Changes due to House Bill No. 1084 (2021 Legislative Session)

Section 92-01-02-02.1 is amended as follows:

92-01-02-02.1. Temporary partial disability benefits.

If, after a compensable injury, an injured employee cannot return to full-time employment, or returns to work at a wage less than that earned at the time of the injured employee's first or recurrent disability, the injured employee is eligible for a temporary partial disability benefit. Pursuant to North Dakota Century Code section 65-05-10, the temporary partial disability rate is to be fixed by the organization.

1. Should the injured employee's postinjury earnings equal or exceed ninety percent of the injured employee's earnings at the time of the first or recurrent disability, no benefits will be paid.

2. An injured employee may earn up to ten percent of the injured employee's ~~preinjury wages~~ average weekly wage without the organization reducing temporary total disability benefits; however, all postinjury wages, from any source, must be reported to the organization to determine whether a reduction is required.

3. If an injured employee is receiving temporary partial disability benefits under North Dakota Century Code section 65-05-10, the injured employee shall submit documentation of paystubs or income earned every pay period. If the organization does not receive this documentation, the organization may not pay temporary partial disability benefits. If the organization does not receive this documentation for a period in excess of ninety days, the organization shall discontinue temporary partial disability benefits.

History: Effective June 1, 1990; amended effective April 1, 1997; February 1, 1998; July 1, 2006; April 1, 2020.
General Authority: NDCC 65-02-08, 65-05-10
Law Implemented: NDCC 65-02-08, 65-05-09

Section 92-01-02-02.5 is amended as follows:

92-01-02-02.5. Contributing cause of mental or psychological condition defined.

As used in subparagraph 6 of subdivision a of subsection ~~10~~ 11 of North Dakota Century Code section 65-01-02:

1. "A mental or psychological condition" must be directly caused by a physical injury. To be directly caused it must be shown with objective medical evidence that the mental or psychological condition is the physiological product of the physical injury.

2. "Other contributing causes" include emotional circumstances that generally accompany work-related injuries, such as the loss of function, loss of self-esteem, loss of financial independence, divorce, loss of career or employment position, disruption to lifestyle or family units, anxiousness, uncertainty, or compromised ability to participate in lifestyles, hobbies, or pastimes.

History: Effective January 1, 2018.
General Authority: NDCC 65-02-08
Law Implemented: NDCC 65-01-02

Section 92-01-02-11.1 is amended as follows:

92-01-02-11.1. Attorney's fees.

Upon receipt of a certificate of program completion from the decision review office, fees for legal services provided by employees' attorneys and legal assistants working under the direction of employees' attorneys will be paid when an administrative order reducing or denying benefits is submitted to administrative hearing, district court, or supreme court and the employee prevails; or when a managed care decision is submitted to binding dispute resolution and the employee prevails subject to the following:

1. The organization shall pay attorneys at ~~one hundred seventy dollars~~ one hundred eighty-five dollars per hour for all actual and reasonable time other than travel time. The organization shall pay attorney travel time at ~~eighty-five dollars~~ ninety-three dollars per hour.

2. The organization may pay legal assistants and third-year law students or law school graduates who are not licensed attorneys who are practicing under the North Dakota senior practice rule acting under the supervision of employees' attorneys up to ~~one hundred~~ one hundred eight dollars per hour for all actual and reasonable time other than travel time. The organization shall pay travel time at ~~fifty~~ fifty-four dollars per hour. A "legal assistant" means any person with a bachelor's degree, associate's degree, or correspondence degree in a legal assistant or paralegal program from an accredited college or university or other accredited agency, or a legal assistant certified by the national association of legal assistants or the national federation of paralegal associations. The term may also include a person employed as a paralegal or legal assistant who has a bachelor's degree in any field and experience working as a paralegal or legal assistant.

3. Total fees paid by the organization for all legal services in connection with a dispute regarding an administrative order is an amount equal to twenty percent of the additional amount awarded except for an order litigating the initial determination of compensability. Awards include those arrived at by a mutually agreed upon settlement. Total fees paid under an administrative order may not exceed the following:

~~a. Except for an initial determination of compensability, twenty percent of the additional amount awarded~~.

a. ~~b. Three thousand nine hundred fifty dollars~~ Four thousand two hundred sixty-five dollars, plus reasonable costs incurred, following issuance of an administrative order under North Dakota Century Code chapter 28-32 reducing or denying benefits, for services provided if a hearing request is resolved by settlement or amendment of the administrative order before the hearing is called to order.

b. ~~c. Six thousand two hundred fifty dollars~~ Six thousand seven hundred fifty dollars, plus reasonable costs incurred, if the hearing request is resolved by settlement or amendment of the administrative order after the hearing is called to order but before a written decision is issued by the administrative law judge; or the employee prevails after the hearing is called to order by the administrative law judge.

c. ~~d. Six thousand nine hundred fifty dollars~~ Seven thousand five hundred five dollars, plus reasonable costs incurred, if the employee's district court appeal is settled prior to submission of briefs. ~~Nine thousand three hundred dollars~~ Ten thousand forty-five dollars, plus reasonable costs incurred, if the employee prevails after hearing by the district court.

d. ~~e. Eleven thousand one hundred fifty dollars~~Twelve thousand forty dollars plus reasonable costs incurred, if the employee's North Dakota supreme court appeal is settled prior to hearing. ~~Twelve thousand two hundred fifty dollars~~Thirteen thousand two hundred thirty dollars, plus reasonable costs incurred, if the employee prevails after hearing by the supreme court.

e. ~~f. One thousand eight hundred fifty dollars~~Two thousand dollars, plus reasonable costs incurred, if the employee requests binding dispute resolution and prevails.

f. ~~g.~~ Should a settlement or order amendment offered during the DRO process be accepted after the DRO certificate of completion has been issued, no attorney's fees are payable. This contemplates not only identical offers and order amendments but those which are substantially similar.

4. The maximum fees specified in subdivisions a, b, c, and d~~, and e~~ of subsection 3 include all fees paid by the organization to one or more attorneys, legal assistants, law students, and law graduates representing the employee in connection with the same dispute regarding an administrative order at all stages in the proceedings. A "dispute regarding an administrative order" includes all proceedings subsequent to an administrative order, including hearing, judicial appeal, remand, an order resulting from remand, and multiple matters or proceedings consolidated or considered in a single proceeding.

5. All time must be recorded in increments of no more than six minutes (one-tenth of an hour).

6. If the organization is obligated to pay the employee's attorney's fees, the attorney shall submit to the organization a final statement upon resolution of the matter. All statements must show the name of the employee, claim number, date of the statement, the issue, date of each service or charge, itemization and a reasonable description of the legal work performed for each service or charge, time and amount billed for each item, and total time and amounts billed. The employee's attorney must sign the fee statement. The organization may deny fees and costs that are determined to be excessive or frivolous.

7. The following costs will be reimbursed:

a. Actual postage, if postage exceeds three dollars per parcel.
b. Actual toll charges for long-distance telephone calls.
c. Copying charges, at eight cents per page.
d. Mileage and other expenses for reasonable and necessary travel. Mileage and other travel expenses, including per diem, must be paid in the amounts that are paid state officials as provided by North Dakota Century Code sections 44-08-04 and 54-06-09. Out-of-state travel expenses may be reimbursed only if approval for such travel is given, in advance, by the organization.
e. Other reasonable and necessary costs, not to exceed one hundred fifty dollars. Other reasonable and necessary costs in excess of one hundred fifty dollars may be reimbursed only upon agreement, in advance, by the organization. Costs for typing and clerical or office services will not be reimbursed.

8. The following costs will not be reimbursed:

a. Facsimile charges.
b. Express mail.
c. Additional copies of transcripts.

d. Costs incurred to obtain medical records.
e. Online computer-assisted legal research.
f. Copy charges for documents provided by the organization.

The organization shall reimburse court reporters for mileage and other expenses, for reasonable and necessary travel, in the amounts that are paid state officials as provided by North Dakota Century Code sections 44-08-04 and 54-06-09.

History: Effective June 1, 1990; amended effective November 1, 1991; January 1, 1994; January 1, 1996; May 1, 2000; May 1, 2002; July 1, 2004; July 1, 2006; April 1, 2008; April 1, 2009; July 1, 2010; April 1, 2012; April 1, 2014; April 1, 2016; January 1, 2018; April 1, 2020.

General Authority: NDCC 65-02-08, 65-02-15

Law Implemented: NDCC 65-02-08, 65-02-15, 65-10-03

Some changes due to House Bill 1051 (2021 Legislative Session)

Section 92-01-02-14 is amended as follows:

92-01-02-14. Procedure for penalizing employers accounts for failure to pay premium or failure to submit payroll reports.

1. The organization shall bill each employer for premiums as provided by North Dakota Century Code chapter 65-04. If an employer has an open account with the organization, the organization may send to the employer a payroll report on which the employer shall submit payroll expenditures ~~from~~ for the preceding payroll ~~year~~ reporting period. The employer shall provide on the payroll report all information requested by the organization, including the name, social security number, rate classification, and gross payroll for each employee. The employer shall submit an electronic report of payroll information in a format approved by the organization. The report must be received by the organization by the last day of the month following the expiration date of the employer's payroll reporting period. The organization shall consider an unsigned or incomplete submission ~~to be~~ a failure or refusal to furnish the report.

2. The organization shall send the first billing statement to the employer by regular mail to the employer's last-known address or by electronic transmission. The first billing statement must identify the amount due from the employer. The statement must explain the installment payment option. The payment due date for an employer's account is thirty days from the date of billing indicated on the billing statement. If a previous delinquency exists on the employer account, the billing statement indicates a past-due status.

3. If the organization does not receive full payment or the minimum installment payment indicated on the billing statement, on or before the payment due date, the organization shall send a second billing statement.

4. If the minimum installment payment remains unpaid thirty days after the organization sends the second billing statement to the employer, the organization shall notify the employer by regular mail to the employer's last-known address or by electronic transmission that:

a. The employer is in default and may be assessed a penalty of two hundred fifty dollars plus two percent of the amount of premium, penalties, and interest in default;
b. The employer's account has been referred to the collections unit of the policyholder services department; and
c. Workforce safety and insurance may cancel the employer's account.

5. The organization may extend coverage if the organization and the employer have agreed in writing to a payment schedule on a delinquent account. If the employer defaults on the agreed payment schedule, that employer is not insured.

6. If the employer's payroll report is not timely received by the organization, the organization shall notify the employer, by electronic transmission or regular mail addressed to the last-known address of the employer of the employer's failure to submit the payroll report. The notification

must indicate that the organization may assess a penalty of up to ~~two~~ five thousand dollars against the employer's account.

7. If the payroll report is not received ~~within forty-five days following the expiration of the employer's payroll year,~~ by the due date provided by letter from the organization to the employer, the organization shall assess a penalty of fifty dollars. A second fifty dollar penalty is assessed against the employer if the payroll report remains unsubmitted after an additional fifteen days. The organization shall notify the employer of the penalty by electronic transmission or regular mail addressed to the employer's last-known address.

8. At any time after sixty days following the expiration of the employer's payroll ~~year~~ period, when the employer has failed to submit a payroll report, the organization may bill the employer consistent with North Dakota Century Code section 65-04-19. An employer whose premium has been calculated under this subsection may submit actual wages on an employer payroll report for the period billed and the organization shall adjust the employer's account unless the organization determines the information submitted by the employer is unreliable or inaccurate.

9. The organization may ~~also~~ cancel ~~the~~ an employer's account who has failed to pay premium owing or failed to submit a payroll report.

~~9~~10. If the organization receives an employer payroll report more than sixty days after the expiration of the employer's payroll period, the employer's billing statement may show a past-due premium billing due date. Any employer account billed without benefit of the employer payroll report may show a past-due billing due date.

~~10~~11. If the employer does not have an open account with the organization, the organization shall send the employer an application for coverage by regular mail or by electronic transmission. The organization shall notify the employer of the penalties provided by North Dakota Century Code chapter 65-04 and this section.

~~11~~12. Upon receipt of an incomplete or unsigned payroll report, the employer shall submit the completed payroll report within fifteen days of the organization's request. The organization shall consider an unsigned or incomplete submission to be a failure or refusal to furnish the report. If the payroll report is not timely received by the organization, the organization may assess a penalty of up to ~~two~~ five thousand dollars and shall notify the employer that the employer is uninsured.

History: Effective June 1, 1990; amended effective January 1, 1994; January 1, 1996; May 1, 2002; March 1, 2003; July 1, 2006; April 1, 2009; July 1, 2010; April 1, 2016; January 1, 2018; April 1, 2020
General Authority: NDCC 65-02-08, 65-04-06, 65-04-19, 65-04-33
Law Implemented: NDCC 65-04-33

Section 92-01-02-24 is amended as follows:

92-01-02-24. Rehabilitation services.

1. When an employment opportunity suited to an employee's education, experience, and marketable skills is identified within thirty-five miles [56.33 kilometers] from the employee's home, the appropriate priority option must be identified as return to related occupation in the local job pool under subdivision e of subsection 4 of North Dakota Century Code section 65-05.1-01, and relocation expense under subsection 3 of North Dakota Century Code section 65-05.1-06.1 may not be paid.

2. The organization may award services to move an employee's household where the employee has actually located work under subdivision f of subsection 2 of North Dakota Century Code section 65-05.1-06.1 or under subsection 3 of North Dakota Century Code section 65-05.1-06.1 only when the employee identifies the job the employee will perform, the employee's employer, and the employee's destination. A relocation award must be the actual cost of moving the household to the location where work has been obtained. A minimum of two bids detailing the costs of relocation must be submitted to the organization for approval prior to incurring the cost. The organization shall pay per diem expenses, as set forth under subsection 2 of North Dakota Century Code section 65-05-28, for the employee only. Reimbursement for mileage expenses may not be paid for more than one motor vehicle.

3. When the rehabilitation award is for retraining, the organization shall pay the actual cost of books, tuition, and school supplies required by the school. The school must provide documentation of the costs necessary for completion of the program in which the employee is enrolled. Reimbursable school costs may not exceed those charged to other students participating in the same program. The award for school supplies may not exceed twenty-five dollars per quarter or thirty dollars per semester unless the employee obtains prior approval of the organization by showing that the expenses are reasonable and necessary. A rehabilitation award for retraining may include tutoring assistance to employees who require tutoring to maintain a passing grade. Payment of tutoring services will be authorized when these services are not available as part of the training program. The award for tutoring services may not exceed the usual and customary rate established by the school. Expenses such as association dues or subscriptions may be reimbursed only if that expense is a course requirement.

4. An award for retraining which includes an additional rehabilitation allowance as provided in subdivision b of subsection 2 of North Dakota Century Code section 65-05.1-06.1 may continue only while the employee is actually enrolled or participating in the training program.

5. An award of a specified number of weeks of training means training must be completed during the specified period of weeks, and rehabilitation benefits may be paid only for the specified number of weeks of training.

6. The organization may reimburse an employee's travel and personal expenses for attendance at an adult learning center or skill enhancement program at the request of the employee and upon the approval of the organization. All claims for reimbursement must be supported by the original vendor receipt, when appropriate, and must be submitted within one year of the date the expense was incurred. The organization shall reimburse these expenses at the rates in effect on the date of travel or the date the expense was incurred at which state employees are paid per diem and mileage, or reimburse the actual cost of meals and lodging plus mileage, whichever is less. The

calculation for reimbursement for travel by motor vehicle must be calculated using miles actually and necessarily traveled. The number of miles actually traveled is rebuttably presumed to be the least number of miles listed by MapQuest at www.mapquest.com between the start and end points of travel. The organization may not reimburse mileage or travel expenses when the distance traveled is less than fifty miles [80.47 kilometers] one way, unless the total mileage in a calendar month equals or exceeds two hundred miles [321.87 kilometers].

7. The organization may pay for retraining equipment required by an institution of higher education or an institution of technical education on behalf of a student attending that institution. The organization will award retraining candidates one thousand two hundred dollars for the purchase of computer, warranty, software, maintenance, and internet access. Securing and maintaining these items are the injured employee's responsibility. Failure to maintain or secure these items does not constitute good cause for noncompliance with vocational rehabilitation. Improper maintenance of the equipment does not constitute good cause for noncompliance with vocational rehabilitation.

8. The organization may provide certain selected services to assist an injured employee and the injured employee's family with coping and financial strategies while in the recovery process. The recovery process includes the medical recovery, the ability to return to gainful employment and the need for financial stability. The services may include up to six sessions with a contracted behavioral health professional, and up to four sessions with a contracted financial services professional. Injured employee participation in these sessions is voluntary. The granting or denial of contemplated services is not appealable, and costs of the program will be made against the general fund.

History: Effective November 1, 1991; amended effective January 1, 1996; April 1, 1997; February 1, 1998; May 1, 2002; July 1, 2006; July 1, 2010; April 1, 2012; April 1, 2016; July 1, 2017.
General Authority: NDCC 65-02-08
Law Implemented: NDCC 65-05.1, 65-05.1-01(2), and 65-05.1-06.3

Section 92-01-02-29 is amended as follows:

92-01-02-29. Medical services - Definitions.

The definitions found in North Dakota Century Code title 65 apply to terms contained in this title. In addition, unless the context otherwise requires, for purposes of sections 92-01-02-27 through 92-01-02-48:

1. "Bill audit" means the review of medical bills and associated medical records by the organization or the managed care vendor, including review for duplications, omissions, actual delivery of billed services and items, accuracy of charges and associated coding, coding documentation guidelines, coverage, concurrent billing for covered and noncovered services, and application of fee schedules.

2. "Case management" means the ongoing coordination of medical services provided to a claimant, including:

   a. Developing a treatment plan to provide appropriate medical services to a claimant.

   b. Systematically monitoring the treatment rendered and the medical progress of the claimant.

   c. Assessing whether alternative medical services are appropriate and delivered in a cost-effective manner based upon acceptable medical standards.

   d. Ensuring the claimant is following the prescribed medical plan.

   e. Formulating a plan for keeping the claimant safely at work or expediting a safe return to work.

3. "Concurrent review" means the monitoring by the organization or the managed care vendor for medical necessity and appropriateness, throughout the period of time in which designated medical services are being provided to the claimant, of the claimant's condition, treatments, procedures, and length of stay.

4. "Consulting health care provider" means a licensed health care provider who examines an injured employee, or the injured employee's medical record, at the request of the primary health care provider to aid in diagnosis or treatment. A consulting health care provider, at the request of the primary health care provider, may provide specialized treatment of the compensable injury and give advice or an opinion regarding the treatment being rendered or considered for an injured employee's injury.

5. "Debilitating side effects" means an adverse effect to a treatment or medication which in and of itself precludes return to employment or participation in vocational rehabilitation services.

6. "Elective surgery" means surgery that may be required in the process of recovery from an injury or illness but need not be done as an emergency to preserve life, function, or health. Pain, of itself, does not constitute a surgical emergency.

7. "Emergency" means a medical condition that manifests itself by symptoms of sufficient severity, which may include severe pain, to cause a prudent layperson possessing an average knowledge of health and medicine to reasonably conclude that immediate medical treatment is required to avoid serious impairment of a bodily function, or serious dysfunction of any body part, or jeopardizing the person's life.

8. "Fee schedule" means the publication entitled "Workforce Safety and Insurance Medical and Hospital Fees".

9. "Functional capacity evaluation" means an objective, directly observed, measurement of a claimant's ability to perform a variety of physical tasks combined with subjective analyses of abilities by the claimant and the evaluator. A physical tolerance screening and a Blankenship's functional evaluation are functional capacity evaluations.

10. "Improved pain control" means the effectiveness of a treatment or medication which results in at least thirty percent reduction in pain scores.

11. "Increase in function" means the effectiveness of a treatment or medication which results in either a resumption of activities of daily living, a return to employment, or participation in vocational rehabilitation services.

12. "Managed care" means services performed by the organization or a managed care vendor, including utilization review, preservice reviews, disability management services, case management services, ambulatory reviews, concurrent reviews, retrospective reviews, preadmission reviews, and medical bill audit.

13. "Managed care vendor" means an organization that is retained by the organization to provide managed care services.

14. "Medical service" means a medical, surgical, chiropractic, psychological, dental, hospital, nursing, ambulance, and other related or ancillary service, including physical and occupational therapy and drugs, medicine, crutches, a prosthetic appliance, braces, and supports, and physical restoration and diagnostic services, or a service outlined in section 92-01-02-30.

15. "Medical service provider" means an allied health care professional, hospital, medical clinic, or vendor of medical services. 21

16. "Medically stationary" means the "date of maximum medical improvement" as defined in North Dakota Century Code section 65-01-02 has been reached.

17. "Notice of nonpayment" means the form by which a claimant is notified of charges denied by the organization which are the claimant's personal responsibility.

~~18. "Palliative care" means a medical service rendered to alleviate symptoms without curing the underlying condition.~~

~~19~~ 18. "Pharmacy services" means any prescribed medication, including over the counter variations requested at the direction of an allied health care professional's rendered treatment.

~~20~~ 19. "Physical conditioning" means an individualized, graded exercise program designed to improve the overall cardiovascular, pulmonary, and neuromuscular condition of the claimant prior to or in conjunction with the claimant's return to any level of work. Work conditioning is the same as physical conditioning.

~~21~~ 20. "Preservice review" means the evaluation by the organization or a managed care vendor of a proposed medical service for medical necessity, appropriateness, and efficiency prior to the services being performed.

~~22~~ 21. "Primary health care provider" means a health care provider who is primarily responsible for the treatment of an injured employee's compensable injury.

~~23~~ 22. "Remittance advice" means the form used by the organization to inform payees of the reasons for payment, reduction, or denial of medical services.

~~24~~ 23. "Retrospective review" means the organization's or a managed care vendor's review of a medical service for medical necessity, appropriateness, and efficiency after treatment has occurred.

~~25~~ 24. "Special report" means an allied health care professional's written response to a specific request from the organization for information, including information on causation, aggravation, preexisting conditions, and clarification of complex medical conditions, requiring the creation of a new document or the previously unperformed analysis of existing data. The explanatory reports required for procedures designated as "by report" under section 92-01-02-27 are not special reports.

~~26~~ 25. "Utilization review" means an evaluation of the necessity, appropriateness, efficiency, and quality of medical services provided to a claimant, based on medically accepted standards and an objective evaluation of the medical services.

~~27~~ 26. "Utilization review department" means the organization's utilization review department.

~~28~~ 27. "Work hardening" means an individualized, medically prescribed and monitored, work-oriented treatment process which involves the claimant participating in simulated or actual work tasks that are structured and graded to progressively increase physical tolerances, stamina, endurance, and productivity to return the claimant to a specified job.

History: Effective January 1, 1994; amended effective October 1, 1998; January 1, 2000; May 1, 2002; April 1, 2014; April 1, 2016; April 1, 2020.
General Authority: NDCC 65-02-08, 65-02-20, 65-05-07
Law Implemented: NDCC 65-02-20, 65-05-07

Subsection 3 of section 92-01-02-29.1 is amended as follows:

92-01-02-29.1. Medical necessity.

3. The organization will not authorize or pay for the following treatment:

o. Opioid therapy exceeding ninety milligrams morphine equivalents daily unless the following criteria are met when a prescription exceeding ninety milligrams morphine equivalents daily is exceeded and as the organization deems necessary:

(1) Documented treatment plan consistent with the organization's utilization review process;
(2) Participation in a psychosocial consult with a healthcare provider, preferably a licensed psychologist or psychiatrist outside the healthcare provider's network, to address the risk and harms of opioid use under the *CDC Guideline for Prescribing Opioids for Chronic Pain*. The psychosocial consult should include standardized screening using validated tools for mental health and substance abuse conditions, as well as a risk stratification plan; and
(3) Recent documentation of attempts to taper opioid use and employ non-opioid therapies for pain control.

p. Benzodiazepine therapies extending beyond a cumulative duration of four weeks, unless prescribed for treatment of a compensable anxiety disorder. In addition, the following criteria must be met when the cumulative duration of four weeks is exceeded and as the organization deems necessary:

(1) A documented treatment plan consistent with the organization's utilization review process;

(2) Participation in a psychosocial consult with a healthcare provider, preferably a licensed psychologist or psychiatrist outside the healthcare provider's network, to address the risk and harms of benzodiazepine use. The psychosocial consult should include standardized screening using validated tools for mental health and substance abuse conditions, as well as a risk stratification plan; and

(3) Recent documentation of attempts to taper benzodiazepine use and employ non-benzodiazepine therapies.

History: Effective January 1, 1994; amended effective October 1, 1998; January 1, 2000; May 1, 2002; July 1, 2004; July 1, 2006; April 1, 2008; April 1, 2009; July 1, 2010; April 1, 2012; April 1, 2014; April 1, 2016; July 1, 2017; April 1, 2020.
General Authority: NDCC 65-02-08, 65-02-20, 65-05-07
Law Implemented: NDCC 65-02-20, 65-05-07, 65-05-40 (House Bill 1139 from the 2021 Legislative Session)

Section 92-01-02-38 is amended as follows:

92-01-02-38. Changes of health care providers.

1. All changes from one health care provider to another must be approved by the organization. Normally, changes will be allowed only after the injured employee has been under the care of the primary health care provider for sufficient time for the health care provider to complete necessary diagnostic studies, establish an appropriate treatment regimen, and evaluate the efficacy of the therapeutic program.

2. North Dakota Century Code section 65-05-28 governs choice of health care provider. For purposes of this rule, the following are not considered changes of health care provider by the injured employee:

a. Emergency services by a health care provider;

b. Examinations at the request of the organization;

c. Consultations or referrals initiated by the health care provider;

d. Referrals to radiologists and pathologists for diagnostic studies;

e. When injured employees are required to change health care providers to receive compensable medical services~~, palliative care~~ or time loss authorization because their health care provider is no longer qualified as a primary health care provider; or

f. Changes of primary health care provider required due to conditions beyond the injured employee's control. This would include when the health care provider terminates practice or leaves the area.

History: Effective January 1, 1994; amended effective April 1, 1997; January 1, 2000; April 1, 2020.
General Authority: NDCC 65-02-08, 65-02-20, 65-05-07
Law Implemented: NDCC 65-02-20, 65-05-07

Section 92-01-02-40 is repealed.

~~**92-01-02-40. Palliative care.**~~

~~1. After the injured employee has become medically stationary, palliative care is compensable without prior approval from the organization only when it is necessary to monitor administration of prescription medication required to maintain the injured employee in a medically stationary condition or to monitor the status of a prosthetic device.~~

~~2. If the organization or its managed care vendor believes palliative care provided under subsection 1 is excessive, inappropriate, ineffectual, or in violation of the rules regarding the performance of medical services, review must be performed according to section 92-01-02-46.~~

~~3. After the injured employee has reached medically stationary status and the injured employee's health care provider believes that palliative care is necessary, the health care provider shall request authorization for palliative care through the managed care vendor prior to the commencement of the treatment. If the palliative care request is approved, services are payable from the date the approved treatment begins. The request must:~~

~~a. Contain all objective findings, and specify if there are none.~~

~~b. Identify the medical condition by ICD-10-CM diagnosis for which the palliative treatment is proposed.~~

~~c. Provide a proposed treatment plan that includes the specific treatment modalities, the name of the allied health care professional who will perform the treatment, and the frequency and duration of the care to be given.~~

~~d. Describe how the requested palliative care is related to the accepted compensable condition.~~

~~e. Describe how the proposed treatment will enable the injured employee to continue employment or to perform the activities of daily living, and what the adverse effect would be to the injured employee if the palliative care is not approved.~~

~~f. Any other information the organization or managed care vendor may request.~~

~~4. The managed care vendor shall approve palliative care only when:~~

~~a. Other methods of care, including patient self-care, structural rehabilitative exercises, and lifestyle modifications are being utilized and documented;~~

~~b. Palliative care reduces both the severity and frequency of exacerbations that are clinically related to the compensable injury; and~~

~~c. Repeated attempts have been made to lengthen the time between treatments and clinical results clearly document that a significant deterioration of the compensable condition has resulted.~~

~~5. If the allied health care professional does not receive written notice from the organization within thirty days of the receipt of the request for palliative care, which approves or disapproves the care, the request will be considered approved.~~

~~6. When the request for palliative care is not approved, the organization shall provide, in writing, specific reasons for not approving the care.~~

~~7. When the organization approves or disapproves the requested palliative care, the allied health care professional, employer, or injured employee may request binding dispute resolution under section 92-01-02-46.~~

~~8. The date of the examination, not the date of the report, controls the medically stationary date. When a specific date is not indicated but the medical opinion states the injured employee is medically stationary, the injured employee is presumed medically stationary on the date of the last examination. This subsection does not govern determination of maximum medical improvement relating to a permanent impairment award.~~

History: Effective January 1, 1994; amended effective October 1, 1998; May 1, 2002; July 1, 2004; April 1, 2014; April 1, 2020.
General Authority: NDCC 65-02-08, 65-02-20, 65-05-07
Law Implemented: NDCC 65-02-20, 65-05-07

Section 92-01-02-45.1 is amended as follows:

92-01-02-45.1. Medical service provider responsibilities and billings.

8. Disputes arising out of reduced or denied reimbursement are handled in accordance with section 92-01-02-46. In all cases of accepted compensable injury or illness under the jurisdiction of the workers' compensation law, a medical service provider may not pursue payment from an injured employee for treatment, equipment, or products unless an injured employee desires to receive them and has accepted responsibility for payment, or unless the payment for the treatment was denied because:

a. The injured employee sought treatment from that medical service provider for conditions not related to the compensable injury or illness.

b. The injured employee sought treatment from that medical service provider which was not prescribed by the injured employee's primary health care provider. This includes ongoing treatment by the allied health care professional.

~~c. The injured employee sought palliative care from that allied health care professional not compensable under section 92-01-02-40 after the injured employee was provided notice that the palliative care service is not compensable.~~

~~d~~ c. The injured employee sought treatment from that allied health care professional after being notified that the treatment sought from that allied health care professional has been determined to be unscientific, unproven, outmoded, investigative, or experimental.

~~e~~ d. The injured employee did not follow the requirements of subsection 1 of North Dakota Century Code section 65-05-28 regarding change of health care providers before seeking treatment of the work injury.

~~f~~ e. The injured employee is subject to North Dakota Century Code section 65-05-28.2, and the health care provider requesting payment is not a preferred provider and has not been approved as an alternative health care provider under subsection 2, 3, or 4 of North Dakota Century Code section 65-05-28.2.

History: Effective January 1, 1994; amended effective April 1, 1996; October 1, 1998; January 1, 2000; May 1, 2002; April 1, 2008; July 1, 2010; April 1. 2012; April 1, 2014; April 1, 2016; July 1, 2017; April 1, 2020. General Authority: NDCC 65-02-08, 65-02-20, 65-05-07
Law Implemented: NDCC 65-02-20, 65-05-07, 65-05-28.2

Section 92-01-02-46 is amended as follows:

92-01-02-46. Medical services disputes.

1. This rule provides the procedures followed for managed care disputes. Retrospective review is the procedure provided for disputing the denial of payment for a medical service charge based on failure to request prior authorization or preservice review. Binding dispute resolution is the procedure provided for disputing managed care recommendations, including ~~palliative care recommendations and~~ bill audit and review. Disputes not arising from managed care follow the reconsideration and hearing procedures provided by North Dakota Century Code section 65-01-16.

History: Effective January 1, 1994; amended effective April 1, 1997; October 1, 1998; January 1, 2000; May 1, 2002; July 1, 2004; April 1, 2020.
General Authority: NDCC 65-02-08, 65-02-20
Law Implemented: NDCC 65-02-20

Changes due to House Bill 1084 (Section 8) of 2021 Legislative Session

Section 92-01-02-48 is amended as follows:

92-01-02-48. Elements of filing.

1. For purposes of this section, unless the context otherwise requires:

a. "Appropriate record" means a legible medical record or report from a provider, or any other relevant and material information, substantiating the type, nature, extent, and work-relatedness of an injury, which is adequate to verify the level, type, and extent of services provided.

b. "Bill" means a provider's statement of charges and services rendered for treatment of a work-related injury.

c. "Bill review" means the review or audit of medical bills and any associated medical records by workforce safety and insurance and may include review for duplications, omissions, actual delivery of billed services and items, accuracy of charges and associated coding, and improper concurrent bills for services involving evaluation or treatment of work-related and non-work-related problems.

d. "Wage verification" means federal and state income tax returns; W-2 forms; daily, weekly, biweekly, semimonthly, or monthly employer payroll statements; and income statements prepared in accordance with generally accepted accounting practices.

2. The elements of filing for an application for workers' compensation benefits are satisfied when the organization has received:

a. The first report of injury form completed and signed by the injured employee or someone acting on the injured employee's behalf. The employer's report may be deemed admitted pursuant to North Dakota Century Code sections 65-01-16 or 65-05-01.4;

b. Wage verification as requested by the organization, if disability benefits are claimed; and

c. Appropriate records from the provider necessary to determine the type, nature, extent, and potential work-relatedness of the injury or disability.

3. The elements of filing for a reapplication are satisfied when the organization is in receipt of:

a. The C4 form or other correspondence requesting benefits signed by the employee;

b. Wage verification as requested by the organization, if disability benefits are claimed; and

c. Appropriate records from the provider.

4. The elements of filing for payment of a medical bill are satisfied when a bill review is completed and after the organization has received:

a. A bill from the provider or employee; and

b. Appropriate records from the provider or employee.

5. If the organization requests additional information from the employee needed to process an application or a reapplication and the employee does not provide the information, elements of filing are not satisfied until the employee provides the requested information.

6. The organization may waive elements of filing in conjunction with programs established for the expedited processing of selected claims.

History: Effective January 1, 1994; amended effective January 1, 1996; April 1, 1997; February 1, 1998; January 1, 2000; July 1, 2006; April 1, 2016; April 1, 2020.
General Authority: NDCC 65-02-08
Law Implemented: NDCC 65-02-08, 65-05-02 (House Bill 1084 – Section 8 – 2021 Legislative Session)

Changes due to House Bill 1040 (2021 Legislative Session)

Section 92-01-03-03 is amended as follows:

92-01-03-03. Request for assistance - Timely request for consideration or rehearing.

A claimant shall request assistance with the resolution of a dispute that arises from an order in writing within ~~thirty~~ forty-five days from the date of service of the order. An oral request is sufficient to toll the statutory time limit for requesting rehearing if that request is followed by a written request for assistance which is received by the office within ten days after the oral request was made.

History: Effective April 1, 1996; amended effective May 1, 1998; May 1, 2000; July 1, 2010.
General Authority: NDCC 65-02-08
Law Implemented: NDCC 65-02-27, (NDCC 65-01-16 within House Bill 1040 from the 2021 Legislative Session.

Changes due to House Bill 1040 (2021 Legislative Session)

Section 92-01-03-04 is amended as follows:

92-01-03-04. Procedure for dispute resolution.

1. A claimant may contact the office for assistance at any time. The claimant shall contact the office to request assistance with a dispute arising from an order within ~~thirty~~ forty-five days of the date of service of the order. A claimant must make an initial request in writing for assistance with an order.

2. In an attempt to resolve the dispute, the decision review specialist may contact any interested parties. After oral or written contact has been made with the appropriate interested parties, the decision review specialist will attempt to accomplish a mutually agreeable resolution of the dispute between the organization and the claimant. The decision review specialist may facilitate the discussion of the dispute but may not modify a decision issued by the organization.

3. If a claimant has attempted to resolve the dispute and an agreement cannot be reached, the decision review specialist shall issue a certificate of completion. The decision review specialist will send the certificate of completion to the claimant and will inform the claimant of the right to pursue the dispute through hearing. To pursue a formal rehearing of the claim, the claimant shall file a request for rehearing with the organization's legal department within ~~thirty~~ forty-five days after the certificate of completion is mailed.

4. If a claimant has not attempted to resolve the dispute, the office shall notify the claimant by letter, sent by regular mail, of the claimant's nonparticipation in the office and that no attorney's fees shall be paid by workforce safety and insurance should the claimant prevail in subsequent litigation. The decision review specialist shall inform the claimant of the right to pursue the dispute through hearing. To pursue a formal rehearing of the claim, the claimant shall file a request for rehearing with the organization's legal department within ~~thirty~~ forty-five days after the letter of noncompliance is mailed.

5. If an agreement is reached, the organization must be notified and an order or other legal document drafted based upon the agreement.

6. The office will complete action within thirty days from the date that the office receives a claimant's request for assistance. This time frame can be extended if the decision review specialist is in the process of obtaining additional information.

History: Effective April 1, 1996; amended effective May 1, 1998; May 1, 2000; July 1, 2004; July 1, 2006; July 1, 2010; April 1, 2012; January 1, 2018
General Authority: NDCC 65-02-08
Law Implemented: NDCC 65-02-27, (NDCC 65-01-16 within House Bill 1040 from the 2021 Legislative Session.)