

Introduced by

1 A BILL for an Act to create and enact a new section to chapter 65-05.1 of the North Dakota
2 Century Code, relating to workers' compensation rehabilitation services pilot programs; to
3 amend and reenact section 65-05.1-06.1 of the North Dakota Century Code, relating to
4 expansion of workers' compensation rehabilitation services; and to provide for a report to the
5 legislative council.

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

7 **SECTION 1. AMENDMENT.** Section 65-05.1-06.1 of the North Dakota Century Code
8 is amended and reenacted as follows:

9 **65-05.1-06.1. Rehabilitation award.**

- 10 1. Within sixty days of receiving the final vocational consultant's report, the
11 organization shall issue an administrative order under chapter 28-32 detailing the
12 employee's entitlement to disability and vocational rehabilitation services.
- 13 2. If the appropriate priority option is short-term or long-term training, the vocational
14 rehabilitation award must be within the following terms:
- 15 a. For the employee's lost time, and in lieu of further disability benefits, the
16 organization shall award a rehabilitation allowance. The rehabilitation
17 allowance must be limited to the amount and purpose specified in the award,
18 and must be equal to the disability and dependent benefits the employee was
19 receiving, or was entitled to receive, prior to the award.
- 20 b. The rehabilitation allowance must include an additional twenty-five percent
21 when it is necessary for the employee to maintain two households, when it is
22 necessary for the employee to maintain two households and the employee
23 elects to commute to and from school on a daily basis rather than maintain a
24 second household and the distance from the employee's residence to the

1 school or training institution is at least thirty miles, or when the employee
2 meets other criteria established by the organization by rule.

3 c. The rehabilitation allowance must be limited to one hundred four weeks
4 except in cases of catastrophic injury, in which case additional rehabilitation
5 benefits may be awarded in the discretion of the organization. Catastrophic
6 injury includes:

7 (1) Paraplegia; quadriplegia; severe closed head injury; total blindness in
8 both eyes; or amputation of an arm proximal to the wrist or a leg
9 proximal to the ankle, caused by the compensable injury, which renders
10 an employee permanently and totally disabled without further vocational
11 retraining assistance; or

12 (2) Those employees the organization so designates, in its sole discretion,
13 provided that the organization finds the employee to be permanently
14 and totally disabled without further vocational retraining assistance.

15 There is no appeal from an organization decision to designate, or fail to
16 designate, an employee as catastrophically injured under this
17 subsection.

18 d. Notwithstanding the one hundred four-week limit of subdivision c to facilitate
19 the completion of a retraining program, the organization may award a
20 rehabilitation extension allowance that may not exceed twenty weeks.

21 e. The rehabilitation award must include the cost of books, tuition, fees, and
22 equipment, tools, or supplies required by the educational institution. The
23 award may not exceed the cost of attending a public college or university in
24 the state in which the employee resides, provided an equivalent program
25 exists in the public college or university.

26 e. f. If the employee successfully concludes the rehabilitation program, the
27 organization may make, in its sole discretion, additional awards for actual
28 relocation expenses to move the household to the locale where the claimant
29 has actually located work.

30 f. g. If the employee successfully concludes the rehabilitation program, the
31 organization may make, in its sole discretion, an additional award, not to

1 exceed two months' disability benefit, to assist the employee with work
2 search.

3 ~~g.~~ h. If the employee successfully concludes the rehabilitation program, the
4 employee is not eligible for further vocational retraining or total disability
5 benefits unless the employee establishes a significant change in medical
6 condition attributable to the work injury which precludes the employee from
7 performing the work for which the employee was trained, or any other work for
8 which the employee is suited. The organization may waive this section in
9 cases of catastrophic injury defined by subdivision c.

10 ~~h.~~ i. If the employee successfully concludes the rehabilitation program, the
11 employee remains eligible to receive partial disability benefits, as follows:

- 12 (1) Beginning the date at which the employee completes retraining, until
13 the employee acquires and performs substantial gainful employment,
14 the partial disability benefit is sixty-six and two-thirds percent of the
15 difference between the injured employee's average weekly wages
16 before the injury, and the employee's wage-earning capacity after
17 retraining, as measured by the average wage in the employee's
18 occupation, according to criteria established by job service North
19 Dakota in its statewide labor market survey, or such other criteria the
20 organization, in its sole discretion, deems appropriate. The average
21 weekly wage must be determined on the date the employee completes
22 retraining. The benefit continues until the employee acquires
23 substantial gainful employment.
- 24 (2) Beginning the date at which the employee acquires substantial gainful
25 employment, the partial disability benefit is sixty-six and two-thirds
26 percent of the difference between the injured employee's weekly wages
27 before the injury, and the employee's wage-earning capacity after
28 retraining, as determined under paragraph 1, or the employee's actual
29 postinjury wage earnings, whichever is higher.

- (3) The partial disability benefit payable under paragraphs 1 and 2 may not exceed the limitation on partial disability benefits contained in section 65-05-10.
- (4) The partial disability benefits paid under paragraphs 1 and 2 may not together exceed one year's duration.
- (5) For purposes of paragraphs 1 and 2, "substantial gainful employment" means full-time bona fide work, for a remuneration, other than make-work. "Full-time work" means employment for twenty-eight or more hours per week, on average.
- (6) The organization may waive the one-year limit on the duration of partial disability benefits, in cases of catastrophic injury under subdivision c.
3. If the appropriate priority option is return to the same or modified position, or to a related position, the organization shall determine whether the employee is eligible to receive partial disability benefits pursuant to section 65-05-10. In addition, the organization, when appropriate, shall make an additional award for actual relocation expenses to move the household to the locale where the claimant has actually located work.
4. If the appropriate priority option is subdivision e or f of subsection 4 of section 65-05.1-01 or subsection 6 of section 65-05.1-01, to assist with work search the organization may award an additional award. The additional award under this subsection is awarded at the organization's sole discretion and may not exceed an amount equal to two months of the employee's total disability benefits calculated under section 65-05-09.

SECTION 2. A new section to chapter 65-05.1 of the North Dakota Century Code is created and enacted as follows:

Rehabilitation services pilot programs - Reports - Data collection.

1. The organization shall implement a system of pilot programs to allow the organization to assess alternative methods of providing rehabilitation services. A pilot program may address one or more of the organization's comprehensive rehabilitation services, including vocational, medical, psychological, economic, and social rehabilitation services. The goal of a pilot program must be to improve the

1 outcome of the rehabilitation services offered by the organization to assist the
2 employee in making adjustments necessitated from the employee's injury and to
3 improve the effectiveness of vocational rehabilitation services in returning an
4 employee to substantial gainful employment. Notwithstanding laws to the contrary,
5 a pilot program may address a broad range of approaches, including collaborative
6 efforts between the organization and the employee through which there are
7 variances from the rehabilitation services hierarchy; return-to-work trial periods
8 during which cash benefits are suspended; intensive job search assistance;
9 recognition of and focused services for injured employees who are at risk; and
10 coordination of services of other state agencies. If a pilot program utilizes
11 coordination of services of other state agencies, such as job service North Dakota,
12 department of human services, or department of public instruction, the organization
13 shall consult with the state agency in establishing the relevant portions of the pilot
14 program and the state agency shall cooperate with the organization in
15 implementing the pilot program.

16 2. Each pilot program must include a cost-benefit analysis; a strengths, weaknesses,
17 opportunities, and threats analysis; and employer and employee satisfaction
18 information. The organization shall include in its annual report to the legislative
19 council's legislative audit and fiscal review committee under section 65-02-03.3:

- 20 a. Preliminary reports on future pilot programs;
21 b. Status reports on current pilot programs; and
22 c. Final reports on completed pilot programs, including recommendations and
23 proposed legislative changes necessary to implement recommendations.

24 3. The organization shall collect data regarding the status of claims that receive
25 rehabilitation services. The data must include:

- 26 a. The stage of rehabilitation services at which closure occurs;
27 b. The reason for the closure; and
28 c. Followup data to determine the effectiveness of job searches and returns to
29 work, including postinjury earnings.