

Section 92-01-02-11.1 is amended as follows:

**92-01-02-11.1. Attorney's fees.**

**92-01-02-11.1. Attorney's fees.** Upon receipt of a certificate of program completion from the decision review office, fees for legal services provided by employees' attorneys and legal assistants working under the direction of employees' attorneys will be paid when an administrative order reducing or denying benefits is submitted to administrative hearing, district court, or supreme court and the employee prevails; or when a managed care decision is submitted to binding dispute resolution and the employee prevails subject to the following:

1. The organization shall pay attorneys at one hundred ~~forty~~ fifty dollars per hour for all actual and reasonable time other than travel time. The organization shall pay attorney travel time at ~~seventy~~ seventy-five dollars per hour.
2. The organization may pay legal assistants and third-year law students or law school graduates who are not licensed attorneys who are practicing under the North Dakota senior practice rule acting under the supervision of employees' attorneys up to ~~eighty-five~~ ninety dollars per hour for all actual and reasonable time other than travel time. The organization shall pay travel time at ~~forty~~ forty-five dollars per hour. A "legal assistant" means any person with a bachelor's degree, associate's degree, or correspondence degree in a legal assistant or paralegal program from an accredited college or university or other accredited agency, or a legal assistant certified by the national association of legal assistants or the national federation of paralegal associations. The term may also include a person employed as a paralegal or legal assistant who has a bachelor's degree in any field and experience working as a paralegal or legal assistant.
3. Total fees paid by the organization for all legal services in connection with a dispute regarding an administrative order may not exceed the following:
  - a. Except for an initial determination of compensability, twenty percent of the additional amount awarded.
  - b. Three thousand ~~five~~ six hundred ~~seventy-five~~ dollars, plus reasonable costs incurred, following issuance of an administrative order under North Dakota Century Code chapter 28-32 reducing or denying benefits, for services provided if a hearing request is resolved by settlement or amendment of the administrative order before the hearing is called to order.
  - c. Five thousand ~~five~~ seven hundred ~~seventy-five~~ dollars, plus reasonable costs incurred, if the employee prevails after the hearing is called to order by the administrative law judge. If the employee prevails after the hearing, and the organization appeals the final order, the organization shall pay attorney's fees at a rate of one hundred twenty-five percent of the maximum fees

specified in subdivisions d and e when the employee prevails on appeal, as defined by North Dakota Century Code section 65-02-08, to the district court or to the supreme court. However, the organization may not pay attorney's fees if the employee prevails at the district court but the organization prevails at the supreme court in the same appeal.

d. Six thousand ~~one~~ four hundred dollars, plus reasonable costs incurred, if the employee's district court appeal is settled prior to submission of briefs. Eight thousand ~~two~~ six hundred dollars, plus reasonable costs incurred, if the employee prevails after hearing by the district court.

e. ~~Nine~~ Ten thousand ~~nine~~ three hundred dollars, plus reasonable costs incurred, if the employee's North Dakota supreme court appeal is settled prior to hearing. ~~Ten~~ Eleven thousand ~~eight~~ three hundred dollars, plus reasonable costs incurred, if the employee prevails after hearing by the supreme court.

f. One thousand ~~six~~ seven hundred dollars, plus reasonable costs incurred, if the employee requests binding dispute resolution and prevails.

g. Should a settlement or order amendment offered during the DRO process be accepted after the DRO certificate of completion has been issued, no attorney's fees are payable. This contemplates not only identical offers and order amendments but those which are substantially similar.

4. The maximum fees specified in subdivisions b, c, d, and e of subsection 3 include all fees paid by the organization to one or more attorneys, legal assistants, law students, and law graduates representing the employee in connection with the same dispute regarding an administrative order at all stages in the proceedings. A "dispute regarding an administrative order" includes all proceedings subsequent to an administrative order, including hearing, judicial appeal, remand, an order resulting from remand, and multiple matters or proceedings consolidated or considered in a single proceeding.

5. All time must be recorded in increments of no more than six minutes (one-tenth of an hour).

6. If the organization is obligated to pay the employee's attorney's fees, the attorney shall submit to the organization a final statement upon resolution of the matter. All statements must show the name of the employee, claim number, date of the statement, the issue, date of each service or charge, itemization and a reasonable description of the legal work performed for each service or charge, time and amount billed for each item, and total time and amounts billed. The employee's attorney must sign the fee statement. The organization may deny fees and costs that are determined to be excessive or frivolous.

7. The following costs will be reimbursed:

- a. Actual postage, if postage exceeds three dollars per parcel.
  - b. Actual toll charges for long-distance telephone calls.
  - c. Copying charges, at eight cents per page.
  - d. Mileage and other expenses for reasonable and necessary travel. Mileage and other travel expenses, including per diem, must be paid in the amounts that are paid state officials as provided by North Dakota Century Code sections 44-08-04 and 54-06-09. Out-of-state travel expenses may be reimbursed only if approval for such travel is given, in advance, by the organization.
  - e. Other reasonable and necessary costs, not to exceed one hundred fifty dollars. Other costs in excess of one hundred fifty dollars may be reimbursed only upon agreement, in advance, by the organization. Costs for typing and clerical or office services will not be reimbursed.
8. The following costs will not be reimbursed:
- a. Facsimile charges.
  - b. Express mail.
  - c. Additional copies of transcripts.
  - d. Costs incurred to obtain medical records.
  - e. Online computer-assisted legal research.
  - f. Copy charges for documents provided by the organization.

The organization shall reimburse court reporters for mileage and other expenses, for reasonable and necessary travel, in the amounts that are paid state officials as provided by North Dakota Century Code sections 44-08-04 and 54-06-09.

**History:** Effective June 1, 1990; amended effective November 1, 1991; January 1, 1994; January 1, 1996; May 1, 2000; May 1, 2002; July 1, 2004; July 1, 2006; April 1, 2008; April 1, 2009; July 1, 2010; April 1, 2012; April 1, 2014; April 1, 2016.

**General Authority:** NDCC 65-02-08, 65-02-15

**Law Implemented:** NDCC 65-02-08, 65-02-15, 65-10-03

## **REGULATORY ANALYSIS OF PROPOSED RULE**

**Section:** 92-01-02-11.1.

**Title of Section:** Attorney's fees.

**GENERAL:** The following analysis is submitted in compliance with 28-32-08 of the NDCC.

**This rule is not expected to impact the regulated community in excess of \$50,000.**

## **SMALL ENTITY REGULATORY ANALYSIS OF PROPOSED RULE**

**Section:** 92-01-02-11.1.

**Title of Section:** Attorney's fees.

**GENERAL:** The following analysis is submitted in compliance with §28-32-08.1(2) of the NDCC.

### **POSSIBLE WAYS TO MINIMIZE THE ADVERSE IMPACT ON SMALL ENTITIES:**

- A. Establishing less stringent compliance or reporting requirements:** There are no reporting or compliance requirements impacted by the change.
- B. Establishing less stringent schedules or deadlines for compliance or report:** There are no compliance issues impacted by the change.
- C. Consolidating or simplifying compliance or reporting requirements:** There is no compliance or reporting issues impacted by the change.
- D. Establishing performance standards that replace design or operational standards required in the proposed rule:** There are no performance standards impacted by the change.
- E. Exempting small entities from all or part of the rule's requirements:** There are no entities impacted by the change.

## **SMALL ENTITY ECONOMIC IMPACT STATEMENT**

**GENERAL:** The following analysis is submitted in compliance with §28-32-08.1(3) of the NDCC.

Based on our analysis of this rule there is no need to complete a Small Entity Economic Impact Statement as there is not an adverse impact.

**WORKFORCE SAFETY & INSURANCE**  
**ADMINISTRATIVE RULE**  
**FISCAL NOTE**

**ADMINISTRATIVE RULE NO:** 92-01-02-11.1.

**ADMINISTRATIVE RULE TITLE:** Attorney's fees.

**SUMMARY OF PROPOSED RULE:** Workforce Safety & Insurance has reviewed the proposed administrative rule in conformance with Section 28-32-08.2 of the North Dakota Century Code.

**FISCAL IMPACT:** It is estimated the proposed rule change will increase claimant attorney fees by \$20,000 to \$25,000 per year.

**DATE:** June 25, 2015

Subsection 2 of Section 92-01-02-14 is amended as follows:

**92-01-02-14. Procedure for penalizing employers accounts for failure to pay premium or failure to submit payroll reports.**

**92-01-02-14. Procedure for penalizing employers accounts for failure to pay premium or failure to submit payroll reports.**

2. The organization shall send the first billing statement to the employer by regular mail to the employer's last-known address or by electronic transmission. The first billing statement must identify the amount due from the employer ~~and the payment due date~~. The statement must explain the installment payment option. The payment due date for an employer's account is thirty days from the date of billing ~~indicted~~ indicated on the premium billing statement. If a previous delinquency exists on the employer account, the billing statement indicates a past-due status.

**History:** Effective June 1, 1990; amended effective January 1, 1994; January 1, 1996; May 1, 2002; March 1, 2003; July 1, 2006; April 1, 2009; July 1, 2010; April 1, 2016.

**General Authority:** NDCC 65-02-08, 65-02-33

**Law Implemented:** NDCC 65-04-33

## **REGULATORY ANALYSIS OF PROPOSED RULE**

**Section:** 92-01-02-14.

**Title of Section:** Procedure for penalizing employers accounts for failure to pay premium or failure to submit payroll reports.

**GENERAL:** The following analysis is submitted in compliance with 28-32-08 of the NDCC.

**This rule is not expected to impact the regulated community in excess of \$50,000.**

## **SMALL ENTITY REGULATORY ANALYSIS OF PROPOSED RULE**

**Section:** 92-01-02-14.

**Title of Section:** Procedure for penalizing employers accounts for failure to pay premium or failure to submit payroll reports.

**GENERAL:** The following analysis is submitted in compliance with §28-32-08.1(2) of the NDCC.

### **POSSIBLE WAYS TO MINIMIZE THE ADVERSE IMPACT ON SMALL ENTITIES:**

- A. Establishing less stringent compliance or reporting requirements:** There are no reporting or compliance requirements impacted by the change.
  
- B. Establishing less stringent schedules or deadlines for compliance or report:** There are no compliance issues impacted by the change.
  
- C. Consolidating or simplifying compliance or reporting requirements:** There is no compliance or reporting issues impacted by the change.
  
- D. Establishing performance standards that replace design or operational standards required in the proposed rule:** There are no performance standards impacted by the change.
  
- E. Exempting small entities from all or part of the rule's requirements:** There are no entities impacted by the change.

**SMALL ENTITY ECONOMIC IMPACT STATEMENT**

**GENERAL:** The following analysis is submitted in compliance with §28-32-08.1(3) of the NDCC.

Based on our analysis of this rule there is no need to complete a Small Entity Economic Impact Statement as there is not an adverse impact.

**WORKFORCE SAFETY & INSURANCE**  
**ADMINISTRATIVE RULE**  
**FISCAL NOTE**

**ADMINISTRATIVE RULE NO:** 92-01-02-14.

**ADMINISTRATIVE RULE TITLE:** Procedure for penalizing employers accounts for failure to pay premium or failure to submit payroll reports.

**SUMMARY OF PROPOSED RULE:** Workforce Safety & Insurance has reviewed the proposed administrative rule in conformance with Section 28-32-08.2 of the North Dakota Century Code.

**FISCAL IMPACT:** No impact is anticipated.

**DATE:** June 25, 2015



Subsection 3 of Section 92-01-02-18 is amended as follows; please note the effective date of this amendment:

### **92-01-02-18. Experience rating system**

**92-01-02-18. Experience rating system.** The following system is established for the experience rating of risks of employers contributing to the fund:

3. For accounts with ratable manual premium of fifteen thousand dollars or more:
  - a. The experience rating must be applied prior to the inception of each premium year for all eligible accounts. A claim is deemed to occur in the premium year in which the injury date occurs.

- b. The experience modification factor (EMF) to be applied to the current estimated portion of an employer's payroll report is computed as follows:

- (1) Calculate the actual primary losses ( $A_p$ ), which consist of the sum of those three-year losses, comprising the first fifteen ~~ten~~ thousand dollars of each individual claim.

- (2) Calculate the actual excess losses ( $A_e$ ), which consist of the sum of those three-year losses in excess of the first fifteen ~~ten~~ thousand dollars of losses of each individual claim, limited to the maximum loss amount contained in the most recent edition of North Dakota workforce safety and insurance rating plan values which is hereby adopted by reference and incorporated within this subsection as though set out in full.

- (3) Calculate the total expected losses ( $E_t$ ), which are determined by adding the products of the actual payroll for each year of the three-year payroll times the class expected loss rate for each year. The class expected loss rates, taking into consideration the hazards and risks of various occupations, must be those contained in the most recent edition of North Dakota workforce safety and insurance rating plan values, which is hereby adopted by reference and incorporated within this subsection as though set out in full.

- (4) Calculate the expected excess losses ( $E_e$ ), which are determined by adding the products of the actual payroll for each year of the three-year payroll times the class expected excess loss rates. The class expected excess loss rates, taking into consideration the hazards and risks of various occupations, must be those contained in the most recent edition of North Dakota workforce safety and insurance rating plan values, which is hereby

adopted by reference and incorporated within this subsection as though set out in full.

(5) Calculate the "credibility factor" (Z) based on the formula that is contained in the most recent edition of North Dakota workforce safety and insurance rating plan values, which is hereby adopted by reference and incorporated within this subsection as though set out in full.

(6) The experience modification factor is then calculated as follows:

(a) Calculate the "ballast amount" (B) which is contained in the most recent edition of North Dakota workforce safety and insurance rating plan values, which is hereby adopted by reference and incorporated within this subsection as though set out in full.

(b) Add the actual primary losses to the product of the actual excess losses times the credibility factor.

(c) To this sum add the product of the expected excess losses times the difference between one dollar and the credibility factor.

(d) To this sum add the ballast amount (B).

(e) Divide this total sum by the sum of the total expected losses plus the ballast amount (B).

The resulting quotient is the experience modification factor to be applied in calculating the estimated premium for the current payroll year.

(7) The formula for the above-mentioned calculation is as follows:

$$\text{EMF} = \frac{A_p + (Z \times A_e) + [(1.00 - Z) \times E_e] + B}{E_t + B}$$

**History:** Effective June 1, 1990; amended effective July 1, 1993; July 1, 1994; April 1, 1997; July 1, 2001; July 1, 2006; July 1, 2009; July 1, 2010; July 1, 2016.

**General Authority:** NDCC 65-02-08, 65-04-17

**Law Implemented:** NDCC 65-04-01

### REGULATORY ANALYSIS OF PROPOSED RULE

**Section:** 92-01-02-18.

**Title of Section:** Experience rating system.

**GENERAL:** The following analysis is submitted in compliance with 28-32-08 of the NDCC.

**This rule is not expected to impact the regulated community in excess of \$50,000.**

### SMALL ENTITY REGULATORY ANALYSIS OF PROPOSED RULE

**Section:** 92-01-02-18.

**Title of Section:** Experience rating system.

**GENERAL:** The following analysis is submitted in compliance with §28-32-08.1(2) of the NDCC.

#### **POSSIBLE WAYS TO MINIMIZE THE ADVERSE IMPACT ON SMALL ENTITIES:**

- A. Establishing less stringent compliance or reporting requirements:** There are no reporting or compliance requirements impacted by the change.
- B. Establishing less stringent schedules or deadlines for compliance or report:** There are no compliance issues impacted by the change.
- C. Consolidating or simplifying compliance or reporting requirements:** There is no compliance or reporting issues impacted by the change.
- D. Establishing performance standards that replace design or operational standards required in the proposed rule:** There are no performance standards impacted by the change.
- E. Exempting small entities from all or part of the rule's requirements:** There are no entities impacted by the change.

### SMALL ENTITY ECONOMIC IMPACT STATEMENT

**GENERAL:** The following analysis is submitted in compliance with §28-32-08.1(3) of the NDCC.

Based on our analysis of this rule there is no need to complete a Small Entity Economic Impact Statement as there is not an adverse impact.

**WORKFORCE SAFETY & INSURANCE**  
**ADMINISTRATIVE RULE**  
**FISCAL NOTE**

**ADMINISTRATIVE RULE NO:** 92-01-02-18.

**ADMINISTRATIVE RULE TITLE:** Experience rating system.

**SUMMARY OF PROPOSED RULE:** Workforce Safety & Insurance has reviewed the proposed administrative rule in conformance with Section 28-32-08.2 of the North Dakota Century Code.

**FISCAL IMPACT:** No statewide fiscal impact is anticipated due to the change in the primary loss amount. The revised primary loss amount will be incorporated into the calculation of Experience Rating System values such that the targeted off-balance included in the manual rates is achieved.

**DATE:** June 25, 2015

Subsection 7 to 92-01-02-24 is created as follows:

**92-01-02-24 Rehabilitation services.**

**92-01-02-24 Rehabilitation services.**

7. The organization may pay for retraining equipment required by an institution of higher education or an institution of technical education on behalf of a student attending that institution. The organization will award retraining candidates one thousand two hundred dollars for the purchase of computer, warranty, software, maintenance, and internet access. Securing and maintaining these items are the injured employee's responsibility. Failure to maintain or secure these items may not constitute good cause for non-compliance with vocational rehabilitation. Improper maintenance of the equipment shall not constitute good cause for noncompliance with vocational rehabilitation.

**History:** Effective November 1, 1991; amended effective January 1, 1996; April 1, 1997; February 1, 1998; May 1, 2002; July 1, 2006; July 1, 2010; April 1, 2012; April 1, 2016.

**General Authority:** NDCC 65-02-08

**Law Implemented:** NDCC 65-05.1

## REGULATORY ANALYSIS OF PROPOSED RULE

**Section:** 92-01-02-24.

**Title of Section:** Rehabilitation services.

**GENERAL:** The following analysis is submitted in compliance with 28-32-08 of the NDCC.

**This rule is not expected to impact the regulated community in excess of \$50,000.**

## SMALL ENTITY REGULATORY ANALYSIS OF PROPOSED RULE

**Section:** 92-01-02-24.

**Title of Section:** Rehabilitation services.

**GENERAL:** The following analysis is submitted in compliance with §28-32-08.1(2) of the NDCC.

### **POSSIBLE WAYS TO MINIMIZE THE ADVERSE IMPACT ON SMALL ENTITIES:**

- A. Establishing less stringent compliance or reporting requirements:** There are no reporting or compliance requirements impacted by the change.
- B. Establishing less stringent schedules or deadlines for compliance or report:** There are no compliance issues impacted by the change.
- C. Consolidating or simplifying compliance or reporting requirements:** There is no compliance or reporting issues impacted by the change.
- D. Establishing performance standards that replace design or operational standards required in the proposed rule:** There are no performance standards impacted by the change.
- E. Exempting small entities from all or part of the rule's requirements:** There are no entities impacted by the change.

**SMALL ENTITY ECONOMIC IMPACT STATEMENT**

**GENERAL:** The following analysis is submitted in compliance with §28-32-08.1(3) of the NDCC.

Based on our analysis of this rule there is no need to complete a Small Entity Economic Impact Statement as there is not an adverse impact.

**WORKFORCE SAFETY & INSURANCE**  
**ADMINISTRATIVE RULE**  
**FISCAL NOTE**

**ADMINISTRATIVE RULE NO:** 92-01-02-24.

**ADMINISTRATIVE RULE TITLE:** Rehabilitation services.

**SUMMARY OF PROPOSED RULE:** Workforce Safety & Insurance has reviewed the proposed administrative rule in conformance with Section 28-32-08.2 of the North Dakota Century Code.

**FISCAL IMPACT:** No impact is anticipated.

**DATE:** June 25, 2015

Subsections 5, 11 and 12 of Section 92-01-02-29 are created and renumbered as follows:

## **92-01-02-29. Medical services - Definitions**

**92-01-02-29. Medical services - Definitions.** The definitions found in North Dakota Century Code title 65 apply to terms contained in this title. In addition, unless the context otherwise requires, for purposes of sections 92-01-02-27 through 92-01-02-48:

5. "Debilitating side effects" means an adverse effect to a treatment or medication that in and of itself precludes return to employment or participation in vocational rehabilitation services.

5 6. "Consulting doctor" means a licensed doctor who examines a claimant, or the claimant's medical record, at the request of the attending doctor to aid in diagnosis or treatment. A consulting doctor, at the request of the attending doctor, may provide specialized treatment of the compensable injury and give advice or an opinion regarding the treatment being rendered or considered for a claimant's injury.

6 7. "Elective surgery" means surgery that may be required in the process of recovery from an injury or illness but need not be done as an emergency to preserve life, function, or health. Pain, of itself, does not constitute a surgical emergency.

7 8. "Emergency" means a medical condition that manifests itself by symptoms of sufficient severity, which may include severe pain, to cause a prudent layperson possessing an average knowledge of health and medicine to reasonably conclude that immediate medical treatment is required to avoid serious impairment of a bodily function, or serious dysfunction of any body part, or jeopardizing the person's life.

8 9. "Fee schedule" means the publication entitled "Workforce Safety and Insurance Medical and Hospital Fees".

9 10. "Functional capacity evaluation" means an objective, directly observed, measurement of a claimant's ability to perform a variety of physical tasks combined with subjective analyses of abilities by the claimant and the evaluator. A physical tolerance screening and a Blankenship's functional evaluation are functional capacity evaluations.

11. "Increase in function" means the effectiveness of a treatment or medication that result in either a resumption of activities of daily living, a return to employment, or participation in vocational rehabilitation services.



12. "Improved pain control" means the effectiveness of a treatment or medication that result in at least a thirty percent reduction in pain scores.

~~40~~ 13. "Managed care" means services performed by the organization or a managed care vendor, including utilization review, preservice reviews, disability management services, case management services, ambulatory reviews, concurrent reviews, retrospective reviews, preadmission reviews, and medical bill audit.

~~44~~ 14. "Managed care vendor" means an organization that is retained by the organization to provide managed care services.

~~42~~ 15. "Medical service" means a medical, surgical, chiropractic, psychological, dental, hospital, nursing, ambulance, and other related or ancillary service, including physical and occupational therapy and drugs, medicine, crutches, a prosthetic appliance, braces, and supports, and physical restoration and diagnostic services, or a service outlined in section 92-01-02-30.

~~43~~ 16. "Medical service provider" means a ~~doctor~~, health care provider, hospital, medical clinic, or vendor of medical services.

~~44~~ 17. "Medically stationary" means the "date of maximum medical improvement" as defined in North Dakota Century Code section 65-01-02 has been reached.

~~45~~ 18. "Notice of nonpayment" means the form by which a claimant is notified of charges denied by the organization which are the claimant's personal responsibility.

~~46~~ 19. "Palliative care" means a medical service rendered to alleviate symptoms without curing the underlying condition.

~~47~~ 20. "Physical conditioning" means an individualized, graded exercise program designed to improve the overall cardiovascular, pulmonary, and neuromuscular condition of the claimant prior to or in conjunction with the claimant's return to any level of work. Work conditioning is the same as physical conditioning.

~~48~~ 21. "Preservice review" means the evaluation by the organization or a managed care vendor of a proposed medical service for medical necessity, appropriateness, and efficiency prior to the services being performed.

~~49~~ 22. "Remittance advice" means the form used by the organization to inform payees of the reasons for payment, reduction, or denial of medical services.

~~20~~ 23. "Retrospective review" means the organization's or a managed care vendor's review of a medical service for medical necessity, appropriateness, and efficiency after treatment has occurred.

~~23~~ 24. "Special report" means a medical service provider's written response to a specific request from the organization for information, including information on causation, aggravation, preexisting conditions, and clarification of complex medical conditions, requiring the creation of a new document or the previously unperformed analysis of existing data. The explanatory reports required for procedures designated as "by report" under section 92-01-02-27 are not special reports.

~~22~~ 25. "Utilization review" means an evaluation of the necessity, appropriateness, efficiency, and quality of medical services provided to a claimant, based on medically accepted standards and an objective evaluation of the medical services.

~~23~~ 26. "Utilization review department" means the organization's utilization review department.

~~24~~ 27. "Work hardening" means an individualized, medically prescribed and monitored, work-oriented treatment process which involves the claimant participating in simulated or actual work tasks that are structured and graded to progressively increase physical tolerances, stamina, endurance, and productivity to return the claimant to a specified job.

**History:** Effective January 1, 1994; amended effective October 1, 1998; January 1, 2000; May 1, 2002; April 1, 2014; April 1, 2016.

**General Authority:** NDCC 65-02-08, 65-02-20, 65-05-07

**Law Implemented:** NDCC 65-02-20, 65-05-07

## REGULATORY ANALYSIS OF PROPOSED RULE

**Section:** 92-01-02-29.

**Title of Section:** Medical services - Definitions.

**GENERAL:** The following analysis is submitted in compliance with 28-32-08 of the NDCC.

**This rule is not expected to impact the regulated community in excess of \$50,000.**

## SMALL ENTITY REGULATORY ANALYSIS OF PROPOSED RULE

**Section:** 92-01-02-29.

**Title of Section:** Medical services - Definitions.

**GENERAL:** The following analysis is submitted in compliance with §28-32-08.1(2) of the NDCC.

### **POSSIBLE WAYS TO MINIMIZE THE ADVERSE IMPACT ON SMALL ENTITIES:**

- A. Establishing less stringent compliance or reporting requirements:** There are no reporting or compliance requirements impacted by the change.
  
- B. Establishing less stringent schedules or deadlines for compliance or report:** There are no compliance issues impacted by the change.
  
- C. Consolidating or simplifying compliance or reporting requirements:** There is no compliance or reporting issues impacted by the change.
  
- D. Establishing performance standards that replace design or operational standards required in the proposed rule:** There are no performance standards impacted by the change.
  
- E. Exempting small entities from all or part of the rule's requirements:** There are no entities impacted by the change.

## **SMALL ENTITY ECONOMIC IMPACT STATEMENT**

**GENERAL:** The following analysis is submitted in compliance with §28-32-08.1(3) of the NDCC.

Based on our analysis of this rule there is no need to complete a Small Entity Economic Impact Statement as there is not an adverse impact.

### **WORKFORCE SAFETY & INSURANCE** **ADMINISTRATIVE RULE** **FISCAL NOTE**

**ADMINISTRATIVE RULE NO:** 92-01-02-29.

**ADMINISTRATIVE RULE TITLE:** Medical services - Definitions.

**SUMMARY OF PROPOSED RULE:** Workforce Safety & Insurance has reviewed the proposed administrative rule in conformance with Section 28-32-08.2 of the North Dakota Century Code.

**FISCAL IMPACT:** Not quantifiable.

**DATE:** June 25, 2015

Subsections 3 and 4 of Section 92-01-02-29.1 are amended as follows:

**92-01-02-29.1. Medical necessity.**

**92-01-02-29.1. Medical necessity.**

3. The organization will not authorize or pay for the following treatment:

- c. Treatment to improve or maintain general health (i.e., prescriptions or injections of vitamins, nutritional supplements, diet and weight loss programs, programs to quit smoking) unless specifically preapproved or otherwise authorized by the organization. Over-the-counter medications may be allowed in lieu of prescription medications when approved by the organization and prescribed by the attending doctor and dispensed and processed according to the current pharmacy transaction standard. Dietary supplements, including minerals, vitamins, and amino acids are reimbursable if a specific compensable dietary deficiency has been clinically established in the claimant. Vitamin B-12 injections are reimbursable if necessary because of a malabsorption resulting from a compensable gastrointestinal disorder.
- d. Articles such as beds, hot tubs, chairs, Jacuzzis, vibrators, heating pads, home furnishings, waterbeds, exercise equipment, cold packs, hot packs and gravity traction devices are not compensable except at the discretion of the organization under exceptional circumstances.

i. Spine strengthening program (MedX)

~~4. If a claimant has had opioids continually prescribed for the treatment during a period after the claim has been filed which exceeds ninety consecutive days, the organization may require a claimant to undergo testing conducted by a health care provider, qualified technician, or chemist to assess the appropriateness of opioid treatment. A claimant who refuses or fails, without good cause, to submit to testing required by the organization forfeits entitlement to payment of any further opioid prescriptions under all existing claims.~~

~~It is rebuttably presumed that no opioid treatment is appropriate after a second time within twenty four months that testing indicates that any prescribed opioids are absent from a claimant's body and thereafter the organization may not pay for any opioids under any existing claim for a period of thirty six months. As used in this subsection, "testing" means a test that is administered after a claim is filed and is conducted by a health care provider, qualified technician, or chemist, and is not limited to testing required by the organization.~~

**History:** Effective January 1, 1994; amended effective October 1, 1998; January 1, 2000; May 1, 2002; July 1, 2004; July 1, 2006; April 1, 2008; April 1, 2009; July 1,

2010; April 1, 2012; April 1, 2014; April 1, 2016.

**General Authority:** NDCC 65-02-08, 65-02-20, 65-05-07

**Law Implemented:** NDCC 65-02-20, 65-05-07

## REGULATORY ANALYSIS OF PROPOSED RULE

**Section:** 92-01-02-29.1.

**Title of Section:** Medical necessity.

**GENERAL:** The following analysis is submitted in compliance with 28-32-08 of the NDCC.

**This rule is not expected to impact the regulated community in excess of \$50,000.**

## SMALL ENTITY REGULATORY ANALYSIS OF PROPOSED RULE

**Section:** 92-01-02-29.1.

**Title of Section:** Medical necessity.

**GENERAL:** The following analysis is submitted in compliance with §28-32-08.1(2) of the NDCC.

### **POSSIBLE WAYS TO MINIMIZE THE ADVERSE IMPACT ON SMALL ENTITIES:**

- A. Establishing less stringent compliance or reporting requirements:** There are no reporting or compliance requirements impacted by the change.
- B. Establishing less stringent schedules or deadlines for compliance or report:** There are no compliance issues impacted by the change.
- C. Consolidating or simplifying compliance or reporting requirements:** There is no compliance or reporting issues impacted by the change.
- D. Establishing performance standards that replace design or operational standards required in the proposed rule:** There are no performance standards impacted by the change.
- E. Exempting small entities from all or part of the rule's requirements:** There are no entities impacted by the change.

## SMALL ENTITY ECONOMIC IMPACT STATEMENT

**GENERAL:** The following analysis is submitted in compliance with §28-32-08.1(3) of the NDCC.

Based on our analysis of this rule there is no need to complete a Small Entity Economic Impact Statement as there is not an adverse impact.

**WORKFORCE SAFETY & INSURANCE**  
**ADMINISTRATIVE RULE**  
**FISCAL NOTE**

**ADMINISTRATIVE RULE NO:** 92-01-02-29.1.

**ADMINISTRATIVE RULE TITLE:** Medical necessity.

**SUMMARY OF PROPOSED RULE:** Workforce Safety & Insurance has reviewed the proposed administrative rule in conformance with Section 28-32-08.2 of the North Dakota Century Code.

**FISCAL IMPACT:** No impact is anticipated.

**DATE:** June 25, 2015



Subsections 10 and 11 of Section 92-01-02-29.4 are created as follows:

**92-01-02-29.4. Home modifications**

**92-01-02-29.4. Home modifications.**

10. Modifications will only be considered upon receipt of documentation establishing injured employee's ownership of the residence to be permanently modified.

11. Modifications within new construction will be considered upon receipt of the original floor plan/specifications and cost estimate, as well as the modified floor plan and cost estimate.

**History:** Effective April 1, 2012; amended effective April 1, 2014, April 1, 2016.

**General Authority:** NDCC 65-02-08

**Law Implemented:** NDCC 65-05-07

### **REGULATORY ANALYSIS OF PROPOSED RULE**

**Section:** 92-01-02-29.4.

**Title of Section:** Home modifications.

**GENERAL:** The following analysis is submitted in compliance with 28-32-08 of the NDCC.

**This rule is not expected to impact the regulated community in excess of \$50,000.**

### **SMALL ENTITY REGULATORY ANALYSIS OF PROPOSED RULE**

**Section:** 92-01-02-29.4.

**Title of Section:** Home modifications.

**GENERAL:** The following analysis is submitted in compliance with §28-32-08.1(2) of the NDCC.

#### **POSSIBLE WAYS TO MINIMIZE THE ADVERSE IMPACT ON SMALL ENTITIES:**

- A. Establishing less stringent compliance or reporting requirements:** There are no reporting or compliance requirements impacted by the change.
  
- B. Establishing less stringent schedules or deadlines for compliance or report:** There are no compliance issues impacted by the change.
  
- C. Consolidating or simplifying compliance or reporting requirements:** There is no compliance or reporting issues impacted by the change.
  
- D. Establishing performance standards that replace design or operational standards required in the proposed rule:** There are no performance standards impacted by the change.
  
- E. Exempting small entities from all or part of the rule's requirements:** There are no entities impacted by the change.

**SMALL ENTITY ECONOMIC IMPACT STATEMENT**

**GENERAL:** The following analysis is submitted in compliance with §28-32-08.1(3) of the NDCC.

Based on our analysis of this rule there is no need to complete a Small Entity Economic Impact Statement as there is not an adverse impact.

**WORKFORCE SAFETY & INSURANCE**  
**ADMINISTRATIVE RULE**  
**FISCAL NOTE**

**ADMINISTRATIVE RULE NO:** 92-01-02-29.4.

**ADMINISTRATIVE RULE TITLE:** Home modifications.

**SUMMARY OF PROPOSED RULE:** Workforce Safety & Insurance has reviewed the proposed administrative rule in conformance with Section 28-32-08.2 of the North Dakota Century Code.

**FISCAL IMPACT:** Not quantifiable, no significant impact is anticipated.

**DATE:** June 25, 2015

Subdivisions of Subsection 5 of Section 92-01-02-34 are created as follows:

**92-01-02-34. Treatment requiring authorization, preservice review, and retrospective review.**

**92-01-02-34. Treatment requiring authorization, preservice review, and retrospective review.**

5. Medical service providers shall request preservice review from the utilization review department for:

- u. Massage therapy. No more than eighteen treatments of thirty minute duration may be paid for the life of the claim. The organization may waive this requirement in conjunction with programs designed to ensure the ongoing evolution of managed care, to meet the needs of injured workers and providers.
- v. Acupuncture therapy. No more than twelve treatments may be paid for the life of the claim. The organization may waive this requirement in conjunction with programs designed to ensure the ongoing evolution of managed care to meet the needs of injured workers and providers.
- w. Speech therapy if more than thirty visits per year are required.

**History:** Effective January 1, 1994; amended effective October 1, 1998; January 1, 2000; May 1, 2002; March 1, 2003; July 1, 2004; July 1, 2006; April 1, 2008; April 1, 2009; July 1, 2010; April 1, 2012; April 1, 2014; April 1, 2016.

**General Authority:** NDCC 65-02-08, 65-02-20, 65-05-07

**Law Implemented:** NDCC 65-02-20, 65-05-07

## REGULATORY ANALYSIS OF PROPOSED RULE

**Section:** 92-01-02-34.

**Title of Section:** Treatment requiring authorization, preservice review, and retrospective review.

**GENERAL:** The following analysis is submitted in compliance with 28-32-08 of the NDCC.

**This rule is not expected to impact the regulated community in excess of \$50,000.**

## SMALL ENTITY REGULATORY ANALYSIS OF PROPOSED RULE

**Section:** 92-01-02-34.

**Title of Section:** Treatment requiring authorization, preservice review, and retrospective review.

**GENERAL:** The following analysis is submitted in compliance with §28-32-08.1(2) of the NDCC.

### **POSSIBLE WAYS TO MINIMIZE THE ADVERSE IMPACT ON SMALL ENTITIES:**

- A. Establishing less stringent compliance or reporting requirements:** There are no reporting or compliance requirements impacted by the change.
- B. Establishing less stringent schedules or deadlines for compliance or report:** There are no compliance issues impacted by the change.
- C. Consolidating or simplifying compliance or reporting requirements:** There is no compliance or reporting issues impacted by the change.
- D. Establishing performance standards that replace design or operational standards required in the proposed rule:** There are no performance standards impacted by the change.
- E. Exempting small entities from all or part of the rule's requirements:** There are no entities impacted by the change.

**SMALL ENTITY ECONOMIC IMPACT STATEMENT**

**GENERAL:** The following analysis is submitted in compliance with §28-32-08.1(3) of the NDCC.

Based on our analysis of this rule there is no need to complete a Small Entity Economic Impact Statement as there is not an adverse impact.

**WORKFORCE SAFETY & INSURANCE**  
**ADMINISTRATIVE RULE**  
**FISCAL NOTE**

**ADMINISTRATIVE RULE NO:** 92-01-02-34.

**ADMINISTRATIVE RULE TITLE:** Treatment requiring authorization, preservice review, and retrospective review.

**SUMMARY OF PROPOSED RULE:** Workforce Safety & Insurance has reviewed the proposed administrative rule in conformance with Section 28-32-08.2 of the North Dakota Century Code.

**FISCAL IMPACT:** No impact is anticipated.

**DATE:** June 25, 2015

Subdivision q of Subsection 3 of Section 92-01-02-45.1 is amended as follows:

**92-01-02-45.1. Provider responsibilities and billings.**

**92-01-02-45.1. Provider responsibilities and billings.**

3. All medical service providers shall submit bills referring to one claim only for medical services on current form UB 04 or form CMS 1500, except for dental billings which must be submitted on American dental association J510 dental claim forms and pharmacy billings which must be submitted electronically to the organization's pharmacy managed care vendor using the current pharmacy transaction standard. Bills and reports must include:

- q. Name of medical service provider providing service along with the provider's tax identification number, provider's National Provider Identifier (NPI); and

**History:** Effective January 1, 1994; amended effective April 1, 1996; October 1, 1998; January 1, 2000; May 1, 2002; April 1, 2008; July 1, 2010; April 1, 2012; April 1, 2014; April 1, 2016.

**General Authority:** NDCC 65-02-08, 65-02-20, 65-05-07

**Law Implemented:** NDCC 65-02-20, 65-05-07, 65-05-28.2

## REGULATORY ANALYSIS OF PROPOSED RULE

**Section:** 92-01-02-45.1.

**Title of Section:** Provider responsibilities and billings.

**GENERAL:** The following analysis is submitted in compliance with 28-32-08 of the NDCC.

**This rule is not expected to impact the regulated community in excess of \$50,000.**

## SMALL ENTITY REGULATORY ANALYSIS OF PROPOSED RULE

**Section:** 92-01-02-45.1.

**Title of Section:** Provider responsibilities and billings.

**GENERAL:** The following analysis is submitted in compliance with §28-32-08.1(2) of the NDCC.

### **POSSIBLE WAYS TO MINIMIZE THE ADVERSE IMPACT ON SMALL ENTITIES:**

- A. Establishing less stringent compliance or reporting requirements:** There are no reporting or compliance requirements impacted by the change.
- B. Establishing less stringent schedules or deadlines for compliance or report:** There are no compliance issues impacted by the change.
- C. Consolidating or simplifying compliance or reporting requirements:** There is no compliance or reporting issues impacted by the change.
- D. Establishing performance standards that replace design or operational standards required in the proposed rule:** There are no performance standards impacted by the change.
- E. Exempting small entities from all or part of the rule's requirements:** There are no entities impacted by the change.

## SMALL ENTITY ECONOMIC IMPACT STATEMENT

**GENERAL:** The following analysis is submitted in compliance with §28-32-08.1(3) of the NDCC.



Based on our analysis of this rule there is no need to complete a Small Entity Economic Impact Statement as there is not an adverse impact.

**WORKFORCE SAFETY & INSURANCE**  
**ADMINISTRATIVE RULE**  
**FISCAL NOTE**

**ADMINISTRATIVE RULE NO:** 92-01-02-45.1.

**ADMINISTRATIVE RULE TITLE:** Provider responsibilities and billings.

**SUMMARY OF PROPOSED RULE:** Workforce Safety & Insurance has reviewed the proposed administrative rule in conformance with Section 28-32-08.2 of the North Dakota Century Code.

**FISCAL IMPACT:** No impact is anticipated.

**DATE:** June 25, 2015

Subdivision a of Subsection 2 of Section 92-01-02-48 is amended as follows:

**92-01-02-48. Elements of filing.**

**92-01-02-48. Elements of filing.**

2. The elements of filing for an application for workers' compensation benefits are satisfied when the organization has received:

- a. The first report of injury form completed and signed by the employee or the employer, or if the employer's report is deemed admitted pursuant to North Dakota Century Code section 65-01-16 ~~and signed by the provider~~;
- b. Wage verification as requested by the organization, if disability benefits are claimed; and
- c. Appropriate records from the provider necessary to determine the type, nature, extent, and potential work-relatedness of the injury or disability.

**History:** Effective January 1, 1994; amended effective January 1, 1996; April 1, 1997; February 1, 1998; January 1, 2000; July 1, 2006; April 1, 2016.

**General Authority:** NDCC 65-02-08

**Law Implemented:** NDCC 65-02-08

## **REGULATORY ANALYSIS OF PROPOSED RULE**

**Section:** 92-01-02-48.

**Title of Section:** Elements of filing.

**GENERAL:** The following analysis is submitted in compliance with 28-32-08 of the NDCC.

**This rule is not expected to impact the regulated community in excess of \$50,000.**

## **SMALL ENTITY REGULATORY ANALYSIS OF PROPOSED RULE**

**Section:** 92-01-02-48.

**Title of Section:** Elements of filing.

**GENERAL:** The following analysis is submitted in compliance with §28-32-08.1(2) of the NDCC.

### **POSSIBLE WAYS TO MINIMIZE THE ADVERSE IMPACT ON SMALL ENTITIES:**

- A. Establishing less stringent compliance or reporting requirements:** There are no reporting or compliance requirements impacted by the change.
- B. Establishing less stringent schedules or deadlines for compliance or report:** There are no compliance issues impacted by the change.
- C. Consolidating or simplifying compliance or reporting requirements:** There is no compliance or reporting issues impacted by the change.
- D. Establishing performance standards that replace design or operational standards required in the proposed rule:** There are no performance standards impacted by the change.
- E. Exempting small entities from all or part of the rule's requirements:** There are no entities impacted by the change.

## **SMALL ENTITY ECONOMIC IMPACT STATEMENT**

**GENERAL:** The following analysis is submitted in compliance with §28-32-08.1(3) of the NDCC.

Based on our analysis of this rule there is no need to complete a Small Entity Economic Impact Statement as there is not an adverse impact.

**WORKFORCE SAFETY & INSURANCE**  
**ADMINISTRATIVE RULE**  
**FISCAL NOTE**

**ADMINISTRATIVE RULE NO:** 92-01-02-48.

**ADMINISTRATIVE RULE TITLE:** Elements of filing.

**SUMMARY OF PROPOSED RULE:** Workforce Safety & Insurance has reviewed the proposed administrative rule in conformance with Section 28-32-08.2 of the North Dakota Century Code.

**FISCAL IMPACT:** No impact is anticipated.

**DATE:** June 25, 2015

Subsection 4 of Section 92-01-02-50 is amended as follows:

**92-01-02-50. Other states' coverage.**

**92-01-02-50. Other states' coverage.**

4. The organization may pay, on behalf of an employer, any regular workers' compensation benefits the employer is obligated to pay under the workers' compensation laws of a state other than North Dakota, with respect to personal injury, illness, or death sustained as a result of work activities by an employee engaged in covered employment in that state, if the employee or the employee's dependents elect to receive benefits under the other state's laws in lieu of benefits available under the North Dakota Workers' Compensation Act. The term "dependents" includes an employee's spouse. The organization may pay benefits on behalf of an employer but may not act nor be deemed as an insurer, nor may the organization indemnify an employer for any liabilities, except as specifically provided in this section.

The benefits provided by this section are those mandated by the workers' compensation laws of the elected state. This includes benefits compensable under North Dakota Century Code chapters 65-05 and 65-08. Medical benefits provided pursuant to this section are subject to any fee schedule and other limitations imposed by the workers' compensation law of the elected state. The North Dakota fee schedule does not apply to this section.

The organization may reimburse an employer covered by this section for legal costs and for reasonable attorney's fees incurred, ~~at a rate of no more than one hundred forty dollars per hour.~~ Reimbursement will be considered only if the employer is sued in tort in another state by an injured employee or an injured employee's dependents relative to a work-related illness, injury, or death; or if the employer is alleged to have failed to make payment of workers' compensation premium in that other state by the workers' compensation authorities of that state. This reimbursement may be made only if it is determined by the organization or by a court of competent jurisdiction that the employer is subject to the provisions of this section and was not required to purchase workers' coverage in that other state relative to the employment of the injured employee. Attorney fees and costs will be paid as set forth in N.D.A.C. 92-01-02-11.1. Should the other state have an appeal process that differs from the organization, WSI, in its sole discretion, will pay fees consistent with, but may not exceed the fees and caps set forth in N.D.A.C. 92-01-02-11.1.

The organization may not reimburse any legal costs, attorney's fees, nor any other costs to a coemployee sued in tort by an injured employee.

**History:** Effective January 1, 1994; amended effective April 1, 1997; July 1, 2004; July 1, 2006; July 1, 2010; April 1, 2014; April 1, 2016.

**General Authority:** NDCC 65-02-08

**Law Implemented:** NDCC 65-08.1-02, 65-08.1-05

## REGULATORY ANALYSIS OF PROPOSED RULE

**Section:** 92-01-02-50.

**Title of Section:** Other states' coverage.

**GENERAL:** The following analysis is submitted in compliance with 28-32-08 of the NDCC.

**This rule is not expected to impact the regulated community in excess of \$50,000.**

## SMALL ENTITY REGULATORY ANALYSIS OF PROPOSED RULE

**Section:** 92-01-02-50.

**Title of Section:** Other states' coverage.

**GENERAL:** The following analysis is submitted in compliance with §28-32-08.1(2) of the NDCC.

### **POSSIBLE WAYS TO MINIMIZE THE ADVERSE IMPACT ON SMALL ENTITIES:**

- A. Establishing less stringent compliance or reporting requirements:** There are no reporting or compliance requirements impacted by the change.
- B. Establishing less stringent schedules or deadlines for compliance or report:** There are no compliance issues impacted by the change.
- C. Consolidating or simplifying compliance or reporting requirements:** There is no compliance or reporting issues impacted by the change.
- D. Establishing performance standards that replace design or operational standards required in the proposed rule:** There are no performance standards impacted by the change.
- E. Exempting small entities from all or part of the rule's requirements:** There are no entities impacted by the change.

**SMALL ENTITY ECONOMIC IMPACT STATEMENT**

**GENERAL:** The following analysis is submitted in compliance with §28-32-08.1(3) of the NDCC.

Based on our analysis of this rule there is no need to complete a Small Entity Economic Impact Statement as there is not an adverse impact.

**WORKFORCE SAFETY & INSURANCE**  
**ADMINISTRATIVE RULE**  
**FISCAL NOTE**

**ADMINISTRATIVE RULE NO:** 92-01-02-50.

**ADMINISTRATIVE RULE TITLE:** Other states' coverage.

**SUMMARY OF PROPOSED RULE:** Workforce Safety & Insurance has reviewed the proposed administrative rule in conformance with Section 28-32-08.2 of the North Dakota Century Code.

**FISCAL IMPACT:** No material impact is anticipated.

**DATE:** June 25, 2015



Section 92-01-02-53 is amended and subsections 1 through 5 are created as follows:

**92-01-02-53. Workforce safety and insurance scholarship fund -  
Application criteria - Refund.**

**92-01-02-53. Workforce safety and insurance scholarship fund -  
Application criteria - Refund.** An applicant for a workers' compensation scholarship offered under section 65-05-20.1 must complete the application form required by the organization. The form, at a minimum, will require the applicant provide:

1. Name, address, date of birth, sex, Social Security Number;
2. Educational history including transcripts if requested;
3. SAT/ACT scores or other institutionally accepted testing program;
4. Proof of association to the organizational claim leading to the application;
5. Access to receive information regarding other financial aid or assistance; and
6. Any other information the organization requires to administer this program.

The scholarship committee will use the information on the application form to determine which applicants receive the scholarship and may require an applicant to submit additional supporting information. The minimum required grade point average is a two point zero on a four point zero scale, or its equivalent. The organization may award individual scholarships in any amount up to the maximum amounts provided in North Dakota Century Code section 65-05-20.1. Applicants who are awarded the scholarship one year must reapply to receive the scholarship in a subsequent year. If the amount awarded to the applicant is greater than the amount owed the institution over the course of the school year, the excess award must be refunded to the organization. If the applicant who is awarded a scholarship withdraws from the institution and there are scholarship funds to be refunded, the institution shall refund those funds to the organization according to the refund priorities of the institution.

**History:** Effective August 1, 1997; amended effective May 1, 2000; July 1, 2006; April 1, 2016.

**General Authority:** NDCC 65-02-08

**Law Implemented:** NDCC 65-05-20.1

## **REGULATORY ANALYSIS OF PROPOSED RULE**

**Section:** 92-01-02-53.

**Title of Section:** Workforce safety and insurance scholarship fund -  
Application criteria - Refund.

**GENERAL:** The following analysis is submitted in compliance with 28-32-08 of the NDCC.

**This rule is not expected to impact the regulated community in excess of \$50,000.**

## **SMALL ENTITY REGULATORY ANALYSIS OF PROPOSED RULE**

**Section:** 92-01-02-53.

**Title of Section:** Workforce safety and insurance scholarship fund -  
Application criteria - Refund.

**GENERAL:** The following analysis is submitted in compliance with §28-32-08.1(2) of the NDCC.

### **POSSIBLE WAYS TO MINIMIZE THE ADVERSE IMPACT ON SMALL ENTITIES:**

- A. Establishing less stringent compliance or reporting requirements:** There are no reporting or compliance requirements impacted by the change.
- B. Establishing less stringent schedules or deadlines for compliance or report:** There are no compliance issues impacted by the change.
- C. Consolidating or simplifying compliance or reporting requirements:** There is no compliance or reporting issues impacted by the change.
- D. Establishing performance standards that replace design or operational standards required in the proposed rule:** There are no performance standards impacted by the change.
- E. Exempting small entities from all or part of the rule's requirements:** There are no entities impacted by the change.

## **SMALL ENTITY ECONOMIC IMPACT STATEMENT**

**GENERAL:** The following analysis is submitted in compliance with §28-32-08.1(3) of the NDCC.

Based on our analysis of this rule there is no need to complete a Small Entity Economic Impact Statement as there is not an adverse impact.

**WORKFORCE SAFETY & INSURANCE**  
**ADMINISTRATIVE RULE**  
**FISCAL NOTE**

**ADMINISTRATIVE RULE NO:** 92-01-02-53.

**ADMINISTRATIVE RULE TITLE:** Workforce safety and insurance scholarship fund - Application criteria - Refund.

**SUMMARY OF PROPOSED RULE:** Workforce Safety & Insurance has reviewed the proposed administrative rule in conformance with Section 28-32-08.2 of the North Dakota Century Code.

**FISCAL IMPACT:** No impact is anticipated.

**DATE:** June 25, 2015

Section 92-01-04-02 is amended as follows:

**92-01-04-02. Applicability of statutes and other regulations - Risk management program requirements.**

**92-01-04-02. Applicability of statutes and other regulations – Risk management program requirements.** Unless otherwise provided by statute or rule, if the department has elected to provide modified workers' compensation coverage to inmates working in a prison industries work program, North Dakota Century Code title 65 and North Dakota Administrative Code articles 92-01, 92-02, and 92-05 apply. The department shall disclose to the organization the name of any business or entity with whom the department contracts to establish a prison industries work program for purposes of allowing the organization and the risk management fund the opportunity to assess the loss prevention practices of that business or entity to ensure minimal risk to inmates working in a prison industries work program. ~~The department shall annually provide to the organization documentation of excess coverage or reinsurance.~~

**History:** Effective May 1, 1998; amended effective April 1, 2016.

**General Authority:** NDCC 65-02-08, 65-06.2-06

**Law Implemented:** NDCC 65-06.2-04, 65-06.2-05, 65-06.2-06

## REGULATORY ANALYSIS OF PROPOSED RULE

**Section:** 92-01-04-02.

**Title of Section:** Applicability of statutes and other regulations - Risk management program requirements.

**GENERAL:** The following analysis is submitted in compliance with 28-32-08 of the NDCC.

**This rule is not expected to impact the regulated community in excess of \$50,000.**

## SMALL ENTITY REGULATORY ANALYSIS OF PROPOSED RULE

**Section:** 92-01-04-02.

**Title of Section:** Applicability of statutes and other regulations - Risk management program requirements.

**GENERAL:** The following analysis is submitted in compliance with §28-32-08.1(2) of the NDCC.

### **POSSIBLE WAYS TO MINIMIZE THE ADVERSE IMPACT ON SMALL ENTITIES:**

- A. Establishing less stringent compliance or reporting requirements:** There are no reporting or compliance requirements impacted by the change.
  
- B. Establishing less stringent schedules or deadlines for compliance or report:** There are no compliance issues impacted by the change.
  
- C. Consolidating or simplifying compliance or reporting requirements:** There is no compliance or reporting issues impacted by the change.
  
- D. Establishing performance standards that replace design or operational standards required in the proposed rule:** There are no performance standards impacted by the change.
  
- E. Exempting small entities from all or part of the rule's requirements:** There are no entities impacted by the change.

**SMALL ENTITY ECONOMIC IMPACT STATEMENT**

**GENERAL:** The following analysis is submitted in compliance with §28-32-08.1(3) of the NDCC.

Based on our analysis of this rule there is no need to complete a Small Entity Economic Impact Statement as there is not an adverse impact.

**WORKFORCE SAFETY & INSURANCE**  
**ADMINISTRATIVE RULE**  
**FISCAL NOTE**

**ADMINISTRATIVE RULE NO:** 92-01-04-02.

**ADMINISTRATIVE RULE TITLE:** Applicability of statutes and other regulations - Risk management program requirements.

**SUMMARY OF PROPOSED RULE:** Workforce Safety & Insurance has reviewed the proposed administrative rule in conformance with Section 28-32-08.2 of the North Dakota Century Code.

**FISCAL IMPACT:** No impact is anticipated.

**DATE:** June 25, 2015

Section 92-01-04-03 is amended as follows:

**92-01-04-03. Classification of inmates - Costs of administration.**

**92-01-04-03. Classification of inmates - Costs of administration.**

Inmates working in a prison industries work program are in a single classification under the workforce safety and insurance account for state entities under section 65-04-03.1 roughrider industries. The account for this classification will be billed an annual amount equal to the organization's minimum premium charge established under section 92-01-02-20 to cover the expense of issuing coverage. The department shall annually reimburse to the organization all allocated loss adjustment expenses, including all claim benefit costs, and all administrative expenses, incurred in the classification during the preceding year to the extent not covered by any program of excess coverage or reinsurance. The organization will calculate and charge to roughrider industries a cost of claims administration so that the ratio of the administrative charge to allocated loss adjustment expenses in the classification is equal to the ratio of the organization's overall administrative expenses to total allocated loss adjustment expenses.

**History:** Effective May 1, 1998; amended effective April 1, 2016.

**General Authority:** NDCC 65-02-08, 65-06.2-06

**Law Implemented:** NDCC 65-06.2-04, 65-06.2-06

**SMALL ENTITY ECONOMIC IMPACT STATEMENT**

**GENERAL:** The following analysis is submitted in compliance with §28-32-08.1(3) of the NDCC.

Based on our analysis of this rule there is no need to complete a Small Entity Economic Impact Statement as there is not an adverse impact.

**WORKFORCE SAFETY & INSURANCE**  
**ADMINISTRATIVE RULE**  
**FISCAL NOTE**

**ADMINISTRATIVE RULE NO:** 92-01-04-03.

**ADMINISTRATIVE RULE TITLE:** Classification of inmates - Costs of administration.

**SUMMARY OF PROPOSED RULE:** Workforce Safety & Insurance has reviewed the proposed administrative rule in conformance with Section 28-32-08.2 of the North Dakota Century Code.

**FISCAL IMPACT:** No impact is anticipated.

**DATE:** June 25, 2015