

ADMINISTRATIVE RULES COMMITTEE
March 14, 2012

Good Afternoon Mr. Chairman, Members of the Committee:

My name is Rob Forward. I am a staff attorney with Workforce Safety and 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 and the reasons for these proposed amendments.

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

ANSWER - Three of the eighteen rules resulted from statutory changes.

The amendment to Administrative Rule 92-01-02-25, regarding permanent impairment evaluations, House Bill 1055, sponsored by the Workers' Compensation Review Committee during the 2011 Legislative Assembly.

The creation of Administrative Rule 92-01-02-29.4, regarding home modifications, House Bill 1453, sponsored by Representative Andrew Maragos and Senator Oley Larsen during the 2011 Legislative Assembly.

The creation of Administrative Rule 92-01-02-53.1, regarding a vocational rehabilitation grant program, House Bill 1050, sponsored by the Workers' Compensation Review Committee during 2011 Legislative Assembly.

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., the type of public notice given and the extent of public hearings held on the rules.

ANSWER - For the creation, amendment, and repeal of these rules, WSI followed the provisions of N.D.C.C. Chapter 28-32. As required, both a full notice and an abbreviated notice of the intent to create, amend, and repeal were accomplished. The full notice was mailed to Legislative Council on June 7, 2011, and the abbreviated notice was published in each official county newspaper in the state (N.D.C.C. § 28-32-10). A letter was submitted to the Legislative Council and a letter was submitted to the North Dakota Newspaper Association requesting publication. The N.D. Newspaper Association issued an affidavit of publication to WSI. The public hearing was held on July 14, 2011, in the Board Room at WSI's Bismarck office. The hearing was transcribed and that transcription is on file with WSI. During the

public hearing, Glen Baltrusch submitted written comments, and Sebald Vetter submitted oral comments. The hearing record was held open for ten days after the hearing. No written comments were received during the subsequent 10-day comment period.

WSI's written record of consideration of the public comments was submitted to the Attorney General on September 2, 2011, and a request for opinion as to legality of the proposed rules was made to the Attorney General on September 2, 2011. The opinion that the rule creations, amendments, and repeals are in compliance with N.D.C.C. Chapter 28-32 was issued on November 23, 2011. Publication of the rules was requested of Legislative Council on December 9, 2011.

Copies of all documents referenced in this response were provided to Legislative Council.

4. Whether any person has presented a written or oral concern, objection, or complaint for agency consideration with regard to these rules. If so, describe the concern, objection, or complaint and the response of the agency, including any change made in the rules to address the concern, objection, or complaint. Please summarize the comments of any person who offered comments at the public hearings on these rules.

ANSWER - Yes, a written comment received at public hearing and an oral comment received at public hearing. A copy of the written comment and a summary of the oral comment were provided to Legislative Council. A copy of the written comment, a summary of the oral comment, a copy of WSI's consideration of the public comments were provided to the Attorney General's Office.

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	\$2,105.72
	Cost of Hearing (transcript)	145.00
	Cost of expert opinion re: rules	<u>\$ 208.52</u>
	TOTAL COST	\$2,459.24

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

1. The purpose of the proposed amendment to Administrative Code Section 92-01-01-01, relating to organization and functions, is to update current functional position

titles. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

2. The purpose for the creation of Administrative Code Section 92-01-02-02.4, pertaining to a treating doctor's opinion, is to clarify North Dakota Century Code section 65-05-08.3. The proposed creation is not expected to have an impact on the regulated community in excess of \$50,000.

3. The purpose of the proposed amendment to Administrative Code Section 92-01-02-11.1, relating to attorney's fees, is to increase the hourly payment to claimant counsel and to clarify when an administrative hearing is called to order. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

4. The purpose of the proposed amendment to Administrative Code Section 92-01-02-12, relating to travel to medical treatment, is to clarify the calculation for mileage reimbursement as found in North Dakota Century Code section 65-05-28(2). The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

5. The purpose of the proposed amendment to Administrative Code Section 92-01-02-24, relating to rehabilitation services, is to clarify the calculation for mileage reimbursement for travel to an adult learning center; and to allow the original vendor receipt when appropriate. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

6. The purpose of the proposed amendment to Administrative Code Section 92-01-02-25, relating to permanent impairment evaluations, is to adopt the provisions of legislation passed by the 62nd Legislative Assembly, House Bill 1055. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

7. The purpose of the proposed amendment to Administrative Code Section 92-01-02-29.1, relating to medical necessity, is to identify procedures and treatment not payable by WSI. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

8. The purpose of the proposed amendment to Administrative Code Section 92-01-02-29.3, relating to a motor vehicle purchase or modification, is to clarify and define the requirements necessary for vehicle purchase or modification. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

9. The purpose for the creation of Administrative Code Section 92-01-02-29.4, relating to home modifications, is the result of legislation passed by the 62nd Legislative Assembly, House Bill 1453. The proposed creation is not expected to have an impact on the regulated community in excess of \$50,000.

10. The purpose of the proposed amendment to Administrative Code Section 92-01-02-33, relating to utilization review and quality assurance, is to allow for pre-operative psychosocial screens and psychological evaluations prior to the authorization of reimbursement for surgery. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

11. The purpose of the proposed amendment to Administrative Code Section 92-01-02-34, relating to treatment requiring authorization, is to clarify when doctor's orders are needed for medical equipment and to clarify requirements for various modalities of treatment. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

12. The purpose of the proposed amendment to Administrative Code Section 92-01-02-45.1, relating to provider responsibilities and billings, is to clarify those items which may impact provider billings. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

13. The purpose of the proposed amendment to Administrative Code Section 92-01-02-49, relating to determination of employment, is to clarify who falls into the category of an independent contractor. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

14. The purpose for the creation of Administrative Code Section 92-01-02-53.1, relating to a vocational rehabilitation grant program, is a result of legislation passed by the 62nd Legislative Assembly, House Bill 1050. The new section will give the agency eligibility guidance when administering the program. The proposed creation is not expected to have an impact on the regulated community in excess of \$50,000.

15. The purpose of the proposed amendment to Administrative Code Section 92-01-02-56, relating to retrospective rating program, is to allow the employer to choose one maximum liability limit per retrospectively rated period. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

16. The purpose of the proposed amendment to Administrative Code Section 92-01-03-04, relating to a procedure for dispute resolution, is to update a job title. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

17. The purpose of the proposed amendment to Administrative Code Section 92-05-02-03, relating to eligibility for the risk management program, is to remove the title safety outreach program of which the rule was repealed and replaced with the risk management program. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

18. The purpose for the repeal of Administrative Code Section 92-05-02-06, is because the safety outreach program has been redesignated. The proposed repeal

is not expected to have an impact on the regulated community in excess of \$50,000.

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

ANSWER - No impact in excess of \$50,000 is expected. A copy of each Regulatory Analysis was provided to Legislative Council.

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 - No adverse impact is expected. A copy of each Small Entity Regulatory Analysis and Small Entity Economic Impact Statement was provided to Legislative Council.

9. Whether these rules have a fiscal effect on state revenues and expenditures, including any effect on funds controlled by your agency. If so, please provide a fiscal note.

ANSWER - No significant financial impact is expected. A copy of each Fiscal Note was provided to Legislative Council.

10. Whether a constitutional takings assessment was prepared as required by North Dakota Century Code Section 28-32-09. Please provide a copy if one was prepared.

ANSWER - None was required.

11. If these rules were adopted as emergency (interim final) rules under NDCC Section 28-32-03, provide the 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 rules were not adopted under the emergency provision.