but MOU terms (such as duration, charges and responsibilities) have not been finalized.

29. A lease will need to be developed for WC to occupy its existing space in GEF-1 because all WC Division staff would continue to be housed at DWD. Prior to this proposal, DHA and OCI were both slated to be moved to a new DOT-Government Services building planned for the state's Hill Farms property. If Hill Farms is built and if the transfer of WC is approved, it is expected that all DHA units (including WC ALJs) and OCI would move to Hill Farms. DOA Facilities Management has said there will be sufficient space to accommodate the larger DHA in the building footprint. Until that time, DWD would continue to house the WC operation in GEF-1.

30. The argument against splitting administrative and adjudicatory functions between two agencies is that such a move could undermine communication between ALJ's and WC administrative staff (including claims specialists, insurance investigators and medical costs dispute specialists). Furthermore, by splitting WC administration into two agencies, some believe there may not be a clear division of responsibilities which could open the door to less consistent rulings and a greater need for claimants to turn to a lawyer for help with an appeal. According to system users, the current administrative structure allows for a great deal of communication between ALJs and other WC division staff. OCI anticipates that all proper communications between ALJ's and the WC division staff, if the proposal is adopted, will continue (especially since they will be located in the same location - GEF-1 - for an indefinite period). OCI believes that there is nothing in the proposed structure that should hinder the continuation of this type of communication.

31. DWD's Information Claims Management System (ICMS) is the chief means by which

individuals claims are updated and ushered through the state's WC system. DWD's ICMS is used to input information provided by insurers from hard copy, Electronic Data Interchange (EDI) and Internet, web-based applications. The system can also be used to initiate correspondence, schedule hearings, notify parties of actions taken or need to be taken on cases, and document actions by parties prior to and subsequent to scheduled hearings or events. Users state that the functionality of DWD's ICMS system is reliant on consistent, daily data input (such as new insurance forms filed, scheduled hearings, and orders) With scanning done at DWD, scheduling input completed at DHA and OCI, and claims data inputted at OCI, the decentralization of ICMS away from one agency and into three agencies could be an obstacle to consistent communication within the state's worker's compensation system. Because the status of an individual claim can change with some regularity, especially with medical disputes, the transfer of the WC Division to OCI and DHA could introduce complexity and confusion to the handling of individual claims if all parties involved in handling claims were not equally vigilant on the proper updating and use of the ICMS system. Conversely, if maintained judiciously with constant and reliable data input, ICMS could be a critical tool to help effectively manage individual claims across a three-agency system.

Transfer of Worker's Compensation Scheduled Hearings to DHA

32. The Division of Hearings and Appeals (DHA) is attached to DOA for administrative purposes; its 51.15 employees (33.15 ALJs) are currently in three units: a Work and Family Service (WFS) unit with 21.65 FTE, a Corrections unit with 21.5 FTE, and a General Government unit with 8 FTE. Together, DHA services the due process needs for 14 different agencies (including hearings for DWD's Division of Vocational Rehabilitations and for OCI).

33. One of the main arguments for consolidating adjudicatory functions of the Worker's Compensation Division in DHA is that it would allow for cross-training of ALJ's to, according to the administration, ensure coverage of cases, promote consistency and independence, and maximize the talents and experience of each administrative law judge. According to DHA, cross-training occurs because caseloads are not static (certain law changes may temporarily spike caseloads), some hearings have time limits (50 days for Corrections and 60 days for Foodshare hearings), and personnel issues (retirements, family leave, illness). It is the experience of DHA that the Department's ALJs appreciate the variety of hearings, both for the different facts presented and new areas of law to explore.

34. Currently at DHA, 15 of the 33.15 ALJ's have helped or are trained to help out in other units. The intent is to follow Wis. Stat. §227.43(1g) which requires the division administrator to "ensure, to the extent practicable, that hearing examiners are assigned to different subjects on a rotating basis". The statute also directs the division administrator to establish "pools of examiners responsible for certain subjects." The purpose of this statute is to prevent potential favoritism; ALJs don't pick their cases and parties don't pick their ALJs. ALJs are allowed to develop experience without sacrificing their independence.

35. The administration states that ALJs transferred to DHA for WC functions will most likely stay as a separate and fourth "pool of examiners" at DHA. Cross-training may occur as caseloads, personnel changes and timelines require and as WC ALJs express an interest in a new area. Cross-training also goes the other way, according to DHA administrators. Several WC ALJs

are nearing the end of their careers: retirements complicate budgets and caseload management. Current DHA ALJs may be cross-trained to fill in for WC ALJs in order to meet WC case demands. Workers compensation cases may be resolved more promptly and at lower cost in this way. In sum, the administration argues, cross-training would allow DHA to alleviate temporary caseload pressures, personnel shortages, conduct hearings more promptly than may otherwise be possible, promote consistency and independence, and maximize the talents and experience of each ALJ. As discussed later, cross training of ALJs is not a common practice among peer states.

36. Beyond the potential benefits of cross training ALJs, DHA argues that additional savings could be realized by the transfer. DHA has stated that there could be a more efficient use of personnel, more use of technology, space consolidation, and other savings through aggregating the cost of subscriptions, legal resources and continuing legal education courses which will result in efficiencies and cost savings. The administration states that the metrics to watch are: (a) whether the costs of the WC program decrease thereby reducing the burden on Wisconsin employers; and (b) whether workflow can be tailored to shorten the time from application to a decision that results in injured workers receiving just compensation. The transfer would be approved under Alternative 1.

37. The Legislative Audit Bureau completed a review of the use of hearing officers in state government in June, 2000. The study addressed the performance and efficiency of the system using data from the 1998-99 fiscal year and made recommendations regarding the merits of further consolidation of the hearing officers to the state's central panel (DHA) or DWD. The LAB concluded that the types of hearings likely to be most suitable for consolidation outside of the agencies in which they are currently conducted are those that: are limited in number and therefore most likely to result in economies of scale if consolidated; have no special need to be conducted by the agency responsible for program administration; do not already ensure sufficient independence through the possibility of review by an objective board, commission, or other oversight entity; and would appear to fit in well with the types of cases currently conducted by either DWD or DOA. Based on these criteria, LAB noted that 79.3 percent of all hearing officers work in either DWD or DOA's Division of Hearings and Appeals and conduct 75.7 percent of all contested case hearings. Transferring responsibility for one of these agency's hearings to the other is not likely to produce substantial benefits. First, the caseload of each agency is already adequate to provide economies of scale that are not likely to be enhanced through further consolidation. Second, such a transfer could be disruptive given the number of staff involved and the new organizational structures that would have to be planned and implemented. Third, consolidation within DOA would likely provide few benefits related to independence, because most DWD cases can be reviewed by the Labor and Industry Review Commission. The LAB concluded that any benefits derived from additional consolidation are likely to be associated with the transfer of hearing responsibilities from agencies that currently conduct few hearings and that such consolidation might both decrease overall costs through economies of scale and, by separating the oversight function from the agency responsible for program administration, increase the independence or perceived independence of the opinions rendered.

38. In a Department memorandum on the worker's compensation transfer proposal entitled "Reforming Government Worker's Compensation FAQ", DWD contends that WC ALJ's would be

better able to maintain their independence by being located in DHA, which would support "greater objectivity and reinforces the firewall that's in place to protect the WC system against political influence." As stated in the June, 2000, LAB audit, the perception of independence is one of the main reasons a large number of hearings such as probation and parole revocation hearings are assigned to agencies other than those responsible for administering the program or policy being contested. However, in the same LAB report, DWD officials stated at the time that their high case volume allowed hearing officers to develop specialized expertise and that, in addition, parties negatively affected by DWD's hearing decisions may appeal to the Labor and Industry Review Commission.

Costs Associated With the Transfer

39. Wisconsin's workers compensation system, including the costs of ALJs, is funded by an assessment against WC insurers (Wis. Stat. 102.75). DWD's worker's compensation administration assessment rate is computed by dividing the current fiscal year's net operating cost by the total indemnity payments by carriers and self-insurers for claims closed in the previous calendar year. The total indemnity paid for 2013 first-closed claims was \$252,054,710. The Worker's Compensation Division's net operating revenue to be collected for FY 2015 is \$12,069,700. Based on the calculation (\$12,069,700 divided by \$252,054,710), the general assessment rate is 4.79% for FY15. Self-insured employers will pay the 4.79% general assessment rate plus an additional 1.02% to cover the administrative cost of operating the self-insured employers program for a total of 5.81%. Administration assessment rates are calculated and released annually in August for the current fiscal year.

40. Any change in the cost of operating the WC Division or in the cost of handling workers compensation claims is factored into the assessment rate charged to insurers. Any change in the assessment charged to insurers would then be passed on to employers through a change in the rate structures. If the system costs more to operate (such as the system becomes more litigious, and/or the time to close cases increases) then rates would be expected to increase. Likewise, if the system costs less to operate (the transfer results in additional operational efficiencies) then rates would be expected to decrease.

41. DWD, OCI and DHA have held meetings to identify duties and services that may need to be provided by DWD if the transfer is approved. The meetings have been preliminary and no formal agreements or MOUs have been signed to date.

42. DWD, OCI and DHA will need to develop a transition plan for information technology (IT) services and systems. It is not possible to calculate the potential costs for the transition. As staff, offices, and equipment are not expected to move initially, OCI does not anticipate any significant costs associated with the transfer, be it related to IT or other functions. OCI plans on utilizing the current ICMS system that is administered by DWD. According to OCI, the only difference will be that the OCI will pay the costs that are now allocated to the WC Division but expect that this cost will be commensurate with current IT costs, so the transfer should be budget neutral. Beyond assurances from the administration, it is not possible to estimate what near-term or longer-term IT costs related to the transfer of WC to OCI and DHA may be incurred.

43. DOA has noted the potential for eventual space consolidation at the Milwaukee State Office Building. DHA currently pays \$94,000 for the 4,559 square feet (807 is Class C space) to house 18 employees. WC pays \$155,218 for 6,530 square feet to house 11 employees. WC is currently charged for three hearing rooms in Milwaukee that DOA indicates could be repurposed. It is unknown if DOA would continue to lease space at DWD's regional worker's compensation office in Appleton.

44. The administration identified 5.0 vacant positions to be deleted under the transfer. Under the bill, 1.0 PR position and 4.0 SEG position would be deleted from DWD and not recreated in OCI. OCI has stated that these positions were no longer needed as part of the transfer of Worker's Compensation from DWD. The Committee could choose to delete funding associated with the 5.0 positions which would reduce funding by \$361,000 over the biennium (\$36,000 PR and \$144,500 SEG annually) [Alternative 2].

Organization of WC in Neighbor States

45. A review of Wisconsin's neighboring states reveals a mix of organizational structures in place for administering worker's compensation. Iowa and Minnesota currently house WC administration within their respective labor departments, while Michigan houses its WC agency within its licensing and regulatory affairs department. Illinois' WC agency is a separate independent agency. Michigan and Minnesota have separated the administration and adjudicatory functions of workers compensation into separate agencies, while Illinois and Iowa have all WC functions located in a single agency. Michigan and Minnesota's WC adjudicatory functions are located in their state's respective "central panel" administrative hearing offices. Central panels are independent agencies, usually located in a state's executive branch, whose sole function is to provide administrative hearing services for other state agencies. Wisconsin's central panel is DHA. Despite colocation within central panels, workers compensation ALJs in Minnesota and Michigan are not cross trained in other areas of law and do not hear cases outside of workers compensation. From a 1999 survey conducted by DHA, of the 17 states with central panels that responded to the survey, three states (Texas, North Dakota, and Minnesota) had central panels that conducted worker's compensation hearings.

46. In Iowa, workers compensation administration, hearings and appeals are housed within the Division of Workers' Compensation which is part of the state's workforce development agency - Iowa Workforce Development. The workers' compensation commissioner is the head of the Division and has the responsibility of administering, regulating, and enforcing the workers' compensation laws. The Division provides information regarding the provisions of the Workers' Compensation Law, the rights of the parties, and the procedures the parties can follow to resolve their disputes.

47. In Minnesota, the administration of workers compensation is located within the Department of Labor and Industry (DLI) which is the state agency that oversees programs for apprenticeship, construction codes and licensing, occupational safety and health, and wage and hour standards. Adjudicatory functions are handled within the Office of Administrative Hearings (OAH). OAH consists of two separate divisions: the Administrative Law Division and the Workers' Compensation Hearing Division. The Administrative Law Division hears state agency

administrative procedure cases, rulemaking cases, and local government licensing and personnel cases. The Workers' Compensation Hearing Division conducts workers' compensation settlement conferences and hears workers' compensation benefit cases. Each division is supervised by an assistant chief judge. According to OAH, scheduling issues make it difficult for judges to regularly handle cases in both divisions; however, such crossover is permitted by statute. Currently, OAH does not routinely cross-train judges, but will do so if requested by the Legislature.

48. In Minnesota, the first significant expansion of OAH responsibilities after its creation was in 1981, when legislation transferred all workers' compensation hearing functions and the compensation judges who were performing those functions from DLI to OAH. While OAH took on this high-volume caseload, DLI retained, for a time, the alternative dispute resolution functions and the quasijudicial settlement function. DLI continued to employ a cadre of compensation judges, known as "settlement judges," who presided over settlement conferences and certain other related prehearing proceedings. In 1997, the Legislature transferred all of the settlement functions to OAH, along with the settlement judges who had been performing those functions. Examples of issues currently handled by OAH are medical and rehabilitation requests where primary liability has been denied, medical requests over \$7,500, petitions to discontinue compensation benefits, objections to discontinuance of compensation benefits, objections to penalty assessments, petitions for permanent total disability, claims for dependency benefits, attorney fee disputes, contribution/reimbursement claims, and various claim petitions. DLI handles cases where primary liability has been accepted and the only issue is for retraining or medical issues of less than \$7,500. Medical requests may involve medical bills, prescription expenses, changing the treating physician, and medical expenses. Rehabilitation requests may involve a request for rehabilitation services, retraining, rehabilitation expenses, and a change of rehabilitation plan.

49. In Michigan, the Worker's Compensation Agency (the administrative body for WC in Michigan) and the Michigan Administrative Hearings System (MAHS) are housed within the Department of Licensing and Regulatory Affairs. Within MAHS, the Workers' Compensation Board of Magistrates is an autonomous entity and conducts administrative hearings on claims for workers' compensation benefits and resolves disputes arising under Michigan's Workers' Disability Compensation Act. Workers compensation administrative law judges are not cross-trained in other areas of law and are not authorized, under Michigan statutes, to hear cases in the other MAHS divisions (General Adjudication Division, Tax Tribunal, and the Benefit Services Division). There are currently 17 WC ALJ's in Michigan, all appointed by the Governor. The intent behind the statutory requirement that WC ALJ's exclusively hear WC cases is unknown, however, the administrative director of MAHS stated that workers compensation is a unique and specialized system with a body of law that largely differs from Michigan's administrative law statutes which apply to other state agencies.

50. In Illinois, The Illinois Workers' Compensation Commission (IWCC) is the administrative body for worker's compensation in Illinois as well as the agency that oversees the judicial process that resolves disputed workers' compensation claims between employees and employers. The IWCC acts as an administrative court system for these claims. In 1957, the Commission separated from the Department of Labor and became a self-standing agency.

Other Considerations

51. Some have expressed concern that the transfer of the workers compensation from DWD to OCI could open the door to adopting a medical fee schedule through the administrative rule process. The budget bill provides that all rules promulgated by DWD in effect on January 1, 2016, that are primarily related to the administrative functions of the Division of Worker's Compensation, as determined by the Secretary of DOA, remain in effect until their specified expiration dates, or until amended or repealed by OCI.

52. Both DWD and OCI are cabinet-level agencies and are both subject to the same rule promulgation process as provided in Chapter 227 of the state statutes. Given that all existing rules would transfer from DWD to OCI under the budget bill, and that both agencies are subject to the same statutory rule making process, any new rule proposed by either agency would have to adhere to the same statutory path for approval.

53. OCI has stated that it has no intent to enact a fee schedule, such as one tied to Medicare, for medical treatments and believes that such a proposal would be a policy decision best addressed by the Legislature.

ALTERNATIVES

1. Approve the Governor's recommendation, as corrected by the administration's erratum [LRB b0001/P2] to transfer DWD's worker's compensation functions to OCI and DHA. Further, provide \$1,622,300 in 2015-16 and \$3,244,700 in 2016-17 to reflect the administration's intent that the transfers be revenue neutral.

ALT 1	Change to Bill
SEG	\$4,867,000

2. Delete \$144,500 SEG and \$36,000 PR annually associated with 5.0 vacant position deletions.

ALT 2	Change to Alt. 1
PR	- \$72,000
SEG	<u>- 289,000</u>
Total	- \$361,000

3. Delete the provision. (The WCAC could explore transferring workers compensation administrative and hearing functions, or other potential program efficiencies.)

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