

ADMINISTRATIVE RULES COMMITTEE
March 14, 2016

Good Morning Mr. Chairman, Members of the Committee:

My name is Jodi Bjornson. I am General Counsel for 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.

As we get started, please note these rules will become effective April 1, 2016, with the exception of administrative rule section 92-01-02-18, which requires an effective date of July 1, 2016.

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

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

The amendment of Administrative Rule 92-01-02-29.1, relating to medical necessity, Senate Bill 2060, referred by the Workers' Compensation Review Committee, during the 2015 Legislative Assembly.

The amendment of Administrative Rule 92-01-02-53, regarding the WSI scholarship fund, House Bill 1102, referred by the Industry, Business and Labor Committee, at the request of Workforce Safety and Insurance, during the 2015 Legislative Assembly.

The amendment of Administrative Rule 92-01-04-02, relating to risk management program requirements, House Bill 1120, referred by the Industry, Business and Labor Committee, at the request of the Department of Corrections and Rehabilitation, during the 2015 Legislative Assembly.

The amendment of Administrative Rule 92-01-04-03, clarifying excess coverage and reinsurance requirements for the prison industry relating to risk management program requirements, House Bill 1120, referred by the Industry, Business and Labor Committee, at the request of the Department of Corrections and Rehabilitation, during the 2015 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 June 25, 2015, 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 June 25, 2015, a letter was submitted to the Legislative Council and a letter was submitted to the North Dakota Newspaper Association requesting publication. On July 14, 2015, the N.D. Newspaper Association issued an Affidavit of Publication to WSI.

The public hearing was held on August 6, 2015, 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.

A request was made to the Attorney General for an opinion as to the legality of the proposed rules on September 15, 2015. 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, 2015. Publication of the rules was requested of Legislative Council on November 25, 2015.

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 - No concerns, objections, or complaints were submitted to WSI. No comments received during the public hearing. No comments received following the public hearing.

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

ANSWER -	
Cost of Public Notice	\$2,426.08
Cost of Hearing (transcript)	97.50
Cost of expert opinion re: rules	<u>\$ 400.43</u>
TOTAL COST	\$2,924.01

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

1. The purpose of the proposed amendment to Administrative Code Section 92-01-02.11.1, relating to attorney's fees, is to increase the hourly payment to claimants' attorneys and to increase the maximum fees allowed to claimants' attorneys. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

2. The purpose of the proposed amendment to Administrative Code Section 92-01-02-14 relating to the procedure for penalizing employer accounts, is to provide for a past due status on billing statements of certain delinquent accounts. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

3. The purpose of the proposed amendment to Administrative Code Section 92-01-02-18, is to provide an increase in the primary loss limits for the purpose of experience rating. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000. This amendment becomes effective July 1, 2016.

4. The purpose of the proposed amendment to Administrative Code Section 92-01-02-24, relating to rehabilitation services, is to provide for a lump sum amount to an injured employee to purchase required computer/computer related items for training. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

5. The purpose of the proposed amendment to Administrative Code Section 92-01-02-29, relating to medical services, is to provide definitions for "debilitating side effects;" "increase in function;" and, "improved pain control." The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

6. the purpose of the proposed amendment to Administrative Code Section 92-01-02-29.1, relating to medical necessity, is to follow standard pharmacy transactions for processing and dispensing over the counter medications prescribed by a physician, to exclude hot packs and a spine strengthening program from compensable items, and eliminate the opioid testing rule and is, in part, a result of legislation passed in the 64th Legislative Assembly, SB

2060. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

7. The purpose of the proposed amendment to Administrative Code Section 92-01-02-29.4, relating to home modifications, is to require documentation of home ownership and floor plans for new construction. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

8. The purpose of the proposed amendment to Administrative Code Section 92-01-02-34, relating to treatments requiring authorization, is to include massage therapy, acupuncture therapy, and speech therapy visits to preservice review requirements, and to provide for a maximum number of treatments for massage therapy and acupuncture therapy. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

9. The purpose of the proposed amendment to Administrative Code Section 92-01-02-45.1, relating to provider responsibilities and billings, is to require the provider's National Provider Identifier number be included in billings and reports. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

10. The purpose of the proposed amendment to Administrative Code Section 92-01-02-48, relating to elements of filing, is to clarify signature requirements on the first report of injury form. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

11. The purpose of the proposed amendment to Administrative Code Section 92-01-02-50, is to parallel the attorney fees paid to employer's attorneys who qualify for reimbursement under this section, with the fees provided for in N.D.A.C. 92-01-02-11.1. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

12. The purpose of the proposed amendment to Administrative Code Section 92-01-02-53, relating to WSI's scholarship fund, is to provide for more specific application criteria. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

13. The purpose of the proposed amendment to Administrative Code Section 92-01-04-02, relating to risk management program requirements is to remove the need for the department to provide annual documentation to WSI of excess coverage or reinsurance and is also the result of legislation passed by the 64th Legislative Assembly, House Bill 1120. The proposed

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

14. The purpose of the proposed amendment to Administrative Code Section 92-01-04-03, clarifies the excess coverage and reinsurance requirements for the prison industry work program and is also the result of legislation passed by the 64th Legislative Assembly, House Bill 1120. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

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

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

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

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

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

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

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

ANSWER – None was required.

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

emergency status of the rules.

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