

2013 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1051

2013 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee
Peace Garden Room, State Capitol

HB 1051

January 9, 2013

Recording Job Number 17041(recording also contains HB 1052)

Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

Provides for a workers' compensation review committee study of the workers' compensation preferred provider program

Minutes:

Attachments 1-4

Representative Keiser: Representative Sukut will carry HB 1051. Representative Sukut from District 1 served as Chairman of the interim Workers' Compensation Review Committee.

Representative Sukut: (6:42) HB 1051 is a study bill to study the preferred provider program. Every four years, WSI has to have an independent performance audit, and that audit is up in 2014, which is the next interim. This bill will allow us to tie this study into that performance audit. The Workers' Compensation Review Committee is giving the charge of putting up to four specific items into what is to be studied in that performance review. This would be one of those items. This fits well with what is mandated in the upcoming interim.

There are many questions. Has this program been successful? Is it doing what it was intended to do? Is it cost effective? Any number of those questions and issues we're interested in hearing.

HB 1051 is about getting a study together so we can get some ideas of what is going on with that program.

Chairman Keiser: Any questions from committee members?

Representative Becker: This may be slightly tangential to the bill itself, but it helps me understand the program. For emergent situations, you go to the emergency room and see the physician on call. You are typically instructed to follow up with that provider.

Representative Sukut: That is included in HB 1052. That is an exception. If it turns out that is a work-related injury, it would be covered.

Representative Ruby: How many preferred providers exist in the state?

Chairman Keiser: We will wait for WSI to provide that kind of information.

Representative Kasper: (10:08) What data has WSI furnished during the interim in regard to the scope of this study?

Representative Sukut: No, we did not receive any data with respect to that program. We did not request it.

Representative M. Nelson: You mentioned several times the question of whether the preferred provider program is performing what its object is. Why was the preferred provider program started? What is the purpose of the preferred provider program?

Representative Sukut: We'll let people from WSI address that.

Jennifer Clark of the North Dakota Legislative Council: (11:26) Testimony references Attachment 1.

I was staff council for the interim Workers' Compensation Review Committee.

Two sections of law relate to the WSI preferred provider program. As it relates to the study, HB 1051, Representative Kasper asked whether WSI has all this data and whether we had requested it. For clarification, his topic came up with our second injured worker. We went out to Dickinson late in the interim and got this information. These bills were prepared towards the end of the interim. All three of our House members on that interim committee are members of this standing committee. The members of the interim committee recognized that there is an issue here and that they had questions about how well the program was working. My recollection is that when asked about this data, WSI knew what was going on with the program. We become aware of how the program is working when an injured worker applies for benefits and is denied because they did not go to a preferred provider. That is the most common way in which WSI is involved in the preferred provider program. We did ask questions, but the issue arose at the back end. The proposed study or performance evaluation would be a way to get the data, and we know the data is out there.

This is a mandatory study, which is unique. Often times, we'll say *may consider studying*. This is a *shall study*. A unique component is that there will be a consultant we already have assigned to do this. It is built with that performance review that the report comes back to the Workers' Compensation Review Committee. That is a statutory committee which will exist next interim.

Representative N. Johnson: When it comes to selecting the topics for the study, who does that?

Jennifer Clark: Section 65-02-30 sets out the protocol for choosing the elements for the performance evaluation. The Workers' Compensation Review Committee can choose up to four elements, and those are then submitted to the state auditor. There are a total of eight elements in the performance evaluation, so this would be four of eight or few than four.

Chairman Keiser: (15:12) HB 1051, Line 7, page 1, says "may conduct" but you say it's a mandatory study.

Jennifer Clark: On page 1, Lines 5-6, it says, "during the interim, the Workers' Compensation Review Committee shall study." It may be conducted as part of the performance evaluation. That is up to the discretion of the committee whether they want to perform it on their own or whether they want to submit it as one of the four elements of the performance evaluation.

Chairman Keiser: Anyone else here to testify on HB 1051?

Tim Wahlin, representing WSI: (17:09) See Attachment 2 for written testimony. Attachments 3 and 4 are supporting documents.

Representative Kasper: (18:46) On the third paragraph of your written testimony, it states that an employee is free to elect another provider as long as the election occurs prior to a work-related injury. How can an employee select a provider prior to an injury if they do not know the type of injury? How is this option communicated to the employee in advance of an injury which may occur?

Tim Wahlin: The designated medical provider is the sole source of treatment other than for emergent care. The only election out of that has to take place prior to an injury, generally at the date of hire or at some other point (prior to an injury) when an employee is able to designate a different medical provider from whom they would seek care. For example, in Bismarck it may be Sanford versus St. Alexius. If your employer selects one as the designated medical provider but you are uncomfortable with that, you simply designate another medical provider as your designated medical provider.

Chairman Keiser: Currently, at the time of hire, if you have a designated provider, you must inform the new employee that you have a designated provider program implemented in your organization. So the only option really is that the employee says at that point that he does not want to be in that program, or sometime 30 days prior to being injured, the employee can come forward and say (I assume in writing) that he or she does not want to be in the designated provider program if injured. The current law requires that, correct?

Tim Wahlin: (21:00) That is correct. See additional documents. The colored poster (attachment #3) is required to be posted at all worksites within North Dakota. Number 2 of the posting explains designated medical providers, if your employer has selected if you have been informed, and explains the opt out provision. Otherwise, you have to treat with the designated medical provider. That gets you your second question, Representative Kasper, regarding how an employee is informed. Number one, this document has to be posted.

The other document (attachment #4) is the actual document the employer files with WSI selecting a designated medical provider so that WSI knows to look for treatment from the designated medical provider. The second page of that document is for employee sign off, to be retained by the employer in the event they need to show that the injured worker had been in fact notified. If an injured worker is not notified of who the employer has selected

as the designated medical provider, that selection will be ultimately ignored, and WSI will end up paying for the medical treatment outside of that.

Representative Kasper: (22:31) An employee is hired and is sitting in front of the HR person or an employer at the time of hire. Under current law, must that HR person or the employer go through this paperwork with the new hire during that hiring process or shortly thereafter and make sure they understand this information and are shown the form on which they can select another provider? Is there direct and timely communication to the employee so the employee knows his or her rights?

Tim Wahlin: (23:25) The only document that WSI would have and retain is the document selecting the designated medical provider by the employer. The intent of the poster is that it would be covered with the employee in a timely manner and prior to a work-related injury. There are questions from time to time whether the information has been covered, and WSI makes the determination at the time of filing. Nowhere in the statute does it say that the information has to be covered in a certain time period. Nowhere in the statute does it say that the employer has to do X, Y, and Z other than to select.

Chairman Keiser: (24:10) Does WSI have data to show or demonstrate that the outcome is better in a preferred provider workers' comp arrangement versus in an open arrangement?

Tim Wahlin: No, we do not have data that shows conclusively that the designated medical provider system provides value in all circumstances. Of the roughly 22,000 employers in the state, 1280 have selected a medical provider. It's a small minority of employers who have gone through the system and have designated a medical provider. It's my speculation that 1280 employers may represent a significantly larger portion of employees because it is generally the larger employers go down this road and establish ties with medical providers.

Representative Becker: (25:32) If I am a worker who signed the form to acknowledge the information but does not get injured for several years. When I am injured, I do not recall the forms and see my own provider. I would have been more than happy to see the preferred provider, had I remembered. So I see my guy and incur a bill. Would WSI be able to tell me in a timely fashion that I am seeing the wrong person and that that visit is not covered and I should quickly switch, or would I have, say, six months of treatment before I would be notified that the entire period would not be covered. What is the timeliness of WSI notifying the employee that they are not being covered?

Tim Wahlin: (26:50) In a perfect world, we'd be able to tell you before you sought treatment. However, the way work-related injuries get filed, there are many times that we will not know that a claim has been filed until perhaps weeks after treatment has taken place. We encourage timely filing, within 24 hours without penalties. The answer is, in most likelihood, no.

Chairman Keiser: That is exactly the case that we heard. The injured employee had been informed but did not remember, received services from his own provider, submitted the bill, and then payment was denied. Then he went through the preferred provider system.

Representative Frantsvog: (27:20) Does WSI have a system in place where they can be assured from an employer that they have gone through the proper steps of notifying employees and the appropriate forms have been taken care of so that you at WSI will know that an employer will not have a problem because they have not done what is proper as it related to selecting a preferred provider and going through the process of notifying their employees?

Tim Wahlin: The way WSI deals with the preferred provider system is reactive, meaning that the claim comes in, a bill follows. For payment to take place, the adjustors review whether or not a preferred provider has been selected. In the event that it is one of the 1280 employers, did the treatment take place at that facility? If not, was it emergent? If it did not, did the injured worker at that time know that it was a work-related injury? If that's the case, the bill will be denied. Then typically the injured worker will state that they were never told. At that point, WSI investigates whether there is credibility to that claim. If there is credibility to that claim, we are going to step in, we are going to pay, we are going to not honor the selection of a designated medical provider. With that scenario, we are reactive and are not the record keepers. We do not go out the employers to inform them that they have not filed their documents and that we do not know if they've filed for all their employees. That is not the role we are taking in this particular system.

Representative M. Nelson: (29:17) Let's say an employer is in Fargo and the designated employer is in Fargo and only in Fargo. However, the worker is working in Williston at time of the work-related injury, but it is not an emergency. What is the employee to do to get his treatment covered?

Tim Wahlin: We would not require the injured worker to travel to Fargo. We'd handle the case as though it were emergent care. If there is not a preferred provider in that area, we would honor whatever selection the injured worker makes.

Representative M. Nelson: How far is an area?

Tim Wahlin: The way a preferred provider is designated is however the employer chooses to designate. They can choose a particular physician. If that physician is unavailable, the injured worker needs treatment, and we're going to allow outside of that. They can choose a group of providers, such as Sanford. Wherever that chain of providers is available, we require treatment with them. If that chain is not available or if there is no one there who is able to see the injured worker, we will honor the other selection.

Representative M. Nelson: How would the employee know that?

Tim Wahlin: That would be covered in the information required during the selection process, during the training of the injured worker as an employee indicating that these are the preferred providers.

Representative M. Nelson: Is that on the informational material the employee receives, that if you're outside of the trade area of the preferred provider, you're not affected by this?

Tim Wahlin: No, that information is not on the material. It has a statement about emergent care.

Chairman Keiser: (31:40) In the case that we heard of the individual from Dickinson, he saw a physician or chiropractor with the MedCenter system in Dickinson. Then he was required to come to Bismarck, so there is a requirement that you stay within the system. He was hoping he could have stayed with a physician in Dickinson, but he was required to come to Bismarck.

Representative Ruby: Can any provider become a preferred provider, such as a chiropractor, or are there criteria? If so, how many are there in the state?

Tim Wahlin: With respect to selection of preferred providers, we allow any of those treatment practices to be selected or allowed by the employer. It is employer driven, so it is not a question of whether a particular treating entity or specialty qualifies. It is whether or not an employer selects a particular treating entity. With that respect, we simply do not know how many there are. We know that there are employers with multiple sites who have selected in excess of ten designated medical providers because some are available in some areas and others are not. We have data that goes into how many employers have selected how many providers. Employers like McDonalds or Wal-Mart cannot select just a single effective medical provider because of their wide geographical area.

Representative Ruby: Does an employer get a discount on their rates if they choose preferred providers?

Tim Wahlin: I believe that it is built in to one of the cafeteria plans for rates, but I cannot tell for certain.

Representative M. Nelson: (34:23) Physician or insurance company typically asks if injury is work related. If WSI does not cover the claim because the worker went to the wrong provider, would the individual's insurance cover the claim? Do they become liable for that, or are they also not going to compensate him because they will take the position that it is a Workers' Compensation claim?

Tim Wahlin: Most of the medical insurers have in their contracts that they are not liable for treatment of work-related injuries, so that ends up being with us. Our direction by statute is that we do not pay for that. So if there is treatment outside of that system, we are prohibited from paying for that treatment.

Chairman Keiser: (35:38) The term "exclusive remedy" is one of the cornerstones of workers' compensation coverage in the state of North Dakota. If it is work-related, there is only one remedy by law, and that is workman's compensation.

Representative Kasper: I come from the insurance business, and I market health insurance, so that is the perspective I come from. When I say "preferred provider" in the regular health insurance industry, there is generally a discount and a contract negotiated, and there are some people who are in and some people who are out. What I hear you saying is that you are using the term preferred provider as a different term or definition than

what I am familiar with as far as why you would have one. From what you have, from my perspective, is you've got an open network, so that any provider in North Dakota can be part of your network if the employer selects them. Why do we even need a preferred provider network under your scenario when everyone in North Dakota is eligible? Why not just have an open network and then we don't have any problems with where the employee goes for treatment. There is no benefit, regardless of where they go, based upon what you have already negotiated with providers. What's the use of the system you currently have?

Tim Wahlin: The statute uses the term "preferred provider," and that is a misnomer. You have pointed out what the industry sees a preferred provider is. We try to use the term "designated medical provider" to get away from that. So that's the terminology we use.

(37:26) The perceived benefit to the system is that if the employer has a working relationship with a physician, that physician should know the type of work available, the ability to come back to alternate duties, whether that particular injured worker can return to work and in what capacity. The perceived benefit is a close relationship between the employer and professional providing treatment to get a better result, a more prompt result for the worker, because they know each other better.

Representative Kasper: I do not know of any employer who knows whether Doctor A or Doctor B is better, whether Hospital A or Hospital B is better in terms of treatment and best practice.

Chairman Keiser: The questioning today is ideal. These are the questions asked in the study. One of the original thoughts when this program was implemented was that there is a new area of medicine called occupational medicine. Those are specialists who can be developed and put together in to an organization, just like a group of orthopods, but they can have specialists (podiatrists, orthopods) but they can focus on occupational medicine. The outcomes should be better because they understand work-related injuries.

(39:50) To review this bill, starting on Line 10: This study should consider the legislative history and intent of creating this program, what were we trying to do? Line 11, whether the program has been successful in furthering that intent. Line 12, the qualifications of the preferred provider and the preferred provider network. How are we allowing them to be designated a preferred provider, and is that right? Line 13, whether employers and employees have benefited under the program. Has it had a benefit, or has it really been detrimental? In the case of the claimant we heard Dickinson, his personal opinion was that this did not benefit him and that it was not a program which worked for him. Whether there are any associated costs to the program; the process workforce safety and insurance utilizes in considering whether to allow an employee to opt-out of the program; and whether employers and employees participating in the program are familiar with the terms of the program. These are the issues we have been talking about. This bill is to require those things to be studied.

How are we allowing them to be designated preferred providers? Are there any associated costs to the program? These are the issues we've been talking about. This bill is designed to require those questions to be studied.

Any further questions for Mr. Wahlin? Anyone here to testify on HB 1051? Anyone here to testify in opposition to HB 1051?

LeRoy Volk: (42:00) I feel that this bill will cause a big headache like it did years ago. If someone is working outside of where he lives, gets injured on a Friday, feels fine and drives home, and then realizes he is injured and needs care, he may visit physician in his hometown rather than the preferred provider near workplace. The employer may say he will not cover it because the worker did not go to the provider first. This will be a big headache for all the injured workers, and I feel this should not be.

Chairman Keiser: Any questions for LeRoy? For the new members, I want to compliment LeRoy early on in the session. He's a very committed individual, and he attends every meeting we have and monitors us very closely on all of these Workers' Compensation issues.

LeRoy Volk: I'm trying to help everybody out, not just the locals. I'm trying to help every state worker because I've seen it where it helped a lot of people and where it did not.

Chairman Keiser: Is there anyone else here to testify in opposition to HB 1051?

Hearing closed on HB 1051. What are the wishes of the committee?

Representative Vigesaa: Moved a "do pass" on HB 1051.

Representative Kreun: Seconded the motion.

Chairman Keiser: Further discussion on the motion?

Chairman Keiser: (43:16) This study may support the position offered by Mr. Volk. We currently have the law in play, and this is the way it is working. The man from Dickinson testified as to his experiences with this program, and the issues he raised caused the interim committee members to include this. I really do support this bill to see whether the program is doing what we thought it would do when we put it into the statutes. I support this bill.

Roll call vote: Yes 14; No 0; Absent and not voting 1

Representative Sukut will carry the bill.

FISCAL NOTE
Requested by Legislative Council
01/07/2013

Bill/Resolution No.: HB 1051

- 1 A. **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.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **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 proposed legislation provides for a study to be conducted of the Preferred Provider Program and that the study may be conducted as an element of the independent performance evaluation conducted under NDCC Section 65-02-30.

- 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.*

see attachment

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.*

- 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.*

Name: John Halvorson

Agency: WSI

Telephone: 328-6016

Date Prepared: 01/07/2013

WORKFORCE SAFETY & INSURANCE
2013 LEGISLATION
SUMMARY OF ACTUARIAL INFORMATION

BILL NO: HB 1051

BILL DESCRIPTION: Preferred Provider Program Study

SUMMARY OF ACTUARIAL INFORMATION: Workforce Safety & Insurance, together with its actuarial firm, Bickerstaff, Whatley, Ryan & Burkhalter Consulting Actuaries, has reviewed the legislation proposed in this bill in conformance with Section 54-03-25 of the North Dakota Century Code.

The proposed legislation provides for a study to be conducted by the Workers' Compensation Review Committee during the 2013-2014 interim relating to the Preferred Provider Program and that the study may be conducted as an element of the independent performance evaluation conducted under NDCC Section 65-02-30.

FISCAL IMPACT: The study would be included as an element of the statutorily required independent performance evaluation of which funding authority already exists. No additional fiscal impact is anticipated.

DATE: December 26, 2012

REPORT OF STANDING COMMITTEE

HB 1051: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **DO PASS** (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).
HB 1051 was placed on the Eleventh order on the calendar.

2013 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1051

2013 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

HB 1051
February 13, 2013
Job Number 18884

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

An Act to provide for a workers' compensation review committee study to study the workers compensation preferred provider program

Minutes:

Testimony Attached

Chairman Klein: Opened the hearing.

Tim Wahlin, Chief of Injury Services at WSI. Written Testimony Attached (1).

Chairman Klein: Asked if he would give an example.

Tim: Said the designated medical provider system basically allows an employer to select a provider that is a system where all injured workers from their business must be treated. They may opt out prior to the injury but if they don't they are required to treat within that provider network, selected by the employer.

Chairman Klein: Commented that it is a managed care approach.

Tim: Said that is correct.

Chairman Klein: Said so as an employer I would say you have to go to Sanford that's whose covering us and that's where we go. If I didn't want to go there I would opt out?

Tim: Said to the extent that the injured worker wants to choose another provider they are free to do so but must do so prior to an injury and notify the employer of that.

Senator Sorvaag: Asked if that was something they were required to offer yearly, remind the employee or is it something he has to think of himself that he wants to opt out or is it like when you redo your other insurance they offer that opportunity.

Tim: Said once they opt out has taken place for an injured worker that stays in place until they change it.

Senator Andrist: Asked if there was disclosure provided in the present law. If I take a job does my employer have to tell me about this?

Tim: Said that is correct. There is a requirement that they be informed at the time of hire. The law requires that there be a poster in every place of employment and on that poster it explains that designated medical provider system and it also explains the, "opt out", provision.

Chairman Klein: Said the reason for the study is because the review committee heard cases or just seemed to see that there may be issues?

Tim: Said that there were some questions about the original intent, whether this was a worthwhile endeavor to have this system in place. They asked some questions about, if it was working and we don't exactly know. The study that will be done as part of our performance audit, we will hopefully get at some of those answers and make recommendation as to whether or not the system is working and what needs to be changed and if it is not, if the system should go away.

Chairman Klein: Closed the hearing.

2013 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

HB 1051
February 13, 2013
Job Number 18888

Conference Committee

Committee Clerk Signature	<i>Eva Liebelt</i>
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Explanation or reason for introduction of bill/resolution:

An Act to provide for a workers' compensation review committee study to study the workers compensation preferred providers program

Minutes:

Vote

Chairman Klein: Opened the meeting. Said the compensation review committee thought it should be worked on.

Senator Murphy: Moved a do pass.

Senator Sorvaag: Seconded the motion.

Roll Call Vote: Yes - 7 No - 0 Absent - 0

Floor Assignment: Senator Andrist

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01/07/2013

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see attachment

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- 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.*

- 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.*

Name: John Halvorson

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Telephone: 328-6016

Date Prepared: 01/07/2013

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FISCAL IMPACT: The study would be included as an element of the statutorily required independent performance evaluation of which funding authority already exists. No additional fiscal impact is anticipated.

DATE: December 26, 2012

**2013 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1051**

Senate Industry, Business, and Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Senator Murphy Seconded By Senator Sorvaag

Senators	Yes	No	Senator	Yes	No
Chairman Klein	x		Senator Murphy	x	
Vice Chairman Laffen	x		Senator Sinner	x	
Senator Andrist	x				
Senator Sorvaag	x				
Senator Unruh	x				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Andrist

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

REPORT OF STANDING COMMITTEE

HB 1051: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1051 was placed on the Fourteenth order on the calendar.

2013 TESTIMONY

HB 1051

65-05-28.1. Employer to select preferred provider.

Notwithstanding section 65-05-28, any employer subject to this title may select a preferred provider to render medical treatment to employees who sustain compensable injuries. "Preferred provider" means a designated provider or group of providers of medical services, including consultations or referral by the provider or providers.

Source. S.L. 1995, ch. 626, § 1; 2003, ch. 564, § 9; 2007, ch. 569, § 5.

Law Reviews.

Are Employees Obtaining "Sure and Certain Relief" Under the 1995 Legislative Enactments of the North Dakota Workers' Compensation Act?, 72 N.D. L. Rev. 349 (1996).

65-05-28.2. Preferred provider — Use required — Exceptions — Notice.

1. During the first thirty days after a work injury, an employee of an employer who has selected a preferred provider under this section may seek medical treatment only from the preferred provider for the injury. Treatment by a provider other than the preferred provider is not compensable and the organization may not pay for treatment by a provider who is not a preferred provider, unless a referral was made by the preferred provider. A provider who is not a preferred provider may not certify disability or render an opinion about any matter pertaining to the injury, including causation, compensability, impairment, or disability. This section does not apply to emergency care nor to any care the employee reasonably did not know was related to a work injury.

2. An employee of an employer who has selected a preferred provider may elect to be treated by a different provider provided the employee makes the election and notifies the employer in writing prior to the occurrence of an injury.

3. After thirty days have passed following the injury, the employee may make a written request to the organization to change providers. The employee shall make the request and serve it on the employer and the organization at least thirty days prior to treatment by the provider. The employee shall state the reasons for the request and the employee's choice of provider.

4. If the employer objects to the provider selected by the employee under subsection 2 or 3, the employer may file an objection to the change of provider. The employer shall detail in the objection the grounds for the objection and shall serve the objection on the employee and the organization within five days of service of the request. The employee may serve, within five days of service of the employer's objection, a written response on the employer and the organization

in support of the request for change of provider. Within fifteen days after receipt of the response or of the expiration of the time for filing the response, the organization shall rule on the request. Failure of the organization to rule constitutes approval of the request. Treatment by the employee's chosen provider is not compensable until the organization approves the request. The preferred provider remains the treating provider until the organization approves the employee's request to change providers.

5. An employer shall give written notice to its employees when the employer makes an initial selection of a preferred provider or changes the selection of the preferred provider. An employer shall give written notice identifying the selected preferred provider to every employee hired after the selection was made. An employer who has selected a preferred provider shall display notice of the preferred provider in a conspicuous manner at fixed worksites, and wherever feasible at mobile worksites, and in a sufficient number of places to reasonably inform employees of the preferred provider and of the requirements of this section. Failure to give written notice or to properly post notice as required under this subsection invalidates the selection, allowing the employee to make the initial selection of a medical provider.

Source. S.L. 1995, ch. 626, § 2; 1999, ch. 550, § 3; 2003, ch. 561, § 3; 2009, ch. 625, § 1.

Effective Date. The 2009 amendment of this section by section 1 of chapter 625, S.L. 2009 became effective August 1, 2009.

Requirements.

Requirements.

Workforce Safety & Insurance (WSI) did not err in finding that the employer failed to comply with the specific statutory requirements of N.D.C.C. § 65-05-28.2(5); WSI did not err in concluding that the employer's selection of a designated medical provider was invalid and that the employee was permitted to select his own medical provider. *Indus. Contrs. v. Workforce Safety & Ins.*, 2009 ND 157, 772 N.W.2d 582, 2009 N.D. LEXIS 168 (Sept. 4, 2009).

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2013 House Bill (No. 1051)
Testimony before the House Industry, Business, and Labor Committee
Presented by: Tim Wahlin, Chief of Injury Services
Workforce Safety & Insurance
January 9, 2013

Mr. Chairman, Members of the Committee:

My name is Tim Wahlin, Chief of Injury Services at WSI. I am here on behalf of WSI to convey support of this bill and to provide information to the Committee to assist in making its determination. WSI's Board of Directors supports the study bill proposed within this legislation.

During the 2011-13 Interim, the Interim Legislative Workers' Compensation Review Committee heard testimony regarding the preferred provider system created under sections 65-05-28.1 & 28.2. The Committee recommended the issues regarding this program be studied with the next WSI independent performance evaluation scheduled to occur in 2014.

The preferred provider system allows an employer to select a designated medical provider (DMP) for the treatment of their injured employees. WSI cannot pay medical expenses incurred nor consider the medical opinions of providers outside this network. An employee is free to elect another provider as long as the election occurs prior to a work injury.

The system is designed to allow employers to establish close working relationships with their treating physicians and likewise allow the physician an ongoing understanding of the work environment. This generally aids in a smoother transition back to work. In return, the medical provider is ensured an ongoing group of patients.

The study, while not necessarily completely spelled out, seeks to determine whether the original intent is being achieved, whether the opt-out provisions are adequate, and whether adequate notice provisions exist.

On behalf of WSI we would request a "do pass" vote. If there are any questions I would be happy to answer those at this time.



North Dakota Workforce Safety & Insurance

Putting Safety to Work

③
1-9-13
HB 1051

1600 E Century Ave, Ste 1 - PO Box 5585 - Bismarck ND 58506-5585
(701) 328-3800 1-800-777-5033 Hearing Impaired: 1-800-366-6888
Decision Review Office: (701) 328-9900 1-800-701-4932
Fraud & Safety HotLine: 1-800-243-3331

Filing a claim (3 methods):

Online: www.WorkforceSafety.com (Online Services Section),
24 hours/weekends/holidays

By hand: Complete the First Report of Injury (FROI) Form and submit to WSI
Telephonically: 1-800-777-5033, 8 a.m. - 5 p.m. on business days

Important Notice to Workers

The information contained in this poster is **effective August 1, 2011**. This poster is updated, reprinted, and distributed to employers every two years for them to post for their workers' reference. For a detailed explanation of the information contained in this poster, please contact WSI at the numbers listed above or visit our web site at www.WorkforceSafety.com.

When you are injured on the job:

- 1 Notify your employer immediately of the accident and your injury.** By law, you must give written or oral notice to your employer within seven days of an accident or after the general nature of your injury becomes apparent. If you fail to notify your employer, Workforce Safety & Insurance (WSI) may consider that failure when deciding whether your claim will be accepted. *NOTE: Even if you feel your injury is not serious enough to need medical treatment, it is important you report your accident to your employer so they are informed of the potential hazard.*
- 2 Seek first aid or medical attention promptly after a workplace injury.** If your employer does not have a Designated Medical Provider (DMP), you may go to a doctor of your choice. If your employer does have a DMP, you are required to see your employer's DMP, UNLESS you informed your employer, in writing, of a different medical provider before any injury occurred. Contact your employer or WSI for more detailed information about this requirement. Emergency medical treatment is exempt from the DMP requirement. Inform the doctor that your injury is a workers' compensation injury. Also, inform the doctor of your work duties and ask if you can return to work within any work restrictions the doctor may impose. Follow restrictions, both on and off the job.
- 3 File a claim with WSI immediately after a work-related injury occurs (within 24 hours of occurrence).** Use one of

three methods: 1) online at www.WorkforceSafety.com, available 24 hours/weekends/holidays (follow online instructions); 2) by hand by completing the First Report of Injury (FROI) Form, or 3) telephonically by calling 1-800-777-5033, 8 a.m. - 5 p.m. on business days.

Whichever claim filing method is used, complete the FROI form with your employer, if possible. Answer all questions fully and honestly on the form. Be sure to have your employer complete the employer's portion of the FROI form. If you have received benefits for an injury and are now off work again for that same injury, you must reapply for benefits in writing. Contact WSI and request a Worker's Notice of Reapplication (C4) form.

- 4** WSI will inform you of your claim number, in writing, upon registering your claim. **Be sure to always inform the pharmacy and medical provider of your claim number.**
- 5** **Keep in touch with your employer and provide them with periodic updates on your condition.**
- 6** **Notify WSI immediately: 1) when you perform any type of work activity, whether you receive pay for it or not; 2) if you change your address or telephone number; or 3) if you apply for either Social Security disability or retirement benefits or are found to be eligible for these benefits.**

Types of benefits available:

Medical Benefits

On an accepted claim, WSI pays for reasonable and necessary work-related medical care and prescriptions in accordance with fee schedule limitations and administrative rule guidelines. Some medical procedures require prior authorization.

Pharmacy Benefits

On accepted claims, WSI will pay for prescriptions that are part of the necessary work-related medical care. All prescriptions must be obtained at pharmacies and medical facilities that are contracted with WSI's prescription benefit management company. WSI does not reimburse for prescriptions that are paid out-of-pocket by an injured worker. WSI will pay for a limited quantity for certain medications under a first fill program while awaiting a decision on the compensability of a claim.

Wage Replacement Benefits

An injured worker may be entitled to wage replacement benefits if their doctor orders them not to work for five or more calendar days in a row because of their work-related injury or illness.

Permanent Partial Impairment (PPI) Benefits

This benefit is for injured workers who suffer permanent physical loss of a body part or function because of a compensable work-related injury. PPI benefits are given only if the full-body impairment meets or exceeds the statutory minimum impairment. Once an injured

worker reaches maximum medical improvement, a doctor will then determine the level of permanent impairment. This is a one-time, lump-sum payment that is tax free.

Return-to-Work Services

These services may be assigned to an injured worker to assist in coordinating medical treatment or return-to-work planning. Different types of return-to-work services include return-to-work case management, medical case management, vocational rehabilitation services, and the Preferred Worker Program.

Reimbursement for Personal Expenses

On accepted claims, WSI will reimburse an injured worker (upon their request) for mileage, meals, and other out-of-pocket costs that are necessary for their medical care, within the limits of the law. Original, itemized, and dated receipts are required (certain conditions apply). Injured workers can download the appropriate form (C40a) from our web site or request it from our office.

Death Benefits

WSI pays death benefits to the survivors of workers killed in work related accidents. Survivors must file a claim within two years of the worker's date of death. Survivors receive 2/3 of the deceased worker's gross weekly wage, up to a maximum of 125% of the state's average weekly wage. Total benefits may not exceed \$300,000. Funeral expenses are payable up to \$10,000.



**North Dakota
Workforce Safety
& Insurance**
Putting Safety to Work

**DESIGNATED MEDICAL
PROVIDER SELECTION**
CUSTOMER SERVICE DIVISION
SFN 58225 (09/2010)

1600 EAST CENTURY AVENUE, SUITE 1
PO BOX 5585
BISMARCK ND 58506-5585
TELEPHONE 1-800-777-5033
Toll Free Fax 1-888-786-8695
TTY (hearing impaired) 1-800-366-6888
Fraud and Safety Hotline 1-800-243-3331
www.WorkforceSafety.com

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Please complete a separate form for each business location.

Date	Employer Account Number	Business / Legal Name
Name and title of person providing information		Employer Contact Telephone Number
Business Address / City / State / Zip		

Has the medical provider been informed of your selection? Yes No
If no, WSI will not recognize your selection.

Our designated medical provider(s) for the above location are:

Name	Address	City

If you have additional designated medical providers, please attach additional pages as needed.

Please Note:

- * Designated Medical Provider (DMP) selection should be reviewed annually.
- * The DMP selection does not apply to emergency care.
- * Employees have the right to add additional medical providers to the above list (referred to as opting out)
- * Employees must notify the employer of their additional medical provider or opting out prior to an injury.
- * There can be more than one DMP. DMPs can be individuals, clinics, hospitals or any combination.
- * They can be medical doctors, chiropractors, osteopaths, dentists, optometrists or any combination.
- * The DMP will remain in effect until the employer notifies WSI of changes.
- * If an employee opts out, he/she should retain a copy of the form.

Employer Signature

Date

Mail completed form to WSI at:
Workforce Safety & Insurance
PO Box 5585
Bismarck ND 58506-5585

DESIGNATED MEDICAL PROVIDER SELECTION FORM

The designated medical providers for _____ are:
Employer's Name

City	Provider

I have been informed of my employer's designated medical provider provisions.

Signature of Employee	Employee Name (please print)	Date
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I wish to add the following designated provider(s) to seek treatment from in the event of a workplace injury or illness:

Provider's Name	Provider's Address	
City	State	Zip Code
Provider's Name	Provider's Address	
City	State	Zip Code
Provider's Name	Provider's Address	
City	State	Zip Code

Do not return this form to WSI. This form should be kept by the employer and a copy given to the employee for their records.

DMP selection should be reviewed annually.

WSI may not pay for medical treatment by another provider unless a designated provider refers you or you list the provider above. Emergency care is exempt from the designated medical provider requirement.

2013 House Bill No. 1051
Testimony before the Senate Industry, Business, and Labor Committee
Presented by: Tim Wahlin, Chief of Injury Services
Workforce Safety & Insurance
February 13, 2013

Mr. Chairman, Members of the Committee:

My name is Tim Wahlin, Chief of Injury Services at WSI. I am here on behalf of WSI to convey support of this bill and to provide information to the Committee to assist in making its determination. WSI's Board supports this study bill.

During the 2012-14 interim, the workers' compensation review committee heard testimony regarding the preferred provider system created under sections 65-05-28.1 & 28.2 and recommended that issues regarding the program be studied with the next WSI performance evaluation scheduled to occur in 2014.

The preferred provider system allows employer to select a designated medical provider (DMP) for the treatment of their injured employees. WSI cannot pay medical expenses incurred outside this network nor consider the provider opinions from outside treaters. An employee is free to elect another provider as long as the election occurs prior to an injury.

The system is designed to allow employers to establish close working relationships with their treating physicians and likewise allow the physician an ongoing understanding of the work environment. This generally aids in a smoother transition back to work. In return the medical provider ensures an ongoing group of patients.

The study, while not necessarily completely spelled out, seeks to determine whether the original intent is being achieved, whether the opt out provisions are adequate, and whether adequate notice provisions exist.

If there are any questions I would be happy to answer those now.