

WORKFORCE SAFETY AND INSURANCE

CHAPTER 480

HOUSE BILL NO. 1102

(Industry, Business and Labor Committee)
(At the request of Workforce Safety and Insurance)

AN ACT to create and enact subsection 9 to section 65-05-32 of the North Dakota Century Code, relating to privacy of records; to amend and reenact subsection 21 of section 65-01-02, subsection 1 of section 65-01-15.1, sections 65-05-10 and 65-05-20.1, subsection 1 of section 65-05.1-06.1, and sections 65-05.1-06.3, 65-05.1-08, and 65-06-03 of the North Dakota Century Code, relating to definition of a health care provider, presumption of compensability for full-time paid firefighters and law enforcement, payment of temporary partial disability benefits, rules for the workforce safety and insurance scholarship fund, issuance of vocational rehabilitation decisions, rehabilitation pilot programs, rules for the educational revolving loan fund, and average weekly wages for volunteer firefighters, volunteer health practitioners, and volunteer emergency responders; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁴⁴ **SECTION 1. AMENDMENT.** Subsection 21 of section 65-01-02 of the North Dakota Century Code is amended and reenacted as follows:

21. "Health care provider" ~~means~~includes a doctor, qualified nurse, pharmacist, audiologist, speech language pathologist, or naturopath or any recognized practitioner providing skilled services pursuant to the prescription of, or under the supervision or direction of, ~~a doctor~~ any of these individuals.

SECTION 2. AMENDMENT. Subsection 1 of section 65-01-15.1 of the North Dakota Century Code is amended and reenacted as follows:

1. Any condition or impairment of health of a full-time paid firefighter or law enforcement officer caused by lung or respiratory disease, hypertension, heart disease, or an exposure to a bloodborne pathogen as defined by section 23-07.5-01 occurring in the course of employment, or occupational cancer in a full-time paid firefighter, ~~resulting in total or partial disability or death~~ is presumed to have been suffered in the line of duty. The presumption may be rebutted by clear and convincing evidence the condition or impairment is not work-related.

SECTION 3. AMENDMENT. Section 65-05-10 of the North Dakota Century Code is amended and reenacted as follows:

²⁴⁴ Section 65-01-02 was also amended by section 11 of House Bill No. 1256, chapter 334.

65-05-10. Partial disability - Weekly benefit.

If the injury causes temporary partial disability resulting in decrease of earning capacity, the disability benefit is sixty-six and two-thirds percent of the difference between the injured employee's average weekly wages before the injury and the employee's wage-earning capacity after the injury in the same or another employment. Partial disability benefits are subject to a maximum of one hundred twenty-five percent of the average weekly wage in the state. The combined partial disability benefits, dependency allowance, and postinjury wage-earning capacity may not exceed ninety percent of the preinjury weekly wage of the employee after deductions for social security and federal income tax.

1. The benefits provided by this section are available to any otherwise eligible worker, providing the loss of earning capacity occurs after July 1, 1989. Partial loss of earning capacity occurring prior to July 1, 1989, must be paid at a rate to be fixed by the organization.
2. Benefits must be paid during the continuance of partial disability, not to exceed a period of five years. The organization may waive the five-year limit on the duration of partial disability benefits in cases of catastrophic injury as defined in section 65-05.1-06.1 or when the injured worker is working and has long-term restrictions verified by clear and convincing objective medical and vocational evidence that limits the injured worker to working less than twenty-eight hours per week because of the compensable work injury. This subsection is effective for partial loss of earnings capacity occurring after June 30, 1991.
3. The employee's earnings capacity may be established by expert vocational evidence of a capacity to earn in the statewide job pool where the worker lives. Actual postinjury earnings are presumptive evidence of earnings capacity if the job employs the employee to full work capacity in terms of hours worked per week, and if the job is in a field related to the employee's transferable skills. The presumption may be rebutted by competent evidence from a vocational expert that the employee's actual earnings do not fairly reflect the employee's earnings capacity in the statewide job pool, considering the employee's capabilities, education, experience, and skills.

SECTION 4. AMENDMENT. Section 65-05-20.1 of the North Dakota Century Code is amended and reenacted as follows:

65-05-20.1. Scholarship fund - Rules.

1. The organization may establish a scholarship fund to ~~provide scholarships for the~~ Scholarships may be awarded to:
 - a. ~~The spouse and child of a worker who dies as a result of a compensable work-related injury, if the spouse and child have received benefits under section 65-05-17. The organization may also grant scholarships for the spouse and child of an injured worker;~~
 - b. ~~The spouse and child of a worker who is~~ deemed to be catastrophically injured as defined in subdivision c of subsection 2 of section 65-05.1-06.1 ~~and the child meets the definition of child at the time of the initial scholarship application. The organization may also grant scholarships to injured; and~~

- c. Injured workers for whom the organization determines a scholarship would be beneficial and appropriate because of exceptional circumstances, or upon successful completion of a rehabilitation program contemplated under subdivision g of subsection 4 of section 65-05.1-01, as determined by the organization.
2. For purposes of this section, child includes a legitimate child, a step child, adopted child, posthumous child, foster child, and acknowledged illegitimate child between twenty-three and twenty-six years of age who is enrolled as a full-time student in any accredited educational institution and is dependent upon the employee for support.
 3. Scholarships are payable to an accredited institution of higher education or an institution of technical education on behalf of a student attending that institution.
 4. The total amount awarded annually in scholarships may not exceed five hundred thousand dollars. The maximum amount payable on behalf of an applicant is ten thousand dollars per year for no more than five years, except that the combined retraining and scholarship periods for applicants successfully completing a rehabilitation program under subdivision g of subsection 4 of section 65-05.1-01 may not exceed five years.
 5. Scholarships must be awarded by a panel chosen by the organization. The organization shall adopt rules establishing selection criteria and obligations associated with the program and identifying information an applicant is required to submit to determine an appropriate scholarship award. Scholarships may be awarded at the sole discretion of the organization. There is no right to reconsideration, rehearing, or appeal from any decision regarding the award, denial, or amount of a scholarship.

SECTION 5. Subsection 9 to section 65-05-32 of the North Dakota Century Code is created and enacted as follows:

9. The organization may provide any state or federal agency any information obtained pursuant to the administration of this title. Any information so provided must be used for the purpose of administering the duties of that state or federal agency.

SECTION 6. AMENDMENT. Subsection 1 of section 65-05.1-06.1 of the North Dakota Century Code is amended and reenacted as follows:

1. Within sixty days of receiving the final vocational report, the organization shall issue ~~an administrative order under chapter 28-32a~~ notice of decision under section 65-01-16 detailing the employee's entitlement to disability and vocational rehabilitation services.

SECTION 7. AMENDMENT. Section 65-05.1-06.3 of the North Dakota Century Code is amended and reenacted as follows:

65-05.1-06.3. Rehabilitation services pilot programs - Reports —Data-collection.

4. The organization ~~shall~~may implement a system of pilot programs to allow the organization to assess alternative methods of providing rehabilitation services. A pilot program may address one or more of the organization's comprehensive

rehabilitation services, including vocational, medical, psychological, economic, and social rehabilitation services. The goal of a pilot program must be to improve the outcome of the rehabilitation services offered by the organization to assist the employee in making adjustments necessitated from the employee's injury and to improve the effectiveness of vocational rehabilitation services in returning an employee to substantial gainful employment. Notwithstanding laws to the contrary, a pilot program may address a broad range of approaches, including collaborative efforts between the organization and the employee through which there are variances from the rehabilitation services hierarchy; return-to-work trial periods during which cash benefits are suspended; intensive job search assistance; recognition of and focused services for injured employees who are at risk; and coordination of services of public and private entities. If a pilot program utilizes coordination of services of other state agencies, such as job service North Dakota, department of human services, North Dakota university system, or department of public instruction, the organization shall consult with the state agency in establishing the relevant portions of the pilot program and the state agency shall cooperate with the organization in implementing the pilot program.

2. ~~Each pilot program must include a cost-benefit analysis; a strengths, weaknesses, opportunities, and threats analysis; and employer and employee satisfaction information. The organization shall include in its annual report to the workers' compensation review committee under section 54-35-22:~~
 - a. ~~Preliminary reports on future pilot programs;~~
 - b. ~~Status~~status reports on current pilot programs; and
 - c. ~~Final reports on completed pilot programs, including recommendations and proposed legislative changes necessary to implement recommendations.~~
3. ~~The organization shall collect data regarding the status of claims that receive rehabilitation services. The data must include:~~
 - a. ~~The stage of rehabilitation services at which closure occurs;~~
 - b. ~~The reason for the closure; and~~
 - c. ~~Followup data to determine the effectiveness of job searches and returns to work, including postinjury earnings.~~

SECTION 8. AMENDMENT. Section 65-05.1-08 of the North Dakota Century Code is amended and reenacted as follows:

65-05.1-08. Workforce safety and insurance educational revolving loan fund - Vocational rehabilitation grants - Continuing appropriation.

1. The organization may establish a revolving loan fund to provide a low-interest loan to an injured employee or to a surviving spouse or child of an injured employee whose death resulted from a compensable injury under section 65-05-16; or to the spouse or child of an injured employee deemed to be catastrophically injured as defined in subdivision c of subsection 2 of section 65-05.1-06.1 ~~and the child meets the definition of child at the time of the initial loan application;~~ or to the spouse or child of an injured employee deemed to be eligible for permanent total disability benefits as defined in section

~~65-01-02 and the child meets the definition of child at the time of the initial loan application.~~

2. The loan must be used to pursue an education at an accredited institution of higher education or an institution of technical education. In order to be eligible for a loan under this section, an individual must have obtained a high school diploma or its equivalent and either must be ineligible for retraining under this chapter or must have exhausted training and education benefits. A child of an injured employee must meet the definition of child at the time of the initial loan application in order to be eligible for a loan. The Bank of North Dakota and the organization shall establish loan eligibility requirements and make application determinations based on the established criteria. The loan application must require an applicant to demonstrate a viable education plan that will enable the individual to achieve gainful employment.
- 2-3. The total amount loaned annually under this section may not exceed two million five hundred thousand dollars. The maximum amount payable on behalf of a loan applicant may not exceed fifty thousand dollars and must be payable within five years. A loan must be repaid within a period not to exceed twenty years. A loan must be repaid at an interest rate established by the organization which may not exceed the rate of one percent below the Bank of North Dakota's prime interest rate. The organization shall pay the Bank of North Dakota a negotiated fee for administering and servicing loans under this section. At the organization's discretion, moneys to establish and maintain the revolving loan fund must be appropriated from the organization's workforce safety and insurance fund. The revolving loan fund is a special fund and must be invested pursuant to section 21-10-06. Investment income and collections of interest and principal on loans made from the revolving loan fund are appropriated on a continuing basis to maintain the fund and provide loans in accordance with this section. As determined necessary, the organization may transfer uncommitted moneys of the revolving loan fund to the workforce safety and insurance fund.
- 3-4. The organization may implement a grant program to promote and provide necessary educational opportunities for injured employees within the vocational rehabilitation process. The organization may award a grant to promote necessary skills upgrading and to provide for the completion of remedial educational requirements which allow for optimal transition into the labor force. The total annual amount the organization may grant under this subsection may not exceed one hundred thousand dollars. The organization shall establish grant eligibility requirements and make grant determinations based on the established criteria. Moneys are appropriated on a continuing basis from uncommitted moneys in the educational revolving loan fund for the purpose of funding the grants under this subsection.

SECTION 9. AMENDMENT. Section 65-06-03 of the North Dakota Century Code is amended and reenacted as follows:

65-06-03. Compensation benefits - How determined.

The basis of compensation and benefits to be paid to a volunteer firefighter, an emergency or disaster volunteer, volunteer health practitioner, or a community emergency response team member under the terms of this chapter shall be determined in accordance with the provisions of section 65-05-09; provided, however, that the average weekly wage of the claimant shall be determined from a computation

of income derived from the claimant's business or employment for which coverage is required or otherwise secured at the date of first disability.

SECTION 10. APPLICATION. Section 3 of this Act applies to all claims regardless of date of injury with a loss of earnings or recurrent loss of earnings commencing after July 31, 2015. Sections 6 and 9 of this Act apply to all claims regardless of date of injury.

Approved April 20, 2015
Filed April 20, 2015

CHAPTER 481

HOUSE BILL NO. 1159

(Representative Keiser)

AN ACT to amend and reenact section 65-05-30 of the North Dakota Century Code, relating to health care provider use of workers' compensation claim information; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-05-30 of the North Dakota Century Code is amended and reenacted as follows:

65-05-30. Filing of claim constitutes consent to use of information received by doctor.

1. The filing of a claim with the organization constitutes a consent to the use by the organization, in any proceeding by ~~the organization~~ or to which ~~the organization~~ is a party in any court, of any information, including prior and subsequent prognosis reports, medical records, medical bills, and other information concerning any health care or health care services which was received by any ~~doctor~~ health care provider, hospital, or clinic in the course of any examination or treatment of the claimant.
2. ~~The filing of a claim with the organization authorizes a health care provider, hospital, or clinic to disclose to the organization, or authorized representative of the organization, information or render an opinion regarding the injured employee's claim with the organization. As used in this subsection, an opinion may include a statement regarding liability, causation, or a preexisting condition or other information the organization deems necessary for the administration of this title. The filing of such a claim with the organization authorizes a doctor health care provider, hospital, or clinic to disclose any such information to the organization; it is deemed necessary for the administration of this title to the organization's representative, or to the employer, except that any such information directly disclosed to the employer must be relevant to the employee's work injury or to return-to-work issues. No physician or~~
The filing of a claim with the organization authorizes a health care provider, hospital, or clinic to disclose to the organization, or authorized representative of the organization, information or render an opinion regarding the injured employee's claim with the organization. As used in this subsection, an opinion may include a statement regarding liability, causation, or a preexisting condition or other information the organization deems necessary for the administration of this title. The filing of such a claim with the organization authorizes a doctor health care provider, hospital, or clinic to disclose any such information to the organization; it is deemed necessary for the administration of this title to the organization's representative, or to the employer, except that any such information directly disclosed to the employer must be relevant to the employee's work injury or to return-to-work issues. No physician or
3. ~~If a health care provider furnishing such reports or records incurs~~ furnishes information or an opinion under this section:
 - a. ~~That health care provider does not incur~~ any liability as a result of furnishing that information or opinion.
 - b. The act of furnishing that information or opinion may not be the sole basis for a disciplinary or other proceeding affecting professional licensure. However, the act of furnishing that information or opinion may be considered in conjunction with another action that may subject the health care provider to a disciplinary or other proceeding affecting professional licensure.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 19, 2015

Filed March 19, 2015

CHAPTER 482

SENATE BILL NO. 2060

(Legislative Management)
(Workers' Compensation Review Committee)

AN ACT to create and enact a new section to chapter 65-05 of the North Dakota Century Code, relating to workers' compensation coverage of chronic opioid therapy; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 65-05 of the North Dakota Century Code is created and enacted as follows:

Chronic opioid therapy coverage and monitoring.

1. As used in this section, "chronic opioid therapy" is opioid treatment extending beyond ninety days from initiation which is for the treatment of pain resulting from a nonmalignant, compensable condition or therapies for another nonterminal compensable condition.
2. In order to qualify for payment for chronic opioid therapy:
 - a. Chronic opioid therapy must result in an increase in function, enable an injured employee to resume working, or improve pain control without debilitating side effects;
 - b. Chronic opioid therapy must treat an injured employee:
 - (1) Who has been nonresponsive to non-opioid treatment;
 - (2) Who is not using illegal substances or abusing alcohol; and
 - (3) Who is compliant with the treatment protocol; and
 - c. The prescriber of chronic opioid therapy shall provide to the organization:
 - (1) At least every ninety days, documentation of the effectiveness of the chronic opioid therapy, including documentation of improvements in function or improvements in pain control without debilitating side effects; and
 - (2) A treatment agreement between the injured employee and the prescriber which restricts treatment access and limits prescriptions to one identified single prescriber. This paragraph does not preclude temporary coverage within a single clinic by an identified prescriber when the prescriber of record is unavailable and does not preclude a referral to a pain specialist.
3. At the prescriber's or organization's request, an injured employee on chronic opioid therapy is subject to random drug testing for the presence of prescribed

and illicit substances. Failure of the test or of timely compliance with the request may result in termination of chronic opioid therapy coverage.

4. Failure to comply with any of the conditions under this section may result in the termination of coverage for chronic opioid therapy.

SECTION 2. APPLICATION. This Act applies to all claims, regardless of date of injury.

Approved March 11, 2015

Filed March 11, 2015

CHAPTER 483

HOUSE BILL NO. 1120

(Industry, Business and Labor Committee)
(At the request of the Department of Corrections and Rehabilitation)

AN ACT to amend and reenact sections 65-06.2-06 and 65-06.2-07 of the North Dakota Century Code, relating to modified workers' compensation coverage for prison industries work programs through roughrider industries.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-06.2-06 of the North Dakota Century Code is amended and reenacted as follows:

65-06.2-06. Rulemaking - ~~Excess or reinsurance coverage~~ Participation in state entities account.

The organization, in cooperation with the department of corrections and rehabilitation and the risk management division of the office of management and budget, shall adopt administrative rules and fee schedules for a program of modified workers' compensation coverage established and provided under this section and sections 65-06.2-04, 65-06.2-05, and 65-06.2-08. The administrative rules and fee schedules must provide for the classification of inmates engaged in work in a prison industries work program through roughrider industries, the computation of premium, the payment of claims charges against the classification, the payment of medical bills, ~~excess coverage or reinsurance coverage under the workforce safety and insurance account for state entities under section 65-04-03.1,~~ and the reimbursement by roughrider industries to the organization for all claim benefit costs charged against that classification, as well as any allocated loss adjustment expense and all administrative expenses, including the expense of issuing the coverage, for the life of the claim in excess of premiums, ~~coverage under the workforce safety and insurance account for state entities,~~ and medical expenses paid by roughrider industries. Roughrider industries shall ~~secure excess coverage or shall reinsure all excess risks through the risk management division~~ contribute to the risk management workers' compensation fund and participate in the workforce safety and insurance account for state entities under section 65-04-03.1 to cover the costs in excess of premiums and medical expenses paid. The ~~organization shall determine and~~ risk management division shall assess a premium against roughrider industries for the cost of ~~excess or reinsurance coverage under the workforce safety and insurance account for state entities~~ and roughrider industries shall pay that premium.

SECTION 2. AMENDMENT. Section 65-06.2-07 of the North Dakota Century Code is amended and reenacted as follows:

65-06.2-07. State reimbursement for liability in excess of collected premiums.

Whenever total costs and expenses charged to the classification of the modified workers' compensation program established under this chapter exceeds the amount of premiums paid into the fund and any ~~policy limits of the reinsurance or excess coverage purchased under section 65-06.2-06~~ payments from the risk management

workers' compensation fund under the workforce safety and insurance state entities account under section 65-04-03.1, those excess costs and expenses are a general obligation of the state and the state shall reimburse the organization for credit to the workforce safety and insurance fund through legislative appropriation to the extent not covered by any program of excess coverage or reinsurance. Roughrider industries shall secure a means of reinsuring excess costs and expenses to minimize exposure of loss to the state general fund. The organization may not provide the additional excess coverage or reinsurance required under this section. This modified workers' compensation coverage may not be effective unless the organization has, in its sole discretion, purchased excess coverage or reinsurance required under this section is in place that does not exclude claims under this section.

Approved March 19, 2015

Filed March 19, 2015

CHAPTER 484

HOUSE BILL NO. 1103

(Industry, Business and Labor Committee)
(At the request of Workforce Safety and Insurance)

AN ACT to create and enact subdivision c of subsection 4 of section 65-08-01 of the North Dakota Century Code, relating to workers' compensation extraterritorial coverage; to amend and reenact section 65-04-22 and subsections 3 and 4 of section 65-04-33 of the North Dakota Century Code, relating to payment of workers' compensation premiums and penalties for failure to secure coverage; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-04-22 of the North Dakota Century Code is amended and reenacted as follows:

65-04-22. Organization may make premium due immediately - When premium is in default.

The organization may require payment of a premium, including an advance premium, security deposit, or any other instrument that is mutually acceptable to the organization and the employer, within any time which, in the judgment of the organization, is reasonable and necessary to secure the payment of the premium by any employer. The premium, whether paid in full or in installments, shall be in default one month from the payment due date specified in the premium billing statement.

Default of any installment payment will, at the option of the organization, make the entire remaining balance of the premium due and payable. The organization may declare an employer uninsured at any time after forty-five days have passed from the due date specified in the premium billing statement and the employer has failed to make a payment to the organization. The organization may decline coverage to any employer that has been determined to be uninsured under this section or where a premium delinquency remains unresolved.

SECTION 2. AMENDMENT. Subsections 3 and 4 of section 65-04-33 of the North Dakota Century Code are amended and reenacted as follows:

3. An employer who is uninsured is liable for any premiums plus penalties and interest due on those premiums, plus a penalty of twenty-five percent of all premiums due during the most recent year of noncompliance. An additional five percent penalty is due for each year of noncompliance before the most recent year beginning on the date the organization became aware of the employer's uninsured status, resulting in the penalty for the second most recent year being thirty percent, for the third most recent year being thirty-five percent, for the fourth most recent year being forty percent, for the fifth most recent year being forty-five percent, and for the sixth most recent year being fifty percent. In addition, the organization may assess a penalty of ~~two~~five thousand dollars for each premium period the employer was uninsured. The organization may not assess a penalty for more than six years of past noncompliance. The organization may assess additional penalties, from the

date the organization became aware of the employer's uninsured status continuing until the effective date of coverage, equal to twenty-five percent of the premium due for that period. ~~The penalties for employers are in addition to any other penalties provided by law. The organization may reduce these penalties. However, the amount due from~~ In addition, the organization may assess an employer may not be less than the actual cost and reserves of any claim attributable to the employer during the time the employer was uninsured, unless authorized by the director. The penalties for employers are in addition to any other penalties by law. The organization may reduce the penalties provided for under this section. An employer may not appeal an organization decision not to reduce a penalty under this subsection.

4. An employer who fails or refuses to furnish to the organization the annual payroll report and estimate or who fails or refuses to furnish other information required by the organization under this chapter is subject to a penalty established by the organization of two thousand dollars. Upon the request of the organization, the employer shall furnish the organization any of that employer's payroll records, annual payroll reports, and other information required by the organization under this chapter and an estimate of payroll for the advance premium year. If the employer fails or refuses to provide the records within thirty days of a written request from the organization, the employer is subject to a penalty not to exceed one hundred dollars for each day until the organization receives the records, in addition to the ~~two~~five thousand dollar penalty set forth above. The organization may not assess a penalty that exceeds one hundred fifty dollars under this subsection against an organized township. The organization may reduce penalties for employers under this subsection. However, an employer may not appeal an organization decision not to reduce a penalty. The organization shall notify an employer by regular mail of the amount of premium and penalty due the organization from the employer. If the employer fails to pay that amount within thirty days, the organization may collect the premium, penalties, and interest due by civil action. In that action, the court may not review or consider the action of the organization regarding the acceptance or payment of a claim filed when the employer was uninsured. No exemptions except absolute exemptions under section 28-22-02 are allowed against any levy under executions pursuant to a judgment recovered in the action.

SECTION 3. Subdivision c to subsection 4 of section 65-08-01 of the North Dakota Century Code is created and enacted as follows:

c. An employer hires an employee in this state for work in this state.

SECTION 4. APPLICATION. Section 2 of this Act applies to all accounts in noncompliance on or after the effective date of this Act.

Approved March 19, 2015

Filed March 19, 2015