

# **STATEMENT OF SCOPE**

## **Department of Workforce Development**

**Rule No.**

DWD 80

**Relating to:**

Minor and Technical changes to the Worker's Compensation Program

**Rule Type:**

Permanent

**Finding/nature of emergency (Emergency Rule only)**

N/A

**Detailed description of the object of the proposed rule**

The proposed rule will update ch. DWD 80 (worker's compensation) and make minor and technical changes in response to 2015 Wis. Act 180 and 2011 Wis. Act 183 relating to:

- Self-insurance approval for local government units with independent taxing authority.
- Self-insured employer liability fund.
- Reasonableness of fee disputes.

In addition to the minor and technical changes needed to conform to state statutes, the rule will also eliminate outdated provisions and terminologies, clarify language, and update references for accuracy to ensure the rule is consistent with current practices and applicable state statute.

**Description of the existing policies relevant to the rule, new policies to be included in the rule, and an analysis of the policy alternatives**

Section DWD 80.40 currently provides the first assessment against a self-insured employer to fund the Self-Insured Employers Liability Fund will be based on an equal amount against each self-insured employer, and further assessments will be made on a pro rata basis according to the gross payroll in this state of each self-insured employer reported to the Department for the previous calendar year for unemployment insurance purposes under ch. 108, Stats. The proposed rule will specify that self-insured local government units with independent taxing authority are not liable to pay into the Self-Insured Employers Liability Fund, that payments from this fund cannot be made to employees who were injured while employed by self-insured local government units with independent taxing authority, and that all assessments into this fund will

be made on a pro rata basis according to gross payroll in this state as reported to the Department for the previous calendar year for unemployment insurance purposes under ch. 108, Stats.

Section DWD 80.60 currently provides the process for employers to be approved to become self-insured for worker's compensation purposes, including the state and its political subdivisions. The proposed rule will make some minor changes to conform to state statutes and to clarify the approval requirements for business entities that are not required to register with the Department of Financial Institutions.

Section DWD 80.61 currently provides the process for employers to be approved for divided-insurance and partial-insurance coverage including approval of divided insurance coverage for designated carrier wrap-up construction projects. The proposed rule will make a minor change to conform to state statutes.

Under s. DWD 80.72 (2) (i), the definition of "formula amount" specifies 1.4 standard deviations from the mean for a procedure as shown from a certified database. The rule will update the definition of "formula amount" to specify that 1.2 standard deviations from the mean for a procedure as shown from a certified database for use in resolving reasonableness of fee disputes involving health care services provided to injured employees.

The policy alternative is to do nothing. If the Department does not move forward with the proposed rule, the rule will not be in conformity with state statutes.

**Detailed explanation of statutory authority for the rule (including the statutory citation and the language)**

*Section 102.28 (2) (e), Stats.*

"The department shall promulgate rules to implement this subsection."

*Section 102.28 (7) (d), Stats.*

"The department shall promulgate rules to implement this subsection."

*Section 102.16 (2) (h), Stats.*

"The department shall promulgate rules establishing procedures and requirements for the fee dispute resolution process under this subsection, including rules specifying the standards that health service fee databases must meet for certification under this paragraph. Using those standards, the department shall certify databases of the health service fees that various health service providers charge. ..."

**Estimate the amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule**

The estimated time is 160 hours.

### **List with description of all entities that may be affected by the proposed rule**

The proposed rule will affect self-insured employers, self-insured local government units with independent taxing authority, employers seeking approval for divided-insurance and partial-insurance coverage, health care providers, worker's compensation insurance carriers, and employers that use the "formula amount" for health service fee dispute resolutions. The entities affected may include all of the following:

- Chiropractic Society of Wisconsin
- Self-Insurers Council
- Wisconsin Manufacturers and Commerce
- Wisconsin Insurance Alliance
- Wisconsin Chiropractic Association
- Wisconsin Hospital Association
- Wisconsin Medical Society
- Wisconsin Physical Therapy Association
- Worker's Compensation Advisory Council

### **Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule**

There are no existing or proposed federal regulations related to the proposed rule.

### **Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small business)**

The proposed rule will have no economic impact locally or statewide. The proposed rule is procedural in nature and will have no economic impact on small business.

### **Contact Person**

James T. O'Malley, Director, Bureau of Legal Services, Worker's Compensation Division, P. O. Box 7901, Madison, WI 53707; or, email [Jim.OMalley@dwd.wisconsin.gov](mailto:Jim.OMalley@dwd.wisconsin.gov).