

**HOUSE BILL NO. 1302**

Introduced by

Representative DeKrey

1 A BILL for an Act to create and enact a new section to chapter 65-05 of the North Dakota  
2 Century Code, relating to workers' compensation health care decisions; to amend and reenact  
3 sections 65-01-16, 65-02-08, 65-04-32, 65-05-04, 65-05-28, and 65-10-01 of the North Dakota  
4 Century Code, relating to workers' compensation appeals and employees' rights; and to provide  
5 for application.

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

7 **SECTION 1. AMENDMENT.** Section 65-01-16 of the North Dakota Century Code is  
8 amended and reenacted as follows:

9 **65-01-16. Decisions by bureau - Disputed decisions.** The following procedures  
10 must be followed in claims for benefits, notwithstanding any provisions to the contrary in  
11 chapter 28-32:

- 12 1. The bureau shall send a copy of each initial claim form filed with the bureau to the  
13 claimant's employer, by regular mail, along with a form for the employer's  
14 response, if the employer's response has not been filed at the time the claim is  
15 filed. Failure of the employer to file a response within fourteen days from the day  
16 the response form was mailed to the employer constitutes the employer's  
17 admission that the information in the claim form is correct.
- 18 2. The bureau may conduct a hearing on any matter within its jurisdiction by informal  
19 internal review of the information of record.
- 20 3. The bureau may issue a notice of decision for any decision made by informal  
21 internal review and shall serve the notice of decision on the parties by regular mail.  
22 A notice of decision must include a statement of the decision, a short summary of  
23 the reason for the decision, and notice of the right to reconsideration.

- 1           4. A party has thirty days from the day the notice of decision was mailed by the  
2           bureau in which to file a written request for reconsideration. The request must  
3           state the alleged errors in the decision and the relief sought. The request may be  
4           accompanied by additional evidence not previously submitted to the bureau. The  
5           bureau shall reconsider the matter by informal internal review of the information of  
6           record. Absent a timely and sufficient request for reconsideration, the notice of  
7           decision is final and may not be reheard or appealed.
- 8           5. Within sixty days after receiving a request for reconsideration, the bureau shall  
9           serve on the parties by regular mail a notice of decision reversing the previous  
10          decision or, in accordance with the North Dakota Rules of Civil Procedure, an  
11          administrative order that includes its findings, conclusions, and order. The bureau  
12          may serve an administrative order on any decision made by informal internal  
13          review without first issuing a notice of decision and receiving a request for  
14          reconsideration.
- 15          6. A party has thirty days from the date of service of an administrative order in which  
16          to file a request for assistance from the office of independent review under section  
17          65-02-27.
- 18          7. A party has thirty days, from the date of service of an administrative order or from  
19          the day the office of independent review mails its notice that the office's assistance  
20          is complete, in which to file a written request for rehearing or to appeal the decision  
21          to the district court. The request for rehearing must specifically state each alleged  
22          error of fact and law to be reheard and the relief sought. Absent a timely and  
23          sufficient request for rehearing, the administrative order is final and may not be  
24          reheard or appealed.
- 25          8. Rehearings must be conducted as hearings under chapter 28-32 to the extent the  
26          provisions of that chapter do not conflict with this section. The bureau may arrange  
27          for the designation of hearing officers to conduct rehearings and issue  
28          recommended findings, conclusions, and orders. In reviewing recommended  
29          findings, conclusions, and orders, the bureau may consult with its legal counsel  
30          representing it in the proceeding.

1           9.    Within sixty days after receiving the recommended findings, conclusions, and  
2                   order, the bureau shall serve on the parties, in accordance with the North Dakota  
3                   Rules of Civil Procedure, its findings, conclusions, and posthearing administrative  
4                   order.

5           10.   A party may appeal a posthearing administrative order to district court in  
6                   accordance with chapter 65-10.

7           11.   Any notice of decision, administrative order, or posthearing administrative order is  
8                   subject to review and reopening under section 65-05-04.

9           12.   This section is effective for all orders and decisions on all claims regardless of the  
10                   date of injury or the date the claim was filed.

11           **SECTION 2. AMENDMENT.** Section 65-02-08 of the North Dakota Century Code is  
12           amended and reenacted as follows:

13           **65-02-08. Rulemaking power of the bureau - Fees prescribed by bureau.** The  
14           bureau shall adopt rules necessary to carry out this title. All fees on claims for medical and  
15           hospital goods and services provided under this title to an injured employee must be in  
16           accordance with schedules of fees adopted by the bureau. Before the effective date of any  
17           adoption of, or change to, a fee schedule, the bureau shall hold a public hearing, which is not  
18           subject to chapter 28-32. The bureau shall establish, by administrative rule, costs payable,  
19           maximum costs, a reasonable maximum hourly rate, and a maximum fee to compensate an  
20           injured employee's attorney for legal services following issuance of an administrative order  
21           reducing or denying benefits. The bureau shall issue a decision within sixty days of the date  
22           when all elements of initial filing or notice of reapplication of claim have been satisfied or a  
23           claim for additional benefits over and above benefits previously awarded has been made.  
24           Satisfaction of elements of filing must be defined by administrative rule. The bureau shall pay  
25           an injured employee's attorney's fees and costs from the bureau general fund. Except for an  
26           initial determination of compensability, an attorney's fee may not exceed twenty percent of the  
27           amount awarded, subject to a maximum fee set by administrative rule. The bureau shall pay an  
28           attorney's fees and costs when:

- 29           1.    The employee has prevailed in binding dispute resolution under section 65-02-20.  
30           2.    The employee has prevailed after an administrative hearing under chapter 28-32.  
31           3.    The employee has prevailed in district court.

1 An injured employee has prevailed only when an additional benefit, previously denied, is paid.  
2 An injured employee does not prevail on a remand for further action or proceedings unless that  
3 employee ultimately receives an additional benefit as a result of the remand. This section does  
4 not prevent an injured employee or an employer from hiring or paying an attorney; however, the  
5 employee's attorney may not seek or obtain costs or attorney's fees from both the bureau and  
6 the employee relative to the same claim. All disputes relating to payment or denial of an  
7 attorney's fee or costs must be submitted to the hearing officer or arbitrator for decision, but a  
8 hearing officer or arbitrator may not order that the maximum fee be exceeded.

9 **SECTION 3. AMENDMENT.** Section 65-04-32 of the North Dakota Century Code is  
10 amended and reenacted as follows:

11 **65-04-32. Decisions by bureau - Disputed decisions.** Notwithstanding any  
12 provisions to the contrary in chapter 28-32, the following procedures apply when the bureau  
13 issues a decision under this chapter or section 65-05-07.2:

- 14 1. The bureau may issue a decision based on an informal internal review of the  
15 record and shall serve notice of the decision on the parties by regular mail. The  
16 bureau shall include with the decision a notice of the employer's right to  
17 reconsideration.
- 18 2. An employer has thirty days from the date of service to file a written petition for  
19 reconsideration. The request must state specifically the alleged errors in the  
20 decision and the relief sought. The request may be accompanied by additional  
21 evidence not previously submitted to the bureau. The bureau shall reconsider the  
22 matter by informal internal review of the information of record. Absent a timely and  
23 sufficient request for reconsideration, the administrative order is final and may not  
24 be reheard or appealed.
- 25 3. Within sixty days after receiving a petition for reconsideration, unless settlement  
26 negotiations are ongoing, the bureau shall serve on the parties by certified mail an  
27 administrative order including its findings of fact, conclusions of law, and order, in  
28 response to the petition for reconsideration.
- 29 4. A party has thirty days from the date of service of an administrative order to file a  
30 written request for rehearing or to appeal the decision to the district court. The  
31 request for rehearing must state specifically each alleged error of fact and law to

1 be reheard and the relief sought. Absent a timely and sufficient request for  
2 rehearing, the administrative order is final and may not be reheard or appealed.

3 5. Rehearings must be conducted as hearings under chapter 28-32 to the extent that  
4 chapter does not conflict with this section. The bureau may arrange for the  
5 designation of hearing officers to conduct rehearings and issue recommended  
6 findings of fact, conclusions of law, and orders. In reviewing recommended  
7 findings, conclusions, and orders, the bureau may consult with its legal counsel  
8 representing it in the proceeding.

9 6. Within sixty days after receiving the administrative law judge's recommended  
10 findings of fact, conclusions of law, and order, the bureau shall serve on the  
11 parties, in accordance with the North Dakota Rules of Civil Procedure, its findings,  
12 conclusions, and posthearing administrative order.

13 7. An employer may appeal a posthearing administrative order to district court in  
14 accordance with chapter 65-10.

15 **SECTION 4. AMENDMENT.** Section 65-05-04 of the North Dakota Century Code is  
16 amended and reenacted as follows:

17 **65-05-04. Bureau has continuing jurisdiction over claims properly filed.** If the  
18 original claim for compensation has been made within the time specified in section 65-05-01,  
19 the bureau at any time, on its own motion or on application, may review the award, and in  
20 accordance with the facts found on such review, may end, diminish, or increase the  
21 compensation previously awarded, or, if compensation has been refused or discontinued, may  
22 award compensation. However, absent fraud, the bureau may not deny at a later date the  
23 occurrence of an earlier determined compensable injury. There is no appeal from a bureau  
24 decision not to reopen a claim after the bureau's order on the claim has become final.

25 **SECTION 5. AMENDMENT.** Section 65-05-28 of the North Dakota Century Code is  
26 amended and reenacted as follows:

27 **65-05-28. Examination of injured employee - Paid expenses - No compensation**  
28 **paid if claimant refuses to reasonably participate.**

29 1. Every employee who sustains an injury may select a doctor of that employee's  
30 choice to render initial treatment. ~~Upon a determination that the employee's injury~~  
31 ~~is compensable, the bureau may require the employee to begin treating with~~

- 1            ~~another doctor, to better direct the medical aspects of the injured employee's claim.~~  
2            ~~The bureau shall provide a list of three doctors who specialize in the treatment of~~  
3            ~~the type of injury the employee sustained. At the bureau's request, the employee~~  
4            ~~shall select a doctor from the list. An injured employee shall follow the directives of~~  
5            ~~the doctor or health care provider who is treating the employee as chosen by the~~  
6            ~~employee at the request of the bureau, and comply with all reasonable requests~~  
7            ~~during the time the employee is under medical care. Providing further that:~~  
8            1. ~~No employee may change from one doctor to another while under treatment or~~  
9            ~~after being released, without the prior written authorization of the bureau. Failure~~  
10           ~~to obtain approval of the bureau renders the employee liable for the cost of~~  
11           ~~treatment and the new doctor will not be considered the attending doctor for~~  
12           ~~purposes of certifying temporary disability.~~  
13           a. ~~Any employee requesting a change of doctor shall file a written request with~~  
14           ~~the bureau stating all reasons for the change. Upon receipt of the request,~~  
15           ~~the bureau will review the employee's case and approve or deny the change~~  
16           ~~of doctor, notifying the employee and the requested doctor.~~  
17           b. ~~Emergency care or treatment or referral by the attending doctor does not~~  
18           ~~constitute a change of doctor and does not require prior approval of the~~  
19           ~~bureau.~~  
20           2. Travel and other personal reimbursement for seeking and obtaining medical care is  
21           paid only upon request of the injured employee. All claims for reimbursement must  
22           be supported by the original vendor receipt and must be submitted within one year  
23           of the date the expense was incurred or reimbursement must be denied.  
24           Reimbursement must be made at the bureau reimbursement rates in effect on the  
25           date of incurred travel or expense. Mileage calculations must be based upon the  
26           atlas or map mileage from city limit to city limit and do not include intracity mileage.  
27           ~~Providing further that:~~  
28           a. No payment for mileage or other travel expenses may be made when the  
29           distance traveled is less than fifty miles [80.47 kilometers] one way, unless the  
30           total mileage equals or exceeds two hundred miles [321.87 kilometers] in a  
31           calendar month;

- 1           b. All travel reimbursements are payable at the rates at which state employees  
2           are paid per diem and mileage, except that the bureau may pay no more than  
3           actual cost of meals and lodging, if actual cost is less;
- 4           c. Reimbursement may not be paid for travel other than that necessary to obtain  
5           the closest available medical or hospital care needed for the injury. If the  
6           injured employee chooses to seek medical treatment outside a local area  
7           where care is available, travel reimbursement may be denied;
- 8           d. Reimbursement may not be paid for the travel and associated expenses  
9           incurred by the injured employee's spouse, children, or other persons unless  
10          the employee's injury prevents travel alone and the inability is medically  
11          substantiated; and
- 12          e. Other expenses, including telephone calls and car rentals are not  
13          reimbursable expenses.
- 14      3. The bureau may at any time require an employee to submit to an independent  
15      medical examination by a duly qualified doctor or doctors designated or approved  
16      by the bureau. The bureau shall choose a medical specialist in the employee's  
17      state of residence if such a specialist is available. The independent medical  
18      examination must be for the purpose of review of the diagnosis, prognosis,  
19      treatment, or fees. The employee may have a duly qualified doctor designated by  
20      that employee present at the examination if procured and paid for by that  
21      employee. Providing further that:
- 22          a. In case of any disagreement between doctors making an examination on the  
23          part of the bureau and the employee's doctor, the bureau shall appoint an  
24          impartial doctor duly qualified who shall make an examination and shall report  
25          to the bureau.
- 26          b. The employee, in the discretion of the bureau, may be paid reasonable travel  
27          and other per diem expenses under the guidelines of subsection 2. If the  
28          employee is working and loses gross wages from the employee's employer  
29          for attending the examination, the gross wages must be reimbursed as a  
30          miscellaneous expense upon receipt of a signed statement from the employer  
31          verifying the gross wage loss.

- 1           4. If an employee, or the employee's representative, refuses to submit to, or in any  
2           way intentionally obstructs, any examination or treatment, or refuses to reasonably  
3           participate in medical or other treatments or examinations, the employee's right to  
4           claim compensation under this title is suspended until the refusal or obstruction  
5           ceases. No compensation is payable while the refusal or obstruction continues,  
6           and the period of the refusal or obstruction must be deducted from the period for  
7           which compensation is payable to the employee.
- 8           5. If an employee undertakes activities, whether or not in the course of employment,  
9           which exceed the treatment recommendations of the employee's doctor regarding  
10          the work injury, and the doctor determines that the employee's injury or condition  
11          has been aggravated or has worsened as a result of the employee's activities, the  
12          bureau may not pay benefits relative to the aggravation or worsening, unless the  
13          activities were undertaken at the demand of an employer. An employer's account  
14          may not be charged with the expenses of an aggravation or worsening of a  
15          work-related injury or condition unless the employer knowingly required the  
16          employee to perform activities that exceed the treatment recommendations of the  
17          employee's doctor.

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

20           **Disputed treatment.** If an employee objects to health care determined by the bureau  
21          to be necessary and appropriate, that employee may file a written request for an administrative  
22          hearing on the matter. On administrative appeal, the health care recommended by the  
23          employee's medical provider is presumed correct and the bureau has the burden of proving  
24          otherwise.

25           **SECTION 7. AMENDMENT.** Section 65-10-01 of the North Dakota Century Code is  
26          amended and reenacted as follows:

27           **65-10-01. Appeal from decision of bureau.** If the final action of the bureau denies the  
28          right of the claimant to participate at all in the fund on the ground that the injury was  
29          self-inflicted, or on the ground that the accident did not arise in the course of employment, or  
30          upon any other ground going to the basis of the claim, or if the bureau allows the claimant to  
31          participate in the fund to a lesser degree than that claimed by the claimant, if such allowance is

1 less than the maximum allowance provided by this title, the claimant may appeal to the district  
2 court of the county wherein the injury was inflicted or of the county in which the claimant  
3 resides. An employer may also appeal a decision of the bureau in any injury case or a bureau  
4 decision issued under chapter 65-04, in the manner prescribed in this section. An appeal  
5 involving injuries allegedly covered by insurance provided under contracts with extraterritorial  
6 coverage shall be triable in the district court of Burleigh County. Any appeal under this section  
7 shall be taken in the manner provided in chapter 28-32, except the appeal is de novo and may  
8 be by jury. ~~Any appeal to the district court shall be heard on the record, transmitted from the~~  
9 ~~bureau, and, in the discretion of the court, additional evidence may be presented pertaining to~~  
10 ~~the questions of law involved in the appeal.~~

11 **SECTION 8. APPLICATION.** This Act applies to all workers' compensation orders and  
12 decisions, regardless of the date of injury or the date of claim for benefits or services.