

Introduced by

1 A BILL for an Act to create and enact four new sections to title 65 of the North Dakota Century
2 Code, relating to workers' compensation coverage of prescriptive drugs as part of pain therapy;
3 and to provide for application.

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

5 **SECTION 1.** A new section to title 65 of the North Dakota Century Code is created and
6 enacted as follows:

7 **General opioid therapy acute stage coverage.**

- 8 1. This section applies to an injured employee with pain resulting from a
9 nonmalignant compensable condition or to an injured employee receiving pain
10 therapy for another nonterminal compensable condition.
11 2. The organization does not cover an opioid therapy prescribed on an outpatient
12 basis extending beyond thirty days following an initial injury or initial discharge or
13 following a subsequent operative procedure, unless the prescriber submits an
14 objectively supportable required prescriber's treatment plan. The organization
15 does not cover an opioid therapy prescribed on an outpatient basis extending
16 beyond six weeks following an initial injury or initial discharge or following a
17 subsequent operative procedure, unless the prescriber prequalifies the injured
18 employee for long-term opioid therapy coverage
19 3. Qualification for coverage beyond the coverage provided for under subsection 2
20 requires prior authorization from the organization. Authorization requests must
21 include documentation as required by the organization.

22 **SECTION 2.** A new section to title 65 of the North Dakota Century Code is created and
23 enacted as follows:

24 **Long-term opioid therapy coverage.**

- 1 1. This section applies to an injured employee with pain resulting from intractable
2 chronic nonmalignant, nonterminal pain. As used in this section, intractable
3 chronic nonmalignant, nonterminal pain may be referred to as "chronic pain" and is
4 pain persisting beyond the expected normal healing time for an injury, for which
5 traditional medical approaches have been unsuccessful.
- 6 2. This section does not apply to an injured employee with pain resulting from a
7 malignant process, such as cancer, or when the pain therapy is aimed at relieving
8 intractable pain and suffering in the terminally ill when other measures fail, if the
9 diagnosis is a compensable condition.
- 10 3. Opioid maintenance analgesia therapy may be provided if the therapy results in
11 greater function, allows an injured employee to resume working, or improves pain
12 control with limited side effects for chronic pain patients.
- 13 4. A candidate for opioid maintenance analgesia therapy:
 - 14 a. Must have an established diagnosis that is consistent with chronic pain;
 - 15 b. Must have been nonresponsive to non-opioid treatment;
 - 16 c. May not be using illegal drugs or abusing alcohol; and
 - 17 d. Must be a reliable injured employee who is known to the prescriber and is
18 expected to be compliant with the treatment protocol.
- 19 5. The organization may not cover long-term opioid maintenance analgesia therapy
20 for an injured employee who meets the criteria for the diagnosis of chronic pain
21 syndrome and who has persistent pain out of proportion to physical findings or with
22 no demonstrable lessening.
- 23 6. If an injured employee has a personal history of addiction, poor impulse control, a
24 comorbid psychiatric disorder, or poor response to opioids in the past for a similar
25 condition, organization coverage of long-term opioid maintenance analgesia
26 therapy requires prior authorization from the organization. An authorization
27 request under this subsection must include documentation as required by the
28 organization.
- 29 7. Coverage of continuation of long-term opioid maintenance analgesia therapy is
30 subject to the following restrictions:
 - 31 a. Low to moderate dose opioid therapy must provide at least partial analgesia.

- 1 b. Every thirty days during the first three months and every sixty days during the
2 next six months, progress of the therapy must be documented on forms
3 provided by the organization.
- 4 c. Annually, the organization shall evaluate every injured employee on long-term
5 opioid maintenance analgesia therapy to determine the need for continuing
6 the therapy.
- 7 d. At the prescriber's organization's request, every injured employee on
8 long-term opioid maintenance analgesia therapy is subject to random drug
9 screens for the presence of both prescribed and illegal substances. Failure of
10 the screen or of timely compliance with the request results in termination of
11 opioid maintenance analgesia therapy.
- 12 e. A treatment agreement between the patient and the prescriber restricting
13 treatment access and limiting prescriptions to an identified single physician
14 must be in place.

15 **SECTION 3.** A new section to title 65 of the North Dakota Century Code is created and
16 enacted as follows:

17 **Prescribers of long-term opioid therapy coverage.**

- 18 1. In the case of prescription of long-term opioid maintenance analgesia therapy, the
19 organization may require:
- 20 a. Upon request of the organization, the prescribing physician shall immediately
21 administer a drug screen that will detect the presence of prescribed and
22 unprescribed medications.
- 23 b. Upon request of the organization or the injured employee, the prescriber shall
24 provide a treatment plan that addresses concerns of the organization and of
25 the injured employee.
- 26 c. Upon request of the organization, the prescriber shall reduce the prescription
27 levels or provide objective justification why such a reduction is not in the
28 injured employee's best interest.
- 29 d. The prescriber shall provide information to the injured employee regarding
30 chemical dependency programs.

1 e. The prescriber shall provide the organization and the injured employee with a
2 titration plan for the reduction and possible discontinuation of the opioid
3 maintenance analgesia therapy.

4 2. If the prescriber or injured employee does not comply with one or more of the
5 requirements of this section or if the probability of imminent harm to the injured
6 employee is high, after the organization provides reasonable notification to the
7 injured employee the organization may discontinue coverage of the opioid
8 maintenance analgesia therapy.

9 **SECTION 4.** A new section to title 65 of the North Dakota Century Code is created and
10 enacted as follows:

11 **Prescriber treatment plans for treatment of nonmalignant pain with opioids.**

12 1. Within the first thirty days of treatment of an injured employee under an opioid
13 maintenance analgesia therapy, the prescriber shall submit a written treatment
14 plan to the organization. The written treatment plan must include the following:

15 a. Time-limited goals, including a time schedule to wean the injured employee
16 from opioid use;

17 b. Consideration of relevant prior medical history;

18 c. A summary of conservative care rendered to the injured employee which
19 focuses on return to work;

20 d. A statement of why prior or alternative conservative measures may have
21 failed or are not appropriate as sole treatment;

22 e. A summary of any consultations that have been obtained, particularly those
23 that have addressed factors that may be barriers to recovery;

24 f. A screen for factors that may significantly increase the risk of abuse or
25 adverse outcomes, such as a history of alcohol or other substance abuse; and

26 g. An opioid treatment agreement that has been signed by the injured employee
27 and the prescriber. This agreement must be renewed every six months. The
28 treatment agreement must outline the risks and benefits of opioid use, the

29 conditions under which opioids will be prescribed, the prescriber's need to
30 document overall improvement in pain and function, and the injured

31 employee's responsibilities.

1 2. If the prescriber or injured employee does not comply with one or more of the
2 requirements of this section or if the probability of imminent harm to the injured
3 employee is high, after the organization provides reasonable notification to the
4 injured employee the organization may discontinue coverage of the opioid
5 maintenance analgesia therapy.

6 **SECTION 5. APPLICATION.** Regardless of the date of injury, this Act applies to all
7 workers' compensation claims on or after the effective date of this Act.