

Sixty-second
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1054

Introduced by

Legislative Management

(Workers' Compensation Review Committee)

1 A BILL for an Act to create and enact four new sections to chapter 65-05 of the North Dakota
2 Century Code, relating to workers' compensation coverage of prescriptive drugs as part of pain
3 therapy; and to provide for application.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** A new section to chapter 65-05 of the North Dakota Century Code is created
6 and enacted as follows:

7 **General opioid therapy acute stage coverage.**

- 8 1. This section applies to an injured employee with pain resulting from a nonmalignant
9 compensable condition or to an injured employee receiving pain therapy for another
10 nonterminal compensable condition.
- 11 2. The organization does not cover an opioid therapy prescribed on an outpatient basis
12 extending beyond thirty days following an initial injury or initial discharge or following a
13 subsequent operative procedure, unless the prescriber submits an objectively
14 supportable required prescriber's treatment plan. The organization does not cover an
15 opioid therapy prescribed on an outpatient basis extending beyond six weeks following
16 an initial injury or initial discharge or following a subsequent operative procedure,
17 unless the prescriber prequalifies the injured employee for long-term opioid therapy
18 coverage.
- 19 3. Qualification for coverage beyond the coverage provided for under subsection 2
20 requires prior authorization from the organization. Authorization requests must include
21 documentation as required by the organization.

22 **SECTION 2.** A new section to chapter 65-05 of the North Dakota Century Code is created
23 and enacted as follows:

1 **Long-term opioid therapy coverage.**

2 1. This section applies to an injured employee with pain resulting from intractable chronic
3 nonmalignant, nonterminal pain. As used in this section, intractable chronic
4 nonmalignant, nonterminal pain may be referred to as "chronic" pain and is pain
5 persisting beyond the expected normal healing time for an injury, for which traditional
6 medical approaches have been unsuccessful.

7 2. This section does not apply to an injured employee with pain resulting from a
8 malignant process, such as cancer, or when the pain therapy is aimed at relieving
9 intractable pain and suffering in the terminally ill when other measures fail, if the
10 diagnosis is a compensable condition.

11 3. Opioid maintenance analgesia therapy may be provided if the therapy results in
12 greater function, allows an injured employee to resume working, or improves pain
13 control with limited side effects for chronic pain patients.

14 4. A candidate for opioid maintenance analgesia therapy:

15 a. Must have an established diagnosis that is consistent with chronic pain;

16 b. Must have been nonresponsive to non-opioid treatment;

17 c. May not be using illegal drugs or abusing alcohol; and

18 d. Must be a reliable injured employee who is known to the prescriber and is
19 expected to be compliant with the treatment protocol.

20 5. The organization may not cover long-term opioid maintenance analgesia therapy for
21 an injured employee who meets the criteria for the diagnosis of chronic pain syndrome
22 and who has persistent pain out of proportion to physical findings or with no
23 demonstrable lesion.

24 6. If an injured employee has a personal history of addiction, poor impulse control, a
25 comorbid psychiatric disorder, or poor response to opioids in the past for a similar
26 condition, organization coverage of long-term opioid maintenance analgesia therapy
27 requires prior authorization from the organization. An authorization request under this
28 subsection must include documentation as required by the organization.

29 7. Coverage of continuation of long-term opioid maintenance analgesia therapy is subject
30 to the following restrictions:

31 a. Low to moderate dose opioid therapy must provide at least partial analgesia.

- 1 b. Every thirty days during the first three months and every sixty days during the
2 next six months, progress of the therapy must be documented on forms provided
3 by the organization.
- 4 c. Annually, the organization shall evaluate every injured employee on long-term
5 opioid maintenance analgesia therapy to determine the need for continuing the
6 therapy.
- 7 d. At the prescriber's or organization's request, every injured employee on long-term
8 opioid maintenance analgesia therapy is subject to random drug screens for the
9 presence of both prescribed and illegal substances. Failure of the screen or of
10 timely compliance with the request results in termination of opioid maintenance
11 analgesia therapy.
- 12 e. A treatment agreement between the patient and the prescriber restricting
13 treatment access and limiting prescriptions to an identified single physician must
14 be in place.

15 **SECTION 3.** A new section to chapter 65-05 of the North Dakota Century Code is created
16 and enacted as follows:

17 **Prescribers of long-term opioid therapy coverage.**

- 18 1. In the case of prescription of long-term opioid maintenance analgesia therapy, the
19 organization may require:
 - 20 a. Upon request of the organization, the prescribing physician shall immediately
21 administer a drug screen that will detect the presence of prescribed and
22 unprescribed medications.
 - 23 b. Upon request of the organization or the injured employee, the prescriber shall
24 provide a treatment plan that addresses concerns of the organization and of the
25 injured employee.
 - 26 c. Upon request of the organization, the prescriber shall reduce the prescription
27 levels or provide objective justification why such a reduction is not in the injured
28 employee's best interest.
 - 29 d. The prescriber shall provide information to the injured employee regarding
30 chemical dependency programs.

e. The prescriber shall provide the organization and the injured employee with a titration plan for the reduction and possible discontinuation of the opioid maintenance analgesia therapy.

2. If the prescriber or injured employee does not comply with one or more of the requirements of this section or if the probability of imminent harm to the injured employee is high, after the organization provides reasonable notification to the injured employee the organization may discontinue coverage of the opioid maintenance analgesia therapy.

SECTION 4. A new section to chapter 65-05 of the North Dakota Century Code is created and enacted as follows:

Prescriber treatment plans for treatment of nonmalignant pain with opioids.

1. Within the first thirty days of treatment of an injured employee under an opioid maintenance analgesia therapy, the prescriber shall submit a written treatment plan to the organization. The written treatment plan must include the following:
 - a. Time-limited goals, including a time schedule to wean the injured employee from opioid use;
 - b. Consideration of relevant prior medical history;
 - c. A summary of conservative care rendered to the injured employee which focuses on return to work;
 - d. A statement of why prior or alternative conservative measures may have failed or are not appropriate as sole treatment;
 - e. A summary of any consultations that have been obtained, particularly those that have addressed factors that may be barriers to recovery;
 - f. A screen for factors that may significantly increase the risk of abuse or adverse outcomes, such as a history of alcohol or other substance abuse; and
 - g. An opioid treatment agreement that has been signed by the injured employee and the prescriber. This agreement must be renewed every six months. The treatment agreement must outline the risks and benefits of opioid use, the conditions under which opioids will be prescribed, the prescriber's need to document overall improvement in pain and function, and the injured employee's responsibilities.

- 1 2. If the prescriber or injured employee does not comply with one or more of the
2 requirements of this section or if the probability of imminent harm to the injured
3 employee is high, after the organization provides reasonable notification to the injured
4 employee the organization may discontinue coverage of the opioid maintenance
5 analgesia therapy.

6 **SECTION 5. APPLICATION.** Regardless of the date of injury, this Act applies to all workers'
7 compensation claims on or after the effective date of this Act.