

**CHAPTER 65-02  
WORKFORCE SAFETY AND INSURANCE ORGANIZATION**

**65-02-01. Workforce safety and insurance - Director - Division directors.**

The organization must be maintained for the administration of this title. The director may appoint the director of any division established by the director. The appointment of a division director must be on a nonpartisan, merit basis.

**65-02-01.1. Workforce safety and insurance.**

The legislative council may delete, where appropriate, "workers compensation bureau", "North Dakota workers compensation bureau", or any derivatives of those terms, which when used in context indicate an intention to refer to those terms, wherever they appear in the North Dakota Century Code or in the supplements thereto and to insert in lieu of each deletion "workforce safety and insurance". Such changes are to be made when any volume or supplement of the North Dakota Century Code is being reprinted. It is the intent of the legislative assembly that workforce safety and insurance be substituted for, shall take any action previously to be taken by, and shall perform any duties previously to be performed by the workers compensation bureau. The legislative council may replace "bureau", where appropriate, wherever the term appears in the North Dakota Century Code or in the supplements of the North Dakota Century Code, with the term "organization". These changes are to be made when any volume or supplement is being reprinted.

**65-02-01.2. Organization to establish personnel system.**

Repealed by S.L. 2009, ch. 611, § 13.

**65-02-01.3. Workforce safety and insurance - Executive director - Governor to appoint - Personnel.**

Notwithstanding any other provisions of law, the governor shall appoint a director of workforce safety and insurance who shall serve at the pleasure of the governor. The governor shall set the compensation and prescribe the duties of the director. Each employee of workforce safety and insurance must occupy a position in the classified service and must be subject to the provisions of the state personnel system provided in chapter 54-44.3.

**65-02-02. Oath of office.**

Before commencing to perform the duties of director of the organization, the director shall file an oath of office in the usual form.

**65-02-03. Organization - Quorum - Effect of vacancy - Vacancies which must be filled within thirty days.**

Repealed by S.L. 1989, ch. 295, § 21.

**65-02-03.1. Workforce safety and insurance board of directors - Appointment.**

1. The board consists of eleven members. The appointment and replacement of the members must ensure that:
  - a. Six board members represent employers in this state which maintain active accounts with the organization. Two of the employer members must be employers with annual premiums, which at the time of the member's initial appointment were greater than twenty-five thousand dollars; one of the employer members must be an employer with an annual premium, which at the time of the member's initial appointment was less than twenty-five thousand dollars; one of the employer members must be an employer with an annual premium, which at the time of the member's initial appointment was less than ten thousand dollars; and two of the employer members must be employer at-large representatives. Except for the employer at-large representatives, each employer representative

- must be a principal owner, chief executive officer, or chief financial officer of the employer.
- b. Three members represent employees. Of the three employee members, one member must represent organized labor and one other member must have received workforce safety and insurance wage-loss benefits at some time during the ten years before the member's initial appointment.
  - c. One member is a member of the North Dakota medical association.
  - d. One member is a member at large who must be a resident of this state and at least twenty-one years of age.
2. Board members shall serve four-year terms. The governor shall make the necessary appointments to ensure the term of office of members begins on January first of each odd-numbered year. A board member whose initial appointment was before August 1, 2007, may not serve more than three consecutive terms and a board member whose initial appointment was after July 31, 2007, may not serve more than two consecutive terms.
- a. A departing member representing an employer must be replaced by a member representing an employer, most of whose employees are in a different rate classification than those of the employer represented by the departing member. The governor shall appoint the member for an employer representative from a list of three potential candidates submitted by a coordinating committee appointed by the governor, composed of representatives from the associated general contractors of North Dakota, the North Dakota petroleum council, the greater North Dakota chamber of commerce, the North Dakota motor carriers association, the North Dakota hospital association, the national federation of independent business, the lignite energy council, and other statewide business interests.
  - b. The governor shall select the member for the organized labor employee representative from a list of three potential candidates submitted by an organization that is statewide in scope and which through the organization's affiliates embraces a cross section and a majority of organized labor in this state.
  - c. The governor shall select the two employee representatives who do not represent organized labor and the member at large.
  - d. The governor shall select the member representing the North Dakota medical association from a list of three potential candidates submitted by the North Dakota medical association.
  - e. Within the thirty days following receipt of a list of potential candidates representing employers, organized labor, or the North Dakota medical association, the governor may reject the list and request that the submitting entity submit a new list of potential candidates.
3. Vacancies in the membership of the board must be filled for the unexpired term by appointment by the governor as provided in this section.

#### **65-02-03.2. Compensation of board members.**

A board member is entitled to receive compensation as determined by the board for days spent in attendance at board meetings or other business as approved by the board. A board member is entitled to reimbursement for mileage and expenses as provided for state officers.

#### **65-02-03.3. Board - Powers and duties.**

The board shall:

1. Assist the organization in developing and submitting a budget, responding to any audit recommendations, formulating policies, and discussing issues related to the administration of the organization, including the determination of employer premium rates, maintenance of the solvency of the workforce safety and insurance fund, and provision of rehabilitation services, while ensuring impartiality and freedom from political influence.

2. Recommend principles of continuous improvement goalsetting, a procedure for implementing a team-oriented continuous improvement program throughout all operations of the organization. The program must include a number of challenging, measurable goals to ensure the organization maintains focus on improving those areas most important to its primary mission.
3. Adopt internal management rules creating bylaws for the board and relating to the election of a board chairman, formation of committees, voting procedures, and other procedural matters.
4. Provide annual, formal recommendations to the governor regarding setting premium levels and providing premium dividend distributions.
5. Provide formal recommendations to the governor regarding legislation that affect the organization.
6. Provide formal recommendations to the governor regarding the fund's investment allocation.

**65-02-04. Chairman.**

Repealed by S.L. 1989, ch. 295, § 21.

**65-02-05. Office space for organization - Expenditures from fund for employees and supplies - Travel.**

The organization must be provided with office space. The organization, at the expense of the fund, shall provide all necessary equipment, supplies, stationery, and furniture, and all clerical and other help necessary to carry out the provisions of this title. The employees of the organization are entitled to receive from the fund for each mile [1.61 kilometers] actually and necessarily traveled in the performance of official duty by motor vehicle the same rates in the same manner as other state officials. If travel is by a motor vehicle owned by the state, or by any department or political subdivision thereof, no allowance may be paid for the mileage. Vouchers for travel and other administrative expenses must bear the approval of the organization and the office of management and budget before payment is made therefor. Travel and other administrative expense payments must be made by warrant-check prepared by the office of management and budget drawn upon the state treasurer against the fund. Expenditures made under this section, however, must be within the limitations designated by the legislative assembly in appropriation measures adopted from time to time.

**65-02-05.1. Building maintenance account - Continuing appropriation.**

There is a building maintenance account within the workforce safety and insurance fund, to which the organization shall deposit all building rental proceeds if the organization builds a building that includes rental space for other state entities. The moneys in the account are appropriated on a continuing basis to the organization to pay bond principal and interest payments, operating, maintenance, repair, and payments in lieu of taxes expenses of the building and grounds. This account may be used only for the purposes identified in this section. The organization may either hire or contract for building maintenance and repair services anticipated by this section.

**65-02-06. Expenditures by organization from fund - Employment of full-time special assistant attorneys general authorized.**

The organization may make necessary expenditures to obtain statistical and other information required for the proper enforcement of this title. The salaries and compensation of the director of the organization and of all employees of the organization, and all other authorized expenses of the organization, including the premium on the bond required of the state treasurer under section 65-04-30, must be paid out of the fund. The organization may employ duly appointed special assistant attorneys general and pay from the fund the entire salary of each special assistant attorney general.

**65-02-06.1. Allocated loss adjustment expenses - Continuing appropriation - Annual review.**

Money in the workforce safety and insurance fund is appropriated on a continuing basis for the payment of all allocated loss adjustment expenses experienced by the organization in its administration of this title. In its annual audit, the organization shall include a breakdown of those allocated loss adjustment expenses that reflect the attorney's fees and costs paid to attorneys who represent injured workers, the attorney's fees and costs paid to attorneys with whom it contracts to represent the organization, the amount paid for administrative law judges for hearings, and the court reporter and other legal expenses paid.

**65-02-06.2. Litigation expenses - Continuing appropriation.**

Money in the workforce safety and insurance fund is appropriated to the organization on a continuing basis for payment of organization expenses associated with litigating employer-related issues arising under this title and for payment of organization expenses associated with litigating medical provider-related issues identified under sections 65-02-23 and 65-02-20.

**65-02-07. Organization to have seal.**

The organization shall have a seal for the purpose of authentication, whenever authentication is required, upon which seal shall be inscribed the words "Workforce Safety and Insurance - North Dakota - Seal".

**65-02-08. Rulemaking power of the organization - Timeliness for issuance of decision - Fees prescribed by organization - Attorney's fees and costs.**

1. The organization shall adopt rules necessary to carry out this title. All fees on claims for medical and hospital goods and services provided under this title to an injured employee must be in accordance with schedules of fees adopted by the organization. Before the effective date of any adoption of, or change to, a fee schedule, the organization shall hold a public hearing, which is not subject to chapter 28-32.
2. The organization shall issue a decision within sixty days following the date all elements of initial filing or notice of reapplication of claim are satisfied or a claim for additional benefits over and above benefits previously awarded is made. The organization's administrative rules must define satisfaction of elements of filing.
3.
  - a. By administrative rule, the organization shall establish costs payable, maximum costs, a reasonable maximum hourly rate, and a maximum fee to compensate an injured employee's attorney for legal services following issuance of an administrative or judicial order reducing or denying benefits.
  - b. Except for an initial determination of compensability, an attorney's fee may not exceed twenty percent of the amount awarded, subject to a maximum fee set by administrative rule. The amount of the attorney's fees must be determined in the same manner as prescribed by the organization for attorney's fees. The total amount of attorney fees paid by the organization may not exceed the fee cap established for the highest appellate level at which the injured employee prevails.
  - c. The organization shall pay an attorney's fees and costs if the injured employee prevailed in binding dispute resolution under section 65-02-20, the injured employee prevailed after an administrative hearing under chapter 28-32, or the injured employee prevailed at the district or supreme court as provided for under section 65-10-03. The organization shall pay the attorney's fees and costs at the time the injured employee prevails. The organization may not condition payment of attorney's fees and costs upon the injured employee prevailing upon any future appeal.
  - d. An injured employee does not prevail unless an additional benefit, previously denied, is paid. An injured employee does not prevail on a remand for further action or proceedings unless that injured employee ultimately receives an additional benefit as a result of the remand.

- e. Notwithstanding the requirement under subdivision d that an additional benefit be paid or received, an injured employee who prevails at the administrative or district court level is eligible for attorney's fees and costs for prevailing at that level, regardless of whether the organization ultimately prevails upon the organization's appeal of an administrative or district court order.
- f. This subsection does not prevent an injured employee or an employer from hiring or paying an attorney.
- g. All disputes relating to payment or denial of an attorney's fees or costs must be submitted to the court, hearing officer, or arbitrator for decision, but a court, hearing officer, or arbitrator may not order the maximum fees be exceeded.
- h. The organization shall pay an injured employee's attorney's fees and costs from the organization's general fund. The organization is liable for its costs on appeal if the decision of the organization is affirmed.

**65-02-08.1. State advisory council - Composition - Compensation - Duties.**

Repealed by S.L. 1997, ch. 528, § 7.

**65-02-09. General information to public - Biennial report.**

The organization, from time to time, may publish and distribute among employers and employees general information as to the business transacted by the organization as in its judgment may be useful. The director shall submit a biennial report to the governor and the secretary of state in accordance with section 54-06-04. The report must include:

- 1. A statement of the number of awards made by it.
- 2. A general statement of the causes of accidents leading to the injuries for which the awards were made.
- 3. A detailed statement of the disbursements from the fund.
- 4. A statement of the conditions of the various funds carried by the organization.
- 5. A breakdown of those allocated loss adjustment expenses that reflect the attorney's fees and costs paid to attorneys who represent injured workers, the attorney's fees and costs paid to attorneys with whom the organization contracts to represent the organization, the amount paid for administrative law judges for hearings, and the amount paid for the court reporter and any other legal expenses.
- 6. Any other matters which the organization wishes to call to the attention of the governor, including any recommendation for legislation or otherwise which it may have to make.

**65-02-10. Organization to submit budget.**

Repealed by S.L. 1959, ch. 372, § 117.

**65-02-11. Process and procedure - Investigations - Examination of witnesses - Costs.**

Except as otherwise provided by this title, process and procedure under this title is governed by chapter 28-32. The organization may make investigation as in its judgment is best calculated to ascertain the substantial rights of all the parties. Any member of the organization and any person specifically designated by the organization may examine witnesses and records, with or without subpoena, examine, investigate, copy, photograph, and take samples at any pertinent location or facility, administer oaths to witnesses, require the attendance of witnesses without fee whenever the testimony is taken at the home, office, or place of work of those witnesses, and generally to do anything necessary to facilitate or promote the efficient administration of this title. The organization may issue a subpoena to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and any other records deemed necessary by the organization. Subpoenas may be enforced by applying to a judge of the district court for an order requiring the attendance of a witness, the production of all documents and objects described in the subpoena, or otherwise enforcing an order. Failure to comply with the order of the district court is contempt as provided in chapter 27-10. The organization shall pay the costs of any medical examination, scientific investigation, medical or

expert witness appearance or report, requested or approved by the organization, relating to a claim for benefits, from the organization's general fund.

**65-02-12. Hearings by director.**

Any investigation, inquiry, hearing, or decision, and every order by the director is deemed to be the order or decision of the organization.

**65-02-13. Organization may reinsure risks.**

The organization may reinsure any risk or any part thereof and may enter into agreements of reinsurance.

**65-02-13.1. Expenditures by organization for reinsurance and extraterritorial coverage and other states' insurance - Report in annual financial audit.**

There is appropriated out of the workforce safety and insurance fund, as a continuing appropriation, an amount necessary to allow the organization to establish a program of reinsurance and a program of extraterritorial coverage and other states' insurance. The organization may execute a contract for reinsurance and a contract for extraterritorial coverage and other states' insurance binding on the organization and the contracting party. The term identified in the contract may extend past the end of the biennium in which a contract under this section is executed. The independent annual financial audit report on the organization shall report on any contract executed pursuant to this section.

**65-02-14. Organization to aid in rehabilitating persons injured in employment.**

Repealed by S.L. 1975, ch. 584, § 10.

**65-02-15. Workforce safety and insurance binding arbitration.**

Repealed by S.L. 2003, ch. 562, § 13.

**65-02-16. Removal of a panel member.**

Repealed by S.L. 1993, ch. 614, § 13.

**65-02-17. Binding arbitration.**

Repealed by S.L. 1995, ch. 614, § 6.

**65-02-18. Administrative orders - Binding arbitration decisions - Appeals.**

Repealed by S.L. 1995, ch. 614, § 6.

**65-02-19. Organization to contract for administrative services.**

Repealed by S.L. 1999, ch. 554, § 4.

**65-02-20. Organization to establish managed care program.**

The organization shall establish a managed care program, including utilization review and bill review, to effect the best medical solution for an injured employee in a cost-effective manner upon a finding by the organization that the employee suffered a compensable injury. The program shall operate according to guidelines adopted by the organization and shall provide for medical management of claims within the bounds of workforce safety and insurance law. Information compiled and analysis performed pursuant to a managed care program which relate to patterns of treatment, cost, or outcomes by health care providers are confidential and are not open to public inspection to the extent the information and analysis identify a specific health care provider, except to the specific health care provider, organization employees, or persons rendering assistance to the organization in the administration of this title. If an employee, employer, or medical provider disputes a managed care decision, the employee, employer, or medical provider shall request binding dispute resolution on the decision. The organization shall make rules providing for the procedures for dispute resolution. Dispute resolution under this section is not subject to chapter 28-32 or section 65-01-16. A dispute resolution decision under

this section requested by a medical provider concerning payment for medical treatment already provided or a request for diagnostic tests or treatment is not reviewable by any court. A dispute resolution decision under this section requested by an employee is reviewable by a court only if medical treatment has been denied to the employee. A dispute resolution decision under this section requested by an employer is reviewable by a court only if medical treatment is awarded to the employee. The dispute resolution decision may be reversed only if the court finds that there has been an abuse of discretion in the dispute resolution process. Any person providing binding dispute resolution services under this section is exempt from civil liability relating to the binding dispute resolution process and decision.

**65-02-21. Contract for administration of managed care program.**

The organization may contract for the services of a third-party administrator to implement a managed care program by soliciting bids for administrative services, including a description of the program and the services expected of the managed care administrator. The organization shall award an administrative services contract to the bidder who will best serve the interests of the organization and the employees under this title. The contract must be for the period of a biennium. The organization may renew, renegotiate, or rebid a contract based upon contract performance, cost, and the best interests of an employee who suffers a compensable injury.

**65-02-21.1. Licensure required for psychologists and physicians performing utilization review.**

Psychologists making utilization review determinations under sections 65-02-20 and 65-02-21 shall have current licenses from the state board of psychologist examiners. Physicians making utilization review determinations under sections 65-02-20 and 65-02-21 shall have current licenses from the North Dakota board of medicine. This requirement does not apply to psychologists or physicians conducting independent medical examinations or independent medical reviews under section 65-05-28.

**65-02-21.2. Ambulance services classifications.**

For purposes of classifying ambulance services for benefits provided under this title, the classifications established under section 50-24.1-16 apply.

**65-02-22. Hearing officer - Qualifications - Location.**

A hearing officer designated by the office of administrative hearings under chapter 28-32 must be an individual licensed to practice law in this state. A hearing officer may not maintain an office within the organization.

**65-02-22.1. Appointment of administrative law judges - Hearings.**

Notwithstanding any other provisions of law, workforce safety and insurance shall contract with the office of administrative hearings for the designation of administrative law judges who shall conduct evidentiary hearings and issue final findings of fact, conclusions of law, and orders. Rehearings must be conducted as hearings under chapter 28-32.

**65-02-23. Workforce safety and insurance fraud unit - Continuing appropriation.**

The organization shall establish a workforce safety and insurance fraud unit. The organization may employ investigators and licensed attorneys, or contract with a private investigator whenever feasible or cost-effective, to investigate and review any alleged case of fraud against the fund by employers, injured workers, or providers of medical or other services, including activities described under section 65-04-33 or 65-05-33. The unit shall refer cases of fraud to the organization for the imposition of administrative penalties and may refer them to the appropriate authorities for prosecution. Money in the workforce safety and insurance fund is appropriated on a continuing basis for payment of costs associated with identifying, preventing, and investigating employer or provider fraud. The organization may establish a process to charge investigative costs against the rate class of an employer being investigated and to credit any recoveries to that rate class.

**65-02-24. Immunity from civil liability.**

A person who notifies the organization or who assists the organization on any matter pertaining to the administration of this title of an alleged violation of section 65-04-33 or 65-05-33, or who provides information in the course of an investigation of an alleged violation of section 65-04-33 or 65-05-33, is not subject to civil liability for that action if the action was in good faith and without malice. At the request of the person who notifies or assists the organization or who provides information to the organization, the organization may not reveal the identity of that person or disclose any information that may reveal the identity of that person to any person other than a representative of or a person rendering assistance to the organization.

**65-02-25. Amnesty for certain claims and accounts.**

After the workforce safety and insurance fraud unit is established, the organization may offer, not more than once every twelve months, a period of amnesty to any person who has willfully made a false claim or false statement or who has willfully misrepresented payroll, to allow that person the opportunity to close and repay the false claim, to close and repay the claim for which a false statement has been made, or to pay the appropriate premium and penalty on an account for which payroll was misrepresented. The amnesty period may not exceed sixty days. A person who receives amnesty under this section is immune from criminal prosecution relating to those acts for which amnesty is received.

**65-02-26. Nondisclosure of investigative information.**

Any investigative information gathered pursuant to section 65-02-23 is criminal investigative information and may not be disclosed except as provided in section 44-04-18.7. Notwithstanding sections 65-04-15 and 65-05-32, the fraud unit may provide investigative and claim file information to other fraud investigative and law enforcement entities, and gather investigative and claim file information from them.

**65-02-27. Decision review office.**

The organization's decision review office is established. The decision review office is independent of the claims department of the organization and activities administered through the office must be administered in accordance with this title. The decision review office shall provide assistance to an injured employee who has filed a claim, which may include acting on behalf of an injured employee who is aggrieved by a decision of the organization, communicating with organization staff regarding claim dispute resolution, and informing an injured employee of the effect of decisions made by the organization, an injured employee, or an employer under this title. The organization shall employ a director of the decision review office and other personnel determined to be necessary for the administration of the office. An individual employed to administer the decision review office may not act as an attorney for an injured employee. The organization may not pay attorney's fees to an attorney who represents an injured employee in a disputed claim before the organization unless the injured employee has first attempted to resolve the dispute through the decision review office. A written request for assistance by an injured employee who contacts the decision review office within the period for requesting a hearing on an administrative order tolls the time period for requesting a hearing on that order. The period begins upon notice to the injured employee, sent by regular mail, that the decision review office's assistance to the injured employee is completed. The information contained in a file established by the decision review office on an injured employee's disputed claim, including communications from an injured employee, is privileged and may not be released without the injured employee's permission. Information in the file containing the notes or mental impressions of decision review office staff is confidential and may not be released by the decision review office.

**65-02-28. Organization claim files - Destruction.**

If the organization determines that a person who has a claim for injury on file has been deceased for at least ten years, the organization may destroy any claim files for that person.



The organization may not destroy any claim file it specifically has been requested not to destroy. The organization shall establish a means for maintaining statistical and identifying information for any claim files destroyed under this section.

**65-02-29. Independent audit.**

Repealed by S.L. 1999, ch. 553, § 8.

**65-02-30. Independent performance evaluation - Organization development of performance measurements - Continuing appropriation.**

Once every four years, the director shall request the state auditor to select a firm with extensive expertise in workers' compensation practices and standards to complete a performance evaluation of the functions and operations of the organization during that evaluation period. This may not be construed to require the firm to be a certified public accounting firm. The firm's report must contain recommendations for departmental improvement or an explanation of why no recommendations are being made. The director or the director's designee, the chairman of the board or the chairman's designee, and a representative of the firm shall present the evaluation report and any action taken to the legislative management's workers' compensation review committee and to the governor. The director shall provide a copy of the performance evaluation report to the state auditor. Except as otherwise provided in this section, the workers' compensation review committee may select no more than four elements to be evaluated in the performance evaluation and shall inform the state auditor of the selected items to be evaluated. The state auditor shall include the elements selected by the committee in the performance evaluation, but the state auditor may select additional elements to be evaluated. The total number of elements, including those selected by the workers' compensation review committee, may not exceed eight. In exceptional circumstances, the state auditor may include more than eight elements for evaluation. If more than eight elements are selected, the state auditor shall report to the workers' compensation review committee the additional elements selected and the exceptional circumstances to support the inclusion of the additional elements. Money in the workforce safety and insurance fund is appropriated on a continuing basis for the payment of the expense of conducting the performance evaluation. The organization shall develop and maintain comprehensive, objective performance measurements. These measurements may be evaluated as part of the independent performance evaluation under this section.

**65-02-31. Payments in lieu of taxes by organization.**

If a building and associated real property is purchased by the organization pursuant to a legislative grant of authority, the organization shall make payments in lieu of property taxes in the manner and according to the conditions and procedures that would apply if the building and property were privately owned.

**65-02-32. Assessment of property - Notice to organization.**

All property subject to valuation must be assessed for the purpose of making the payments under section 65-02-31 in the same manner as other real property in this state is assessed for tax purposes. Before June thirtieth of each year, the county auditor of any county in which property subject to valuation is located shall give written notice to workforce safety and insurance and the tax commissioner of the value placed by the county board of equalization upon each parcel of property subject to valuation in that county.

**65-02-33. Occupational health and preventive medicine programs - Continuing appropriation.**

The organization may establish and implement programs to advance occupational health and preventive medicine in this state and to protect the integrity of the fund. These programs may include the provision of education or training, consultation, grants, scholarships, or other incentives that promote superior care and treatment of the workforce in this state. Funds in the

workforce and insurance fund are appropriated to the organization on a continuing basis for the purpose of funding the programs implemented under this section.

**65-02-34. Spending authority - Limited.**

Repealed by S.L. 2009, ch. 611, § 13.

**65-02-35. Attorney's fees for legal review in preparation for rehearing of an administrative order.**

1. The organization shall pay an injured employee's attorney for the fees and costs to consult with the injured employee regarding a request for rehearing of an administrative order issued by the organization under section 65-01-16 and chapter 28-32. The attorney's fees and costs under this section are for the purpose of an initial consultation and review of the claimant's case and are separate from and independent of the attorney's fees and costs provided for under section 65-02-08. To be eligible for payment of attorney's fees and costs under this section, before consulting the attorney the injured employee must first receive a certificate of completion from the decision review office, and the attorney consultation must take place after the certificate of completion is issued but before the rehearing is conducted.
2. Payment of attorney's fees and costs under this section is limited as follows:
  - a. An injured employee may consult with one attorney per administrative order;
  - b. The payment amount for attorney's fees may not exceed a total of five hundred dollars per injured employee, per administrative order;
  - c. The payment amount for costs may not exceed a total of one hundred fifty dollars per injured employee, per administrative order;
  - d. The attorney must be licensed to practice law in North Dakota and must be in good standing; and
  - e. The organization may deny fees and costs the organization determines to be excessive or frivolous.
3. To obtain payment under this section, an attorney shall submit to the organization a fee statement. The fee statement must be signed by the attorney and must include:
  - a. The name of the injured employee;
  - b. The workforce safety and insurance claim number;
  - c. The date of the billing statement;
  - d. A summary of the basic legal issue;
  - e. The date of each service or charge being billed;
  - f. An itemization and a reasonable description of the legal work performed for each service or charge;
  - g. The time and amount billed for each item; and
  - h. The total time and amounts billed.
4. Under this section, the organization shall reimburse the following costs:
  - a. Actual postage, if postage exceeds three dollars per parcel;
  - b. Actual toll charges for long-distance telephone calls;
  - c. Copying charges at eight cents per page;
  - d. Mileage and other expenses for reasonable and necessary travel, including per diem, all of which are to be paid in the amounts paid state officials as provided under sections 44-08-04 and 54-06-09; and
  - e. Other reasonable and necessary costs, not to exceed one hundred fifty dollars.
5. Under this section, the organization may not reimburse the following costs:
  - a. Express mail;
  - b. Additional copies of transcripts;
  - c. Costs incurred to obtain medical records;
  - d. Copy charges for documents provided by the organization; and
  - e. Costs for typing and clerical or office services.

**65-02-36. Attorney's fees for legal review of proposed settlement.**

The organization shall pay up to five hundred dollars to an attorney for review of a proposed settlement offered to an injured employee, if the employee to whom the settlement is offered was not represented by an attorney at the time the offer was made. Subdivisions d and e of subsection 2 of section 65-02-35 apply to the payment of fees under this section. The organization may reimburse an attorney for costs under this section according to subsections 3, 4, and 5 of section 65-02-35. Fees and costs under this section are payable regardless of whether the injured employee accepts the settlement proposal.