

**DEPARTMENT POLICIES  
AND  
PROCEDURES**

The following points of law or procedure are uniform policies that should be followed by the department. Some items are a restatement of statutory or Administrative Code provisions but are included because they are a bit obscure or commonly overlooked.

**1) TPD: TIME LOSS TO RECEIVE TREATMENT**

Compensation for temporary partial disability is payable for lost time to attend treatment during the healing period unless the treatment can reasonably be taken outside of working hours. After the healing period has ended, compensation is not payable.

**2) DISFIGUREMENT BENEFITS**

Disfigurement benefits should be paid periodically but a compromise agreement may authorize a lump sum payment. Note the language in s. 102.44(3), Stats., which includes benefits under s. 102.56, Stats., as a type of permanent partial disability. A disfigurement evaluation is generally not done until one year post surgery or injury date. Compensation for disfigurement is payable after compensation for permanent partial disability ends.

**3) CONFIDENTIALITY OF WC RECORDS**

Worker's compensation records are subject to Wisconsin public records law except for records identifying an employee's name, injury, medical condition, disability or benefits or financial records of applicants for self-insurance, which are confidential. Authorized requestors are limited to parties to the claim (the employee, the employer, and the insurance carrier); an authorized attorney or agent of such a party; and a spouse or adult child of a deceased employee. Department staff may provide limited confidential information regarding the status of claims to a legislator or aide or government official on behalf of a specific constituent/party. In addition, department staff are not permitted by law to conduct a random search to determine if other injuries have been reported.

If the requestor is the same employer or insurance carrier involved in the prior injury, then access will be allowed. If the requestor is a different employer or insurance carrier but they make a reasonable argument that the prior injury and the current injury are related, access may be allowed. For example, they are reasonably related if the two injuries involve the same body areas.

**4) SECTION 102.58, STATS.**

An insurance carrier may not take a 15% reduction under s. 102.58, Stats., without prior approval or adjudication from the department.

#### **5) SECTION 102.43(9)(c), STATS.**

A carrier should also notify the department of its intent to terminate temporary disability benefits pursuant to s. 102.43(9)(c), Stats. The department will request further information before such a termination is approved. The department will ask for a copy of the drug test result, proof that the employer reasonably enforces its drug policy, and a copy of the medical report releasing the employee to light duty. The drug test is to be taken after the date of injury and during the healing period.

#### **6) FINAL REPORT**

A final report is required pursuant to s. 102.13(2)(c), Stats., and DWD 80.02(2)(e)4 of the Wisconsin Administrative Code if permanent disability results from the injury or temporary disability exceeds three weeks, the employee has undergone surgery to treat an injury other than a hernia, and if the employee sustained an eye injury requiring treatment on three (3) or more occasions off the employer's premises. In addition, the insurance carrier is responsible for paying the treating doctor a reasonable fee for such a final report. The treating practitioner may not require prepayment of that fee under s. 102.13(2)(c), Stats.

#### **7) FREE EXCHANGE OF RECORDS**

The department encourages a voluntary and free exchange of records and does not endorse the practice of charging a party for records.

#### **8) REFUSAL TO FURNISH AUTHORIZATIONS**

The department encourages parties to sign reasonable authorizations for the release of medical and other records. The department will not delay proceedings or hearings because an employee refuses to furnish an authorization. We do not have authority to compel an authorization. The party's recourse is to subpoena the records and request a continued hearing.

Pursuant to s. 102.17(1)(b), Stats., an ALJ has the discretion to hold a conference and may, after the prehearing, issue an order requiring disclosure or exchange of information or written material which he/she considers material to the timely and orderly disposition of the dispute.

#### **9) EXHIBITS**

The department does not recommend that ALL records from health care providers be filed before a hearing. We recommend that parties file only those records that are: 1) relevant and 2) actually have some probative value. For those documents filed on the day of hearing, copies should be provided to the other parties.

#### **10) SECTION 102.64(1), STATS.**

A compromise of a death benefit claim must provide payment into the Work Injury Supplemental Benefit Fund (WISBF) under s. 102.64(1), Stats. The language in the statute is mandatory and not permissive. If the parties refuse or fail to comply with this statutory section, the

Wisconsin Department of Justice is not barred or precluded from collecting any amount due to the WISBF. If we see a death benefit compromise that does not comply with this provision, we will notify the parties with a letter which will be copied to the DOJ.

#### **11) WC PAYMENTS ARE SUBJECT TO THE UNCLAIMED PROPERTY ACT**

Worker's compensation payments are subject to the Unclaimed Property Act under Chapter 177, Stats. If a carrier is unable to make payment to a claimant because it cannot locate that person, the carrier should contact the State Treasurer's Office for information on how to report unclaimed property. The WKC-13 should state that the unpaid amount will be sent to the State Treasurer as unclaimed property.

#### **12) ANNUITY**

An annuity is subject to the following conditions: the annuity carrier must be licensed in the state of Wisconsin and rated A by the Best Rating Service; purchasing the annuity does not constitute an assignment or transfer of liability for payment of the claim; and the worker's compensation insurance carrier remains liable for all payments required in the event of the annuity carrier's insolvency. These same criteria apply when an annuity is purchased to fund a Medicare Set-Aside Trust Account.

#### **13) APPLICATIONS TO TOLL THE STATUTE OF LIMITATIONS**

The department will serve an application for hearing that is filed for the purpose of tolling the statute of limitations. In general, we place a five-year follow-up on these files.

#### **14) ATTORNEY FEE REQUESTS IN NON-LITIGATED CLAIMS**

Any request for an attorney fee in a non-litigated claim must be accompanied by a copy of the retainer fee agreement. The attorney should also specify exactly what compensation he/she is claiming a fee on.

#### **15) PLACEMENT AT A NON-PROFIT CHARITY DURING THE HEALING PERIOD**

This is allowed if: the employer cannot accommodate light duty restrictions; the charity has suitable work available within the employee's physical and mental limitations; the employee is paid by the employer; and the worker's compensation insurance carrier pays any remaining indemnity that may be due. Note that, if the worker is injured while working at the charity, the employee will likely be able to file a new claim against the charity. Since the charity would likely control the details of the work, the charity may be found to be the employer.

Such placements are NOT allowed if the injured worker is only going to receive TTD benefits that are due. If only TTD is going to be received for charity work, the worker can refuse the work and the employee's benefits cannot be suspended based on that refusal.

**16) DEATH BENEFITS FOR MINORS**

At age 18, the death benefit for a minor is paid out monthly at the same rate it was paid into the restricted account. It is not paid in a lump sum. The minor can request advancements. Prior to age 18, the legal guardian can request advancements. See s. 102.45, Stats.

**17) MEAL RATES DURING VOCATIONAL RETRAINING**


Pursuant to s. 102.61(1), Stats., meal reimbursement rates during weeks of vocational retraining are equal to the rates payable to travelling state employees.

**18) CERTIFICATE OF READINESS IS NOT A PLEADING**

A COR is not a pleading. New claims must be made by filing an amended WKC-7 application form or a letter amending the application.

**19) SECTION 102.42(6), STATS., REFUSAL OF TREATMENT**

Based on longstanding department policy, an employee's refusal to submit to an invasive procedure that is hazardous to life or limb is NOT an unreasonable refusal under s. 102.42(6), Stats.

  
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