

EFFICIENT BENEFIT DELIVERY PROPOSALS FOR DISCUSSION
AT THE LABOR MANAGEMENT ADVISORY COUNCIL MEETINGS OF
MARCH 18-19, 2010
Revised March 26, 2010, Based on LMAC Comments

The objective is to provide reasonable wage-loss benefits in a timely manner while improving the predictable delivery of benefits and at the same time decrease duration of time off work to reduce costs to the workers' compensation system. **NOTE: Proposed changes would be effective for dates of injuries on or after July 1, 2011.**

1. NOTE: All the proposals in No. 1 are needed to achieve efficient delivery, reduce duration, and increase permanent partial disability benefits (PPD) to workers.

- a. Statutorily end temporary total and temporary partial benefits at maximum medical improvement (MMI) on the completion of a permanent impairment evaluation.
- b. **Comments: This clear termination of temporary total and temporary partial benefits (TTD) and (TPD) would require definition and other statutory changes to TTD and TPD and would eliminate the need for the "Coles" criteria to be met before termination or conversion to permanent partial benefits (PPD).** Immediately start paying permanent partial impairment (PPI) or permanent partial disability (PPD) award upon the termination of TTD or TPD. a.) The PPI would be paid to those workers with a >0% impairment rating who have returned to work with no wage loss compared to the time of injury (TOI) wage or been offered a suitable job by the TOI employer at the TOI wage. b.) The PPD award would be payment of the impairment rating plus other percentages for age, education, restrictions and wage loss to those workers who have not been offered suitable employment by the TOI employer at the TOI wage and have not returned to work in any employment within 14 days after the insurer receives notice of MMI and impairment rating.

Comments: This change would require definition changes and other statutory changes to PPD. The dollar amounts due the worker would be easily calculated without vocational rehabilitation assessments. An offer of employment would provide an incentive to an employer to return a worker to work and reduce the PPD costs while providing meaningful employment to the worker.

- c. Eliminate the eligibility for vocational rehabilitation services/benefits for disabled workers or those workers with a >15% impairment rating provided in the Vocational Rehabilitation Sections, Title 39, Chapter 71, Part 10.

Comments: Vocational Rehabilitation Services would not be needed here to determine eligibility or entitlement to PPD since benefits are not dependent on documentation of ability to return to work or amount of wage loss resulting from injury. Rehab benefits would not be paid since the proposal increases PPD benefits.

- d. Increase the PPD rate to 66 2/3% of the AWW with a maximum rate at the SAWW for both the PPI and PPD award.

Comments: The decreased costs resulting from the earlier termination of TTD and TPD combined with the decreased costs resulting from reduced use of and payments to vocational rehab counselors for services and reduced job placement rehab benefits would be used to pay increased PPD benefits directly to the worker.

- e. Revise the wage loss percentage factor to be paid at the equivalent percentage for the impairment rating. For example, if the impairment rating is 5% whole person then the wage loss percentage is also 5%; if the impairment rating is 10% then the wage loss percentage is also 10%.

Comments: The degree of impairment would be used to estimate a degree of wage loss without the need for an employability assessment to determine how much a worker is “qualified to earn”.

- f. Leave the percentages for age, education, and restrictions resulting from the injury the same as in current law.

Comments: These factors are known or easily determined and are also indicators that impact an injured worker’s ability to return to work.

- g. Add a section that requires the insurer to pay the PPD award if the employee only received an impairment rating payment and the employee is terminated or their job is eliminated for other than cause.

Comments: This should help eliminate an employer who offers a job they have no intention of making permanent just to pay the impairment rating amount rather than the full PPD award.

- h. Leave the PTD statute as it is in current statute.
- i. Revise the Vocational Rehabilitation Sections, Title 39, Chapter 71, Part 10 to allow a worker to request the insurer designate and pay for a vocational rehabilitation counselor to perform an employability assessment for the purpose of determining if the worker is PTD because the worker has not returned to work by the end of payment of the PPD award, has not been offered a suitable job by the TOI employer, and has not settled the claim.
- j. Provide up to 104 weeks of retraining benefits if a vocational rehabilitation provider recommends a retraining plan in order to prevent a worker from being determined PTD. The benefits would be paid bi-weekly over the retraining period as long as the

worker was successfully completing the retraining plan. Retraining benefits could not be settled and paid in a lump sum.

Comments: These changes to the Vocational Rehabilitation statutes would provide a mechanism for a worker to request an employability assessment when they have not been able to return to work after full payment of their PPD award and would be used only to help determine if there is an entitlement for PTD or retraining to prevent PTD.

2. Codify in statute the use of the 6th Edition AMA Guides as the rating tool for permanent impairment. This is expected to lower PPD ratings for backs, but increase ratings for some other less frequent conditions resulting in an overall decrease in PPD ratings.
3. Implement an “Early Return to Work” provision and funding to provide upon request a Department referral to a vocational rehabilitation counselor for the purpose of facilitating the early return to work proposal being developed by the SAW/RTW committee of WorkSafeMT.
4. Shorten from 30 days to 14 days the length of time an insurer has to investigate and accept or deny a claim, or begin making wage loss payments under 39-71-608 or medical benefit payments under 39-71-615.
5. Move to a Washington type of approach where the weekly benefit rate for both temporary total disability and permanent total disability is based on gross wages (so there is no need for administrative tables) but the rate varies so those injured workers with more dependents get more benefits and single workers get a bit less. The goal would be to achieve as close as possible a result that is revenue neutral.
6. Change the waiting period to 7 days of lost time before indemnity benefits begin.
7. Enact a retroactive payment for the waiting period after the payment of 28 days of disability.
8. Reduce the TPD rate to 80% of the difference between the wage at injury and the wage a worker is able to earn, eliminating the disincentive for a worker to return to work full time.