

WORKERS' COMPENSATION REVIEW COMMITTEE

North Dakota Century Code Section 54-35-22 established the Workers' Compensation Review Committee. 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 composed 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, Section 65-02-30 requires the committee select up to four elements to be included in the quadrennial performance evaluation of Workforce Safety and Insurance (WSI) and review any actions taken resulting from the performance evaluation report.

In addition to its statutory directives, the committee was charged with receiving the following four reports:

- A report from the Director of WSI, the Chairman of the WSI Board of Directors, and the audit firm selected by the State Auditor regarding the quadrennial performance evaluation of WSI, pursuant to Section 65-02-30.
- A biennial report from WSI regarding compiled data relating to safety grants issued under Chapter 65-03, pursuant to Section 65-03-05.
- An annual report from WSI on the status of WSI's current pilot programs to assess alternative methods of providing rehabilitation services and a summary of findings and recommendations for pilot programs completed within the previous 12 months, pursuant to Sections 65-01-19 and 65-05.1-06.3.
- A quarterly report from the Office of Administrative Hearings (OAH) and WSI on statistical information regarding results under the case processing standards and policies, pursuant to Section 54-57-09.

Committee members were Senators Scott Meyer (Chairman), JoNell A. Bakke, and Curt Kreun and Representatives Dan Ruby, Mary Schneider, and Greg Stemen.

Representative George Keiser served on the committee until his death on December 22, 2021.

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. Section 12 of Article X 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.

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

Claims Review Procedure

Based on the protocol and application packet used during the 2019-20 interim, the committee established a procedure and protocol for conducting its charge of reviewing claims. The revised application packet 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 claims for review, the committee published the application packet on the legislative branch website and mailed a copy of the application packet to injured employees who recently used the claim review services of WSI's Decision Review Office. The committee adopted the following procedure, which was used during previous interims 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 submits to the Legislative Council office a completed "Release of Information and Authorization" form and a "Review Issue Summary" form on which the applicant summarizes the issues the applicant wants the committee to review.
2. Upon receipt of a completed application, the Legislative Council staff forwards a copy of the application information to an assigned ombudsman at WSI, who reviews 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 contacts the Legislative Council staff to provide a recommendation regarding eligibility for review. Upon receipt of this recommendation, the Legislative Council staff contacts the committee chairman to make a determination of eligibility.
4. Upon a determination of eligibility, the Legislative Council staff contacts 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 prepares a summary of the case to present at the committee meeting.
6. At the injured employee's discretion, the ombudsman assists the applicant in organizing the issues for review.
7. The ombudsman prepares a case review packet and includes the packet in a binder of information prepared for each committee member, the Legislative Council staff, and the WSI representative. Although these binders are distributed at each committee meeting, the binders remain the property of WSI and are returned at the completion of each committee meeting.
8. Before each committee meeting at which a claim is to be reviewed, the ombudsman meets with the Legislative Council staff to review the case summary and workers' compensation issues to be raised.
9. Upon receipt of these workers' compensation issues, the Legislative Council staff notifies a WSI representative of the identity of the injured employee who will appear before the committee for a case review and, as appropriate, the basic issues to be raised by the injured employee.

The committee established the following committee meeting procedure, which was followed for the claims reviewed by the committee:

1. Committee members have an opportunity before and during the committee meeting to review the binder of claim review information and the injured employee's WSI electronic records.
2. The ombudsman summarizes the injured employee's case.
3. The injured employee presents the workers' compensation issues brought forward for review. At the discretion of the injured employee, these issues are presented by the injured employee, a representative of the injured employee, or both of these individuals.
4. One or more representatives of WSI comments on the workers' compensation issues raised.
5. The committee members have an opportunity to discuss the issues raised.

Each claim reviewed is allocated a block of time during which the committee conducts the initial claim review. 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 review this information at a future meeting. During a committee meeting at which a claim is reviewed, a WSI representative is available to access the injured employee's WSI records electronically.

First Claim

Issues for Review

The injured employee reported WSI denied the employee's request to reopen her May 2009 WSI claim because WSI's medical consultant concluded there was no objective medical evidence indicating her 2009 work injury was the primary factor in the injured employee's 2020 right shoulder treatment.

Workforce Safety and Insurance Response

The WSI representative reviewed Sections 65-05-01 and 65-05-35(1)(2), which provide the claimant bears the burden of proving any entitlements to benefits and a claim for benefits is presumed closed if WSI has not paid any benefit or received a demand for payment of any benefit for 4 years. If a claim is dormant for an extended period of time without treatment, the claim becomes difficult to assess. If a claim is dormant for 4 years or more, the claim is presumed closed. Clear and convincing evidence the work injury is the primary cause of the current symptoms is required to reopen a claim presumed closed due to dormancy. Workforce Safety and Insurance seeks objective medical evidence supporting whether a work-related injury is a compensable injury. According to the WSI representative, in the injured employee's situation, the medical consultant found no evidence the May 2009 work injury or job duties were the primary factor in the injured employee's 2020 right shoulder treatment or in her cervical spine condition.

Committee Considerations

Committee members considered the following issues raised by the injured employee:

- WSI's doctors may not have the injured employee's interests at the forefront because the doctors work for WSI.
- WSI should not be able to conclude a physician's opinion is not objective medical evidence when the examining specialist is a specialist in the medical field.
- WSI did not give weight to the opinion of the doctor who stated the condition was related to employment.
- The treating physician should not be designated statutorily as the primary physician because the treating physician may not be an expert in a particular medical area.

Second Claim

Issues for Review

The injured employee reported his temporary partial disability benefits set him up to fail because his hands are too severely injured and deformed for him to seek employment in good faith. His frostbite developed into complex regional pain syndrome that now renders it impossible for him to get more than 2 hours of sleep at night and he does not understand how WSI reasonably can expect him to seek employment effectively. The injured employee provided the following issues for consideration:

- Vocational rehabilitation plans may not consider an injured employee's physical abilities and pain adequately.
- The WSI process is not ideal for injured workers who cannot get back to work after their injury. The process was designed to protect WSI and employers, with no regard for the injured worker.
- WSI should have a program assisting permanently injured workers in finding employment.
- WSI should be an independent entity.

Workforce Safety and Insurance Response

The WSI representative reviewed Section 65-05.1-01 pertaining to rehabilitation services. It is the goal of vocational rehabilitation to return the injured employee to substantial gainful employment with a minimum of retraining as soon as possible after an injury occurs. The injured employee was rated at 0 percent whole person impairment and the rating system in North Dakota starts with awards beginning at 14 percent whole person impairment. Permanent partial impairment awards based solely on pain likely are prohibited because pain cannot be measured objectively. In accordance with statute, temporary partial disability benefits may not exceed 5 years.

Committee Considerations

Committee members considered the following issues raised by the injured employee:

- The issues of pain management and severe or ongoing pain resulting from injuries are issues constituents commonly raise with legislators.
- Vocational rehabilitation may not address deteriorating medical conditions and practical return-to-work opportunities adequately.
- Vocational rehabilitation plans should be designed in collaboration with the injured employee.

Third Claim

Issues for Review

The injured employee reported he filed a claim for a lumbar injury sustained from a slip and fall occurring at work in 2019. The injured employee was treated and was diagnosed with lumbar pain and contusion. Workforce Safety and Insurance accepted the injured employee's claim and paid the associated medical benefits. The injured employee was treated again in 2021 but WSI did not consider the medical treatment from 2021 part of the injured employee's 2019 lumbar spine injury. The injured employee reported the claim process was designed to protect WSI and employers with no regard for the injured employee.

Workforce Safety and Insurance Response

The WSI representative reported Section 65-01-11 provides the claimant has the burden of proving by a preponderance of the evidence the claimant is entitled to benefits. Section 65-01-02 defines a compensable injury as an injury by accident arising out of and in the course of hazardous employment which must be established by medical evidence supported by objective medical findings. Workforce Safety and Insurance's physician advisor completed a medical review on January 20, 2021, and opined there did not appear to be any physical impairment at that time and the current treatment in 2021 was not related to the 2019 work incident.

Committee Considerations

Committee members considered the following issues raised by the injured employee:

- The system could be improved to facilitate better communication between WSI and injured employees.
- WSI's responses to injured employees may not be timely nor presented clearly or transparently enough.
- Claimants should be provided instructional tools and service resources to better inform a claimant of claimant rights and enhance the claimant's awareness of the WSI claims process.

Fourth Claim

Issues for Review

The injured employee reported she filed a claim for a slip and fall on the ice in 2018 while working. In March 2019, the injured employee reported severe pain from her groin and into the legs. In 2020, the injured employee was released to regular duty and WSI issued a notice of intent to discontinue benefits ending temporary total disability. In 2021, WSI issued a reapplication to the injured employee because she relayed a change in her restrictions. Workforce Safety and Insurance issued a notice of decision denying the reapplication on the basis the injured employee did not have a significant change or substantial worsening of the condition. The injured employee reported WSI should rely on the injured employee's medical provider's recommendations and if a local physician is not familiar with a disease or medical condition, WSI should make an immediate referral to a specialist.

Workforce Safety and Insurance Response

The WSI representative reported Section 65-02-20 provides disability benefits are reinstated upon proof by the injured employee that the employee has sustained a significant change in the compensable medical condition. Pain is a symptom and may be considered in determining whether there is a substantial acceleration or substantial worsening of a condition, but pain alone is not a substantial acceleration or substantial worsening. Section 65-05-08 provides a presumption may not be established in favor of any health care provider's opinion. Workforce Safety and Insurance must resolve conflicting medical opinions and in doing so WSI must consider factors, including the nature and extent of the treatment relationship, the amount of relevant evidence in support of the opinion, and whether the health care provider specializes in the medical issues related to the opinion. Workforce Safety and Insurance is a payor and does not treat or diagnose an injured employee.

Committee Considerations

Committee members considered the following issues raised by the injured employee:

- The issues of pain management and severe or ongoing pain resulting from injuries are issues constituents commonly raise with legislators.
- Vocational rehabilitation may not address deteriorating medical conditions and practical return-to-work opportunities adequately.
- An injured employee who believes a condition has undergone a substantial worsening can request a re-evaluation of the initial impairment rating and if the request is denied, the denial is appealable.

Fifth Claim

Issues for Review

The injured employee reported because of his work in a health care setting and continuous work-related coworker exposure, he became colonized with Clostridium Difficile Colitis and tested positive for SARS-CoV-2 (COVID-19). Workforce Safety and Insurance issued a notice of decision denying the injured employee's claim because the exposure, and required quarantine, were not the result of direct patient care. The injured employee reported it is challenging finding North Dakota attorneys to handle workers' compensation claims and asserted North Dakota should have more attorneys representing injured employees for a reasonable fee.

Workforce Safety and Insurance Response

The WSI representative reported Section 65-01-02 excludes from the definition of a compensable injury ordinary diseases of life to which the general public outside of employment is exposed or preventive treatment for communicable diseases. The Governor's Executive Order 2020-12 required the injured employee to demonstrate the infection resulted from a work-related exposure.

Committee Considerations

Committee members considered the following issues raised by the injured employee:

- The inability of injured employees to find or afford legal representation is an issue raised regularly by injured employees.
- Section 65-02-08 provides if an injured employee has a successful claim or appeal, whether at the administrative law level or in court, WSI must pay the attorney. The actual amounts reimbursed are specified within North Dakota Administrative Code and the amounts are reviewed and adjusted every other year.

Sixth Claim

Issues for Review

The injured employee reported she suffered a lumbar sprain and strain in 2001, while working as a registered nurse while trying to reposition a patient. Workforce Safety and Insurance accepted the claim. In 2005 and 2006, the injured employee filed two new claims for the lumbar spine injury. Workforce Safety and Insurance viewed the new claims as an exacerbation of her 2001 injury and consolidated the new claim filings with the 2001 work injury claim. From 2013 until 2020, the injured employee experienced flare-ups of her lumbar spine injury and sought treatment under her WSI claim. An independent medical review indicated the injured employee's ongoing medical treatment and diagnoses were not related to her original work injury. The injured employee reported the lack of an adequate explanation in light of the issues brought to WSI's attention gives the impression the process is used as a pretext to eliminate injured employees from having claims accepted.

Workforce Safety and Insurance Response

The WSI representative reported Section 65-01-02 provides a compensable injury is not only an injury by accident arising out of and in the course of hazardous employment but one that must be established by medical evidence supported by objective medical findings. Workforce Safety and Insurance follows a physician's treatment plan, recommendations, opinions, and diagnosis for purposes of accepting or denying claims and determining benefits. The physician determined the injured employee's new injury was related to natural body degeneration and was not related to her original work injury.

Committee Considerations

Committee members considered the following issues raised by the injured employee:

- The issues of pre-existing conditions and degenerative conditions are issues constituents commonly raise with legislators and are especially relevant as the workforce ages.

Seventh Claim

Issues for Review

The injured employee reviewed his voluminous claim history and his entire file was provided to the committee for review. The injured employee provided the following issues for consideration:

- WSI should be more helpful in assisting injured employees through the claims process.
- WSI should not cherry-pick which medical provider opinions WSI accepts.
- WSI's claim and appeal process is unacceptable and difficult to navigate, which is why there are no attorneys in North Dakota willing to take a case against WSI.
- WSI should take the injured employee's opinion into consideration, not just the opinion of the treating physician or WSI's internal medical personnel.

Workforce Safety and Insurance Response

The WSI representative reported:

- Six or seven attorneys in the state handle workers' compensation law cases. Those attorneys represent injured workers at hearings. An attorney shortage within the scope of workers' compensation law does not appear to exist in North Dakota.
- Section 65-01-02 provides a compensable injury is not only an injury by accident arising out of and in the course of hazardous employment but one that must be established by medical evidence supported by objective medical findings.
- Section 65-05-08.3 provides a presumption may not be established in favor of any health care provider's opinion. Workforce Safety and Insurance must resolve conflicting medical opinions and in doing so WSI must consider factors, including the nature and extent of the treatment relationship, the amount of relevant evidence in support of the opinion, and whether the health care provider specializes in the medical issues related to the opinion.

Committee Considerations

Committee members considered the following issues raised by the injured employee:

- The inability of injured employees to find or afford legal representation is an issue raised regularly by injured employees.
- Section 65-02-08 provides if an injured employee has a successful claim or appeal, whether at the administrative law level or in court, WSI must pay the injured employee's attorney fees. The actual amounts reimbursed are specified within North Dakota Administrative Code and the amounts are reviewed and adjusted every other year.
- WSI's responses to injured employees may not be timely nor presented clearly or transparently enough.

Eighth Claim

Issues for Review

The injured employee reported he was working when he slipped in a parking lot, felt a tearing or pull in the left groin, and was diagnosed with an inguinal hernia. Workforce Safety and Insurance denied the claim because the physician advisor indicated the treating provider could not provide an objective reasoning for the hernia being a work-related incident. A secondary finding with the denial stated if it is later found the injured employee's employment is the cause of the hernia, workers compensation benefits remain denied because the injured employee did not seek treatment from the employer's designated medical provider. The injured employee reported workers are not taught workers' compensation law or protocol by their employers. It is unfair for injured employees to be held accountable for work injuries and claims when their employer does not provide them with a workers' compensation handbook or explain what the process is after a work accident occurs.

Workforce Safety and Insurance Response

The WSI representative reported Section 65-05-28.2 provides during the first 30 days after a work injury, an employee of an employer that has selected a preferred provider under the section may seek medical treatment only from the preferred provider for the injury. Treatment by a provider other than the preferred provider is not compensable and WSI may not pay for treatment by a provider that is not a preferred provider, unless a referral was made by the preferred provider. A provider that is not a preferred provider may not certify disability or render an opinion about any matter pertaining to the injury, including causation, compensability, impairment, or disability. The injured employee did not seek treatment from the employer's designated medical provider, nor did he select his own provider in writing as required under Section 65-05-28.2.

Committee Considerations

Committee members considered the following issues raised by the injured employee:

- The treating physician should not be designated statutorily as the primary physician because the treating physician may not be an expert in a particular medical area.
- The system could be improved to facilitate better communication between the treating medical providers and WSI.

Ninth Claim

Issues for Review

The injured employee reported he filed a claim with WSI for a left shoulder injury that occurred in 2019. The injured employee had a prior left shoulder condition that predated the work injury. Since the work injury significantly worsened or accelerated the pre-existing condition, WSI accepted the claim and paid on a 50-percent aggravation basis. The injured employee reported his prior injury had completely healed with no limitations and his current claim should therefore

not have been deemed to be an aggravated claim. Workforce Safety and Insurance should deem a new injury as an aggravated claim only if the prior injury limits that bodily function at the time of the new injury.

Workforce Safety and Insurance Response

The WSI representative reported WSI does not pay for pre-existing conditions if the conditions become symptomatic, but will pay if work substantially worsens or substantially progresses that underlying condition. The distinction is a clear delineation between what is covered by health insurance and what is related to an industrial incident. Section 65-05-15 provides in cases of a prior injury, disease, or other condition, known in advance of the work injury, which has caused previous work restriction or interference with physical function the progression of which is substantially accelerated by, or the severity of which is substantially worsened by, a compensable injury, WSI shall pay benefits during the period of acute care in full. The period of acute care is presumed to be 60 days immediately following the compensable injury, absent clear and convincing evidence to the contrary. Following the period of acute care, WSI must pay benefits on an aggravation basis. When an injured employee is entitled to benefits on an aggravation basis, WSI pays the costs of vocational rehabilitation, travel, other personal reimbursement for seeking and obtaining medical care, and dependency allowance on a 100-percent basis.

Committee Considerations

Committee members considered the following issues raised by the injured employee:

- The issues of pre-existing conditions and degenerative conditions are issues constituents commonly raise with legislators and are especially relevant as the workforce ages.
- Since every employee will have some degree of degeneration, WSI should not be able to deny responsibility by claiming a pre-existing condition.

Tenth Claim

Issues for Review

The injured employee reported his 2008 motor vehicle accident caused anxiety, depression, and posttraumatic stress disorder. Workforce Safety and Insurance denied his claim for coverage for mental health conditions because the injured employee's psychiatric conditions predated his 2008 work injury. The injured employee reported WSI did not consider the posttraumatic stress his work injury caused him.

Workforce Safety and Insurance Response

The WSI representative reported Section 65-01-02 defines a "compensable injury" to include a mental or psychological condition caused by a physical injury, but only when the physical injury is determined with reasonable medical certainty to be at least 50 percent of the cause of the condition as compared with all other contributing causes combined, and only when the condition did not pre-exist the work injury. A compensable injury does not include a mental injury arising from mental stimulus.

Committee Considerations

Committee members considered the following issues raised by the injured employee:

- The issues of mental injury and mental health conditions arising from or being related to physical work injuries are issues constituents commonly raise with legislators.
- WSI typically denies benefits for the treatment of depression and other mental injuries.

Eleventh Claim

Issues for Review

The injured employee provided the following issues for consideration:

- The laws pertaining to WSI are difficult to read and understand.
- WSI should have been more responsive to the injured employee when she contacted WSI with questions and concerns.

Workforce Safety and Insurance Response

The WSI representative reviewed Section 65-01-16 which provides WSI may issue a notice of decision for any decision made by informal internal review and shall serve the notice of decision on the parties by regular mail. An injured worker has 45 days from the day the notice of decision was mailed by WSI in which to file a written request for reconsideration.

Committee Considerations

Committee members considered the following issues raised by the injured employee:

- WSI's responses to injured employees may not be timely nor presented clearly or transparently enough.
- There may be methods through which the system could be improved to facilitate better communication between the injured employee and WSI.

WORKFORCE SAFETY AND INSURANCE STATUS UPDATES

To keep apprised of current events at WSI, the committee received status updates on topics related to WSI trends, initiatives, and 2021 legislation relating to the state's workers' compensation system.

Trends and Initiatives

The committee received an overview of WSI trends and initiatives. The overview included WSI's performance metrics for the 2021 fiscal year which covered:

- Investment returns;
- Fund surplus;
- Premium dividends;
- Employer and injured employee satisfaction survey results;
- WSI employee turnover;
- Claims filed for every 100 covered employees;
- Average annual premium rate adjustment; and
- The available surplus ratio.

The committee was informed WSI accommodated increased workloads during the peak boom years by increasing the number of temporary employees. As of June 30, 2015, WSI had the equivalent of 32 temporary employees. As workloads decreased, this number was reduced to 1.8 in Fiscal Year 2021, a reduction of 94 percent. With a state population of around 780,000 residents, WSI covers a workforce of 386,414. There are ongoing developments of WSI's claims and policy system (CAPS). The goal of CAPS is to replace WSI's core business system software with web-based technology to improve customer service, enhance system maintainability, and provide enhanced reporting and accessibility to information. A key initiative for WSI is the continuation of the myWSI extranet enhancement project. The goal of myWSI is to create a secure, self-service portal for external customers and stakeholders to view, update, submit, and retrieve information relating to interactions with WSI.

Legislative Package

The committee received a status report on the implementation of 2021 legislation relating to workers' compensation. The legislation addressed the extension of injured worker and employer appeal time frames from 30 to 45 days; payment of attorney fees for an employer involved in a jurisdictional dispute in another state; allowing WSI to retain counsel on both a contingent and hourly basis; providing a compensable injury does not include injuries caused by the use of recreational marijuana; establishing duration limits and maximum payable dosing limits for opioid therapies; establishing duration limits for benzodiazepines; and adding physical therapists to the definition of health care provider.

REPORTS

Safety Grants Report

Pursuant to Section 65-03-05, the committee received the biennial report from WSI regarding compiled data relating to safety grants issued under Chapter 65-03. The report provided an overview of the safety training and education program, ergonomic initiative and ergonomic grant programs, learning management system, and the federal Occupational Safety and Health Administration Outreach 10-hour Online Training programs. The committee received data about each program, including the continuing safety appropriation amount by biennium, beginning in 2005.

Pilot Programs Report

Pursuant to Sections 65-01-19 and 65-05.1-06.3, the committee received a report from WSI regarding current pilot programs and pilot programs completed within the previous 12 months, including a summary of findings and recommendations.

Injured Worker Assistance Program

The committee was informed the injured worker assistance program was implemented as a pilot program in 2015 and provides counseling services for injured employees and their family members. The program provides up to

six sessions with a behavioral health counselor contracted by WSI and up to four sessions with a financial professional contracted by WSI. Program participation is voluntary and completely confidential. Program services are provided independent of liability determinations, recognizing psychological, social, and economic stressors may impact physical recovery timetables. The pilot program status of the injured worker assistance program ended on January 1, 2022, after which the program was integrated into regular use.

Computer Pilot Program

The committee was informed WSI implemented the computer pilot program to provide access and opportunity to injured employees who do not have a home computer or the financial means to obtain one and are limited to access of public use computers, either by proximity or physical restriction due to the work injury. Under the program, WSI will provide an identified injured employee \$1,200 to purchase a laptop computer, warranty, software, maintenance, and Internet access. The program provides an injured employee with an opportunity to develop additional skills for returning to employment and the ability to begin enhancing skills earlier in the recovery process if the injured employee's restrictions preclude the individual from traveling to a public computer.

Alternative Neutral Evaluation Pilot Program

The committee was informed the alternative neutral evaluation pilot program was implemented in October 2021, and provides for a Bismarck physician, trained in orthopedic medicine, to conduct a neutral medical evaluation of an injured employee in claims containing conflicting medical opinions. Under the program, the evaluator issues an opinion regarding the medical issue which is binding on WSI and the injured employee. To be eligible for the program, the claim must contain conflicting medical opinions, relate to an injury that can be best evaluated by an orthopedic specialist, and be at a point in the adjudication process at which a decision to accept or deny the claim has not been made. If the injured employee wants to participate in the program, the employee signs an agreement letter acknowledging the binding nature of the program. Workforce Safety and Insurance will pay up to \$500 in attorney fees and \$150 in costs, for an attorney selected by the injured employee to review the agreement letter and provide legal advice about participation in the program. The program has received 10 referrals. Of the 10 referrals, 5 neutral evaluations have been conducted. All 5 evaluations resulted in WSI accepting the claim. Four injured employees declined participation in the program, and 1 injured employee resolved the medical dispute through a stipulated settlement. Program costs have totaled \$13,700.

Case Processing Standards and Policies Report

Pursuant to Section 54-57-09, the committee received quarterly reports from OAH and WSI on statistical information regarding results under the case processing standards and policies adopted to produce a 6-month rolling average of time elapsed to 215 days or fewer between the date OAH receives a WSI file and the date of the administrative law judge's decision. The reports provided a statistical overview of data between 2010 to 2022, which provided the number of files received from WSI each year, the number of WSI-related hearings held each year, the average number of days between receipt of a WSI file and when a hearing is held, and the average number of days between receipt of a WSI file to when OAH closes the file. The committee was informed that as a result of OAH's response and goal of meeting the 6-month rolling average of a 215-day limit, the average number of days from OAH receiving a file to when a hearing is held between January 1, 2022, and June 30, 2022, was reduced to a range of 175 to 189 days. Between January 1, 2022, and June 30, 2022, the average number of days from when an administrative hearing is held to when a decision is issued was reduced to a range of 32 to 59 days.

The committee was informed the statistics regarding the decisions issued by OAH align with WSI's expectations and WSI was pleased the number of days for a decision to be issued by OAH was reduced by an average of 100 days.

QUADRENNIAL PERFORMANCE EVALUATION

Background

Section 65-02-30 requires the Director of WSI to request the State Auditor to select a firm to complete a performance evaluation every 4 years 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.

At the beginning of the interim, in accordance with Section 65-02-30, the State Auditor selected two elements to be included in the performance evaluation while the committee did not select any elements to be included. The State Auditor selected whether COVID-19 WSI claims were evaluated and processed during the appropriate period of time according to Executive Orders 2020-12, 2020-12.1, and 2020-12.2; and whether WSI identifies recurring incidents in certain industries or with certain employers and reaches out to assist those employers or industries.

Elements

The State Auditor awarded the contract for the performance evaluation to Sedgwick Claims Management Services, Inc. (Sedgwick). The WSI performance evaluation request for proposals provided the following two elements be addressed:

1. COVID-19 claims management practices subject to three executive orders issued by the Governor. This element included:
 - a. A review of a sample of COVID-19 claims to determine if claims occurred, were assessed, and were processed during the appropriate period according to the Executive Orders issued by the Governor.
 - b. A review of Executive Orders 2020-12, 2020-12.1, and 2020-12.2.
 - c. An understanding of each Executive Order and the employee group subject to those Executive Orders.
 - d. An assessment of WSI's management of COVID-19 cases submitted by North Dakota employers during the covered period of the Executive Orders.
2. Industry and employer assistance. This element included:
 - a. Practices tied to the identification of recurring incident trends pertaining to both industries and individual employers, various analyses and reports provided by WSI, training and education, and trends among 1st year employees.
 - b. A review of 2019, 2020, and 2021 claims data and a comparison of the data to existing reports by WSI.
 - c. Observation of trends among industry groupings for the purpose of evaluating safety efforts.

Performance Evaluation Recommendations

For the two elements of the performance evaluation, the report prepared by Sedgwick included recommendations identified by priority level, WSI's response to the recommendations, and Sedgwick's replies to WSI's responses. The material in this report is limited to the recommendations and does not include WSI's responses or Sedgwick's replies.

COVID-19 Claims

Recommendation 1.1: Low Priority. Sedgwick recommends clear documentation standards for each employer be developed so more detailed evidence is provided in cases of denied claims when an employer is in a position of trying to evaluate whether a workplace exposure to COVID-19 occurred and the employer concluded no known workplace exposure had occurred.

Industry and Employer Assistance

Recommendation 2.1: Medium Priority. Sedgwick recommends developing more initiatives specific to the high-risk industry groups, such as hospitals, restaurants, schools, automotive dealers, and trucking and hauling.

Recommendation 2.2: Low Priority. Sedgwick recommends evaluating the viability of creating and maintaining webpages dedicated to specific high-risk industries. The webpage would be a central place to access any industry-based resources, such as local associations, alliances, events, organizations, safety tip sheets, and data.

Recommendation 2.3: Low Priority. Sedgwick recommends increasing awareness of the value of applying leading indicator methodologies within their safety practices, including considering providing additional educational materials and training sessions about indicators or promoting the topic of leading and lagging indicators as a new outreach initiative.

Recommendation 2.4: High Priority. Sedgwick recommends establishing a threshold for experience ratings which triggers loss control employer outreach throughout the policy period. This recommendation includes comparing the premium to total paid claim amount quarterly. For employers found to have claim expenses equating 60 percent of their premium or greater, consider establishing that point as a threshold for a safety consultant to reach out with a trend analysis and recommend loss control objectives to prevent further escalation of losses.

Recommendation 2.5: High Priority. Sedgwick recommends WSI consider establishing a process in Injury Services requiring patterns of injuries and illnesses be reported to the safety consultant covering the employer's region.

Recommendation 2.6: High Priority. Sedgwick recommends ensuring claims staff is aware of and following the set criteria for generating a C173 and sending it to loss control promptly. This recommendation would allow safety consultants to conduct accident investigations and root cause analyses as soon as possible after the incident occurs and ensure employers can mitigate risks as soon as possible.

Recommendation 2.7: Low Priority. Sedgewick recommends providing employers education about calculating and comparing total recordable incident rates to industry averages provided by the Federal Bureau of Labor and Statistics.

Recommendation 2.8: High Priority. Sedgewick recommends amending reports for inclusion of the Full Cause Category and Cause Code so clarity is achieved. For example, "Cut, Puncture, Scrape Injured by" is one of the broad categories, and "Objects Being Lifted or Handled" is one of the detailed codes that fall within that category. Having both portions of the code where appropriate can provide a more complete picture of how the injury occurred.

Recommendation 2.9: Medium Priority. Sedgewick recommends recording the time as "unreported" rather than 12:00 a.m. when a first report of injury is received without time of injury information. This recommendation would allow the pie charts included on the Employer Trend Analysis to show separate categories for unknown times versus those occurring between 12:00 a.m. and 12:59 a.m.

Recommendation 2.10: Medium Priority. Sedgewick recommends increasing and enhancing outreach to nonprogram participants, including evaluation of the loss control results within the employer survey which comment on responses from specific premium groups, and factor in loss control objectives as well as the numbers comparing program participants versus nonparticipants.

Recommendation 2.11: Medium Priority. Sedgewick recommends conducting annual training program reviews or needs assessments to help measure whether organizational goals are being met, quality control is maintained, and the ever-changing needs of end-users continue to be accommodated. This recommendation includes considering the inclusion of a focus group, surveys, a review board or steering committee, or a formal needs assessment specific to training, and modifying the existing employer survey to ensure the context, content, and results of the survey questions clearly tie to loss control objectives, and the process incorporates control sheets for tracking changes implemented in response to survey results.

Recommendation 2.12: Medium Priority. Sedgewick recommends developing a means for system users to submit program or course evaluations.

Recommendation 2.13: High Priority. Sedgewick recommends re-evaluating the objectives of the Safety Management Program and the Safety Orientation System Program and how the programs are communicated. Then, relaunch and market each with more emphasis.

Recommendation 2.14: Medium Priority. Sedgewick recommends either extracting information about injuries within the 1st year on the job into a separate report for employers to lend greater emphasis on the loss trend and as part of an overall policyholder initiative to reduce losses for workers within their 1st year on the job; or modifying the employer dashboard to combine claim counts and costs for injuries occurring the 1st year onto one page to help reduce the report size and combine like data.

Recommendation 2.15: Medium Priority. Sedgewick recommends adding information about injuries based on length of service to the annual WSI Detail Claims & Injury Characteristics Report.

COMMITTEE CONSIDERATIONS

Quadrennial Performance evaluation

The committee received testimony indicating since 2006, there have been five performance evaluations conducted by an outside firm with expertise in workers' compensation and industry standards. The cost of the last five performance evaluations has ranged between \$91,290 and \$284,939, with an average cost of approximately \$187,200. The costs of the quadrennial performance evaluation are paid from the WSI fund.

The committee considered a bill draft to repeal the quadrennial performance evaluation of WSI. Some committee members indicated the cost of the quadrennial performance evaluation is excessive, considering WSI is subject to an annual financial audit; WSI has an Internal Audit Department that plans, directs, and completes internal audits and compliance reviews; and WSI is statutorily subject to review at the discretion of the Legislative Audit and Fiscal Review Committee and the State Auditor. Other committee members highlighted the benefits of having a neutral third-party nongovernmental entity audit WSI and provide the committee with recommendations for improvement.

Recommendation

The committee recommends a bill draft [\[23.0003.01000\]](#) to repeal the quadrennial performance evaluation of WSI.

Reports

The committee considered a bill draft to remove the requirement that WSI provide various reports to the committee. The committee discussed whether the reports the committee is statutorily required to receive from WSI and OAH are

needed considering the information included in the reports are provided to standing committees during the legislative session, can be provided upon request from the two agencies, and can be found on the two agencies' webpages. Some committee members indicated the interim reports provide a helpful status update on WSI programs.

Recommendation

The committee recommends a bill draft [\[23.0049.01000\]](#) to remove the requirement that WSI provide the committee reports on current and completed pilot programs and compiled data relating to safety grants. The bill also removes the requirement that WSI and OAH provide the committee quarterly updates on the statistical information regarding results under the case processing standards and policies.

Workers' Compensation Review Committee

The committee discussed whether the committee serves a useful purpose and considered a bill draft to repeal the committee.

Some committee members indicated the committee was created statutorily in 2005 and has recommended numerous beneficial legislative changes. However, over the last decade, fewer injured employees have volunteered to have their claims reviewed and fewer bill drafts have been recommended by the committee at the end of each interim. The committee was created to remedy reoccurring problems experienced by injured employees who went through the claims process and it appears most reoccurring issues have been resolved. Proponents of the bill draft pointed out no other state agency has a statutory legislative committee to review individual citizen criticisms of the agency and examine thoroughly the criticism. They contended legislative resolution of agency criticism could be achieved faster and in a more cost-effective manner by citizens contacting their district legislators and voicing the need for change.

Some committee members indicated the committee has achieved beneficial changes for the citizens of North Dakota but there remains work for the committee to do. They contended the criticisms voiced by injured employees each interim highlights the need for the committee.

Recommendation

The committee recommends a bill draft [\[23.0048.01000\]](#) to repeal the Workers' Compensation Review Committee.