

FISCAL NOTE
Requested by Legislative Council
12/23/2016

Bill/Resolution No.: HB 1086

- 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.*

	2015-2017 Biennium		2017-2019 Biennium		2019-2021 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.*

	2015-2017 Biennium	2017-2019 Biennium	2019-2021 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).*

see attachment

- 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 or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Name: John Halvorson

Agency: WSI

Telephone: 328-6016

Date Prepared: 12/28/2016

WORKFORCE SAFETY & INSURANCE
2017 LEGISLATION
SUMMARY OF ACTUARIAL INFORMATION

BILL NO: HB 1086

BILL DESCRIPTION: WSI Injury Services Bill

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 removes the requirement for WSI to copy an injured worker's doctor on a notice of intention to discontinue benefits; clarifies the types of benefits in which WSI can recoup an overpayment that resulted from the receipt of social security benefits; establishes that disputes relating to personal reimbursements will be resolved utilizing the binding dispute resolution process; increases the dollar threshold that constitutes a false claim or false statement from \$500 to \$1,000; and changes frequency of vocational rehabilitation pilot program status reports to the legislative workers compensation review committee from annually to biennially.

FISCAL IMPACT: No significant impact to statewide premium rate and reserve levels is anticipated.

DATE: December 28, 2016

2017 HOUSE INDUSTRY, BUSINESS, AND LABOR

HB 1086

2017 HOUSE STANDING COMMITTEE MINUTES

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

HB 1086
1/11/2017
26761

- Subcommittee
 Conference Committee

Ellen Stanley

Explanation or reason for introduction of bill/resolution:

Minutes:

Chairman Keiser: Opens the hearing of HB 1086.

Rep Ruby: Motions to have the bill heard next week of HB 1086.

Rep Kasper: Second.

Voice vote, motion carried forward.

2017 HOUSE STANDING COMMITTEE MINUTES

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

HB 1086
1/16/2017
26917

- Subcommittee
 Conference Committee

Colleen Letano

Explanation or reason for introduction of bill/resolution:

Notice to treating doctor, social security offset, criminal offense for filing of false claim & vocational rehabilitation pilot program reports.

Minutes:

Attachments 1, 2

Chairman Keiser: Opens the hearing of HB 1086.

Tim Wahlin~Chief of Injury Services at WSI: Attachment 1.

Rep Kasper: The last statement, all forms of disability benefits, does that include private group insurance?

Wahlin: No, it does not.

5:00

Wahlin: Continues with testimony.

7:48

Rep Ruby: Could you go back to the issue of Federal offset & that WSI grandfathered into that. How does it work with the Social Security Disability (SSD) payments? What triggers the offset?

Wahlin: An injured client can receive two forms of payments from different sources. If they are injured at work & qualify for wage loss replacement, WSI will repay the disability or wage loss replace. For the same injured worker, same circumstance, can apply at the Federal level for the Social Security Disability. SSD will then also, be paying & a portion of that will be offset by WSI. They will be able to collect two payments. That's been in ND law for decades so we were grandfathered in to offset.

Rep Ruby: The Federal government, then won't reduce the payments to injured worker?

Wahlin: Yes.

Rep Ruby: So does their offset go away once they get to retirement age & our converts to initial benefits table?

Wahlin: That's correct.

Chairman Keiser: The providing the treating doctor really doesn't want the information. You make your decision. There are thousands of decisions made between doctors. On the other hand, we have had legislation before, where they want to involve the treating doctor more. What is the cost, based on the changes, it won't be significant, I have a hard time believing that can't be too accurate?

Wahlin: With the respect to just providing the notices for the expiration of the disabilities notification, there will be no fiscal impact, because they are rarely sent.

Chairman Keiser: Even so, the law says to.

Wahlin: Unfortunately that's correct.

Rep Kasper: On social security offset, do you have an interest penalty or fee overcharge?

Wahlin: No.

Cheryl Rising~Family Nurse Practitioner & Legislative Liaison for the ND Nurses Practitioner Association: (Attachment 2).

18:10

Chairman Keiser: In the 1st section we are taking doctor out, so there is no reason to put you in. Page 2, line 9, "an injured employee may select a doctor" so we don't need to put in the advanced practical nurse there?

Rising: Anywhere the word doctor is left in, any place of this bill, we should replace to health care provider or if they want doctor in, to insert "or advance practice registered nurse". So that we don't barriers to practice in any areas in our state.

Chairman Keiser: We don't want any health care providers because we will get into debate who is a health care provider.

Rep Ruby: Removing the doctor from the mailing, but your suggestion is to insert the language on line 9, after doctor, does advanced practice registered nurses certify disabilities?

Rising: It's in our scope of practice that we can do history in physicals. We can assess, diagnose & treat.

Rep Ruby: Certify?

Rising: Yes.

Rep Becker: Does that apply for nurse practitioners?

Rising: I can't answer to that.

Chairman Keiser: Closes the hearing.

2017 HOUSE STANDING COMMITTEE MINUTES

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

HB 1086
1/23/2017
27250

Subcommittee
 Conference Committee

Ellen Letang

Explanation or reason for introduction of bill/resolution:

Notice to treating doctor, social security offset, criminal offense for filing of false claim & vocational rehabilitation pilot program reports.

Minutes:

Chairman Keiser: Reopens the hearing of HB 1086. What are the wished of the committee?

Rep Ruby: Moves a Do Pass.

Rep Dobervich: Second.

Roll call was taken for a Do Pass on HB 1086 with 13 yes, 0 no, 1 absent & Rep Ruby is the carrier.

Date: 1/11/2017

Roll Call Vote #: 1

**2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1086**

House _____ Industry, Business and Labor _____ Committee

Subcommittee

Amendment LC# or
Description: _____

Recommendation

- Adopt Amendment
- Do Pass Do Not Pass Without Committee Recommendation
- As Amended Rerefer to Appropriations
- Place on Consent Calendar

Other Actions

- Reconsider
- Move the hearing to next week.

Motion Made By Rep. Ruby Seconded By Rep Kasper

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser			Rep Laning		
Vice Chairman Sukut			Rep Lefor		
Rep Beadle			Rep Louser		
Rep R Becker			Rep O'Brien		
Rep Bosch			Rep Ruby		
Rep C Johnson			Rep Boschee		
Rep Kasper			Rep Dobervich		

Total (Yes) _____ No _____

Absent _____

Floor
Assignment _____

Voice vote – motion carried.

Date: Jan 23, 2017

Roll Call Vote #: 1

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1086

House _____ Industry, Business and Labor _____ Committee

Subcommittee

Amendment LC# or
Description: _____

Recommendation

- Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions

Reconsider

Motion Made By

Rep Ruby

Seconded By

Rep Dobervich

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep Laning	X	
Vice Chairman Sukut	X		Rep Lefor	X	
Rep Beadle	<u>Ab</u>		Rep Louser	X	
Rep R Becker	X		Rep O'Brien	X	
Rep Bosch	X		Rep Ruby	X	
Rep C Johnson	X		Rep Boschee	X	
Rep Kasper	X		Rep Dobervich	X	

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep Ruby

REPORT OF STANDING COMMITTEE

HB 1086: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).
HB 1086 was placed on the Eleventh order on the calendar.

2017 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1086

2017 SENATE STANDING COMMITTEE MINUTES

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

HB 1086
2/13/2017
Job Number 28263

- Subcommittee
 Conference Committee

Committee Clerk Signature

Eva Liebelt

Explanation or reason for introduction of bill/resolution:

Relating to notice to treating doctor, social security offset, criminal offense for filing of false claim, and vocational rehabilitation pilot program reports

Minutes:

Attachment 1

Chairman Klein: Opened the hearing.

Tim Wahlin, Chief of Injury Services at WSI: Written testimony, see attachment #1. (3:37-6:13)

Chairman Klein: In section 2, why is a copy of the notice mailed to the doctor, so that the doctor would be aware of the action you are taking against the employer?

Tim Wahlin: That has been there before I was at WSI. The intention was to let providers know when a benefit is going to change in an event they're missing something but a lot of times providers are not providing a certification of disability because the injured worker is better. They already know that and sending them a notice that lets them know what they already know or they may have an agitated worker who may be disagreeing with the provider and that may create some turmoil. (6:55-7:22)

Begins going over testimony again @ 7:24; section 2.

Chairman Klein: What I am hearing you say is I am on WSI benefits and I file for my social security disability, I know it takes a while and I do know they get a lump sum. Do you as an agency asks for a portion of that money back?

Tim Wahlin: That is correct. To the extent that you can qualify for both, WSI will offset a portion of the social security disability benefits. That is different in about 70% of the states that did not have an offset. The federal government decided to offset those state disability payments but ours was already in place and so they were not able to and they decided to honor our offset provision. Otherwise it would go in the reverse direction.

Chairman Klein: So if they can't pay you back in a lump sum, we are just saying that as payments go to the future, you are going to take a little bit out until you get all of your money back?

Tim Wahlin: That's absolutely correct and the law actually gives us that ability but it specified two types of disability benefits, it didn't specify what is now four types of disability benefits. We are including those two others and generalizing to say any set of disability.

Senator Roers: What's the likeliness of going back and collecting? It seems to me that once the social security disability kicks in there isn't much need for WSI to be involved in the recovery of that individual. How can you offset future payments?

Tim Wahlin: There is a number of cases, probably 25% of our long-term population qualifies for benefits from both programs and receives ongoing payments from both programs. Both SSD and WSI disability benefits. So that goes on into the future, up till retirement age if you are a permanently and totally disabled worker.

Senator Roers: So 25% of the people receive both and 75% don't. Do you lose the opportunity to recover from those 75%?

Tim Wahlin: No to the extent that they ever qualified for social security we can step in at that point and time.

Senator Burckhard: Does social security disability inform WSI when they are making a lump sum payment to an injured worker, or how do you find out about that?

Tim Wahlin: They are prevented from informing WSI unless the injured worker gives them a release to inform WSI. If WSI is proactive in calling, they will say there is an award that has been made. A large number of injured workers are upfront about it. (11:32-12:18)

Chairman Klein: With the social security, it's a lengthy process to get SSD but at the end of the day it is retroactive to the day they started attempting to get on disability. Do they often times pay you back from that portion?

Tim Wahlin: Yes, that is our request when we find out the award has been made we run our calculation because we know then during that interim period where they are receiving their post payment from, we know we have overpaid those benefits and generally it comes back in a lump sum. Continues with Section 3 @ 13:24.

Chairman Klein: What you are saying is that you are just raising that dollar number, it is still a class c felony? (15:32)

Tim Wahlin: That's exactly right. We are just moving the threshold from five hundred to one thousand to match up with the theft offenses. Continues with Section 5 @ 15:55, ends at 16:39.

Chairman Klein: Asked about section 6 still being stated as section 5 and if it was a typo.

Tim Wahlin: I thought that was cleared up but there is still two section fives. Yes, it is a typo.

Chairman Klein: I think it is pretty simple and straight forward. Closed the hearing.

Senator Casper moved a do pass.

Senator Poolman seconded the motion.

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

Senator Burckhard will carry the bill.

**2017 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. HB 1086**

Senate Industry, Business and Labor Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Senator Casper Seconded By Senator Poolman

Senators	Yes	No	Senators	Yes	No
Chairman Klein	x		Senator Marcellais	x	
Vice Chairman Campbell	x				
Senator Roers	x				
Senator Burckhard	x				
Senator Casper	x				
Senator Poolman	x				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Burckhard

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

REPORT OF STANDING COMMITTEE

HB 1086: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1086 was placed on the Fourteenth order on the calendar.

2017 TESTIMONY

HB 1086

2017 House Bill No. 1086
Testimony before the House Industry, Business and Labor Committee
Presented by Tim Wahlin, Chief of Injury Services
Workforce Safety and Insurance
January 16, 2017

Mr. Chairman and Members of the Committee:

My name is Tim Wahlin, Chief of Injury Services at WSI. I am here today to provide testimony regarding HB 1086. The WSI Board supports this bill.

Section 1.

Section 65-05-08.1 sets forth the requirements regarding the verification of disability. Disability is the basis for establishing wage loss and entitlement to wage replacement benefits. Disability must be documented and supported by objective medical evidence. Subsection 5 specifically addresses the organization's responsibility and what is required when a certification expires. In all cases of termination, the organization will "discontinue disability benefits, effective twenty-one days after the date the notice of intention to discontinue benefits is mailed or the date which the injured employee actually returned to work, whichever occurs first." NDCC 65-05-08.1(5). This ensures a meaningful opportunity to appeal thereby ensuring the highest levels of due process before those benefits end.

The proposed amendments in this section remove the requirement that the organization also send copies of this notice to the employee's doctor.

This requirement creates numerous problems. First, an injured employee's doctor is not a party to an action before the organization. The injured employee bears the burden of proving entitlement to benefits. If an injured employee wishes to appeal, the employee will have full access to present evidence from the provider. Providing notification to the provider when disability benefits of an injured employee are ending implies some action or advocacy is required from the physician, yet under the law, WSI cannot acknowledge a response. Finally, medical providers are not provided with other communications, interactions, and requirements the organization communicates with an injured employee. As a result, notifying a provider creates ambiguity and confusion.

WSI, as an insurer, is required to have significant communication with medical providers, too much communication according to members of the provider community. As a result, WSI faces ongoing complaints from medical providers about the volume of correspondence they receive. Requiring another set of communications only serves to exacerbate this issue.

As a result of these problems, system limitations, and complaints, WSI, has never consistently provided these notices to providers.

Section 2.

This section of the Century Code sets forth the Social Security Offset provision whereby WSI will offset a portion of the wage loss payments to injured employees who also receive Social Security Disability (SSD) payments. Because WSI's offset predated the federal government's offset law, federal law grandfathered in WSI's ability to offset SSD payments.

Applying for and receiving SSD benefits often takes a significant amount of time, sometimes over a year. The federal SSD benefits will then be awarded retroactively, and in a lump sum to the injured employee. Upon discovering the SSD award, WSI will seek repayment of the overpayment of wage loss benefits from the SSD award. In the event an injured employee refuses to reimburse WSI, the organization may offset future benefits in an effort to collect this overpayment.

The proposed changes simply make clear that the offsets can derive from all forms of disability benefits.

Section 3.

WSI will reimburse an injured employee for certain travel and personal expenses incurred by an employee while obtaining medical care. These expenses may include items such as lodging, mileage, and meals. The amount WSI will reimburse for these expenses is directed by statute or administrative rule. If an injured employee disagrees with the reimbursement amount received, the employee may appeal WSI's reimbursement decision. These decisions are subject to WSI's formal administrative appeal process and could theoretically be appealed all the way to the North Dakota Supreme Court.

In some cases, a considerable amount of staff time and resources can be expended on these rather minor disputes. In order to handle these disputes more efficiently, the amendments to this section propose to move personal reimbursement expense disputes into the dispute resolution process currently in place for disputes involving the medical management of a claim. This process is less formal, faster, yet still provides an injured employee with an adequate appeal process. Ultimately, this change will make the appeal process commensurate with the size of the appeal.

Section 4.

The subsection included in this section is part of the injured employee fraud statute. Certain willful acts under this statute constitute workers' compensation fraud. For

example, an injured employee who willfully files a false claim with WSI to obtain medical and wage loss benefits is guilty of workers compensation fraud. Under current law, if an injured employee obtains more than \$500 in fraudulent benefits, it is a Class C felony. The \$500 amount has been in place since the inception of this statute in 1995. The proposed amendment increases this monetary threshold from \$500 to \$1,000 and is currently the same monetary threshold for a Class C felony theft offense.

Section 5.

The proposed amendment to this section makes a minor change to the rehabilitation services pilot program provisions. The current law directs WSI to report on the rehabilitation pilot programs to the interim legislative workers' compensation review committee on an annual basis. This committee only meets on a biennial basis and the proposed amendment remedies this oversight.

Section 6.

This section makes it clear the dispute resolution process for WSI decisions relating to personal reimbursements for travel and other personal expenses applies to all claims regardless of the date of injury.



Jan 16, 2017

TESTIMONY TO:

House Industry, Business & Labor Committee

65TH NORTH DAKOTA LEGISLATIVE ASSEMBLY

House Bill 1086 1/11/2017

Chairman Keiser and Committee Members:

I am Cheryl Rising, Family Nurse Practitioner (FNP) and Legislative Liaison for the North Dakota Nurse Practitioner Association (NDNPA). I am here to testify in support of House Bill 1086 with proposed changes.

Health care in ND is provider by many different health care providers, one of them being Advance Practice Registered Nurses (APRN's). Please see the MAPs that are provided that display data on where APRN's are practicing. House Bill 1086 uses the term doctor throughout the bill. I propose that we change doctor to health care provider. Changes are needed on page 1, line 9, page 2 line 9,12,13,15,19,22,24,27,28,29,30,page 3 line 30,31, page 4 line 2,3,11,12,15,16,17, page 5 line 3,10.

Over the last years the North Dakota Nurse Practitioner Association has worked with a variety of groups to work on provider neutral language. This will decrease barriers to care in our communities.

That concludes my testimony and I entertain any questions.

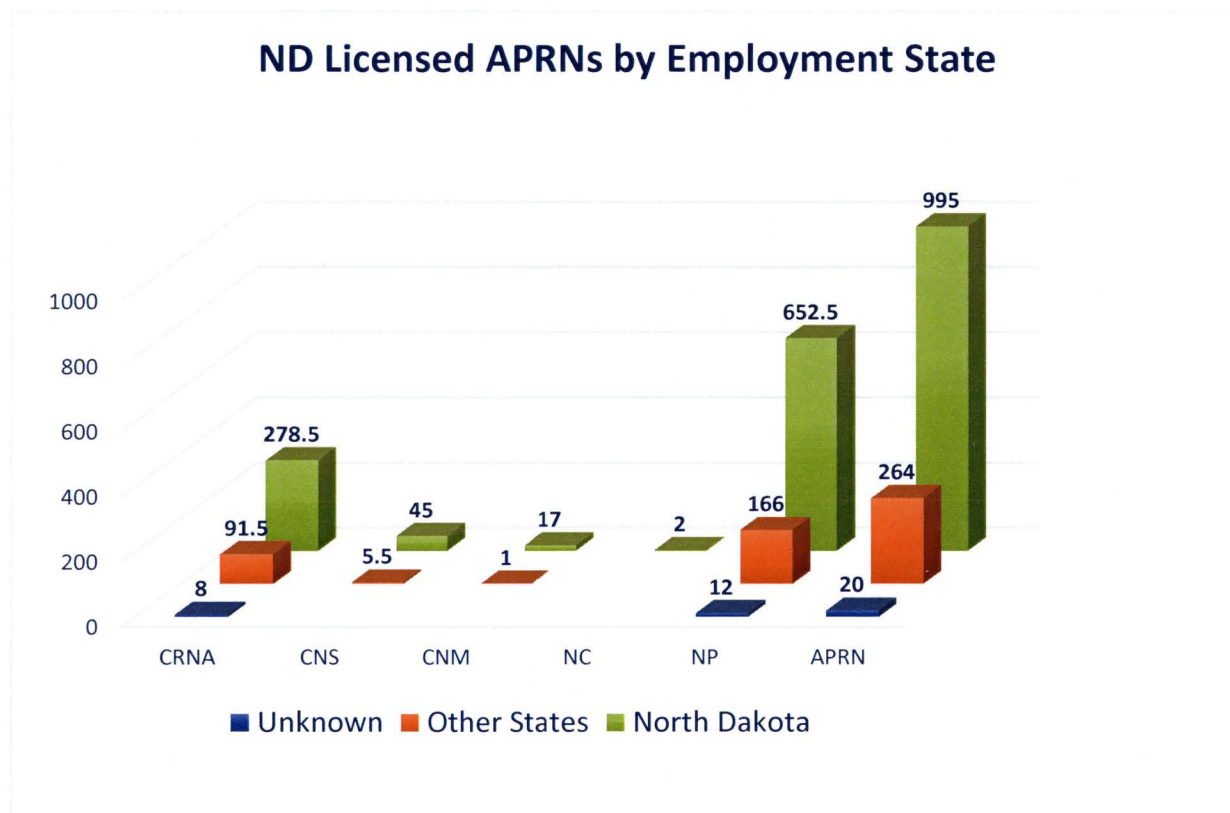
Cheryl Rising, RN, MS, FNP-BC

701-527-2583 crisingnp@gmail.com

APRNs in ND

Methodology: All providers are counted as one full-time equivalent (FTE). Providers that are dually licensed in more than one discipline are split equally among each discipline. Those that indicated more than one practice state are divided equally to each state and providers that indicated more than one practice location are divided equally to each site.

APRNs: There are 1,279 advanced practice registered nurses (APRNs) licensed in North Dakota. Of the total APRNs, there are 830.5 nurse practitioners (NPs), 378 certified registered nurse anesthetists (CRNAs), 50.5 are clinical nurse specialists (CNS), 18 certified nurse midwives (CNMs), and 2 nurse clinicians (NCs). Seven APRNs were dually licensed, 5 CNS/NPs and 2 CNM/NPs. As of August 5, 2016, 862 APRNs have prescriptive authority.

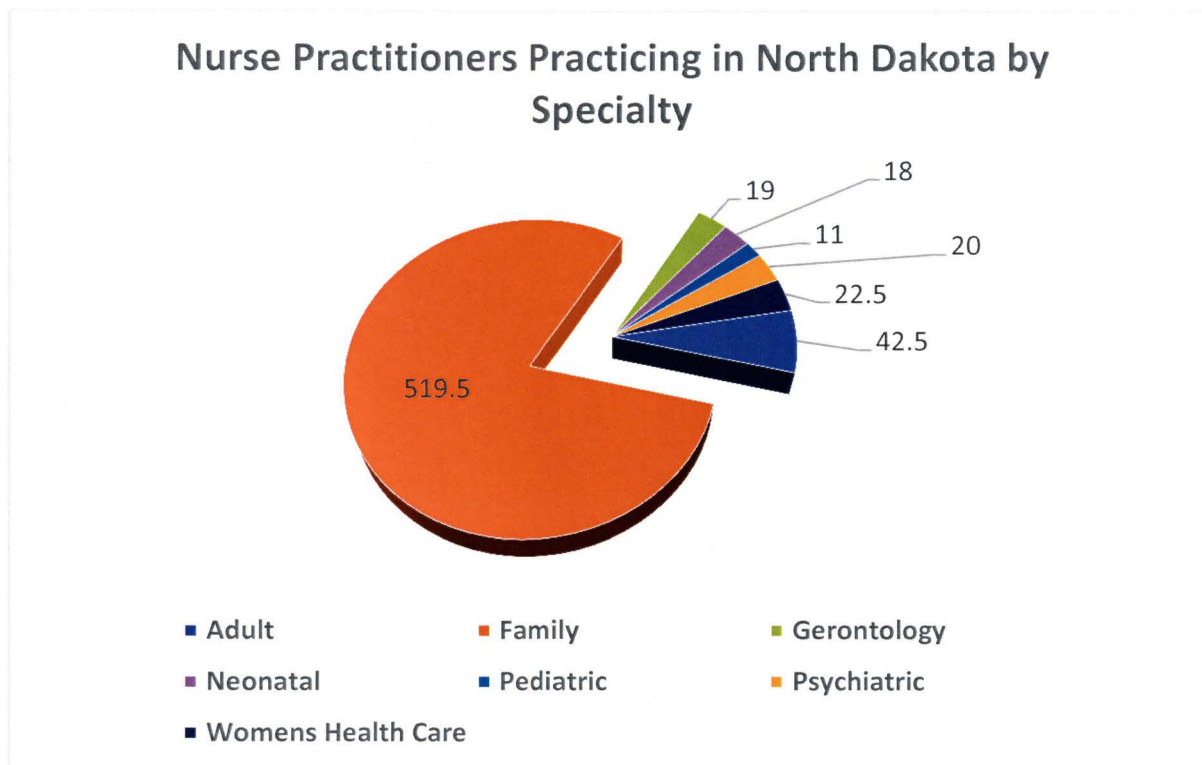


Nurse Practitioners: North Dakota has 830.5 licensed NPs, 652.5 FTE (78.6%) indicated they are currently practicing in North Dakota at least part of the year. Of those practicing within North Dakota, 69.7% are practicing in the more urban cities of Bismarck, Fargo, Grand Forks and Minot with 31.3% practicing in more rural areas. Please see attached map.

Although licensed in North Dakota, 166 NPs indicated states other than North Dakota as their State of employment including Minnesota (55), Missouri (21), South Dakota (16.5), Washington (8), Texas (8), Montana (6), Iowa (5.5), Arizona (5), Wisconsin (5), Utah (4.34), Georgia (4.33), Alaska (2), California (2), Colorado (2), Florida (2), Illinois (2), Kentucky (2), Michigan (2), West Virginia (2), Massachusetts (1.5),

Oklahoma (1.5), Indiana (1), Kansas (1), Nebraska (1), New Jersey (1), New Mexico (1), Ohio (1), Oregon (1), Tennessee (1) and Nevada (0.33).

Of the nurse practitioners practicing in North Dakota 79.6% (519.5/652.5) indicated their specialty area was family medicine. Other specialties included adult, gerontology, neonatal, pediatric, psychiatric, and women's health. (See chart below).

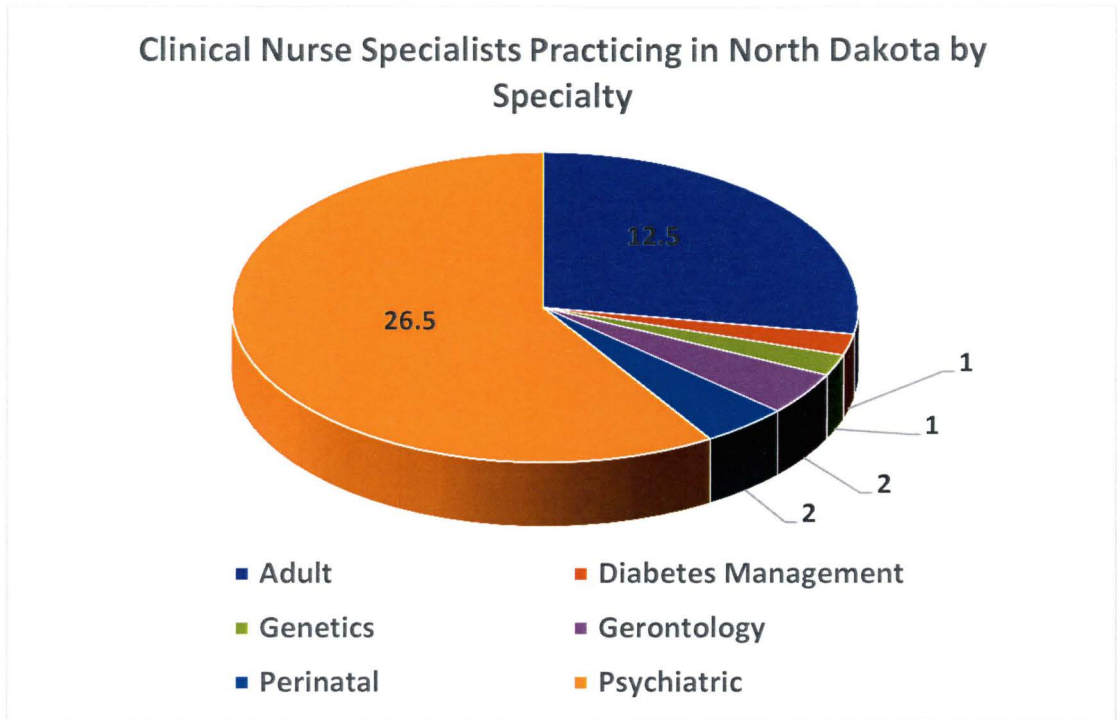


Currently, 20 NPs specializing in psychiatry are practicing in North Dakota. Of the NPs specializing in psychiatry, 72.5% (14.5/20) practice within the four major cities of Bismarck, Fargo, Grand Forks and Minot. Please see attached map of the locations of the NPs with a specialty in psychiatry.

Clinical Nurse Specialists: In North Dakota 50.5 CNS are licensed of which 45 (89.1%) indicated they currently practice in the State. Of the 45 CNS practicing in North Dakota 38 (84.4%) are practicing in the more urban cities of Bismarck, Fargo, Grand Forks, and Minot. Please see attached map.

Although licensed in North Dakota 5.5 CNS indicated they practice outside of the State. These included Minnesota (3), California (1), Florida (1) and Iowa (0.5).

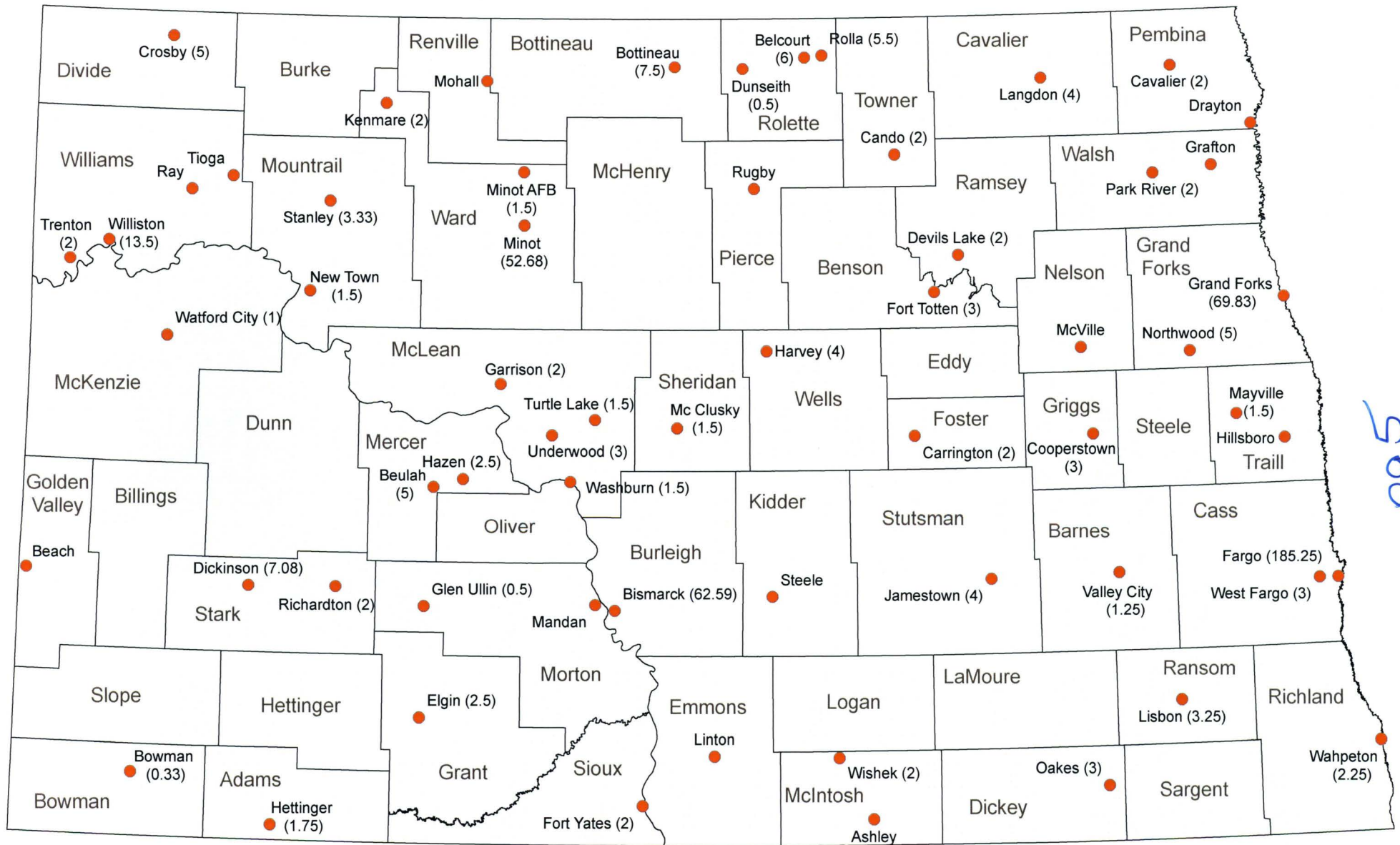
Of the clinical nurse specialists practicing in North Dakota, 58.9% indicated their specialty area was psychiatry and 27.8% indicated adult medicine. Please see chart below.



Certified Nurse Midwives: A total of 18 CNMs are licensed in North Dakota of which 17 indicated they are practicing within the State. Two or 11.8% of the CNMs are practicing in rural areas of Belcourt and Williston. The other fifteen indicated they were practicing in three of the more urban cities including Fargo (9), Minot (4), and Grand Forks (2). Please see attached map.

Certified Registered Nurse Anesthetists: North Dakota has 378 licensed CRNAs of which 278.5 indicated they are practicing in North Dakota. Of the CRNAs practicing in North Dakota, 85.9% are practicing in the four most urban cities of Bismarck, Fargo, Grand Forks and Minot; 12.7% are practicing in rural areas and 1.4% did not indicate a practice city. Please see attached map.

2016 North Dakota Nurse Practitioners



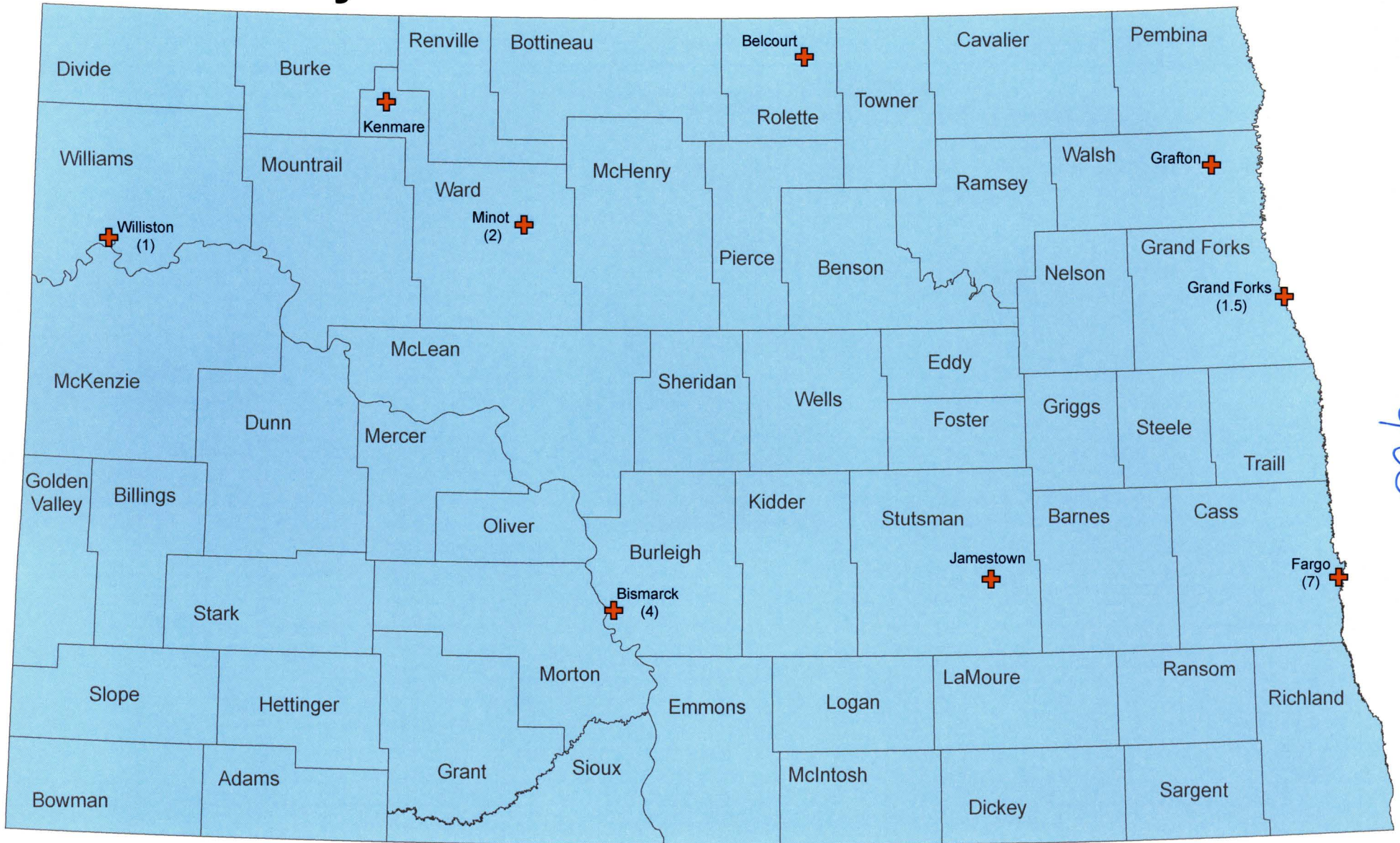
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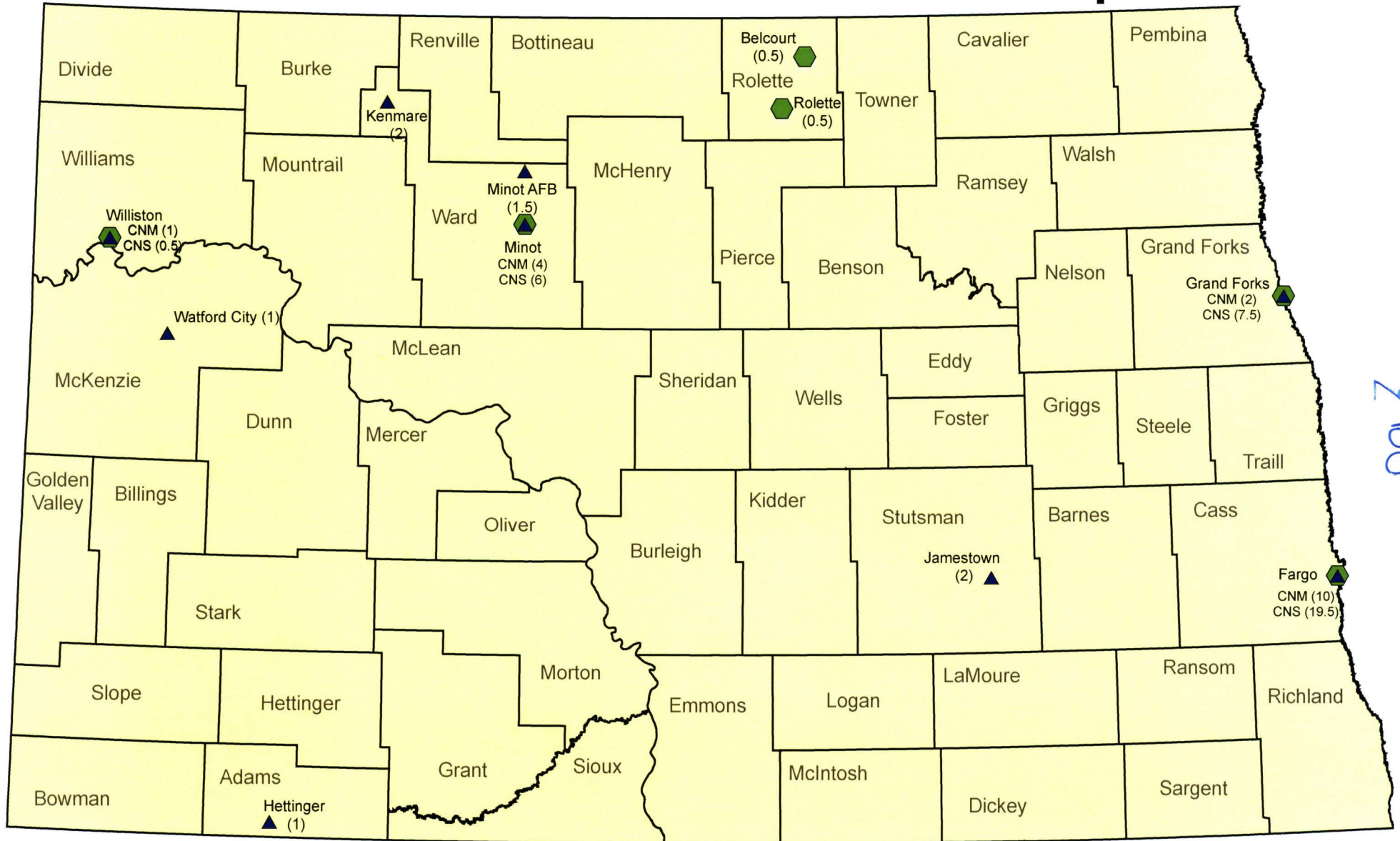


*For those that indicated more than one site, the FTE was split equally and not based on actual hours worked.

2016 North Dakota Psychiatric Nurse Practitioners



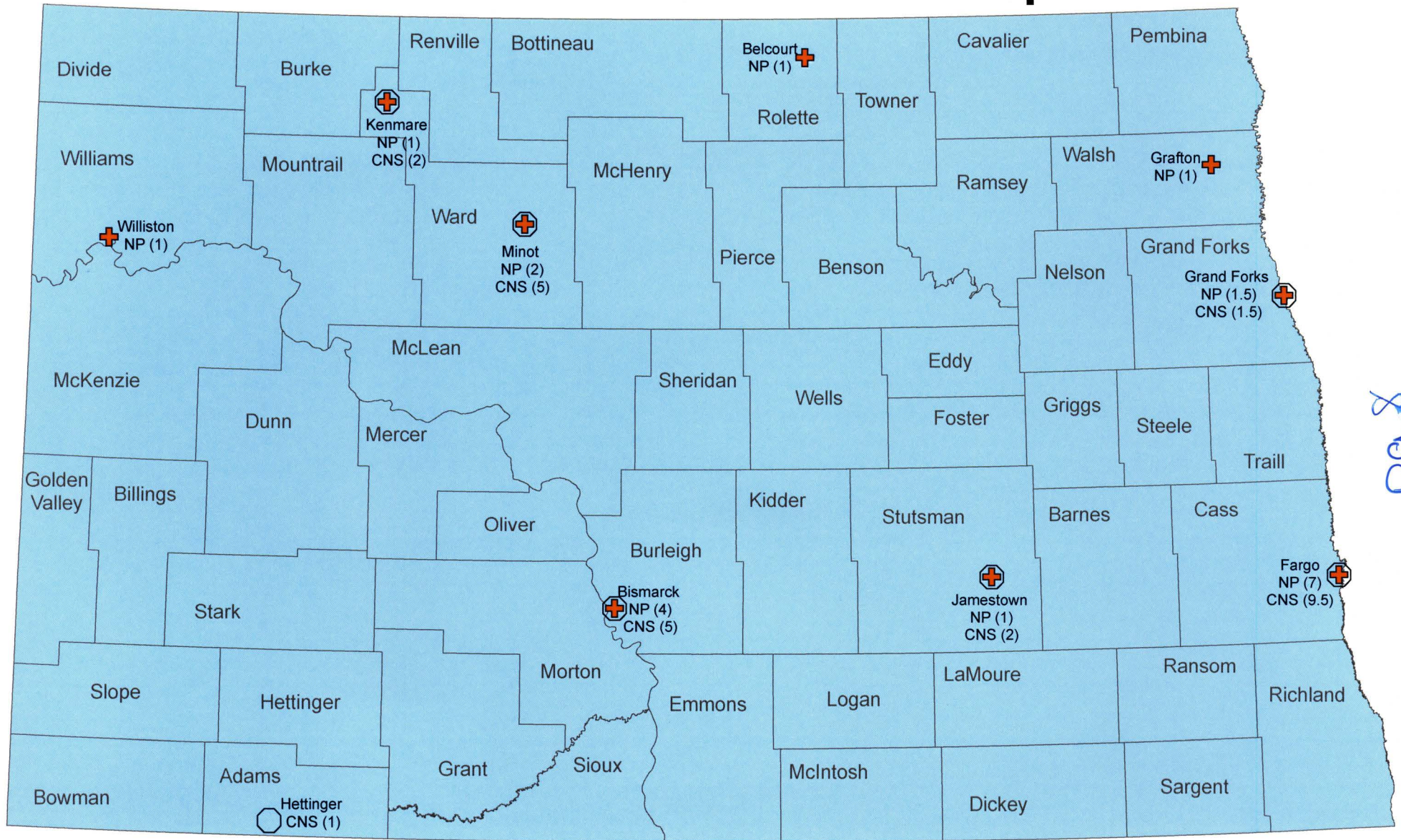
2016 North Dakota Certified Nurse Midwives & Clinical Nurse Specialists



269

*For those that indicated more than one site, the FTE was split equally and not based on actual hours worked.

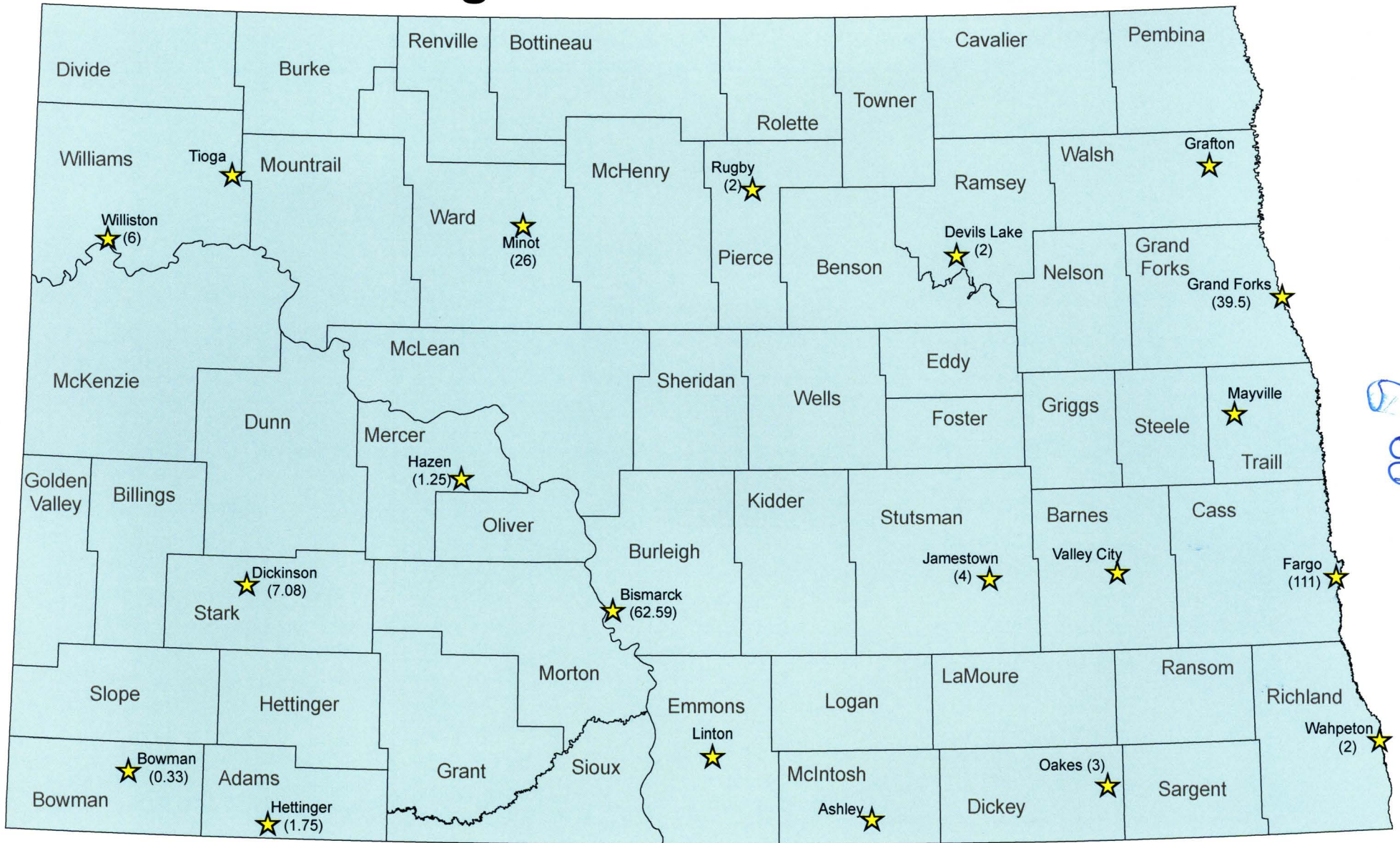
2016 North Dakota Psychiatric Nurse Practitioners & Clinical Nurse Specialists



Page 8

*For those licensed in more than one discipline and/or indicated more than one site, the FTE was split equally and not based on actual hours worked.

2016 North Dakota Certified Registered Nurse Anesthetists



*For those that indicated more than one site, the FTE was split equally and not based on actual hours worked.

2017 House Bill No. 1086
Testimony before the Senate Industry, Business and Labor Committee
Presented by Tim Wahlin, Chief of Injury Services
Workforce Safety and Insurance
February 13, 2017

Mr. Chairman and Members of the Committee:

My name is Tim Wahlin, Chief of Injury Services at WSI. I am here today to provide testimony regarding HB 1086. The WSI Board supports this bill.

Section 1.

Section 65-05-08.1 sets forth the requirements regarding the verification of disability. Disability is the basis for establishing wage loss and entitlement to wage replacement benefits. Disability must be documented and supported by objective medical evidence. Subsection 5 specifically addresses the organization's responsibility and what is required when a certification expires. In all cases of termination, the organization will "discontinue disability benefits, effective twenty-one days after the date the notice of intention to discontinue benefits is mailed or the date which the injured employee actually returned to work, whichever occurs first." NDCC 65-05-08.1(5). This ensures a meaningful opportunity to appeal thereby ensuring the highest levels of due process before those benefits end.

The proposed amendments in this section remove the requirement that the organization also send copies of this notice to the employee's doctor.

This requirement creates numerous problems. First, an injured employee's doctor is not a party to an action before the organization. The injured employee bears the burden of proving entitlement to benefits. If an injured employee wishes to appeal, the employee will have full access to present evidence from the provider. Providing notification to the provider when disability benefits of an injured employee are ending implies some action or advocacy is required from the physician, yet under the law, WSI cannot acknowledge a response. Finally, medical providers are not provided with other communications, interactions, and requirements the organization communicates with an injured employee. As a result, notifying a provider creates ambiguity and confusion.

WSI, as an insurer, is required to have significant communication with medical providers, too much communication according to members of the provider community. As a result, WSI faces ongoing complaints from medical providers about the volume of correspondence they receive. Requiring another set of communications only serves to exacerbate this issue.

As a result of these problems, system limitations, and complaints, WSI, has never consistently provided these notices to providers.

Section 2.

This section of the Century Code sets forth the Social Security Offset provision whereby WSI will offset a portion of the wage loss payments to injured employees who also receive Social Security Disability (SSD) payments. Because WSI's offset predated the federal government's offset law, federal law grandfathered in WSI's ability to offset SSD payments.

Applying for and receiving SSD benefits often takes a significant amount of time, sometimes over a year. The federal SSD benefits will then be awarded retroactively, and in a lump sum to the injured employee. Upon discovering the SSD award, WSI will seek repayment of the overpayment of wage loss benefits from the SSD award. In the event an injured employee refuses to reimburse WSI, the organization may offset future benefits in an effort to collect this overpayment.

The proposed changes simply make clear that the offsets can derive from all forms of disability benefits.

Section 3.

WSI will reimburse an injured employee for certain travel and personal expenses incurred by an employee while obtaining medical care. These expenses may include items such as lodging, mileage, and meals. The amount WSI will reimburse for these expenses is directed by statute or administrative rule. If an injured employee disagrees with the reimbursement amount received, the employee may appeal WSI's reimbursement decision. These decisions are subject to WSI's formal administrative appeal process and could theoretically be appealed all the way to the North Dakota Supreme Court.

In some cases, a considerable amount of staff time and resources can be expended on these rather minor disputes. In order to handle these disputes more efficiently, the amendments to this section propose to move personal reimbursement expense disputes into the dispute resolution process currently in place for disputes involving the medical management of a claim. This process is less formal, faster, yet still provides an injured employee with an adequate appeal process. Ultimately, this change will make the appeal process commensurate with the size of the appeal.

Section 4.

The subsection included in this section is part of the injured employee fraud statute. Certain willful acts under this statute constitute workers' compensation fraud. For

example, an injured employee who willfully files a false claim with WSI to obtain medical and wage loss benefits is guilty of workers compensation fraud. Under current law, if an injured employee obtains more than \$500 in fraudulent benefits, it is a Class C felony. The \$500 amount has been in place since the inception of this statute in 1995. The proposed amendment increases this monetary threshold from \$500 to \$1,000 and is currently the same monetary threshold for a Class C felony theft offense.

Section 5.

The proposed amendment to this section makes a minor change to the rehabilitation services pilot program provisions. The current law directs WSI to report on the rehabilitation pilot programs to the interim legislative workers' compensation review committee on an annual basis. This committee only meets on a biennial basis and the proposed amendment remedies this oversight.

Section 6.

This section makes it clear the dispute resolution process for WSI decisions relating to personal reimbursements for travel and other personal expenses applies to all claims regardless of the date of injury.