

**Sixty-fifth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 3, 2017**

HOUSE BILL NO. 1086
(Industry, Business and Labor Committee)
(At the request of Workforce Safety and Insurance)

AN ACT to amend and reenact subsection 5 of section 65-05-08.1, subsection 1 of section 65-05-09.1, section 65-05-28, subsection 2 of section 65-05-33, and section 65-05.1-06.3 of the North Dakota Century Code, relating to notice to treating doctor, social security offset, criminal offense for filing of false claim, and vocational rehabilitation pilot program reports; to provide a penalty; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 65-05-08.1 of the North Dakota Century Code is amended and reenacted as follows:

5. Prior to the expiration of a period of disability certified by a doctor, if a report certifying an additional period of disability has not been filed, or upon receipt of a report or other evidence indicating an injured employee who is receiving disability benefits has been or will be released to return to work, the organization shall send a notice to that employee of the organization's intention to discontinue benefits, including an explanation of the reason for discontinuing benefits, an explanation of the injured employee's right to respond, and the procedure for filing the required report or challenging the proposed action. ~~A copy of the notice must be mailed to the employee's doctor.~~ Thereafter, if the required certification is not filed, the organization shall discontinue disability benefits, effective twenty-one days after the date the notice of intention to discontinue benefits is mailed or the date on which the injured employee actually returned to work, whichever occurs first.

SECTION 2. AMENDMENT. Subsection 1 of section 65-05-09.1 of the North Dakota Century Code is amended and reenacted as follows:

1. If the receipt of social security benefits results in an overpayment of temporary or permanent total disability benefits by the organization, a refund of any overpayment must be made by the injured worker/employee or that overpayment must be taken from future ~~temporary total or permanent total disability benefits or, permanent partial impairment awards, or personal reimbursements~~ on the current claim or any future claim filed, at a recovery rate to be determined by the organization.

SECTION 3. AMENDMENT. Section 65-05-28 of the North Dakota Century Code is amended and reenacted as follows:

65-05-28. Examination of injured employee - Paid expenses - No compensation paid if claimant/injured employee refuses to reasonably participate.

~~Every employee who sustains an injury~~An injured employee may select a doctor of that ~~employee's~~injured employee's choice to render initial treatment. Upon a determination that the injured employee's injury is compensable, the organization may require the injured employee to begin treating with another doctor to better direct the medical aspects of the injured employee's claim. The organization shall provide a list of three doctors who specialize in the treatment of the type of injury the employee sustained. At the organization's request, the injured employee shall select a doctor from the list. An injured employee shall follow the directives of the doctor or health care provider who is treating the injured employee as chosen by the injured employee at the request of the organization and comply with all reasonable requests during the time the injured employee is under medical care. Providing further that:

1. No injured employee may change from one doctor to another while under treatment or after being released, without the prior written authorization of the organization. Failure to obtain approval of the organization renders the injured employee liable for the cost of treatment and the new doctor will not be considered the attending doctor for purposes of certifying temporary disability.
 - a. Any injured employee requesting a change of doctor shall file a written request with the organization stating all reasons for the change. Upon receipt of the request, the organization will review the injured employee's easeclaim and approve or deny the change of doctor, notifying the injured employee and the requested doctor.
 - b. Emergency care or treatment or referral by the attending doctor does not constitute a change of doctor and does not require prior approval of the organization.
2. Travel and other personal reimbursement for seeking and obtaining medical care is paid only upon request of the injured employee. All claims for reimbursement must be supported by the original vendor receipt, when appropriate, and must be submitted within one year of the date the expense was incurred or reimbursement must be denied. Reimbursement must be made at the organization reimbursement rates in effect on the date of incurred travel or expense. The calculation for reimbursement for travel by motor vehicle must be calculated using miles actually and necessarily traveled. A personal reimbursement requested under this subsection is a managed care decision under section 65-02-20, subject to the appeal process as provided for in section 65-02-20. Providing further that:
 - a. Payment for mileage or other travel expenses may not be made when the distance traveled is less than fifty miles [80.47 kilometers] one way, unless the total mileage equals or exceeds two hundred miles [321.87 kilometers] in a calendar month;
 - b. All travel reimbursements are payable at the rates at which state employees are paid per diem and mileage, except that the organization may pay no more than actual cost of lodging, if actual cost is less;
 - c. Reimbursement may not be paid for travel other than that necessary to obtain the closest available medical or hospital care needed for the injury. If the injured employee chooses to seek medical treatment outside a local area where care is available, travel reimbursement may be denied;
 - d. Reimbursement may not be paid for the travel and associated expenses incurred by the injured employee's spouse, children, or other persons unless the injured employee's injury prevents travel alone and the inability is medically substantiated; and
 - e. Other expenses, including telephone calls and car rentals are not reimbursable expenses.
3. The organization may at any time require an injured employee to submit to an independent medical examination or independent medical review by one or more duly qualified doctors designated or approved by the organization. The organization shall make a reasonable effort to designate a duly qualified doctor licensed in the state in which the injured employee resides to conduct the examination before designating a duly qualified doctor licensed in another state or shall make a reasonable effort to designate a duly qualified doctor licensed in a state other than the injured employee's state of residence if the examination is conducted at a site within two hundred seventy-five miles [442.57 kilometers] from the injured employee's residence. An independent medical examination and independent medical review must be for the purpose of review of the diagnosis, prognosis, treatment, or fees. An independent medical examination contemplates an actual examination of an injured employee, either in person or remotely if appropriate. An independent medical review contemplates a file review of an injured employee's records, including treatments and testing. The injured employee may have a duly qualified doctor designated by that employee present at the examination or later review the

written report of the doctor performing the independent medical examination, if procured and paid for by that injured employee. Providing further that:

- a. In case of any disagreement between doctors making an examination on the part of the organization and the injured employee's doctor, the organization shall appoint an impartial doctor duly qualified who shall make an examination and shall report to the organization.
 - b. The injured employee, in the discretion of the organization, may be paid reasonable travel and other per diem expenses under the guidelines of subsection 2. If the injured employee is working and loses gross wages from the injured employee's employer for attending the examination, the gross wages must be reimbursed as a miscellaneous expense upon receipt of a signed statement from the employer verifying the gross wage loss.
4. If an injured employee, or the injured employee's representative, refuses to submit to, or in any way intentionally obstructs, any examination or treatment, or refuses to reasonably participate in medical or other treatments or examinations, the injured employee's right to claim compensation under this title is suspended until the refusal or obstruction ceases. No compensation is payable while the refusal or obstruction continues, and the period of the refusal or obstruction must be deducted from the period for which compensation is payable to the injured employee.
 5. If an injured employee undertakes activities, whether or not in the course of employment, which exceed the treatment recommendations of the injured employee's doctor regarding the work injury, and the doctor determines that the employee's injury or condition has been aggravated or has worsened as a result of the injured employee's activities, the organization may not pay benefits relative to the aggravation or worsening, unless the activities were undertaken at the demand of an employer. An employer's account may not be charged with the expenses of an aggravation or worsening of a work-related injury or condition unless the employer knowingly required the injured employee to perform activities that exceed the treatment recommendations of the injured employee's doctor.

SECTION 4. AMENDMENT. Subsection 2 of section 65-05-33 of the North Dakota Century Code is amended and reenacted as follows:

2. If any of the acts in subsection 1 are committed to obtain, or pursuant to a scheme to obtain, more than ~~five hundred~~ one thousand dollars in benefits or payment for services, the offense is a class C felony.

SECTION 5. 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.

The organization 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 injured 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 injured 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. The organization shall include in its ~~annual~~biennial report to the workers' compensation review committee under section 54-35-22 status reports on current pilot programs.

SECTION 6. APPLICATION. Section 3 of this Act applies to all claims regardless of date of injury.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-fifth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1086.

House Vote: Yeas 90 Nays 4 Absent 0

Senate Vote: Yeas 46 Nays 0 Absent 1

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2017.

Approved at _____ M. on _____, 2017.

Governor

Filed in this office this _____ day of _____, 2017,

at _____ o'clock _____ M.

Secretary of State