

**ADMINISTRATIVE RULES COMMITTEE**  
**March 11, 2014**

Good Morning Mr. Chairman, Members of the Committee:

My name is Anne Green. I am a staff attorney with Workforce Safety and Insurance. I submit for your review responses to the questions posed by Legislative Council in their organizational materials. I direct your attention to number 6 of this document, which outlines the subject matter and the reasons for these proposed amendments.

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

ANSWER - Two of the fourteen rules resulted from statutory changes.

The amendment of Administrative Rule 92-01-02-23, regarding installment payment of premiums, Senate Bill 2080, sponsored by Senator Jerry Klein, Chairman of Senate Industry, Business, and Labor Committee during the 2013 Legislative Assembly.

The amendment of Administrative Rule 92-01-02-29.3, regarding motor vehicle purchase or modification, Senate Bill 2178, sponsored by Senators Jerry Klein, Karen Krebsbach, and Oley Larsen, and Representatives Andrew Maragos, Dan Ruby, and Roscoe Streyle during the 2013 Legislative Assembly.

**2. Whether the rules are related to any federal statute or regulation.**

ANSWER - No.

**3. A description of the rulemaking procedure followed in adopting the rules, e.g., the type of public notice given and the extent of public hearings held on the rules.**

ANSWER - For the amendment of these rules, WSI followed the provisions of N.D.C.C. Chapter 28-32. As required, both a full notice and an abbreviated notice of the intent to amend were accomplished. On July 1, 2013, the full notice was mailed to Legislative Council, and the abbreviated notice was published in each official county newspaper in the state (N.D.C.C. § 28-32-10). On July 1, 2013, a letter was submitted to the Legislative Council and a letter was submitted to the North Dakota Newspaper Association requesting publication. On August 9, 2013, the N.D. Newspaper Association issued an Affidavit of Publication to WSI.

WSI received one written commentary, which was a letter dated August 5, 2013, from Larson Latham Huettl Attorneys.

The public hearing was held on August 15, 2013, in the Board Room at WSI's Bismarck office. The public hearing was transcribed and that transcription is on file with WSI. No persons from the public attended the hearing and no comments were received during the public hearing. The hearing record was held open for ten days after the public hearing. No written comments were received during the subsequent 10-day comment period.

WSI's written record of its consideration of the single written comment was submitted to the Attorney General on October 1, 2013, and a request for an opinion as to the legality of the proposed rules was made to the Attorney General on October 1, 2013. The Opinion of the Office of Attorney General that the rule amendments are in compliance with N.D.C.C. Chapter 28-32 was issued on October 28, 2013. Publication of the rules was requested of Legislative Council on December 20, 2013.

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

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

ANSWER - Yes, a single written comment was received at WSI prior to the public hearing (August 5, 2013, letter from Larson Latham Huettl Attorneys). Subsequent to receipt of this August 5, 2013, letter, an in-person meeting was held with WSI representatives and Attorney Dean Haas and Attorney Steve Little. In both the written comment and during the meeting, discussion centered around the fees provided claimant's counsel at various stages of the pre-litigation and litigation process. As a result of the written comment and the in-person meeting, WSI submitted an additional increase in the fee cap applicable to resolution prior to administrative hearing from the proposed \$2,700 to \$3,500.

No comments received during the public hearing. No comments received following the public hearing.

A copy of the written comment dated August 5, 2013, and a copy of WSI's consideration of the written comment were provided to Legislative Council and the Attorney General's Office.

**5. The approximate cost of giving public notice and holding any hearing on the rules, and the approximate cost (not including staff time) of developing and adopting the rules.**

ANSWER -	Cost of Public Notice	\$1,910.70
	Cost of Hearing (transcript)	88.50
	Cost of expert opinion re: rules	<u>\$1,272.58</u>
	<b>TOTAL COST</b>	<b>\$3,271.78</b>

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

1. The proposed amendment to Administrative Code Section 92-01-02.11.1, relating to attorney's fees, increases the hourly payment to claimants' attorneys and increases the maximum fees allowed to claimants' attorneys.
2. The purpose of the proposed amendment to Administrative Code Section 92-01-02-12, relating to travel to and from medical treatments, clarifies that lodging expenses are reimbursable if necessary and reasonable.
3. The purpose of the proposed amendment to Administrative Code Section 92-01-02-23, relating to installment payment of premiums, is to allow the organization to apply alternative installment options, and is responsive to legislation (Senate Bill 2080) passed by the 63<sup>rd</sup> Legislative Assembly.
4. The proposed amendment to Administrative Code Section 92-01-02-29, relating to medical services, removes references to the "HCFA" or health care finance administration, an out of date reference.
5. The purpose of the proposed amendment to Administrative Code Section 92-01-02-29.1, relating to medical necessity, is to proactively monitor claimants receiving opioids by prescription longer than 90 consecutive days. The rule further provides a process when prescribed opioids are absent from an injured worker's body.
6. The proposed amendment to Administrative Code Section 92-01-02-29.3, relating to motor vehicle purchase or modification, tracks the lifetime benefit amount outlined in statute and is the result of Senate Bill 2178 passed by the 63<sup>rd</sup> Legislative Assembly.
7. The purpose of the proposed amendment to Administrative Code Section 92-01-02-29.4, relating to home modifications, clarifies the mechanism for appeal.

8. The proposed amendment to Administrative Code Section 92-01-02-34, relating to treatments requiring authorization, removes unnecessary additional review by both the provider and the organization.

9. The purpose of the proposed amendment to Administrative Code 92-01-02-40, relating to palliative care, is to identify when the organization will use ICD-10 coding.

10. The purpose of the proposed amendment to Administrative Code Section 92-01-02-45.1, anticipates the transition from ICD-9 to ICD-10 diagnostic codes.

11. The purpose of the proposed amendment to Administrative Code Section 92-01-02-50(4), relating to other states' coverage, is to increase the hourly payment to employers' attorneys who may receive payment under this section.

12. The proposed amendment to Administrative Code Section 92-02-01-01, incorporates the Code of Federal Regulations by the United States Department of Labor into the organization's standards of safety and conduct.

13. The purpose of the proposed amendment to Administrative Code Section 92-05-02-03, clarifies that discounts earned from participation in a risk management program are payable as a credit to the employer's account.

14. The purpose of the proposed amendment to Administrative Code Section 92-05-03-01, relating to grant programs, clarifies that the organization may discontinue a grant program.

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

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

**8. Whether a regulatory analysis or economic impact statement of impact on small entities was required by NDCC Section 28-32-08.1 and whether that regulatory analysis or impact statement was issued. Please provide copies.**

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

**9. Whether these rules have a fiscal effect on state revenues and**

**expenditures, including any effect on funds controlled by your agency. If so, please provide a fiscal note.**

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

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

ANSWER – None was required.

**11. If these rules were adopted as emergency (interim final) rules under NDCC Section 28-32-03, provide the statutory grounds from that section for declaring the rules to be an emergency and the facts that support that declaration and provide a copy of the Governor’s approval of the emergency status of the rules.**

ANSWER – These rules were not adopted under the emergency provision.