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Joint Committee on Finance

Paper #736

Changes to Supplemental Benefit Reimbursements and Payments from the Uninsured Employers Fund (DWD -- Worker's Compensation)

[LFB 2015-17 Budget Summary: Page 551, #2]

CURRENT LAW

The Worker's Compensation Division at DWD administers two worker's compensation claim payment funds: (1) the work injury supplemental benefits fund (WISBF), and (2) the uninsured employers fund (UEF). Under current law, an employer or insurance carrier paying supplemental workers compensation benefits is entitled to reimbursement for each such case from the WISBF, commencing one year after the date of the first payment of those benefits and annually thereafter while those payments continue.

Also under current law, if an employee of an illegally uninsured employer suffers an injury for which the uninsured employer is liable, DWD or DWD's reinsurer must pay to, or on behalf of, the injured employee or to the employee's dependents an amount equal to the compensation owed them by the uninsured employer under the WC law. The payments are made from the UEF, except that if DWD has obtained an excess or stop-loss insurance policy from a reinsurer, the Department's reinsurer must make those payments to the injured employee according to the terms of the contract of reinsurance. The state then tries to recoup those funds, plus penalties, from the uninsured employer.

GOVERNOR

Terminate reimbursements to self-insured employers for supplemental benefits paid by self-insured employers beginning on the effective date of the bill.

Terminate reimbursements to insurers for supplemental benefits paid by insurers from the

WISBF beginning on the effective date of the bill. Provide that, an insurer paying supplemental benefits would instead be entitled to annual reimbursement from the workers compensation operations fund (WCOF).

Specify that DWD must pay a claim of an employee of an uninsured employer in excess of \$1,000,000 from the UEF in the first instance. If the claim is not covered by excess or stop-loss reinsurance, the Secretary of DOA must transfer from the WCOF administration appropriation to the UEF an amount equal to the amount by which payments from the UEF on the claim are in excess of \$1 million.

DISCUSSION POINTS

1. Supplemental benefits are for older worker's compensation (WC) claims when the injured worker is permanently and totally disabled or has been on continuous temporary total disability for more than 24 months after the date of injury resulting from an injury that occurred prior to January 1, 2001. The insurance carrier or self-insured employer is responsible for the duration of the claim to make benefit payments at the rate that is in effect on the date of injury. The insurance carrier or self-insured employer is also responsible to pay supplemental benefit payments to the claimant. The purpose of supplemental payments is to provide for cost-of-living adjustments for very old injuries sustained by workers because, as noted, these payments are locked in at the rate that is in effect on the date of the injury. These supplemental payments are reimbursed to the insurance carrier or self-insured employer upon request. The reimbursements are paid out of the WISBF.

2. The WISBF is primarily funded through statutory assessments against insurance carriers and employers for dismemberments and death claims. The WISBF has seven revenue sources and five benefit expenditures. Since 2004, 83 percent of WISBF revenue has been generated from three of the seven sources: death benefits for workers with no dependents, injuries resulting in death assessments, and dismemberment assessments. Since 2004, 45 percent of WISBF expenditures have been paid solely to reimburse supplemental benefits paid by insurance companies - one of the five statutory benefit expenditure categories. In 2012 and 2013, the share of supplemental benefit expenditures increased to 75 percent of all WISBF expenditures. At the same time that the share of supplemental payments to overall WISBF expenditures was increasing, the adequacy of WISBF revenue sources were compromised by lower payments into the fund. Although the state has recently experienced a lower number of worker deaths and dismemberments, this has resulted in a reduction in assessments (and associated revenue).

3. The WISBF condition deteriorated to a point where, as of May 14, 2013, reimbursements to employers and insurers of supplemental benefit payments were reduced to \$0 pursuant to state statute section 102.65(4) which states that the DOA Secretary, in consultation with the Worker's Compensation Advisory Council (WCAC), is obligated to reduce payments from the WISBF if known claims exceed 85 percent of the cash balance in that fund and the Secretary determines that the cash balance in the WISBF may become inadequate to fund all claims. Other payments made from the WISBF were not affected by this action.

4. Under the bill, reimbursements for supplemental benefits paid by self-insured employers would terminate. Reimbursements for supplemental benefits paid by insurers would move from being paid out of the WISBF to annual reimbursements from the workers compensation operations fund (WCOF). To fund those reimbursements, DWD would calculate the proportion of an insurer's approved reimbursement for supplemental benefits paid in the year before the previous year as a proportion of the total indemnity paid by the insurer in WC cases initially closed during the preceding calendar year (other than for increased, double, or treble compensation). This proportion would then be multiplied by the total indemnity paid in cases closed the previous calendar year by all carriers (other than for increased, double, or treble compensation).

5. Under the bill, the maximum amount that DWD may collect in a calendar year is \$5 million. If the amount determined collectible in a calendar year exceeds \$5,000,000, DWD must collect \$5 million in the year in which the determination is made and must collect the excess in the next calendar year or in subsequent calendar years until that excess is collected in full. DWD must require each insurer to make these payments for each fiscal year on such dates as the Department prescribes. All amounts would be deposited in the WCOF and used to provide reimbursement to insurers paying supplemental benefits. DWD would pay a claim for reimbursement approved by the Department by no later than 16 months after the end of the year in which the claim was received. The maximum amount that the Department may pay in a calendar year is \$5,000,000. If the amount payable in a calendar year exceeds \$5 million, DWD would pay the excess in the next calendar year or in subsequent calendar years until that excess is paid in full. The Department would pay claims for reimbursement in the chronological order in which they were received. No reimbursement would be paid to insurers for employees injured beginning on January 1, 2016 (although the bill would not affect current law provisions which specify that reimbursements only apply for injuries sustained prior to January 1, 2001).

6. This provision, in a somewhat similar form, was previously recommended by the WCAC and included as one of several provisions in the Council's "agreed upon" bill, 2013 AB 711/SB 550. A hearing was held on February 4, 2014, but the bill failed to pass any committee.

7. Under current law, the Uninsured Employers Fund (UEF) pays worker's compensation benefits on valid worker's compensation claims filed by employees who are injured while working for illegally uninsured Wisconsin employers. When a compensable claim is filed, the UEF pays the injured employee worker's compensation benefits as if the uninsured employer had been insured. The UEF was implemented July 1, 1996, and only applies to injuries occurring on or after July 1, 1996. The UEF is funded through penalties assessed against employers for illegally operating a business without WC insurance. The penalties are mandatory and non-negotiable. In addition, the Department pursues reimbursement from each uninsured employer for benefit payments made by the UEF, to the employee of that uninsured employer or to the employee's dependents and to health care providers. The UEF uses collection action (including warrants, levies, garnishment and execution against property) to secure satisfaction of penalty assessments and reimbursement of claims paid by the fund.

8. Under current law, the Department may obtain excess or stop-loss reinsurance with an insurance carrier in an amount that the DWD Secretary determines is necessary for the sound

operation of the UEF. The cost of the excess policy premium was paid out of the UEF and, for many years, the fund was able to buy relatively inexpensive excess insurance to cover very large claims. According to the Department, excess insurance prevented a number of catastrophic claims from quickly depleting the Fund. Since the inception of the fund, they have had 3 claims over \$1 million that have tapped into the UEF's reinsurance policy. The Fund had an excess insurance policy in place from its inception in 1996 (except for a four month period of January 1, 2011 to April 14, 2011) until April 15, 2013.

9. Effective April 15, 2013, the Department determined that the renewal premium rate was not financially viable for the UEF and opted not to purchase excess insurance. If the Department had accepted the quoted rate, the UEF's excess policy premium payment for fiscal year 2014 would have been \$1,050,000, as compared to \$151,000 for fiscal year 1996. In addition, from 2004 to 2014, increased premium costs combined with a very tight excess insurance market necessitated DWD to increase the UEF's excess policy retention from \$250,000 to \$1,500,000 (reimbursement of excess claim amounts are made by the policy once the retention has been paid by the UEF), with a per occurrence coverage limit of \$5,000,000. The lack of excess coverage put the Fund at a much greater risk of a single catastrophic claim quickly depleting the Fund, or of a large claim, or series of claims, encumbering the Fund above the 85% threshold. (Under current law, if the 85% threshold is reached, the DWD Secretary, after consulting with the WCAC will specify a date after which no new claims will be paid.)

10. Under the bill, DWD would pay a claim of an employee of an uninsured employer in excess of \$1,000,000 from the UEF in the first instance. If the claim is not covered by excess or stop-loss reinsurance, the Secretary of DOA must transfer from the WCOF administration appropriation to the UEF an amount equal to the amount by which payments from the UEF on the claim are in excess of \$1,000,000. Each calendar year DWD would file with the DOA Secretary a certificate setting forth the number of claims in excess of \$1,000,000 in the preceding year paid from the UEF, the payments made from the UEF on each such claim in the preceding year, and the total payments made from the UEF on all such claims. Based on that information, the DOA Secretary would determine the amount to be transferred in that calendar year. The maximum amount that the DOA Secretary could transfer in a calendar year would be \$500,000. If the amount exceeds \$500,000, the Secretary of DOA would transfer \$500,000 in the calendar year in which the determination is made and would transfer that excess in the next calendar year or in subsequent calendar years until that excess is transferred in full. According to the Department, by limiting the transfer to \$500,000 per calendar year, payments will be spread out (smoothed) over a course of time to mitigate the impact of year-to-year volatility if multiple catastrophic claims are made against the UEF.

11. The state's worker's compensation law establishes a Worker's Compensation Advisory Council (WCAC) to advise the Department on matters related to worker's compensation. The Council can submit its recommendations for changes in WC law to the Legislature and report its views on any other pending legislation which relates to WC. A similar provision was previously recommended by the WCAC and included as one of several provisions in the Department's agreed upon bill, 2013 AB 711/SB 550. Historically, the Council's recommended changes in WC law presented to the Legislature have been adopted with few, if any, amendments. It is believed the

2013 bill did not advance due to issues unrelated to supplemental benefit reimbursement.

12. Given that the proposal largely mirrors changes that were submitted by the WCAC and included in the 2013 recommended bill as well as the identified risks to the solvency of the UEF and the fact that supplemental payments have not been reimbursed to insurers from the WISBF since May 14, 2013, the Committee could choose to approve the Governor's recommendation to modify both claim payment funds as provided in the bill [Alternative 1]. This would recognize the time sensitive nature of the proposal and the fact that a similar proposal was previously vetted by the WCAC and submitted by DWD to the Legislature in an earlier agreed upon bill.

13. The Governor's recommendation to make changes to the state's WC law in the biennial budget bill is a significant departure from the process as described above for how changes to WC law have historically been presented to the Legislature. The WCAC process of consensus building and incremental changes to the Worker's Compensation Law has avoided abrupt policy changes and contributed to stability and predictability for employers, insurers and injured workers. It is argued that this policy stability has also resulted in more predictable and stable worker's compensation rates for employers and insurers, and benefits for injured workers. The Committee could choose to delete the provision [Alternative 2]. This would allow the WCAC to address the issue as part of its proposal for the 2015 legislative session to modify the state's worker's compensation laws.

ALTERNATIVES

1. Approve the Governor's recommendation to modify the supplemental benefit reimbursement system.

2. Delete provision (the WCAC may consider the item for inclusion in separate legislation).

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