

Section 92-01-02-11.1 is amended as follows:

**92-01-02-11.1. Attorney's fees.**

Upon receipt of a certificate of program completion from the decision review office, fees for legal services provided by employees' attorneys and legal assistants working under the direction of employees' attorneys will be paid when an administrative order reducing or denying benefits is submitted to administrative hearing, district court, or supreme court and the employee prevails; or when a managed care decision is submitted to binding dispute resolution and the employee prevails subject to the following:

1. The organization shall pay attorneys at one hundred ~~forty~~ sixty dollars per hour for all actual and reasonable time other than travel time. The organization shall pay attorney travel time at ~~seventy-five~~ eighty dollars per hour.

2. The organization may pay legal assistants and third-year law students or law school graduates who are not licensed attorneys who are practicing under the North Dakota senior practice rule acting under the supervision of employees' attorneys up to ninety dollars per hour for all actual and reasonable time other than travel time. The organization shall pay travel time at forty-five dollars per hour. A "legal assistant" means any person with a bachelor's degree, associate's degree, or correspondence degree in a legal assistant or paralegal program from an accredited college or university or other accredited agency, or a legal assistant certified by the national association of legal assistants or the national federation of paralegal associations. The term may also include a person employed as a paralegal or legal assistant who has a bachelor's degree in any field and experience working as a paralegal or legal assistant.

3. Total fees paid by the organization for all legal services in connection with a dispute regarding an administrative order may not exceed the following:

a. Except for an initial determination of compensability, twenty percent of the additional amount awarded.

b. ~~Three thousand six hundred seventy-five~~ three thousand seven hundred seventy-five dollars, plus reasonable costs incurred, following issuance of an administrative order under North Dakota Century Code chapter 28-32 reducing or denying benefits, for services provided if a hearing request is resolved by settlement or amendment of the administrative order before the hearing is called to order.

c. ~~Five thousand seven hundred seventy-five~~ five thousand nine hundred fifty dollars, plus reasonable costs incurred, if the employee prevails after the hearing is called to order by the administrative law judge. ~~If the employee prevails after the hearing, and the organization appeals the final order, the organization shall pay attorney's fees at a rate of one hundred twenty five percent of the maximum fees specified in subdivisions d and e when the employee prevails on appeal, as defined by North Dakota Century Code section 65-02-08, to the district court or to the supreme court. However, the organization may not pay attorney's fees if the employee prevails at the district court but the organization prevails at the supreme court in the same appeal.~~

d. ~~Six thousand four hundred~~ six thousand six hundred dollars, plus reasonable costs incurred, if the employee's district court appeal is settled prior to submission of briefs.

~~Eight thousand six hundred~~ eight thousand eight hundred fifty dollars, plus reasonable costs incurred, if the employee prevails after hearing by the district court.

e. ~~Ten thousand three hundred~~ ten thousand six hundred dollars, plus reasonable costs incurred, if the employee's North Dakota supreme court appeal is settled prior to hearing. ~~Eleven thousand three hundred~~ eleven thousand six hundred fifty dollars, plus reasonable costs incurred, if the employee prevails after hearing by the supreme court.

f. ~~One thousand seven hundred~~ one thousand seven hundred fifty dollars, plus reasonable costs incurred, if the employee requests binding dispute resolution and prevails.

g. Should a settlement or order amendment offered during the DRO process be accepted after the DRO certificate of completion has been issued, no attorney's fees are payable. This contemplates not only identical offers and order amendments but those which are substantially similar.

4. The maximum fees specified in subdivisions b, c, d, and e of subsection 3 include all fees paid by the organization to one or more attorneys, legal assistants, law students, and law graduates representing the employee in connection with the same dispute regarding an administrative order at all stages in the proceedings. A "dispute regarding an administrative order" includes all proceedings subsequent to an administrative order, including hearing, judicial appeal, remand, an order resulting from remand, and multiple matters or proceedings consolidated or considered in a single proceeding.

5. All time must be recorded in increments of no more than six minutes (one-tenth of an hour).

6. If the organization is obligated to pay the employee's attorney's fees, the attorney shall submit to the organization a final statement upon resolution of the matter. All statements must show the name of the employee, claim number, date of the statement, the issue, date of each service or charge, itemization and a reasonable description of the legal work performed for each service or charge, time and amount billed for each item, and total time and amounts billed. The employee's attorney must sign the fee statement. The organization may deny fees and costs that are determined to be excessive or frivolous.

7. The following costs will be reimbursed:

a. Actual postage, if postage exceeds three dollars per parcel.

b. Actual toll charges for long-distance telephone calls.

c. Copying charges, at eight cents per page.

d. Mileage and other expenses for reasonable and necessary travel. Mileage and other travel expenses, including per diem, must be paid in the amounts that are paid state officials as provided by North Dakota Century Code sections 44-08-04 and 54-06-09. Out-of-state travel expenses may be reimbursed only if approval for such travel is given, in advance, by the organization.

e. Other reasonable and necessary costs, not to exceed one hundred fifty dollars. Other reasonable and necessary costs in excess of one hundred fifty dollars may be reimbursed only upon agreement, in advance, by the organization. Costs for typing and clerical or office services will not be reimbursed.

8. The following costs will not be reimbursed:

- a. Facsimile charges.
- b. Express mail.
- c. Additional copies of transcripts.
- d. Costs incurred to obtain medical records.
- e. Online computer-assisted legal research.
- f. Copy charges for documents provided by the organization.

The organization shall reimburse court reporters for mileage and other expenses, for reasonable and necessary travel, in the amounts that are paid state officials as provided by North Dakota Century Code sections 44-08-04 and 54-06-09.

**History:** Effective June 1, 1990; amended effective November 1, 1991; January 1, 1994; January 1, 1996; May 1, 2000; May 1, 2002; July 1, 2004; July 1, 2006; April 1, 2008; April 1, 2009; July 1, 2010; April 1, 2012; April 1, 2014; April 1, 2016.

**General Authority:** NDCC 65-02-08, 65-02-15

**Law Implemented:** NDCC 65-02-08, 65-02-15, 65-10-03,

## REGULATORY ANALYSIS OF PROPOSED RULE

**Section:** 92-01-02-11.1

**Title of Section:** Attorney's fees.

**GENERAL:** The following analysis is submitted in compliance with 28-32-08 of the NDCC.

**This rule is not expected to impact the regulated community in excess of \$50,000.**

## SMALL ENTITY REGULATORY ANALYSIS OF PROPOSED RULE

**Section:** 92-01-02-11.1

**Title of Section:** Attorney's fees.

**GENERAL:** The following analysis is submitted in compliance with §28-32-08.1(2) of the NDCC.

### **POSSIBLE WAYS TO MINIMIZE THE ADVERSE IMPACT ON SMALL ENTITIES:**

- A. Establishing less stringent compliance or reporting requirements:** There are no reporting or compliance requirements impacted by the change.
- B. Establishing less stringent schedules or deadlines for compliance or report:** There are no compliance issues impacted by the change.
- C. Consolidating or simplifying compliance or reporting requirements:** There are no compliance or reporting issues impacted by the change.
- D. Establishing performance standards that replace design or operational standards required in the proposed rule:** There are no performance standards impacted by the change.
- E. Exempting small entities from all or part of the rule's requirements:** There are no entities impacted by the change.

**SMALL ENTITY ECONOMIC IMPACT STATEMENT**

**GENERAL:** The following analysis is submitted in compliance with §28-32-08.1(3) of the NDCC.

Based on our analysis of this rule there is no need to complete a Small Entity Economic Impact Statement as there is not an adverse impact.

**WORKFORCE SAFETY & INSURANCE**  
**ADMINISTRATIVE RULE**  
**FISCAL NOTE**

**ADMINISTRATIVE RULE NO:** 92-01-02-11.1

**ADMINISTRATIVE RULE TITLE:** Attorney's fees.

**SUMMARY OF PROPOSED RULE:** Workforce Safety & Insurance has reviewed the proposed administrative rule in conformance with Section 28-32-08.2 of the North Dakota Century Code.

**FISCAL IMPACT:** No significant impact is anticipated. Based on historical experience, it is anticipated the attorney fees of injured workers will increase approximately \$12,000.00 per year.

**DATE:** July 11, 2017

A new section to Chapter 92-01-02 of the Administrative Code is created as follows:

**92-01-02-13.1. General Contractors.**

For purposes of application of N.D.C.C. § 65-04-26.2, the relationship between a general contractor and subcontractor may be identified by the organization in any industry.

**History:**

**General Authority:** NDCC 65-02-08, 65-04-26.2

**Law Implemented:** NDCC 65-04-26.2

## REGULATORY ANALYSIS OF PROPOSED RULE

**Section:** 92-01-02-13.1.

**Title of Section:** General Contractors

**GENERAL:** The following analysis is submitted in compliance with 28-32-08 of the NDCC.

**This rule is not expected to impact the regulated community in excess of \$50,000.**

## SMALL ENTITY REGULATORY ANALYSIS OF PROPOSED RULE

**Section:** 92-01-02-13.1.

**Title of Section:** General Contractors

**GENERAL:** The following analysis is submitted in compliance with §28-32-08.1(2) of the NDCC.

### **POSSIBLE WAYS TO MINIMIZE THE ADVERSE IMPACT ON SMALL ENTITIES:**

- A. Establishing less stringent compliance or reporting requirements:** There are no reporting or compliance requirements impacted by the change.
- B. Establishing less stringent schedules or deadlines for compliance or report:** There are no compliance issues impacted by the change.
- C. Consolidating or simplifying compliance or reporting requirements:** There are no compliance or reporting issues impacted by the change.
- D. Establishing performance standards that replace design or operational standards required in the proposed rule:** There are no performance standards impacted by the change.
- E. Exempting small entities from all or part of the rule's requirements:** There are no entities impacted by the change.

**SMALL ENTITY ECONOMIC IMPACT STATEMENT**

**GENERAL:** The following analysis is submitted in compliance with §28-32-08.1(3) of the NDCC.

Based on our analysis of this rule there is no need to complete a Small Entity Economic Impact Statement as there is not an adverse impact.

**WORKFORCE SAFETY & INSURANCE**  
**ADMINISTRATIVE RULE**  
**FISCAL NOTE**

**ADMINISTRATIVE RULE NO:** 92-01-02-13.1.

**ADMINISTRATIVE RULE TITLE:** General Contractors.

**SUMMARY OF PROPOSED RULE:** Workforce Safety & Insurance has reviewed the proposed administrative rule in conformance with Section 28-32-08.2 of the North Dakota Century Code.

**FISCAL IMPACT:** No impact is anticipated.

**DATE:** July 11, 2017



Subsection 1 of section 92-01-02-14 is amended as follows:

**92-01-02-14. Procedure for penalizing employers accounts for failure to pay premium or failure to submit payroll reports.**

1. The organization shall bill each employer annually for premiums as provided by North Dakota Century Code chapter 65-04. If an employer has an open account with the organization, the organization may send to the employer annually a form payroll report on which the employer shall ~~report~~ submit payroll expenditures from the preceding payroll year. The employer shall provide on the payroll report all information requested by the organization including the name, social security number, rate classification and gross payroll for each employee. An electronic report of payroll information in a format approved by the organization is acceptable. The employer shall complete the report and send it to the organization either by regular mail or electronic transmission. The report must be received by the organization by the last day of the month following the expiration date of the employer's payroll period. The organization shall consider an unsigned or incomplete submission to be a failure or refusal to furnish the report.
2. The organization shall send the first billing statement to the employer by regular mail to the employer's last-known address or by electronic transmission. The first billing statement must identify the amount due from the employer. The statement must explain the installment payment option. The payment due date for an employer's account is thirty days from the date of billing indicated on the premium billing statement. If a previous delinquency exists on the employer account, the billing statement indicates a past-due status.
3. If the organization does not receive full payment or the minimum installment payment indicated on the premium billing statement, on or before the payment due date, the organization shall send a second billing statement.
4. If the minimum installment payment remains unpaid thirty days after the organization sends the second billing statement to the employer, the organization shall notify the employer by regular mail to the employer's last-known address or by electronic transmission that
  - a. The employer is in default and may be assessed a penalty of two hundred fifty dollars plus two percent of the amount of premium, penalties, and interest in default;
  - b. The employer's account has been referred to the collections unit of the policyholder services department; and
  - c. Workforce safety and insurance may cancel the employer's account.
5. The organization may extend coverage by written binder if the organization and the employer have agreed in writing to a payment schedule on a delinquent account. If the employer is in default of the agreed payment schedule, however, that employer is not insured.
6. If the employer's payroll report is not timely received by the organization, the organization shall notify the employer, by electronic transmission or regular mail addressed to the last-known address of the employer of the delinquency. The notification must indicate that the organization may assess a penalty of up to two thousand dollars against the employer's account.
7. If the payroll report is not received within forty-five days following the expiration of the employer's payroll year, the organization shall assess a penalty of fifty dollars. The organization shall notify the employer of the penalty by electronic transmission or regular mail addressed to the employer's last-known address ~~that the employer is uninsured.~~

8. At any time after sixty days following the expiration of the employer's payroll year, when the employer has failed to submit a payroll report, the organization may bill the employer ~~at the wage cap per employee using the number of employees reported per rate classification from a previous year of actual or estimated payroll reported to the organization. The organization may also bill an employer account using data obtained from job service North Dakota to bill an employer who has failed to submit a payroll report~~ consistent with N.D.C.C. §65-04-19. An employer whose premium has been calculated under this subsection may submit actual wages on an employer payroll report for the period billed and the organization shall adjust the employer's account. The organization may also cancel the employer's account.

9. If the organization receives an employer payroll report more than sixty days after the expiration of the employer's payroll period, the employer's premium billing statement may have a past-due premium billing due date. Any employer account billed without benefit of the employer payroll report may have a past-due premium billing due date.

10. If the employer does not have an open account with the organization, the organization shall send the employer an application for coverage by regular mail or by electronic transmission. The organization shall notify the employer of the penalties provided by North Dakota Century Code chapter 65-04 and this section.

11. Upon receipt of an incomplete or unsigned payroll report, the employer shall submit the completed payroll report within fifteen days of the organization's request. The organization shall consider an unsigned or incomplete submission to be a failure or refusal to furnish the report. If the payroll report is not timely received by the organization, the organization may assess a penalty of up to two thousand dollars and shall notify the employer that the employer is uninsured.

**History:** Effective June 1, 1990; amended effective January 1, 1994; January 1, 1996; May 1, 2002; March 1, 2003; July 1, 2006; April 1, 2009; July 1, 2010; April 1, 2016, April 1, 2018??

**General Authority:** NDCC 65-02-08, 65-04-33, 65-04-06

**Law Implemented:** NDCC 65-04-33

## REGULATORY ANALYSIS OF PROPOSED RULE

**Section:** 92-01-02-14

**Title of Section:** Procedure for penalizing employers accounts for failure to pay premium or failure to submit payroll reports.

**GENERAL:** The following analysis is submitted in compliance with 28-32-08 of the NDCC.

**This rule is not expected to impact the regulated community in excess of \$50,000.**

## SMALL ENTITY REGULATORY ANALYSIS OF PROPOSED RULE

**Section:** 92-01-02-14

**Title of Section:** Procedure for penalizing employers accounts for failure to pay premium or failure to submit payroll reports.

**GENERAL:** The following analysis is submitted in compliance with §28-32-08.1(2) of the NDCC.

### **POSSIBLE WAYS TO MINIMIZE THE ADVERSE IMPACT ON SMALL ENTITIES:**

- A. Establishing less stringent compliance or reporting requirements:** There are no reporting or compliance requirements impacted by the change.
- B. Establishing less stringent schedules or deadlines for compliance or report:** There are no compliance issues impacted by the change.
- C. Consolidating or simplifying compliance or reporting requirements:** There are no compliance or reporting issues impacted by the change.
- D. Establishing performance standards that replace design or operational standards required in the proposed rule:** There are no performance standards impacted by the change.
- E. Exempting small entities from all or part of the rule's requirements:** There are no entities impacted by the change.

**SMALL ENTITY ECONOMIC IMPACT STATEMENT**

**GENERAL:** The following analysis is submitted in compliance with §28-32-08.1(3) of the NDCC.

Based on our analysis of this rule there is no need to complete a Small Entity Economic Impact Statement as there is not an adverse impact.

**WORKFORCE SAFETY & INSURANCE**  
**ADMINISTRATIVE RULE**  
**FISCAL NOTE**

**ADMINISTRATIVE RULE NO.:** 92-01-02-14

**ADMINISTRATIVE RULE TITLE:** Procedure for penalizing employers accounts for failure to pay premium or failure to submit payroll reports.

**SUMMARY OF PROPOSED RULE:** Workforce Safety & Insurance has reviewed the proposed administrative rule in conformance with Section 28-32-08.2 of the North Dakota Century Code.

**FISCAL IMPACT:** No impact is anticipated.

**DATE:** July 11, 2017

A new section to Chapter 92-01-02 of the Administrative Code is created as follows:

**92-01-02-23.2. Employers to provide security instrument.**

The organization may require an employer to provide a bond, letter of credit, cash deposit or other security instrument approved by the organization to guarantee payment of workers compensation premium. The required security instrument is in addition to any other required installment payment obligations.

1. A security instrument or cash deposit may be required when:
  - a. The employer does not have a permanent place of business in this state.
  - b. The employer is not a resident of this state.
  - c. The employer does not have a payment history or previously underwritten account with the organization, or
  - d. The employer has a previous delinquency with the organization.
2. The security required by an employer may be the amount of premium calculated for the applicable premium year. The security amount may be adjusted by the organization based on changes in premium and anticipated payroll. The organization may consider all aspects of an employer's account, including premium, rate classifications and premium and assessment delinquencies to determine the security required.
3. Failure to provide a security instrument as required by the organization results in the employer being deemed uninsured and in default.
4. The organization may permit withdrawal of the security if the employer has made all premium and assessment payments timely for two policy periods and complied with all requirements of the organization.
5. Once an employer account is in a closed status, and any balance due on the account is paid, the security instrument will be released.

**History:**

**General Authority:** NDCC 65-02-08, 65-04-22

**Law Implemented:** NDCC 65-04-22

## REGULATORY ANALYSIS OF PROPOSED RULE

**Section: 92-01-02-23.2.**

**Title of Section: Employers to provide security instrument**

**GENERAL:** The following analysis is submitted in compliance with 28-32-08 of the NDCC.

**This rule is not expected to impact the regulated community in excess of \$50,000.**

## SMALL ENTITY REGULATORY ANALYSIS OF PROPOSED RULE

**Section: 92-01-02-23.2.**

**Title of Section: Employers to provide security instrument**

**GENERAL:** The following analysis is submitted in compliance with §28-32-08.1(2) of the NDCC.

### **POSSIBLE WAYS TO MINIMIZE THE ADVERSE IMPACT ON SMALL ENTITIES:**

- A. Establishing less stringent compliance or reporting requirements:** There are no reporting or compliance requirements impacted by the change.
- B. Establishing less stringent schedules or deadlines for compliance or report:** There are no compliance issues impacted by the change.
- C. Consolidating or simplifying compliance or reporting requirements:** There are no compliance or reporting issues impacted by the change.
- D. Establishing performance standards that replace design or operational standards required in the proposed rule:** There are no performance standards impacted by the change.
- E. Exempting small entities from all or part of the rule's requirements:** There are no entities impacted by the change.

**SMALL ENTITY ECONOMIC IMPACT STATEMENT**

**GENERAL:** The following analysis is submitted in compliance with §28-32-08.1(3) of the NDCC.

Based on our analysis of this rule there is no need to complete a Small Entity Economic Impact Statement as there is not an adverse impact.

**WORKFORCE SAFETY & INSURANCE**  
**ADMINISTRATIVE RULE**  
**FISCAL NOTE**

**ADMINISTRATIVE RULE NO:** 92-01-02-23.2.

**ADMINISTRATIVE RULE TITLE:** Employers to provide security instrument

**SUMMARY OF PROPOSED RULE:** Workforce Safety & Insurance has reviewed the proposed administrative rule in conformance with Section 28-32-08.2 of the North Dakota Century Code.

**FISCAL IMPACT:** This rule promulgates regulations set by Senate Bill 2094 from the 2017 Legislative Session.

**DATE:** July 11, 2017

Subsection 3 of section 92-01-02-25 is amended as follows, and a new subsection 5 of section 95-01-02-25 is created as follows. Renumber accordingly.

**92-01-02-25. Permanent impairment evaluations and disputes.**

3. The organization shall ~~establish a list of medical specialists~~ schedule an evaluation with a doctor who have has the training and experience necessary to conduct an evaluation of permanent impairment and apply the American medical association guides to the evaluation of permanent impairment, sixth edition. ~~When an employee requests an evaluation of impairment, the organization shall schedule an evaluation with a doctor from the list.~~ The organization may not schedule a permanent impairment evaluation with the employee's treating doctor or a doctor who has treated the injured employee for the work related injury. ~~The organization and employee may agree to an evaluation by a doctor not on the current list.~~ In the event of a medical dispute, the organization will identify qualified specialists and submit all objective medical documentation regarding the dispute to specialists who have the knowledge, training, and experience in the application of the American medical association guides to the evaluation of permanent impairment, sixth edition. ~~To the extent more than one doctor is identified, the organization will consult with the employee before appointment of the doctor.~~

5. Pollicization procedures will be rated as an impairment under the Scheduled Injury Subsection of North Dakota Century Code section 65-05-12.2(11) and may not be rated as a whole body impairment, unless otherwise specified under N.D.C.C. section 65-05-12.2(11).

5 6. Errata sheets and guides updates. Any updates, additions, or revisions by the editors of the sixth edition of the guides to the evaluation of permanent impairment as of April 1, 2012, are adopted as an update, addition, or revision by the organization.

**History:** Effective November 1, 1991; amended effective January 1, 1996; April 1, 1997; May 1, 1998; May 1, 2000; May 1, 2002; July 1, 2004; July 1, 2006; April 1, 2009; July 1, 2010; April 1, 2012.

**General Authority:** NDCC 65-02-08

**Law Implemented:** NDCC 65-05-12.2



## REGULATORY ANALYSIS OF PROPOSED RULE

**Section:** 92-01-02-25.

**Title of Section:** Permanent impairment evaluations and disputes.

**GENERAL:** The following analysis is submitted in compliance with 28-32-08 of the NDCC.

**This rule is not expected to impact the regulated community in excess of \$50,000.**

## SMALL ENTITY REGULATORY ANALYSIS OF PROPOSED RULE

**Section:** 92-01-02-25.

**Title of Section:** Permanent impairment evaluations and disputes.

**GENERAL:** The following analysis is submitted in compliance with §28-32-08.1(2) of the NDCC.

### **POSSIBLE WAYS TO MINIMIZE THE ADVERSE IMPACT ON SMALL ENTITIES:**

- A. Establishing less stringent compliance or reporting requirements:** There are no reporting or compliance requirements impacted by the change.
- B. Establishing less stringent schedules or deadlines for compliance or report:** There are no compliance issues impacted by the change.
- C. Consolidating or simplifying compliance or reporting requirements:** There are no compliance or reporting issues impacted by the change.
- D. Establishing performance standards that replace design or operational standards required in the proposed rule:** There are no performance standards impacted by the change.
- E. Exempting small entities from all or part of the rule's requirements:** There are no entities impacted by the change.

**SMALL ENTITY ECONOMIC IMPACT STATEMENT**

**GENERAL:** The following analysis is submitted in compliance with §28-32-08.1(3) of the NDCC.

Based on our analysis of this rule there is no need to complete a Small Entity Economic Impact Statement as there is not an adverse impact.

**WORKFORCE SAFETY & INSURANCE**  
**ADMINISTRATIVE RULE**  
**FISCAL NOTE**

**ADMINISTRATIVE RULE NO:** 92-01-02-25

**ADMINISTRATIVE RULE TITLE:** Permanent impairment evaluations and disputes.

**SUMMARY OF PROPOSED RULE:** Workforce Safety & Insurance has reviewed the proposed administrative rule in conformance with Section 28-32-08.2 of the North Dakota Century Code.

**FISCAL IMPACT:** No impact is anticipated.

**DATE:** July 11, 2017

A new subsection 4 of section 92-01-02-31 is created as follows. Renumber accordingly.

**92-01-02-31. Who may be reimbursed.**

1. Only treatment that falls within the scope and field of the treating medical service provider's license to practice is reimbursable.
2. Paraprofessionals who are not independently licensed must practice under the direct supervision of a licensed medical service provider whose scope of practice and specialty training includes the service provided by the paraprofessional, in order to be reimbursed.
3. Health care providers may be refused reimbursement to treat cases under the jurisdiction of the organization.
4. Any entity operating under the authority of the federal government and granted authority to receive direct reimbursement for payments made for medical treatment determined to be related to the workers' compensation injury.

4 5. Reasons for holding a medical service provider ineligible for reimbursement include one or more of the following:

- a. Failure, neglect, or refusal to submit complete, adequate, and detailed reports.
- b. Failure, neglect, or refusal to respond to requests by the organization for additional reports.
- c. Failure, neglect, or refusal to observe and comply with the organization's orders and medical service rules, including cooperation with the organization's managed care vendors.
- d. Failure to notify the organization immediately and prior to burial in any death if the cause of death is not definitely known or if there is question of whether death resulted from a compensable injury.
- e. Failure to recognize emotional and social factors impeding recovery of claimants.
- f. Unreasonable refusal to comply with the recommendations of board-certified or qualified specialists who have examined the claimant.
- g. Submission of false or misleading reports to the organization.
- h. Collusion with other persons in submission of false or misleading information to the organization.
- i. Pattern of submission of inaccurate or misleading bills.
- j. Pattern of submission of false or erroneous diagnosis.
- k. Billing the difference between the maximum allowable fee set forth in the organization's fee schedule and usual and customary charges, or billing the claimant any other fee in addition to the fee paid, or to be paid, by the organization for individual treatments, equipment, and products.
- l. Failure to include physical conditioning in the treatment plan. The medical service provider should determine the claimant's activity level, ascertain barriers specific to the claimant, and provide information on the role of physical activity in injury management.
- m. Failure to include the injured worker's functional abilities in addressing return-to-work options during the recovery phase.
- n. Treatment that is controversial, experimental, or investigative; which is contraindicated or hazardous; which is unreasonable or inappropriate for the work injury; or which yields unsatisfactory results.

- o. Certifying disability in excess of the actual medical limitations of the claimant.
- p. Conviction in any court of any offense involving moral turpitude, in which case the record of the conviction is conclusive evidence.
- q. The excessive use, or excessive or inappropriate prescription for use, of narcotic, addictive, habituating, or dependency inducing drugs.
- r. Declaration of mental incompetence by a court of competent jurisdiction.
- s. Disciplinary action by a licensing board.

**History:** Effective January 1, 1994; amended effective October 1, 1998; January 1, 2000; July 1, 2010.

**General Authority:** NDCC 65-02-08, 65-02-20, 65-05-07

**Law Implemented:** NDCC 65-02-20, 65-05-07

## REGULATORY ANALYSIS OF PROPOSED RULE

**Section:** 92-01-02-31.

**Title of Section:** Who may be reimbursed.

**GENERAL:** The following analysis is submitted in compliance with 28-32-08 of the NDCC.

**This rule is not expected to impact the regulated community in excess of \$50,000.**

## SMALL ENTITY REGULATORY ANALYSIS OF PROPOSED RULE

**Section:** 92-01-02-31.

**Title of Section:** Who may be reimbursed.

**GENERAL:** The following analysis is submitted in compliance with §28-32-08.1(2) of the NDCC.

### **POSSIBLE WAYS TO MINIMIZE THE ADVERSE IMPACT ON SMALL ENTITIES:**

- A. Establishing less stringent compliance or reporting requirements:** There are no reporting or compliance requirements impacted by the change.
- B. Establishing less stringent schedules or deadlines for compliance or report:** There are no compliance issues impacted by the change.
- C. Consolidating or simplifying compliance or reporting requirements:** There are no compliance or reporting issues impacted by the change.
- D. Establishing performance standards that replace design or operational standards required in the proposed rule:** There are no performance standards impacted by the change.
- E. Exempting small entities from all or part of the rule's requirements:** There are no entities impacted by the change.

**SMALL ENTITY ECONOMIC IMPACT STATEMENT**

**GENERAL:** The following analysis is submitted in compliance with §28-32-08.1(3) of the NDCC.

Based on our analysis of this rule there is no need to complete a Small Entity Economic Impact Statement as there is not an adverse impact.

**WORKFORCE SAFETY & INSURANCE**  
**ADMINISTRATIVE RULE**  
**FISCAL NOTE**

**ADMINISTRATIVE RULE NO:** 92-01-02-31.

**ADMINISTRATIVE RULE TITLE:** Who may be reimbursed.

**SUMMARY OF PROPOSED RULE:** Workforce Safety & Insurance has reviewed the proposed administrative rule in conformance with Section 28-32-08.2 of the North Dakota Century Code.

**FISCAL IMPACT:** No impact is anticipated.

**DATE:** July 11, 2017

Section 92-01-03-02 is amended as follows. Renumber accordingly.

**92-01-03-02. Definitions.**

In this chapter:

1. "Act" means the North Dakota Workers Compensation Act.
2. "Attempt to resolve" means a prompt, active, honest, good-faith effort by the claimant to settle disputes with the organization, through the office.
3. "Benefits" means an obligation of the organization to provide a claimant with assistance as required by the Act.
4. "Certificate of completion" means the form sent to the claimant when the office closes its file which acknowledges the claimant made a good-faith effort to resolve the dispute.
5. "Claimant" means an employee who has filed a claim for benefits with the organization.
- ~~6. "Constructive denial" occurs when sixty days have passed since all elements of filing under subsection 2 of section 92-01-02-48 have been satisfied, but the organization has not made the decision to accept or deny the claim.~~
- ~~76.~~ "Decision review specialist" means a person employed by the office to assist a claimant in a disputed claim.
- ~~87.~~ "Disputed claim" means a challenge to an order issued by the organization.
- ~~98.~~ "Interested party" means:
  - a. The claimant.
  - b. The claims adjuster assigned to that claimant's claim.
  - c. A claims supervisor.
  - d. The claimant's employer or immediate supervisor.
  - e. The claimant's treating doctor.
  - f. A member of the organization's legal department.
  - g. Any other person the decision review specialist determines appropriate.
- ~~109.~~ "Office" means the decision review office.
- ~~110.~~ "Order" means an administrative order issued pursuant to North Dakota Century Code chapter 28-32 or section 65-01-16.
- ~~1211.~~ "Organization" means workforce safety and insurance, or the director, or any department heads, assistants, or employees of the organization designated by the director to act within the course and scope of their employment in administering the policies, powers, and duties of the Act.
- ~~13.~~ "Vocational consultant's report" means the report issued by the rehabilitation consultant outlining the most appropriate rehabilitation option identified for the claimant.

**History:** Effective April 1, 1996; amended effective May 1, 2000; July 1, 2004; July 1, 2010.

**General Authority:** NDCC 65-02-08

**Law Implemented:** NDCC 65-02-27

## REGULATORY ANALYSIS OF PROPOSED RULE

**Section:** 92-01-03-02.

**Title of Section:** Definitions.

**GENERAL:** The following analysis is submitted in compliance with 28-32-08 of the NDCC.

**This rule is not expected to impact the regulated community in excess of \$50,000.**

## SMALL ENTITY REGULATORY ANALYSIS OF PROPOSED RULE

**Section:** 92-01-03-02.

**Title of Section:** Definitions.

**GENERAL:** The following analysis is submitted in compliance with §28-32-08.1(2) of the NDCC.

### **POSSIBLE WAYS TO MINIMIZE THE ADVERSE IMPACT ON SMALL ENTITIES:**

- A. Establishing less stringent compliance or reporting requirements:** There are no reporting or compliance requirements impacted by the change.
- B. Establishing less stringent schedules or deadlines for compliance or report:** There are no compliance issues impacted by the change.
- C. Consolidating or simplifying compliance or reporting requirements:** There are no compliance or reporting issues impacted by the change.
- D. Establishing performance standards that replace design or operational standards required in the proposed rule:** There are no performance standards impacted by the change.
- E. Exempting small entities from all or part of the rule's requirements:** There are no entities impacted by the change.



**SMALL ENTITY ECONOMIC IMPACT STATEMENT**

**GENERAL:** The following analysis is submitted in compliance with §28-32-08.1(3) of the NDCC.

Based on our analysis of this rule there is no need to complete a Small Entity Economic Impact Statement as there is not an adverse impact.

**WORKFORCE SAFETY & INSURANCE**  
**ADMINISTRATIVE RULE**  
**FISCAL NOTE**

**ADMINISTRATIVE RULE NO:** 92-01-03-02.

**ADMINISTRATIVE RULE TITLE:** Definitions.

**SUMMARY OF PROPOSED RULE:** Workforce Safety & Insurance has reviewed the proposed administrative rule in conformance with Section 28-32-08.2 of the North Dakota Century Code.

**FISCAL IMPACT:** No impact is anticipated.

**DATE:** July 11, 2017

Section 92-01-03-04 is amended as follows:

**92-01-03-04. Procedure for dispute resolution.**

1. A claimant may contact the office for assistance at any time. The claimant shall contact the office to request assistance with a dispute arising from an order within thirty days of the date of service of the order. ~~The claimant may also contact the office for assistance when a claim has been constructively denied or when a vocational consultant's report is issued.~~ A claimant must make an initial request in writing for assistance with an order, ~~a constructively denied claim, or a vocational consultant's report.~~

**History:** Effective April 1, 1996; amended effective May 1, 1998; May 1, 2000; July 1, 2004; July 1, 2006; July 1, 2010; April 1, 2012.

**General Authority:** NDCC 65-02-08

**Law Implemented:** NDCC 65-02-27

## REGULATORY ANALYSIS OF PROPOSED RULE

**Section:** 92-01-03-04.

**Title of Section:** Procedure for dispute resolution.

**GENERAL:** The following analysis is submitted in compliance with 28-32-08 of the NDCC.

**This rule is not expected to impact the regulated community in excess of \$50,000.**

## SMALL ENTITY REGULATORY ANALYSIS OF PROPOSED RULE

**Section:** 92-01-03-04

**Title of Section:** Procedure for dispute resolution.

**GENERAL:** The following analysis is submitted in compliance with §28-32-08.1(2) of the NDCC.

### **POSSIBLE WAYS TO MINIMIZE THE ADVERSE IMPACT ON SMALL ENTITIES:**

- A. Establishing less stringent compliance or reporting requirements:** There are no reporting or compliance requirements impacted by the change.
- B. Establishing less stringent schedules or deadlines for compliance or report:** There are no compliance issues impacted by the change.
- C. Consolidating or simplifying compliance or reporting requirements:** There are no compliance or reporting issues impacted by the change.
- D. Establishing performance standards that replace design or operational standards required in the proposed rule:** There are no performance standards impacted by the change.
- E. Exempting small entities from all or part of the rule's requirements:** There are no entities impacted by the change.

**SMALL ENTITY ECONOMIC IMPACT STATEMENT**

**GENERAL:** The following analysis is submitted in compliance with §28-32-08.1(3) of the NDCC.

Based on our analysis of this rule there is no need to complete a Small Entity Economic Impact Statement as there is not an adverse impact.

**WORKFORCE SAFETY & INSURANCE**  
**ADMINISTRATIVE RULE**  
**FISCAL NOTE**

**ADMINISTRATIVE RULE NO:** 92-01-03-04.

**ADMINISTRATIVE RULE TITLE:** Procedure for dispute resolution.

**SUMMARY OF PROPOSED RULE:** Workforce Safety & Insurance has reviewed the proposed administrative rule in conformance with Section 28-32-08.2 of the North Dakota Century Code.

**FISCAL IMPACT:** No impact is anticipated.

**DATE:** July 11, 2017

A new section to Chapter 92-01-02 is created as follows:

**92-01-02-02.5. Contributing cause of mental or psychological condition defined.**

As used in subparagraph 6 of subdivision a of subsection 10 of North Dakota Century Code section 65-01-02:

- a) “A mental or psychological condition” must be directly caused by a physical injury. To be directly caused it must be shown with objective medical evidence that the mental or psychological condition is the physiological product of the physical injury.
  
- b) “Other contributing causes” include emotional circumstances that generally accompany work related injuries, such as, the loss of function, loss of self-esteem, loss of financial independence, divorce, loss of career or employment position, disruption to lifestyle or family units, anxiousness, uncertainty, or compromised ability to participate in lifestyles, hobbies or past times.

**History:**

**General Authority:** NDCC 65-02-08

**Law Implemented:** NDCC 65-01-02(10)(a)(6)

## REGULATORY ANALYSIS OF PROPOSED RULE

**Section:** 92-01-02-02.5.

**Title of Section:** Contributing cause of mental or psychological condition defined.

**GENERAL:** The following analysis is submitted in compliance with 28-32-08 of the NDCC.

**This rule is not expected to impact the regulated community in excess of \$50,000.**

## SMALL ENTITY REGULATORY ANALYSIS OF PROPOSED RULE

**Section:** 92-01-02-02.5

**Title of Section:** Contributing cause of mental or psychological condition defined.

**GENERAL:** The following analysis is submitted in compliance with §28-32-08.1(2) of the NDCC.

### **POSSIBLE WAYS TO MINIMIZE THE ADVERSE IMPACT ON SMALL ENTITIES:**

- A. Establishing less stringent compliance or reporting requirements:** There are no reporting or compliance requirements impacted by the change.
- B. Establishing less stringent schedules or deadlines for compliance or report:** There are no compliance issues impacted by the change.
- C. Consolidating or simplifying compliance or reporting requirements:** There are no compliance or reporting issues impacted by the change.
- D. Establishing performance standards that replace design or operational standards required in the proposed rule:** There are no performance standards impacted by the change.
- E. Exempting small entities from all or part of the rule's requirements:** There are no entities impacted by the change.

**SMALL ENTITY ECONOMIC IMPACT STATEMENT**

**GENERAL:** The following analysis is submitted in compliance with §28-32-08.1(3) of the NDCC.

Based on our analysis of this rule there is no need to complete a Small Entity Economic Impact Statement as there is not an adverse impact.

**WORKFORCE SAFETY & INSURANCE**  
**ADMINISTRATIVE RULE**  
**FISCAL NOTE**

**ADMINISTRATIVE RULE NO:** 92-01-02-02.5.

**ADMINISTRATIVE RULE TITLE:** Contributing cause of mental or psychological condition defined.

**SUMMARY OF PROPOSED RULE:** Workforce Safety & Insurance has reviewed the proposed administrative rule in conformance with Section 28-32-08.2 of the North Dakota Century Code.

**FISCAL IMPACT:** No impact is anticipated. This rule clarifies the statutory law and is consistent with historical application.

**DATE:** July 11, 2017