



North Dakota Workforce
Safety & Insurance

Bryan Klipfel
Director

January 5, 2017

Ms. Vonette Richter
Code Revisor
ND Legislative Council
State Capitol
600 East Boulevard, 2nd Floor
Bismarck, ND 58505

Dear Ms. Richter:

The Full Notice of Intent to Adopt and Amend Administrative Rules relating to Workforce Safety & Insurance, and Notice of Public Hearing, and copies of the proposed rule changes are enclosed, as required by N.D.C.C. §28-32-10(1). Also enclosed and attached to each proposed rule are the regulatory analyses, small entity regulatory analyses, small entity economic impact statements and fiscal notes and statement of whether any significant impact will occur.

This Full Notice is not required to be mailed to any sponsors of legislation.

Respectfully,


Julie Porsborg
WSI Paralegal
Ph. 701-328-3878

Enclosures

**NOTICE OF INTENT TO
ADOPT AND AMEND ADMINISTRATIVE RULES
RELATING TO WORKFORCE SAFETY & INSURANCE,
AND NOTICE OF PUBLIC HEARING**

Attorney Representation; Lodging Expenses to attend Medical Treatment; Moving Expenses under Rehabilitation Services; Permanent Impairment Evaluations and Disputes; Medical Necessity; Motor Vehicle Purchase and Modification; Home Modifications; Power Mobility Devices; Medical Service Provider Ineligible for Reimbursement; Physical Therapy Assistants and Certified Occupational Therapy Assistants and Certified Athletic Trainers; Utilization Review and Quality Assurance of Health Care Services; Treatment Requiring Authorization and Preservice Review; and Payment to Medical Providers for Copies of Records.

TAKE NOTICE that Workforce Safety & Insurance will hold a public hearing to address the proposed creations and amendments to N.D. Admin. Code Title 92 at 2:00 p.m. on Thursday, February 16, 2017, at the WSI Board Room, Century Center, 1600 E. Century Avenue, Bismarck, North Dakota, at which time and place all persons will be heard regarding the proposed amendments to the North Dakota Administrative Code as follows:

1. The purpose of the proposed amendment to Administrative Code Section 92-01-02-11, relating to attorney representation, is to enforce the expiration of a notice of legal representation after five years or until revoked by the injured worker, whichever occurs first. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.
2. The purpose of the proposed amendment to Administrative Code Section 92-01-02-12 relating to mileage and per diem for travel to medical treatment, is to update reimbursement language regarding out-of-state lodging to align with policies of the Office of Management and Budget. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.
3. The purpose of the proposed amendment to Administrative Code Section 92-01-02-24, relating to moving expenses under rehabilitation services, is to clarify the statutory citations that allow for payment of moving expenses under specific rehabilitation options. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.
4. The purpose of the proposed amendment to Administrative Code Section 92-01-02-25, relating to permanent impairment evaluations and disputes, is to clarify the definition of a medical dispute involving permanent impairment. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

5. The purpose of the proposed creation and proposed amendment to Administrative Code Section 92-01-02-29.1, relating to medical necessity, is to move subdivision e of subsection 5 of section 92-01-02-34 regarding electrodiagnostic studies to subdivision k of subsection 3 of section 92-01-02-29.1; and to clarify who may provide massage therapy. The proposed creation and amendment are not expected to have an impact on the regulated community in excess of \$50,000.

6. The purpose of the proposed amendment to Administrative Code Section 92-01-02-29.3, relating to motor vehicle purchase and modification, is to outline the parameters that must be contained in the attending doctor's order. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

7. The purpose of the proposed amendment to Administrative Code Section 92-01-02-29.4, relating to home modifications, is to outline the parameters that must be contained in an attending doctor's order. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

8. The purpose of the proposed creation to Administrative Code Section 92-01-02-29.5, relating to power mobility devices, is to allow the purchase of power mobility devices as long as the specific criteria outlined in the rule are met and satisfied. The proposed creation is not expected to have an impact on the regulated community in excess of \$50,000.

9. The purpose of the proposed amendment to Administrative Code Section 92-01-02-31, relating who may be reimbursed, is to hold a medical service provider ineligible for reimbursement for failure, neglect, or refusal to respond to requests by the organization for drug testing. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

10. The purpose of the proposed creation to Administrative Code Section 92-01-02-32.1, is to allow for reimbursement to physical therapy assistants, certified occupational therapist assistants, and certified athletic trainers if they meet the specific criteria outlined in the new rule. The proposed creation is not expected to have an impact on the regulated community in excess of \$50,000.

11. The purpose of the proposed amendment to Administrative Code Section 92-01-02-33, relating to utilization review and quality assurance, is to change the prior authorization for health care services from twenty-four hours to seventy-two hours. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

12. The purpose of the proposed creations and amendments to Administrative Code Section 92-01-02-34, relating to treatment requiring authorization, preservice review, and retrospective review, is to identify equipment costing less than five hundred dollars that does require prior authorization; to change the preservice review requirement for nonemergent major surgery from twenty-four hours to seventy-two hours; to identify the maximum number of units performed and billed per visit for outpatient physical therapy and outpatient occupational therapy services; to create a new rule requiring preservice review for all nonemergent air ambulance services; to no longer allow payment for massage therapy that is performed by a licensed massage therapist; to increase acupuncture

therapy from twelve to eighteen treatments for the life of the claim; to provide preservice review requirements for all speech therapy requests; and to create a new rule requiring preservice review to restart opioid therapy.

The proposed creation regarding preservice review requirements for all nonemergency air ambulance services is expected to have an impact on the regulated community in excess of \$50,000. All other proposed creations and amendments to Administrative Code Section 92-01-02-34 may have some impact, but they will be insignificant overall.

13. The purpose of the proposed amendment to Administrative Code Section 92-01-02-45.1, relating to provider responsibilities and billings, is to implement the organization's payments for medical records to be aligned with N.D.C.C. Section 23-12-14. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

The proposed rules, and regulatory analyses, small entity regulatory analyses, small entity economic impact statements, and fiscal notes may be reviewed at Workforce Safety & Insurance, 1600 East Century Avenue, Suite 1, Bismarck, North Dakota. A copy of the proposed rules, and regulatory analyses, small entity regulatory analyses, small entity economic impact statements, and fiscal notes may be requested by writing to the address below or by calling (701)328-3800.

Persons who require accommodations to attend or otherwise appear at this hearing should contact Workforce Safety & Insurance at the below address and phone number at least five days prior to the public hearing.

Workforce Safety & Insurance
ATTN: Legal Dept., Julie Porsborg
P.O Box 5585
1600 E. Century Ave., Suite 1
Bismarck, ND 58506-5585
(701)328-3800
TTY: 1-800-366-6888

Written or oral comments concerning the proposed rules may be sent or telephoned to the organization at the above address or phone number. The closing date for receipt and full consideration of all written or oral comments is end of business day, February 27, 2017.

Dated this 5th day of January 2017.

WSI Legal Department
ATTN: Julie Porsborg