

ADMINISTRATIVE RULES COMMITTEE
December 12, 2007

Good afternoon Mr. Chairman, Members of the Committee

My name is Anne Jorgenson Green. I am Staff Counsel with Workforce Safety & Insurance. I submit for your review responses to the questions posed by Legislative Council in their organizational materials. I direct your attention to section 6 of this document which outlines the subject matter of the rules and the reasons for adoption and amendment.

1. Whether the rules resulted from statutory changes made by the Legislative Assembly:

NDAC §92-01-02-11. Attorneys

Answer – No

NDAC §92-01-02-11.1. Attorney's Fees

Answer – No

NDAC §92-01-02-22.1. Out-of-Country Injuries

Answer – No

NDAC §92-01-02-29.1. Medical necessity

Answer – No

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

Answer – No

NDAC §92-01-02-43. Home nursing care

Answer – No

NDAC §92-01-02-45.1. Provider responsibilities and billings

Answer – No

NDAC §92-01-02-57. Medical expense assessments

Answer – No

NDAC §92-05-02-03. Eligibility – Billing

Answer – No

NDAC §92-05-02-07. Alternative Risk Management Programs

Answer – No

NDAC §92-05-03-01. Grant programs – Purpose

Answer – No

NDAC §92-05-03-04. Transitional return-to-work program

Answer – No

NDAC §92-05-03-05. Ergonomic program

Answer – No

NDAC §92-05-03-06. Hazard Elimination Learning Program

Answer – No

NDAC §92-05-03-07. Safety Training and Education Program

Answer – No

2. Whether the rules are related to any federal statute or regulation.

Answer – No

3. A description of the rulemaking procedure followed in adopting the rules, e.g., they type of public notice given and the extent of public hearings held on the rules.

Answer – For these rules, WSI followed the provisions of NDCC Chapter 28-32. As required, both a full notice and abbreviated notice of the intent to amend and create were accomplished and are attached. The full notice was mailed to Legislative Council on August 17, 2007, and the abbreviated notice was published in each official county newspaper in the state (NDCC §28-32-10). Attached is a copy of the letter submitted to the Legislative Council and a copy of the letter submitted to the North Dakota Newspaper Association requesting publication, along with a copy of the affidavit of publication. The public hearing was held on September 25, 2007, in the Board Room at WSI's Bismarck offices and teleconferenced to the conference room in WSI's Fargo office. The hearing was transcribed and that transcript is on file with WSI. The hearing record was held open for 10 days after the hearing for public comments. WSI did not receive any comments at the public hearing or any written comments during the 10 day comment period. A request for opinion as to legality of the proposed amendments was made to the Attorney General on October 10, 2007, and the opinion that the amendments are in compliance with NDCC Chapter 28-32 was issued on November 8, 2007. Publication of the amendments was requested of Legislative Council on November 14, 2007. Copies of all referenced documents, with the exception of the hearing transcript are attached.

4. Whether any person has presented a written or oral concern, objection, or complaint for agency consideration with regard to these rules.

Answer – No comments, written or oral, were received.

5. The approximate cost of giving public notice and holding any hearing on the rules and the approximate cost (not including staff time) of developing and adopting the rules.

Answer – Cost of Public Notice	\$1,797.00
Cost of Hearing (transcript)	\$ 67.00

6. An explanation of the subject matter of the rules and the reasons for adopting those rules.

Answer – NDAC §92-01-02-11 relates to attorney representation of claimants. The change was made to simplify the notice of legal representation for claimant's attorneys.

NDAC §92-01-02-11.1 changes the hourly rate for law students representing injured workers from \$60 dollars to \$70 dollars and changes the hourly travel rate for paralegals from \$30 dollars to \$35. An additional change in this section is in accordance with a ruling by the North Dakota Supreme Court in Ash v Traynor, 609 N.W.2d 96 (N.D. 2000).

NDAC §92-01-02-22.1 Out of Country Injuries. This is a proposed new section to the Code. This rule outlines when the Organization may write coverage for exposures outside this country.

NDAC §92-01-02-29.1(3)(b) This amendment allows WSI to review, allow and pay for Synvisc and other hyaluronic acid injections.

NDAC §92-01-02-29.1(3)(e) & NDCC §92-01-02-29.1(3)(f) This proposed amendment removes Vertebral axial decompression therapy (Vax-D treatment) and Intradiscal electrothermal annuloplasty (IDET) from the list of treatments WSI will pay.

NDAC §92-01-02-34(5)(d) This proposed amendment requires preauthorization for physical therapy and occupational therapy services when those services begin 90 days after the surgery date.

NDAC §92-01-02-34(5)(e) This proposed amendment adopts the industry standards for electromyographers.

NDAC §92-01-02-34(9) This proposed amendment permits WSI's Medical Director 72 hours to respond to complex utilization review requests.

NDAC §92-01-02-34(12) This proposed amendment requires WSI to respond within 30 days to a provider for a retrospective review for possible payment. Previously, there was no deadline for WSI to respond.

NDAC §92-01-02-43(6) This proposed change will adopt classifications for payment of nursing care that are followed by The North Dakota Department of Human Services in order to provide reimbursement which more fairly reflects the daily care specific to each injured worker.

NDAC §92-01-02-45.1 These proposed amendments to subsections (2), (3), (3)(h), & (3)(i) reflect necessary terminology updates, and no substantive effects are intended.

NDAC §92-01-02-45.1(14) This proposed amendment changes the manner in which hot and cold packs are reimbursed.

NDAC §92-01-02-45.1(15) This proposed amendment provides that occupational therapy, physical therapy and chiropractic treatment will be handled uniformly in regard to the number of reimbursable modalities per visit.

NDAC §92-01-02-57 Medical Expense Assessments. This proposed amendment changes the days within which to file a claim for injury from 10 to 14 days to avoid the \$250 medical expense assessment. This change makes 14 days the standard in all appealable decisions concerning medical expense assessments.

NDAC §92-05-02-03. Eligibility – Billing. This proposed change concerns WSI's grant programs and provides an employer the opportunity to elect participation in an alternative program. Additionally, the proposed changes to this section permit the organization to pay an employer discount as a premium credit or a cash payment.

NDAC §92-05-02-07. Alternative Risk Management Programs. This proposed new section to the Admin Code permits the Organization to continue to develop new premium calculation programs.

NDAC §92-05-03-01. Grant programs – Purpose. This proposed change permits the Organization to consider all potential grant opportunities.

NDAC §92-05-03-04. Transitional return- to-work program. This proposed change in language acknowledges that this program is more than a grant program and contemplates onsite assessment of work spaces, development of job descriptions and transitional work for injured employees. There may or may not be grant funds associated with an award under this section.

NDAC §92-05-03-05. Ergonomic Program. The new section reflects the Organization's commitment to continued development in identified areas of risk. Here, the ergonomic program seeks to identify those employers whose workplaces require ergonomic analysis and funding.

NDAC §92-05-03-06. Hazard Elimination Learning Program. This proposed new section outlines the HELP Grant program in the Administrative Code.

NDAC §92-05-03-07. Safety, Training and Education Program. This proposed new section outlines WSI's newest grant program for training and education.

7. Whether a regulatory analysis was required by North Dakota Century Code (NDCC) Section 28-32-08 and whether that regulatory analysis was issued. Please provide a copy.

Answer – No request for regulatory analysis was filed by the Governor or other agency and none of the amendments were identified as having an impact on the regulated community in excess of \$50,000.

8. Whether a regulatory analysis or economic impact statement of impact on small entities was required by NDCC Section 28-32-08.1 and whether that regulatory analysis or impact statement was issued. Please provide copies.

Answer – The analysis was completed pursuant to statute with no impact noted.
Copies of the Small Entity Regulatory Analysis and Small Entity Economic Impact Statement are attached.

9. Whether a constitutional takings assessment was prepared as required by NDCC Section 28-32-09. Please provide a copy if one was prepared.

Answer – None were required.

10. If these rules were adopted as emergency (interim final) rules under NDCC Section 28-32-03, provide statutory grounds from that section for declaring the rules to be an emergency and the facts that support that declaration and provide a copy of the Governor's approval of the emergency status of the rules.

Answer – These amendments were not adopted as interim final rules.