

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

12886

2007 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1286

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1286

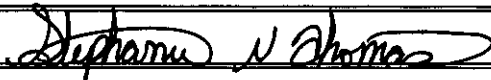
House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: January 31, 2007

Recorder Job Number: 2402

Committee Clerk Signature



Minutes:

Chair Keiser opened the hearing on HB 1286.

Rep. Bill Amerman, District 26: I seems like a big portion of the problems with WSI happens when they bring in independent medical examiners. Most all of these examiners are basically specialists from out of state, because they supposedly can't find specialists from instate.

Claimants that we listen to, their personal doctor may recommend surgery; WSI is not so sure, so they say this is not necessary, even though their doctor thinks this is what should be done.

There seems to be a lot of problems with these independent medical examiners. What I was attempting to do was try to establish a bill where an agency, I chose the State Department of Health to audit this type of thing, and see if things are as bad as they might seem, or maybe not as bad as they might seem, and then report back to Legislative Council, and give us a better idea if there is a better way of doing this, because when they get these IME's, and I see in report after report that this surgery doesn't need to be done, or this MRI isn't necessary, and it's because of these IME's. Some of these are on retainers, from my understanding \$200,000 a year, they work for \$5,000 an hour. I thought there must be a vehicle or whatever where we can get a better handle on this.

David Kemnitz, AFLCIO: Support HB 1286, discussion of handouts.

See handouts A and B.

Rep. Keiser: You quoted the Octagon Report, in that section, do they say we're wrong?

David: That's the page that I best incur from them. I'll quote the report in a recommendation from pages 84, 85, 86, they address that. I can read the information from the Octagon Report, and give you my best rendition of it.

Sebald Vetter, CARE: For the record, I support HB 1286. We're not satisfied with the outside doctors. This has been going on for years, let's do something about it.

Ed Christianson, CARE: For the record, I support HB 1286.

Leroy Volk: For the record, I support HB 1286.

Kevin Paulson: For the record, I support HB 1286.

Toby LaMare: For the record, I support HB 1286.

David: The Octagon Report says that recommendation of the 78TH, "we recommend that the auto payment process you would use to determine if the process was adequate, that would pay for the judistry of the bill to determine if there are certain procedural, etc., and we further recommend that once the process is completed that WSI again reviews payments approve of work flow, and they recommend that medical services that manage the staff fully understand how the process deals, so that they can pitch in if back laws arise, and the priority level is high."

Dan Fitterman, CARE: For the record, I'm in favor of HB 1286.

Rob Forward, WSI: Opposed to HB 1286. See written testimony #1.

See handout C.

Rep. Amerman: In your testimony the numbers indicate that about ½ of 1% of claims ever goes to an IME, and then later on you said the actual utilization of this particular process is a fairly all frequency considering the number of injuries per year. So, I guess from this through

all the claims IME's are not used except for ½ of 1%. I remember back in the WSI review committee asking the question that if you have an IME that's on board for \$200,000 a year, that this is low frequency of ½ of 1%, then why was he on retainer for \$200,000 a year?

Rob: I can't speak to that comment. Our total from the period of July 1, 2005 to July 30, 2006 was \$215,043.10, and that's for 94 IME's conducted during that time period, and also included in that number is about \$10,500 worth of reimbursements that are paid to the injured workers for hotels, flights, things of that sort.

Rep. Keiser: If you had 94 IME's, are they all the result of a dispute? Is this agreement that I'm not happy with what's happening, and the WSI than says we'll get an IME to look at you and see if where we're at is right, is that the case?

Rob: That's correct. This bill has really very little to do with utilization review. There are occasions when our utilization review team will ask for an IME but, the bulk of our IME's that we're talking about here are IME's where we're concerned about the lack of progress of injured workers claims.

Rep. Keiser: So, of the 94 IME's that were done in this time period, how many reversed the position?

Rob: Without the full report, I can't answer that.

Arvy Smith, ND Department of Health: See written testimony #2.

Rep. Thorpe: Do we have an organization in state government that could do this audit?

Arvy: With regard to both of those functions, I do know that the Department of Human Services does medical utilization review type of procedures, but I don't know that they would be happy that it would be this type of function.

Rep. Keiser: The State Auditors Department currently has the authority to do a performance audit on this issue if it chooses to put it into the performance audit, and they could either do it themselves, or subcontract it to an appropriate subcontractor.

Rep. Keiser: When was the last time statutorily an audit was performed on IME's?

Rob: It's my understanding that we've never had it done, because it is such a small part of the claims process.

Rep. Zaiser: In terms of that performance audit that has to be done every biennium. From your perspective, would it make sense to randomly audit some IME's?

Rob: I don't have any authority from the WSI Board to give you any opinion on that concept.
Hearing closed.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1286

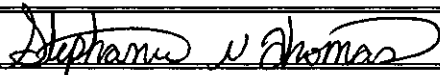
House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: January 31, 2007

Recorder Job Number: 2493

Committee Clerk Signature



Minutes:

Chair Keiser opened the hearing on HB 1286. This bill is the independent audit of WSI, regarding the independent medical exam. There is a fiscal note, because it's in the Health Department, that's an easy amendment that we can do right here if we want, but somebody is going to want money regardless of where we move it.

Rep. Amerman: It's a good bill. The Health Department came to mind, because I just felt that was the best place to go. I understand there's an audit going on now. I'm still going to support the bill, but I certainly recognize that the Health Department probably isn't the thing, and this will help.

Rep. Ruby: I agree with Rep. Amerman. If we get called that process is where we get called about. I was leaning towards voting for this until the Health Department got up and said that they don't have the expertise for the money. WSI said that they have audits that they would do on this, but it's not a very large area, so they don't see it, because it doesn't get audited as much as the other areas. I saw the red flags as well, and so maybe this was not the way to go, but I applaud the effort.

Rep. Zaiser: I do agree with Rep. Amerman. I think maybe the first step in the approach would be to randomly ask WSI to do an audit on these things, because things are problematic.

Rep. Keiser: In the interim WSI committee there were several things that were recurring, and one of the things that occurred was in at least 60% of the cases that we examined, one of them was the IME, and the concerns about the IME. What I discover in the interim was that it was recognition that if you and I go to a doctor we get to choose our doctor, or hospital, our clinic, or whatever. We have an open system, and WSI is a closed system, a managed care system, and that's entirely different. When we recognized the 60% of the claimants coming in and saying we don't like the IME process, it was Sandy Blunt that came and said I hear what's being said, and we will go in and hire someone to look at this, and they've done it. One of the things we discovered with this process is either we have to change the way we deliver the IME, or we have to change the name of the IME, Independent Medical Exam, infers suggests that you're going to be examined. In some of the cases where people were complaining, you heard it today, I went all the way down there, and I saw the doctor for 15 minutes, he looked at just a couple of things and said ok, and then he made a ruling. That is exactly the way things do happen. I'm going to vote against this bill, because we already have statutory authority to exam this, we don't need the legislation to do it.

Rep. Thorpe: I've been here since 1991, and ever since then I've been hearing about some of these IME's, and I don't think that they're all kept up cases. There has got to be some problems there with the independent medical review.

Rep. Ruby: I move a do not pass.

Rep. Vigesaa: Second.

Rep. Kasper: The one area that I'm concerned with Mr. Porter's testimony is on the 2nd page 2nd paragraph on this finding one where the last sentence says, WSI is routinely required to use doctors from outside the state, because of lack of willing and qualified choices in ND. I don't know if I can buy that. I understand in cases of extreme difficulty, such as the doctor in

Rochester, but I wonder if by the time you look at spending the money for someone to travel, overnight expenses, plus what you pay the doctor over there, compared to paying the doctor here a little more, I think what it's all about is not willing to pay enough money here. So, I just want WSI to consider increasing their dollar amount they'll pay local doctors, so that these injured workers don't have to travel if they can find a qualified person, when it's all just the money.

Roll call vote was taken. 9 Yeas, 2 Nays, 3 Absent, Carrier: Rep. Clark

Hearing closed.

FISCAL NOTE
Requested by Legislative Council
01/10/2007

Bill/Resolution No.: HB 1286

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			\$370,000		\$370,000	
Appropriations						

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The department of health shall establish and implement a program to conduct random audits of independent medical examinations performed by workforce safety and insurance. The department may select a third party to perform all or specific parts of the audits.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Since the department does not have an auditing function or a medical review function; in order to provide this service the department would contract with a private third party to perform these duties.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The department would contract with a medical facility for approximately \$160,000 per year or \$320,000 per biennium to provide this service. This would include a half time physician plus benefits, a full time support person plus benefits, and general operating supplies. The department would also need \$50,000 for over site or administrative costs to administer this program.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The fiscal impact of this bill is not included in the Health Department's appropriation bill (HB 1004). General funds will need to be appropriated.

Name:	Kathy J. Albin	Agency:	Health
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Phone Number: 328.4542

Date Prepared: 01/26/2007

Date: 1-31-07
Roll Call Vote #: _____

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1286

House Industry Business & Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DO NOT Pass

Motion Made By Rep Ruby Seconded By Rep. Vigesaa

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep. Amerman		X
Vice Chairman Johnson			Rep. Boe		
Rep. Clark	X		Rep. Gruchalla	X	
Rep. Dietrich	X		Rep. Thorpe		X
Rep. Dosch			Rep. Zaiser	X	
Rep. Kasper	X				
Rep. Nottestad	X				
Rep. Ruby	X				
Rep. Vigesaa	X				

Total Yes 9 No 2

Absent 3

Floor Assignment Rep Clark

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
February 1, 2007 9:44 a.m.

Module No: HR-22-1751
Carrier: Clark
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1286: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **DO NOT PASS** (9 YEAS, 2 NAYS, 3 ABSENT AND NOT VOTING).
HB 1286 was placed on the Eleventh order on the calendar.

2007 TESTIMONY

HB 1286

#1

**2007 House Bill No. 1286
Testimony before the House Industry, Business, and Labor Committee
Rob Forward, Staff Attorney
Workforce Safety and Insurance
January 31, 2007**

Good morning, Mr. Chairman and Members of the Committee:

My name is Rob Forward and I am a staff attorney for Workforce Safety and Insurance (WSI). On behalf of WSI and its Board of Directors, I am here to testify in opposition to HB 1286 which would require an independent audit of WSI's independent medical exams (IMEs).

WSI's existing statutorily-required biennial performance evaluations may review the IME process anytime. Another mandated annual audit of one specific facet of the claims process would constitute a disproportionate focus of time, cost and effort. Further, our numbers indicate that only about one-half of one percent of all claims received ever go through an IME. This is not to say that audits or reviews of WSI's operations are not a prudent and necessary method of oversight and improvement, because the organization believes they are. However, there is already a statutory process in place to achieve this same objective.

Under section 65-02-30, all WSI operations, including the IME process, are subject to the biennial performance evaluations. This section directs that every biennium the state auditor select a firm with extensive expertise in the workers' compensation industry to complete a performance evaluation of WSI's functions and operations. The evaluation must review individual departments of WSI to determine whether the organization is providing quality service in an efficient and cost-effective manner. Consequently, the review of the IME process can be included as an area for review.

Additionally, during one of the interim Workers' Compensation Legislative Review Committee hearings last year WSI committed to arranging an independent audit of its IME process. In conducting this audit, the auditor interviewed a representative of CARE, a representative of the AFL-CIO, a State Legislator, a WSI Board member, an attorney for injured workers, IME contractors, and WSI staff. The independent IME audit was recently completed and WSI will be meeting with the contractor at the end of this week to review their findings.

The auditor has preliminarily highlighted eleven areas with findings and recommendations. All eleven of those areas are important and provide constructive criticism, but findings one, two, and three are particularly noteworthy.

Finding one reveals there is a lack of qualified doctors in this region that are willing to conduct IMEs. Even though WSI would prefer to use local doctors for IMEs, WSI is routinely required to use doctors from outside the state because of a lack of willing, qualified choices in North Dakota.

Finding two indicates that injured workers have a pessimistic view of IMEs because they do not believe that the IME is unbiased. This is no surprise. Nor is it a surprise that the auditor found that many of the IME results were well thought out, well-documented, and contained a medically solid basis for the opinion rendered. And, "[a] reasonable number of IME's did support the employee's position regarding the diagnosis, treatment needs, relationship to injury or ability to perform meaningful work activities."

Finding three has probably the most telling commentary. The auditor states that even though IMEs are a "lighting rod" for complaints, "[t]he actual utilization of this particular process . . . is of fairly low frequency considering the number of injuries per year." The auditor goes on to point out that the issue that deserves more attention than the IME process is the level of quality, effective treatment given by treating doctors.

For the above reasons, WSI asks that you give a "do not pass" recommendation for HB 1286. I'd be happy to answer any of your questions.

Testimony**House Bill 1286****House Industry, Business and Labor Committee****Wednesday, January 31, 2007; 8 a.m.****North Dakota Department of Health**

Good morning, Chairman Keiser and members of the Industry, Business and Labor Committee. My name is Arvy Smith, and I am the Deputy State Health Officer with the North Dakota Department of Health. I am here today to provide information regarding House Bill 1286.

Introduction

House Bill 1286 requires the Department of Health to establish and implement a program to conduct random audits of independent medical examinations performed by Workforce Safety and Insurance. It allows us to select a third party to perform the audits, as well.

While we have no opinion as to whether the audits should be conducted or not, I would like to outline some of the challenges the Department of Health would have in implementing this bill. First, the department does not have the funding and staffing resources to take on this responsibility; and second, we do not have the department infrastructure in place to perform this function.

Funding and Staffing Resources

Department of Health personnel do not have the required skills or experience to conduct audits of independent medical examinations. In addition, we have no funding source to cover this additional responsibility. In preparing a fiscal note for this bill, the Department of Health researched the costs of adding staff and of contracting for the services and determined that the price was essentially the same for either – \$370,000.

Infrastructure

Currently, the physicians on the Department of Health staff perform a variety of services for the department, none of which include medical examination oversight. We have two fulltime physicians – the state health officer and the state forensic examiner. In addition, we have two physicians who are employed only part time for the department. One is the section chief for our Medical Services Section, and both provide medical consultation regarding infectious diseases and emergency services

and conduct special projects using federal grants. None of these physicians has the background, the extra time or a funding source to pay for them to conduct the audits.

Also related to infrastructure, the Department of Health does not have an internal audit function or any other audit function that could provide oversight to this process. Qualified auditors are necessary to provide guidance and oversight to audits of independent medical examinations.

Conclusion

This concludes my testimony. I am happy to answer any questions you may have.

Why are fair, unbiased reports so important?

Labor and Industries, employers, the labor community and the legislature all want IME examiners to make a special effort to provide fair, unbiased reports.

This is partly because biased reports may create significant problems for all parties involved. For example, biased reports may lead to litigation, which can result in costly delays and high legal expenses, not to mention the effect on the health of the worker and the operation of the employer's business. Protests create administrative problems for claim managers, so adjudicators prefer reports that neither overstate nor understate the worker's impairment.

provide a complete IME report as described in Chapter 3. If you are not on the Approved Examiner's List, you should use the standard "evaluation and management" consultation codes (CPT 99241, etc.). See also "Limited License Providers" on this page.

If you are a consultant and become an approved examiner, you do NOT need to be affiliated with an IME panel, and you are NOT obligated to accept referrals for IMEs.

Agreed exams: An agreed exam may be scheduled when the worker is represented by legal counsel. The claim manager and legal counsel of a worker may arrange for an IME by certain examiner(s) and agree that each will abide by the findings and conclusions. The agreed exam must be approved or authorized by the employer when the employer is active in the claim. Doctors must be on the department's Approved Examiners List to perform agreed exams. Agreed exams are paid according to the IME fee schedule. Doctors must use the same billing procedures used for other IMEs.

Limited license providers: Limited license providers (for example, dentists, podiatrists, and chiropractors) may only provide ratings for regions or conditions within their scope of practice. Chiropractors must be on the Approved Examiners List.

Examiner's Roles and Responsibilities

Performing IMEs requires considerable judgment and understanding of specialized terms. You also are called on to have mastery of skills that may not be part of your original training. This guidebook can help you understand Washington state's industrial insurance system and the requirements for high-quality IMEs. Keep in mind that other disability systems—private, federal and other state systems—may use different definitions and rules for determining impairment and disability.

As an approved examiner for Washington state, you have agreed that you will be evaluated on the quality of your examination and report, not on whether your recommendations are perceived as favorable or unfavorable to the parties involved.

You have further agreed to treat workers you examine with dignity and respect. To accomplish this, please be sure to:

- Introduce yourself to the worker. You are also encouraged to wear a name tag. The worker has a right to know his or her examiner's name and specialty.
- Explain the examination procedures.
- Answer the worker's questions about the examination process. (Refer the worker to his or her claim manager for questions about the claim, and to the attending doctor for medical advice outside the scope of your examination.)
- Provide adequate draping and privacy if the worker needs to remove clothing for the examination. The worker must be fully dressed while you take the history.
- Allow a friend or family member to attend non-psychiatric portions of the examination. (See Accompaniment During Examinations on page 8.)
- Refrain from derogatory comments, such as comments about the worker, the employer, the worker's motivations or the worker's choice of attending doctor.
- Refrain from comments about the care the worker has received. While Labor and Industries may solicit your opinions later, please don't express opinions during the examination process. If you do not feel the worker has had adequate care, suggest a change of attending doctor in your written comments. (See Recommending Change of Provider, page 19.)
- Close the examination by telling the worker that the examination is over and ask if there is further information the worker would like to add or questions he/she would like to ask. A worker who feels an important point was not addressed in the examination is likely to feel dissatisfied and believe the examination was incomplete.

Workers' Compensation

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Insurance Carriers and Their Doctors (IME)

The goal of most insurance companies is to keep their money, not to pay you. When they call and/or visit your house, ask them to call your attorney. If you are represented by an attorney or licensed representative, you do not have to talk to insurance company representatives — refer them to your legal representative. Do not sign any papers without your attorney.

Be aware, they may try to videotape or photograph you at home.

"Independent Medical Evaluation"

Note The insurance company usually has the right to require you to go to their doctor for an evaluation (not treatment). This is called an IME, but it is not really "independent" because it is the insurance company's doctor. There have been many criticisms of the practices of IME doctors. Tell your doctor and legal representative as soon as you get the appointment. [In rare cases, you do not have to go; consult your attorney.]

It is critical to see your doctor after the IME appointment and before your next hearing.

Your legal representative *may* or *may not* want you to take information with you. Call the lawyer's office to ask if you should bring:

- copies of all C-4's including a recent one;
- copies of medical tests results;
- a letter from your doctor describing your history and medical problems.

If the doctor asks you to move body parts, cooperate, but do not aggravate the injury or injure yourself. You do not have to volunteer any additional information.

Women

Women have the right to be examined by a female doctor *or* to bring a female to the examination. Before the appointment, ask if the doctor will be a man or a woman.

After the insurance doctor evaluates you:

- see your own doctor as soon as possible.
- tell your doctor and legal representative if the insurance doctor actually examined you, and how long the appointment took, and where the appointment took place.
- If you have already been receiving any compensation checks, you may notice that the amount of your check is *cut* after the insurance doctor sees you. They can also stop paying for your treatment. Request a new hearing.

Independent Medical Examinations (IME)

In your WC case, did the insurance carrier send you to their doctor (an IME)? ☐ yes ☐ no

Were you examined in a: ☐ private medical office ☐ medical center
☐ residence ☐ other (describe)

How many minutes approximately did the doctor spend with you?

☐ 1-5 ☐ 6-10 ☐ 11-15 ☐ 16-20 ☐ 21-25

Did the doctor actually do a physical examination? ☐ yes ☐ no

Did you bring reports of prior examinations, x-rays (CT, MRI) or other tests with you? ☐ yes ☐ no

Did the IME doctor review them in your presence? ☐ yes ☐ no

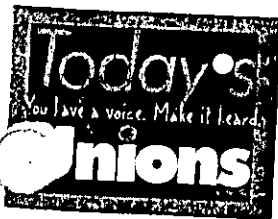
If you are female, was the examining doctor: ☐ male ☐ female

If you are female and the doctor was male was a female nurse or assistant present during the examination? ☐ yes ☐ no

Did the WC insurance carrier refuse you further treatment after your visit to the IME doctor? ☐ yes ☐ no

Were your wage payments lowered or cut off after you had your IME examination? ☐ yes ☐ no

Please describe any other problems you had regarding the visit to the insurance company doctor (IME).

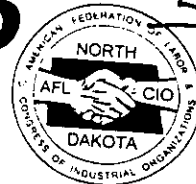


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May

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MINE WORKERS

Tom M. McLaughlin

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AFSCME

Carol Gierszewski

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UTU

John Risch

MISSOURI SLOPE CLC

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ERN PLAINS UNITED LC

Michel

EN VALLEY LC

ike

GREATER NORTHWEST LC

Mark Hager

ND Workers Compensation Changes Needed in North Dakota's Worker's Compensation as recommended by ND AFL-CIO Convention August 26, 2006

- WHEREAS:** The North Dakota Workers Compensation system now known as Workforce Safety and Insurance or WSI has been changed significantly
- WHEREAS:** The control of WC/WSI has been removed from the executive branch and placed in the hands of a board of directors, and
- WHEREAS:** The system's ability to provide sure and certain relief to injured workers has come under question, now, therefore, be it
- RESOLVED:** That the following ' be provided to the 2007 legislative session.

- 1) Require that WC/WSI use hearing officers and that the hearing officers' finding be final.
- 2) Fraud. Require that the bureau use the same standard for fraud that is used in all other fraud cases. Equal standards would apply, no harm-no foul.
- 3) Permanent Partial Impairment (PPI). A PPI award is a one-time payment for job related injuries that result in permanent loss of use of bodily functions(s). Because of the use of weeks, rather than a dollar amount within the formula, Social Security unfairly offsets about 80% of that award. Change the formula for calculating PPI from a "weeks" calculation to a "dollar amount" calculation.
- 4) Executive Director. The Governor should have sole power to appoint the executive director of the bureau/WSI.
- 5) Office of Independent Review. Place the control of the OIR with the Governor.
- 6) Independent Medical Exam (IME). Require that independent medical examinations be conducted in state unless the specific specialty is not available. The IME should be conducted with a physician picked from a panel of all physicians licensed in and practicing in North Dakota.
- 7) Independent Medical Review (IMR). Give greater weight to the opinion of the claimant's treating physician when the claimant undergoes an independent medical review.
- 8) Physician. Eliminate the requirement that an employee choose his/her own doctor at the time of hire or 30 days prior to an injury. The injured claimant should be allowed to pick the treating physician.
- 9) Permanent Partial Impairment (PPI) awards. Presently, an individual must have 16 % whole body impairment to obtain a PPI award. If a person has 16%, in effect, they are getting 1 percent in an award. Although the Bureau/WSI does pay for the more catastrophic impairments, this still does not justify the denial of an award for 5% to 15% impairment. Exclusions for pain, disfigurement, loss of range of motion etc. need to be addressed.

10) Liberal Construction. The loss of the "liberal construction" of the Worker's Compensation Act has made it very difficult for the employee to establish an otherwise legitimate claim.

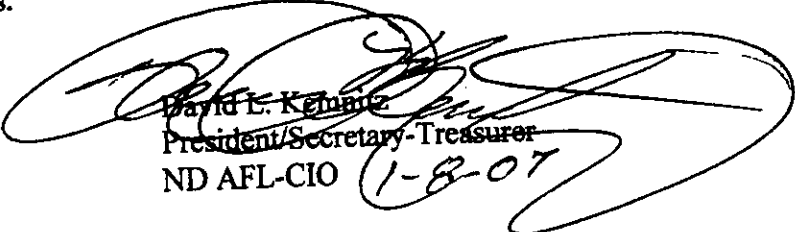
11) Definition of Compensable Injury. There is no specific definition of what is "objective medical evidence." Before 1995, the doctor's notations that the person has sustained an injury and has subjective complaints of pain sufficed. The argument is that the doctor's notations no longer meet the requirements of "objective medical evidence". Injury should be any need for treatment arising out of and as a result of any incident, event or cumulative trauma arising from work.

12) Pre-existing condition. The Bureau now denies claims because the claimant has a pre-existing condition. The language should be changed back to what it was before 1997, thereby requiring that if there is a pre-existing condition that it must be "active" at the time of the injury to allow an offset. Burden of proof should be on the employer to prove that the pre-existing condition would have caused the disability absent the work event.

13) Disability benefits. Changes made to 65-05-08.1, NDCC (1995), make it more difficult for employees to receive disability benefits and demands more from the doctor as to what the doctor is required to do in order for the employee to obtain disability benefits. Presently, the doctor is required not only to say that the person is disabled but also to exclude other types of employment, for example, light or sedentary. The doctor is also to list specifically what the restrictions are. If these are not all included in the doctor's letter, the person is not eligible for disability benefits. Expert vocational evidence by those experienced in job ergonomics is preferable.

14) Closed Claim Presumption. Once again, the 1995 legislature made it much more difficult for an individual to receive benefits that they were clearly entitled to. 65-05-35, NDCC (1995) states that an individual's claim is "presumed closed" if there has not been a payment of any benefit for four years on the claim. The Bureau/WSI maintains that this can be rebutted, however, the only way to rebut this is to establish that the employee proves by "clear and convincing evidence" the work injury is the sole cause of the later symptoms. Virtually throughout the Workers Compensation Act the employee is required to show "more likely than not" or by a preponderance that the claim is compensable. This standard of "clear and convincing evidence" and "sole cause" makes it virtually impossible for a claimant to have their case reopened or any medical bill paid if it has been more than four years since any activity on that claim. It should go back to the old standard of simply preponderance of the evidence rather than clear and convincing evidence.

15) Vocational Rehabilitation Services. Over the past 10 years, vocational rehabilitation services have been virtually eliminated. There are very few people being retrained and/or offered assistance back to work. Vocational Rehabilitation Services reform must address the needs of the claimant and the employers willing to hire people with special needs.


David L. Kennedy
President/Secretary-Treasurer
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MEDICAL SERVICE -

All of the compensation acts provide medical service in case of injury. The usual provision is that the employer shall furnish reasonable or necessary medical, surgical, and hospital service. In 14 of the acts neither period of service or cost of service is limited. Eight other acts do not limit the period, and 12 other acts place no limitation except reasonableness upon the amount of medical service which the employer must furnish. In 19 of the acts the employer's liability is limited as to length of time, ranging from 10 days to 90 days, but with additional service at the discretion of the administration in 12 acts. In 25 of the acts the maximum amount is limited, ranging from \$100 to \$800, but with additional cost at the discretion of the administration in 11 of the acts.

Four of the acts permit collections from employees for medical funds, \$2.50 per month in one, one half cost but not to exceed \$1 per month in two, and one half cost in one, while several acts prohibit contributions by employees.

There seems to be no legitimate reason why unlimited medical, surgical, and hospital treatment should not be provided under every workmen's compensation act. Adequate medical treatment is absolutely essential for the rehabilitation and restoration of the earning capacity of injured workers. The cost of this service should not be transferred to the worker, who already carries considerable of the financial burden. It should, like the compensation payments, be absorbed by the industry as cost of production.

The injured worker should be furnished, free of charge, such medical, and hospital treatment including nursing, medicines, medical, and appliances, crutches, and apparatus, including artificial members, as may reasonably be required to cure and relieve from the effects of the injury. Employers should not be permitted to accept contributions from employees to defray medical, surgical, or hospital service for injuries arising out of the injury in the course of employment.

SECOND INJURIES.

It is manifestly unjust that in case of the loss of a