



North Dakota Workforce  
Safety & Insurance

Bryan Klipfel  
Director

JUL 12 2019

July 12, 2019

Ms. Vonette Richter  
Legal Division Director  
ND Legislative Council  
State Capitol  
600 East Boulevard, 2<sup>nd</sup> 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 with a statement of whether any significant impact will occur.

The Full Notice and the applicable proposed rule changes are also emailed to the following sponsors of Senate Bill 2184 of the 66<sup>th</sup> Legislative Assembly:

Senator Judy Lee, Senator Kathy Hogan, and Senator Jerry Klein. Representative Pamela Anderson, Representative George Keiser, and Representative Karen Rohr. Senate Bill 2184 provides a new definition, specifically, "allied health care professional;" amends the definition of "health care provider;" and removes the definition of "doctor." The applicable proposed rule changes in Administrative Code - Title 92 have been made to comport with Senate Bill 2184.

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**

**Temporary Partial Disability Benefits; Verification of Disability; Notice of Legal Representation; Attorney Fees; File Copies; Elements of Filing; Employer Payroll Reports; Reporting Payroll for Noncompliance Period; Rate Classifications; Installment Payment of Premiums; Payment by Credit Card; Other States' Coverage; Dividend Programs; Medical Expense Assessments; Permanent Impairment Evaluations; Pharmacy Services Defined; Medical Necessity; Footwear; Generic Medication; Physical Therapy Aides and Technicians; AMA Guides to the Evaluation of Disease and Injury Causation; Treatment Requiring Authorization; Palliative Care; Medical Service Provider Responsibilities and Billings including Electronic Billing; Pharmacy Services Disputes; and Title 92 Health Care Provider and Allied Health Care Professional.**

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 8:30 AM on Thursday, August 22, 2019, 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 creations and amendments to the North Dakota Administrative Code as follows:

1. The purpose of the proposed amendment to Administrative Code Section 92-01-02-02.1, relating to temporary partial disability benefits is to remove the word "claimant" and replace with "injured employee" and to clarify documentation required to receive this benefit. 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 92-01-02-02.3, relating to First Report of Injury is to change "injured worker" to "injured employee" and to change "medical provider" to "health care provider." The amendment is, in part, the result of legislation passed by the 66<sup>th</sup> Legislative Assembly, Senate Bill 2184. 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 92-01-02-02.4, relating to treating doctor's opinion is to change "doctor" to "health care provider." The amendment is the result of legislation passed by the 66<sup>th</sup> Legislative Assembly, Senate Bill 2184. 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 creation of Administrative Code Section 92-01-02-02.6, relating to the verification of disability is to define requirements and timeframes that must be met to remain eligible for disability benefits. The proposed creation is not expected to have an impact on the regulated community in excess of \$50,000.

5. The purpose of the proposed amendment to Administrative Code Section 92-01-02-11, relating to attorneys is to remove the word “worker” and replace with “employee,” and to require the signature of the injured employee. The proposed amendment is 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 92-01-02-11.1, relating to attorney’s fees is to adjust fees for legal services provided by employees’ attorneys and legal assistants working under the direction of employees’ attorneys. 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 creation of Administrative Code Section 92-01-02-12.1, is to put forth the cost of requesting file copies from WSI in any format. The proposed creation is not expected to have an impact on the regulated community in excess of \$50,000.

8. The purpose of the proposed amendment to Administrative Code Section 92-01-02-14, relating to penalizing employers for failure to pay premiums or submit payroll reports is to identify the method of payroll submission format. The amendment is the result of legislation passed by the 66<sup>th</sup> Legislative Assembly, House Bill 1072. The proposed amendment 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 92-01-02-17 relating to noncompliance of employer accounts is to clarify the period for the payment due. 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 amendment to Administrative Code Section 92-01-02-19 relating to third-party relief is to correctly identify the referenced North Dakota Century Code cite. The proposed amendment 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 92-01-02-20 relating to application of rate classification is to clarify that WSI assigns and modifies employment rate classifications. 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 amendment to Administrative Code Section 92-01-02-23 relating to installment payments of premiums is to identify the period to which installment payments apply and to make a change in the title of the rule. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

13. The purpose of the proposed amendment to Administrative Code Section 92-01-02-23.1 relating to payments by credit card is to include assessments to those items which can be paid by credit card. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

14. The purpose of the proposed amendment to Administrative Code Section 92-01-02-25, relating to permanent impairment evaluations is to change any reference to a “doctor” to “health care provider;” to clarify mental and behavioral disorders are a part of the physical rating; and to clarify the organization may not use a permanent impairment evaluation conducted by a treating health care provider. The amendment is, in part, the result of legislation passed by the 66<sup>th</sup> Legislative Assembly, Senate Bill 2184. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

15. The purpose of the proposed amendment to Administrative Code Section 92-01-02-27 relating to medical and hospital fees is to remove the title of the publication and replace it with “organization’s fee schedule guidelines.” The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

16. The purpose of the proposed amendment to Administrative Code Section 92-01-02-29 is to add a definition for “Pharmacy Services”, and to change the term “claimant” to “injured employee” and to change the terms “doctor” and “medical service provider” to either “health care provider” or “allied health care professional.” The amendment is, in part, the result of legislation passed by the 66<sup>th</sup> Legislative Assembly, Senate Bill 2184. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

17. The purpose of the proposed amendment and creation of subsections to Administrative Code Section 92-01-02-29.1, relating to medical necessity is to change any reference to a “doctor” to “health care provider,” to identify payment schedules of injections and acupuncture formerly provided in section 92-01-02-34, and to disallow payment of dry needling. The amendment is, in part, the result of legislation passed by the 66<sup>th</sup> Legislative Assembly, Senate Bill 2184. The proposed creation and amendment is not expected to have an impact on the regulated community in excess of \$50,000.

18. The purpose of the proposed amendment to Administrative Code Section 92-01-02-29.3, is to change “injured worker” to “injured employee” and to change any reference to “doctor” to “health care provider.” The amendment is, in part, the result of legislation passed by the 66<sup>th</sup> Legislative Assembly, Senate Bill 2184. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

19. The purpose of the proposed amendment to Administrative Code Section 92-01-02-29.4, is to change “injured worker” to “injured employee” and to change any reference to “doctor” to “health care provider.” The amendment is, in part, the result of legislation passed by the 66<sup>th</sup> Legislative Assembly, Senate Bill 2184. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

20. The purpose of the proposed amendment to Administrative Code Section 92-01-02-29.5, is to change any reference to “doctor” to “health care provider.” The amendment is the result of legislation passed by the 66<sup>th</sup> Legislative Assembly, Senate Bill 2184. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

21. The purpose of the proposed creation of Administrative Code Section 92-01-02-29.6, relating to footwear is to define the criteria for approval and purchase of footwear. The proposed creation is not expected to have an impact on the regulated community in excess of \$50,000.

22. The purpose of the proposed amendment to Administrative Code Section 92-01-02-30 is to change "injured worker" to "injured employee," to change "medical service provider" to "allied health care professional," and to insert "objective medical evidence" to replace "documentation." The amendment is, in part, the result of legislation passed by the 66<sup>th</sup> Legislative Assembly, Senate Bill 2184. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

23. The purpose of the proposed amendment to Administrative Code Section 92-01-02-31 is to change "medical service provider" to "allied health care professional." The amendment is the result of legislation passed by the 66<sup>th</sup> Legislative Assembly, Senate Bill 2184. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

24. The purpose of the proposed amendment to Administrative Code Section 92-01-02-32 is to remove "nurse practitioner." The amendment is the result of legislation passed by the 66<sup>th</sup> Legislative Assembly, Senate Bill 2184. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

25. The purpose of the proposed amendment to Administrative Code Section 92-01-02-32.1 is to clarify treatment by physical therapy aides or technicians is not reimbursable. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

26. The purpose of the proposed amendment to Administrative Code Section 92-01-02-33 is to include the publication entitled "American Medical Association Guides to the Evaluation of Disease and Injury Causation," and to indicate the organization shall develop the mode and manner of submissions for utilization review, and to change "medical service provider" to "allied health care professional." The amendment is, in part, the result of legislation passed by the 66<sup>th</sup> Legislative Assembly, Senate Bill 2184. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

27. The purpose of the proposed amendment to Administrative Code Section 92-01-02-34 is to change "claimant" to "injured employee" and to change any references to "doctor" or "provider" or "medical service provider" to either "allied health care professional" or "health care provider." Also, to identify and further clarify the criteria for durable medical equipment; to further clarify Telehealth; and to remove trigger point injections and acupuncture therapy as subdivisions, and to modify chiropractic preservice review guidelines. The amendment is, in part, the result of legislation passed by the 66<sup>th</sup> Legislative Assembly, Senate Bill 2184. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

28. The purpose of the proposed amendment to Administrative Code Section 92-01-02-38 is to change “claimant” to “injured employee” and to change “doctor” to “health care provider.” The amendment is, in part, the result of legislation passed by the 66<sup>th</sup> Legislative Assembly, Senate Bill 2184. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

29. The purpose of the proposed amendment to Administrative Code Section 92-01-02-40 is to change “claimant” to “injured employee”, and to change any reference to “doctor” or “provider” to either “allied health care professional” or “health care provider,” and to further clarify “medically stationary.” The amendment is, in part, the result of legislation passed by the 66<sup>th</sup> Legislative Assembly, Senate Bill 2184. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

30. The purpose of the proposed amendment to Administrative Code Section 92-01-02-41 is to change “claimant” to “injured employee” and to change any reference to “doctor” to either “medical service provider” or “allied health care professional.” The amendment is, in part, the result of legislation passed by the 66<sup>th</sup> Legislative Assembly, Senate Bill 2184. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

31. The purpose of the proposed amendment to Administrative Code Section 92-01-02-43 is to change “claimant” to “injured employee” and to change “doctor” to “health care provider.” The amendment is, in part, the result of legislation passed by the 66<sup>th</sup> Legislative Assembly, Senate Bill 2184. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

32. The purpose of the proposed amendment to Administrative Code Section 92-01-02-44 is to change “claimant” to “injured employee” and to change “provider” to “medical service provider.” The amendment is, in part, the result of legislation passed by the 66<sup>th</sup> Legislative Assembly, Senate Bill 2184. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

33. The purpose of the proposed amendment to Administrative Code Section 92-01-02-45 is to change “claimant” to “injured employee” and to change “health care provider or doctor” to “allied health care professional” and to remove the requirement of a “written” notice. The amendment is, in part, the result of legislation passed by the 66<sup>th</sup> Legislative Assembly, Senate Bill 2184. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

34. The purpose of the proposed amendment to Administrative Code Section 92-01-02-45.1, relating to provider responsibilities is to further clarify a “provider” as a “Medical Service Provider” and to define other industry terms of art, to define the use of ICD-10-CM codes, and to clarify other requirements for medical record documentation and billings sent to the organization. The amendment is, in part, the result of legislation passed by the 66<sup>th</sup> Legislative Assembly, Senate Bill 2184. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

35. The purpose of the proposed creation of Administrative Code Section 92-01-02-45.2 is to outline the version to use when submitting an electronic medical bill transaction. The amendment is the result of legislation passed by the 66<sup>th</sup> Legislative Assembly, House Bill 1073. It is uncertain if the proposed creation is expected to have an impact on the regulated community in excess of \$50,000.

36. The purpose of the proposed amendment to Administrative Code Section 92-01-02-46 is to change “claimant” to “injured employee,” change “provider” to “medical service provider,” and to change “medical service provider” terms to “allied health care professional” where appropriate. The amendment is, in part, the result of legislation passed by the 66<sup>th</sup> Legislative Assembly, Senate Bill 2184. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

37. The purpose of the proposed creation of Administrative Code Section 92-01-02-46.1 is to outline the procedure to follow for managed care disputes for pharmacy services. The proposed creation is not expected to have an impact on the regulated community in excess of \$50,000.

38. The purpose of the proposed amendment to Administrative Code Section 92-01-02-48, relating to elements of filing is to update changes to the First Report of Injury (FROI). The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

39. The purpose of the proposed amendment to Administrative Code Section 92-01-02-50 relating to other states’ coverage is to change the North Dakota Century Code cite in the new subsection 7, and to create a new subsection 5 to establish a provision that allows WSI to provide legal support in limited situations involving claim jurisdiction. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

40. The purpose of the proposed amendment to Administrative Code Section 92-01-02-55 relating to dividend programs is to put forth a section of those employers who are not eligible for the program. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

41. The purpose of the proposed amendment to Administrative Code Section 92-01-02-57 relating to medical expense assessments is to notify employers by electronic transmission or by regular mail of an assessment. 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, Tuesday, September 3, 2019.

Dated this 12<sup>th</sup> day of July, 2019.

WSI Legal Department  
ATTN: Julie Porsborg