



North Dakota Legislative Council

Prepared for the Workers' Compensation Review Committee
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WORKERS' COMPENSATION REVIEW COMMITTEE - BACKGROUND MEMORANDUM

North Dakota Century Code Section 54-35-22 ([Appendix A](#)) established the Workers' Compensation Review Committee. Under this law, the committee is directed to review workers' compensation claims brought to the committee and determine whether changes should be made to the workers' compensation laws. Section 54-35-22 provides for a six-member committee comprised of two members of the Senate appointed by the Senate Majority Leader, one member of the Senate appointed by the Senate Minority Leader, two members of the House of Representatives appointed by the House Majority Leader, and one member of the House of Representatives appointed by the House Minority Leader.

In addition to the statutory directive to review workers' compensation claims, the committee has five statutory directives:

- Section 54-57-09 ([Appendix B](#)) requires the committee receive a quarterly report from the Office of Administrative Hearings and Workforce Safety and Insurance (WSI) on statistical information regarding results under the case processing standards and policies;
- Section 65-02-30 ([Appendix C](#)) requires the committee select up to four elements to be included in the quadrennial performance evaluation of WSI;
- Section 65-02-30 requires the committee receive the performance evaluation report and review any actions taken resulting from the performance evaluation report;
- Section 65-03-05 ([Appendix D](#)) requires the committee to receive a biennial report from WSI regarding compiled data relating to safety grants issued under chapter 65-03; and
- Section 65-05.1-06.3 ([Appendix E](#)) directs WSI include in an annual report to the committee, status reports in accordance with Section 65-01-19 ([Appendix F](#)) on WSI's current rehabilitation services pilot programs and pilot programs completed within the previous 12 months.

CLAIM REVIEW General Background

Workers' compensation laws in North Dakota are found primarily in North Dakota Century Code Title 65. The administrative rules adopted by WSI are found in North Dakota Administrative Code Title 92. Article X, Section 12, of the Constitution of North Dakota, specifically addresses the state's workers' compensation agency, providing for a constitutional continuing appropriation of the workers' compensation fund for the purpose of paying workers' compensation benefits.

North Dakota Century Code Section 54-35-22 established the Workers' Compensation Review Committee effective August 1, 2005, and the law originally was set to expire August 1, 2007. The expiration clause was repealed in 2007. The law requires the committee to meet once each calendar quarter unless there is no claim to review. The committee operates according to the laws and procedures governing the operation of Legislative Management interim committees.

Interim History

The following is a history of the committee's activities relating to claim reviews conducted under Section 54-35-22 and legislative recommendations made:

| Interim | Claims Reviewed | Bills Recommended |
|---------|-----------------|-------------------|
| 2005-06 | 11 | 3 |
| 2007-08 | 15 | 9 |
| 2009-10 | 4 | 7 |
| 2011-12 | 2 | 4 |
| 2013-14 | 1 | 2 |
| 2015-16 | 7 | 1 |
| 2017-18 | 10 | 0 |
| 2019-20 | 12 | 1 |

The committee typically begins the interim by establishing a procedure and protocol for conducting its charge of reviewing claims, using the protocol and application packet ([Appendix G](#)) used during the previous interim as a model. In the past, the application packet has included a cover letter explaining the application process and eligibility requirements, a copy of Section 54-35-22, a "Release of Information and Authorization" form, and a "Review Issue Summary" form.

To notify the public of the committee's activities and to solicit injured employees to submit their claims for review, the committee has published the application packet on the legislative branch website.

During past interims, the committee adopted the following procedure to determine eligibility for a claim review and to prepare the injured employee for the committee meeting at which the claim is reviewed:

1. An injured employee would submit to the Legislative Council office a completed "Release of Information and Authorization" form and a "Review Issue Summary" form on which the applicant summarized the issues the applicant wanted the committee to review.
2. Upon receipt of a completed application, the Legislative Council staff forwarded a copy of the application information to an assigned ombudsman at WSI who reviewed the application to make a recommendation regarding whether:
 - a. The applicant was an injured employee or the survivor of an injured employee;
 - b. The workers' compensation claim was final; and
 - c. All of the administrative and judicial appeals were exhausted or the period for appeal had expired.
3. Following this review, the ombudsman contacted the Legislative Council staff to provide a recommendation regarding eligibility for review. Upon receipt of this recommendation, the Legislative Council staff contacted the committee Chairman to make a determination of eligibility.
4. Upon a determination of eligibility, the Legislative Council staff contacted the injured employee and the ombudsman to begin the case preparation.
5. Regardless of whether the injured employee accepted the assistance of the ombudsman, the ombudsman prepared a summary of the case to present at the committee meeting.
6. At the injured employee's discretion, the ombudsman assisted the applicant in organizing the issues for review.
7. The ombudsman prepared a case review packet that was included in a binder of information prepared for each committee member, Legislative Council staff, and the WSI representative. Although these binders were distributed at each committee meeting, the binders remained the property of WSI and were returned at the completion of each committee meeting.
8. Before each committee meeting at which a claim was to be reviewed, the ombudsman met with Legislative Council staff to review the case summary and workers' compensation issues being raised.
9. Upon receipt of these workers' compensation issues, Legislative Council staff notified a WSI representative of the identity of the injured employee who would be appearing before the committee for a case review, and as appropriate, the basic issues being raised by the injured employee.

In the past, the committee has followed the following committee meeting procedure:

1. Committee members had an opportunity before and during the committee meeting to review the binder of claim review information and to review the injured employee's WSI electronic records.
2. The ombudsman summarized the injured employee's case.

3. The injured employee presented the workers' compensation issues brought forward for review. At the discretion of the injured employee, these issues were presented by the injured employee, a representative of the injured employee, or both of these individuals.
4. One or more representatives of WSI commented on the workers' compensation issues raised.
5. Interested persons were invited to comment on the workers' compensation issues raised as part of the claim review.
6. The committee members had an opportunity to discuss the issues raised.

An injured employee typically is allotted 1 hour during which the initial review is conducted. Following the initial review, the committee retains the authority to continue to discuss issues raised as part of the review. The committee may request additional information on specific issues and reviews this information at one or more future meetings.

During a committee meeting at which a claim is reviewed, a WSI representative is available to electronically access the injured employee's WSI records.

QUADRENNIAL PERFORMANCE EVALUATION

Under Section 65-02-30, once every 4 years, the Director of WSI is required to request the State Auditor to select a firm to complete a performance evaluation of the functions and operations of WSI during that evaluation period. The firm's report must contain recommendations for departmental improvement or an explanation of why no recommendations are being made. The evaluation report and any action taken must be presented to the committee. The committee may select up to four elements to be evaluated in the performance evaluation and is required to inform the State Auditor of the selected items to be evaluated. The State Auditor is required to include the elements selected by the committee in the performance evaluation. The State Auditor also may select up to four elements to be evaluated.

During the 2017-18 interim, the State Auditor selected the following two elements to be included in the performance evaluation:

- Identifying and evaluating WSI's risk management and loss control programs; and
- Performing followup work of specified recommendations from the 2014 report.

The committee selected the following element to be included in the performance evaluation:

- WSI's historical management of prescribed opioids, including rates and usage.

APPROACH

At the initial meeting of the Workers' Compensation Review Committee, the committee should consider approving an application packet and protocol to begin the claim review application process. Once the claim review application and claim review protocol is established, it may be helpful for the committee to receive a timeline for receiving reports. At the initial meeting, the committee also should consider selecting up to four of the elements to be included in the 2021-22 quadrennial performance evaluation. As a matter of background and education, the committee may request WSI provide a status report on the implementation of 2021 legislation and report on any timely issues related to WSI and the provision of workers' compensation in this state.

ATTACH:7