

**Sixty-sixth Legislative Assembly of North Dakota
In Regular Session Commencing Thursday, January 3, 2019**

SENATE BILL NO. 2184
(Senators J. Lee, Hogan, Klein)
(Representatives P. Anderson, Keiser, Rohr)

AN ACT to amend and reenact subsection 7 of section 23-07.5-02, sections 65-01-02, 65-01-11, 65-01-15, 65-02-20, 65-02-21.1, 65-05-07, 65-05-08.1, and 65-05-08.3, subsections 5 and 12 of section 65-05-12.2, section 65-05-28, subsection 2 of section 65-05-29, section 65-05-30, subsection 3 of section 65-05-32, subsection 5 of section 65-05.1-01, subsection 6 of section 65-05.1-02, and subsection 1 of section 65-07-03 of the North Dakota Century Code, relating to the definition of allied health care professional and health care provider with respect to workers' compensation claims and benefits.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 7 of section 23-07.5-02 of the North Dakota Century Code is amended and reenacted as follows:

7. The exposed individual shall pay the expense of testing. However, if the exposure occurs at an employee's workplace, the worker's employer shall pay the expense of testing unless otherwise provided by subdivision b of subsection ~~40~~11 of section 65-01-02. If the individual to be tested is convicted of a crime relating to the exposure or the exposure occurred during an arrest or other contact with the exposed individual in the course of that individual's official duties, a court may order the individual to be tested to pay for the testing.

SECTION 2. AMENDMENT. Section 65-01-02 of the North Dakota Century Code is amended and reenacted as follows:

65-01-02. Definitions.

In this title:

1. "Acute care" means a short course of intensive diagnostic and therapeutic services provided immediately following a work injury with a rapid onset of pronounced symptoms.
2. "Adopted" or "adoption" refers only to a legal adoption effected prior to the time of the injury.
3. "Allied health care professional" includes a health care provider, pharmacist, audiologist, speech language pathologist, or naturopath or any recognized practitioner who provides skilled services pursuant to the prescription of, or under the supervision or direction of any of these individuals.
4. "Artificial members" includes a device that is a substitute for a natural part, organ, limb, or other part of the body. The term includes a prescriptive device that is an aid for a natural part, organ, limb, or other part of the body if the damage to the prescriptive device is accompanied by an injury to the body. A prescriptive device includes prescription eyeglasses, contact lenses, dental braces, and orthopedic braces.
- ~~4.5.~~ "Artificial replacements" means mechanical aids, including braces, belts, casts, or crutches as may be reasonable and necessary due to compensable injury.
- ~~5.6.~~ "Average weekly wage" means the weekly wages the employee was receiving from all employments for which coverage is required or otherwise secured at the date of first disability. The average weekly wage determined under this subsection must be rounded to the nearest

dollar. If the employee's wages are not fixed by the week, they must be determined by using the first applicable formula from the schedule below:

- a. For seasonal employment, during the first consecutive days of disability up to twenty-eight days the average weekly wage is calculated pursuant to the first applicable formula in subdivisions b through g, and after that are calculated as one-fiftieth of the total wages from all occupations during the twelve months preceding the date of first disability or during the tax year preceding the date of first disability, or an average of the three tax years preceding the date of first disability, whichever is highest and for which accurate, reliable, and complete records are readily available.
- b. The "average weekly wage" of a self-employed employer is determined by the following formula: one fifty-second of the average annual net self-employed earnings reported the three preceding tax years or preceding fifty-two weeks whichever is higher if accurate, reliable, and complete records for those fifty-two weeks are readily available.
- c. Hourly or daily rate multiplied by number of hours or days worked per seven-day week.
- d. Monthly rate multiplied by twelve months and divided by fifty-two weeks.
- e. Biweekly rate divided by two.
- f. The usual wage paid other employees engaged in similar occupations.
- g. A wage reasonably and fairly approximating the weekly wage lost by the claimant during the period of disability.

6-7. "Average weekly wage in the state" means the determination made of the average weekly wage in the state by job service North Dakota on or before July first of each year, computed to the next highest dollar.

7-8. "Board" means the workforce safety and insurance board of directors.

8-9. "Brother" and "sister" include a stepbrother and a stepsister, a half brother and a half sister, and a brother and sister by adoption. The terms do not include a married brother or sister unless that person actually is dependent.

9-10. "Child", for determining eligibility for benefits under chapter 65-05, means a legitimate child, a stepchild, adopted child, posthumous child, foster child, and acknowledged illegitimate child who is under eighteen years of age and resides with the employee; or is under eighteen years of age and does not reside with the employee but a duty of support is substantiated by an appropriate court order; or is between eighteen and twenty-two years of age and enrolled as a full-time student in any accredited educational institution and dependent upon the employee for support; or is eighteen years of age or over and is physically or mentally incapable of self-support and is actually dependent upon the employee for support. A child does not include a married child unless actually dependent on the employee as shown on the preceding year's income tax returns.

40-11. "Compensable injury" means an injury by accident arising out of and in the course of hazardous employment which must be established by medical evidence supported by objective medical findings.

a. The term includes:

- (1) Disease caused by a hazard to which an employee is subjected in the course of employment. The disease must be incidental to the character of the business and not independent of the relation of employer and employee. Disease includes effects from radiation.

- (2) An injury to artificial members.
 - (3) Injuries due to heart attack or other heart-related disease, stroke, and physical injury caused by mental stimulus, but only when caused by the employee's employment with reasonable medical certainty, and only when it is determined with reasonable medical certainty that unusual stress is at least fifty percent of the cause of the injury or disease as compared with all other contributing causes combined. Unusual stress means stress greater than the highest level of stress normally experienced or anticipated in that position or line of work.
 - (4) Injuries arising out of employer-required or supplied travel to and from a remote jobsite or activities performed at the direction or under the control of the employer.
 - (5) An injury caused by the willful act of a third person directed against an employee because of the employee's employment.
 - (6) A mental or psychological condition caused by a physical injury, but only when the physical injury is determined with reasonable medical certainty to be at least fifty percent of the cause of the condition as compared with all other contributing causes combined, and only when the condition did not pre-exist the work injury.
- b. The term does not include:
- (1) Ordinary diseases of life to which the general public outside of employment is exposed or preventive treatment for communicable diseases, except that the organization may pay for preventive treatment for a health care provider as defined in section 23-07.5-01, firefighter, peace officer, correctional officer, court officer, law enforcement officer, emergency medical technician, or an individual trained and authorized by law or rule to render emergency medical assistance or treatment who is exposed to a bloodborne pathogen as defined in section 23-07.5-01 occurring in the course of employment and for exposure to rabies occurring in the course of employment.
 - (2) A willfully self-inflicted injury, including suicide or attempted suicide, or an injury caused by the employee's willful intention to injure or kill another.
 - (3) Any injury caused by the use of intoxicants or the illegal use of controlled substances.
 - (4) An injury that arises out of an altercation in which the injured employee is an aggressor. This paragraph does not apply to public safety employees, including law enforcement officers or private security personnel who are required to engage in altercations as part of their job duties if the altercation arises out of the performance of those job duties.
 - (5) An injury that arises out of an illegal act committed by the injured employee.
 - (6) An injury that arises out of an employee's voluntary nonpaid participation in any recreational activity, including athletic events, parties, and picnics, even though the employer pays some or all of the cost of the activity.
 - (7) Injuries attributable to a pre-existing injury, disease, or other condition, including when the employment acts as a trigger to produce symptoms in the pre-existing injury, disease, or other condition unless the employment substantially accelerates its progression or substantially worsens its severity. Pain is a symptom and may be considered in determining whether there is a substantial acceleration or substantial worsening of a pre-existing injury, disease, or other condition, but pain alone is not a substantial acceleration or a substantial worsening.

- (8) A nonemployment injury that, although acting upon a prior compensable injury, is an independent intervening cause of injury.
- (9) A latent or asymptomatic degenerative condition, caused in substantial part by employment duties, which is triggered or made active by a subsequent injury.
- (10) A mental injury arising from mental stimulus.

~~41.12.~~ "Date of first disability" means the first date the employee was unable to work because of a compensable injury.

~~42.13.~~ "Date of maximum medical improvement" or "date of maximum medical recovery" means the date after which further recovery from, or lasting improvement to, an injury or disease can no longer reasonably be anticipated based upon reasonable medical probability.

~~43.14.~~ "Director" means the director of the organization.

~~44.15.~~ "Disability" means loss of earnings capacity and may be permanent total, temporary total, or partial.

~~15.~~ "Doctor" means ~~doctor of medicine or osteopathy, chiropractor, dentist, optometrist, podiatrist, or psychologist acting within the scope of the doctor's license, or an advanced practice registered nurse or certified physician assistant.~~

16. "Employee" means an individual who performs hazardous employment for another for remuneration unless the individual is an independent contractor under the common-law test.

a. The term includes:

- (1) All elective and appointed officials of this state and its political subdivisions, including municipal corporations and including the members of the legislative assembly, all elective officials of any county, and all elective peace officers of any city.
- (2) Aliens.
- (3) County general assistance workers, except those who are engaged in repaying to counties moneys the counties have been compelled by statute to expend for county general assistance.
- (4) Minors, whether lawfully or unlawfully employed. A minor is deemed sui juris for the purposes of this title, and no other person has any claim for relief or right to claim workforce safety and insurance benefits for any injury to a minor worker, but in the event of the award of a lump sum of benefits to a minor employee, the lump sum may be paid only to the legally appointed guardian of the minor.

b. The term does not include:

- (1) An individual whose employment is both casual and not in the course of the trade, business, profession, or occupation of that individual's employer.
- (2) An individual who is engaged in an illegal enterprise or occupation.
- (3) The spouse of an employer or the child under the age of twenty-two of an employer. For purposes of this paragraph and section 65-07-01, "child" means any legitimate child, stepchild, adopted child, foster child, or acknowledged illegitimate child.
- (4) A real estate broker or real estate salesperson, provided the individual meets the following three requirements:

- (a) The salesperson or broker must be a licensed real estate agent under section 43-23-05.
 - (b) Substantially all of the salesperson's or broker's remuneration for the services performed as a real estate agent must be directly related to sales or other efforts rather than to the number of hours worked.
 - (c) A written agreement must exist between the salesperson or broker and the person for which the salesperson or broker works, which agreement must provide the salesperson or broker will not be treated as an employee but rather as an independent contractor.
- (5) The members of the board of directors of a business corporation who are not employed in any capacity by the corporation other than as members of the board of directors.
- (6) An individual delivering newspapers or shopping news, if substantially all of the individual's remuneration is directly related to sales or other efforts rather than to the number of hours worked and a written agreement exists between the individual and the publisher of the newspaper or shopping news which states the individual is an independent contractor.
- (7) An employer.
17. "Employer" means a person who engages or received the services of another for remuneration unless the person performing the services is an independent contractor under the common-law test. The term includes:
- a. The state and all political subdivisions thereof.
 - b. All public and quasi-public corporations in this state.
 - c. Every person, partnership, limited liability company, association, and private corporation, including a public service corporation.
 - d. The legal representative of any deceased employer.
 - e. The receiver or trustee of any person, partnership, limited liability company, association, or corporation having one or more employees as herein defined.
 - f. The president, vice presidents, secretary, or treasurer of a business corporation, but not members of the board of directors of a business corporation who are not also officers of the corporation.
 - g. The managers of a limited liability company.
 - h. The president, vice presidents, secretary, treasurer, or board of directors of an association or cooperative organized under chapter 6-06, 10-12, 10-13, 10-15, 36-08, or 49-21.
 - i. The clerk, assessor, treasurer, or any member of the board of supervisors of an organized township, if the person is not employed by the township in any other capacity.
 - j. A multidistrict special education unit.
 - k. An area career and technology center.
 - l. A regional education association.

18. "Fee schedule" means the payment formulas established in the organization publication entitled "Medical and Hospital Fees".
19. "Fund" means the workforce safety and insurance fund.
20. "Hazardous employment" means any employment in which one or more employees are employed regularly in the same business or in or about the establishment except:
 - a. Agricultural or domestic service.
 - b. Any employment of a common carrier by railroad.
 - c. Any employment for the transportation of property or persons by nonresidents, where, in such transportation, the highways are not traveled more than seven miles [11.27 kilometers] and return over the same route within the state of North Dakota.
 - d. All members of the clergy and employees of religious organizations engaged in the operation, maintenance, and conduct of the place of worship.
21. ~~"Health care provider" includes a doctor, 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 any of these individuals~~means a doctor of medicine or osteopathy, chiropractor, dentist, optometrist, podiatrist, or psychologist acting within the scope of the doctor's license, or an advanced practice registered nurse or certified physician assistant.
22. "Medical marijuana" means the use of all parts of the plant of the genus cannabis, the seeds of the plant, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, the seeds of the plant, or the resin extracted from any part of the plant as a physician-recommended form of medicine or herbal therapy. The term does not include treatments or preparations specifically approved by the United States food and drug administration as a drug product.
23. "Organization" means workforce safety and insurance, or the director, or any department head, assistant, or employee of workforce safety and insurance designated by the director, to act within the course and scope of that person's employment in administering the policies, powers, and duties of this title.
24. "Parent" includes a stepparent and a parent by adoption.
25. "Permanent impairment" means the loss of or loss of use of a member of the body existing after the date of maximum medical improvement and includes disfigurement resulting from an injury.
26. "Permanent total disability" means disability that is the direct result of a compensable injury that prevents an employee from performing any work and results from any one of the following conditions:
 - a. Total and permanent loss of sight of both eyes;
 - b. Loss of both legs or loss of both feet at or above the ankle;
 - c. Loss of both arms or loss of both hands at or above the wrist;
 - d. Loss of any two of the members or faculties in subdivision a, b, or c;
 - e. Permanent and complete paralysis of both legs or both arms or of one leg and one arm;
 - f. Third-degree burns that cover at least forty percent of the body and require grafting;

- g. A medically documented brain injury affecting cognitive and mental functioning which renders an employee unable to provide self-care and requires supervision or assistance with a majority of the activities of daily living; or
- h. A compensable injury that results in a permanent partial impairment rating of the whole body of at least twenty-five percent pursuant to section 65-05-12.2.

If the employee has not reached maximum medical improvement within one hundred four weeks, the employee may receive a permanent partial impairment rating if a rating will assist the organization in assessing the employee's capabilities. Entitlement to a rating is solely within the discretion of the organization.

- 27. "Rehabilitation services" means nonmedical services reasonably necessary to restore a disabled employee to substantial gainful employment as defined by section 65-05.1-01 as near as possible. The term may include vocational evaluation, counseling, education, workplace modification, vocational retraining including training for alternative employment with the same employer, and job placement assistance.
- 28. "Seasonal employment" includes occupations that are not permanent or that do not customarily operate throughout the entire year. Seasonal employment is determined by what is customary with respect to the employer at the time of injury.
- 29. "Spouse" includes only the decedent's husband or wife who was living with the decedent or was dependent upon the decedent for support at the time of injury.
- 30. "Temporary total disability" means disability that results in the inability of an employee to earn wages as a result of a compensable injury for which disability benefits may not exceed a cumulative total of one hundred four weeks or the date the employee reaches maximum medical improvement or maximum medical recovery, whichever occurs first.
- 31. "Utilization review" means the initial and continuing evaluation of appropriateness in terms of both the level and the quality of health care and health services provided a patient, based on medically accepted standards. The evaluation must be accomplished by means of a system that identifies the utilization of medical services, based on medically accepted standards, and which refers instances of possible inappropriate utilization to the organization to obtain opinions and recommendations of expert medical consultants to review individual cases for which administrative action may be deemed necessary.
- 32. a. "Wages" means:
 - (1) An employee's remuneration from all employment reportable to the internal revenue service as earned income for federal income tax purposes.
 - (2) For members of the national guard who sustain a compensable injury while on state active duty, "wages" includes income from federal employment and may be included in determining the average weekly wage.
 - (3) For purposes of chapter 65-04 only, "wages" means all gross earnings of all employees. The term includes all pretax deductions for amounts allocated by the employee for deferred compensation, medical reimbursement, retirement, or any similar program, but may not include dismissal or severance pay.
- b. The organization may consider postinjury wages for which coverage was not required or otherwise secured in North Dakota for purposes of determining appropriate vocational rehabilitation options or entitlement to disability benefits under this title.

SECTION 3. AMENDMENT. Section 65-01-11 of the North Dakota Century Code is amended and reenacted as follows:

65-01-11. Burden of proof in compensation matters - Death certificate.

If the organization or an employer claims that an employee is not entitled to the benefits of the North Dakota workforce safety and insurance law because the employee's injury was caused by the employee's willful intention to cause self-injury, or to injure another, or by reason of the voluntary impairment caused by use of alcohol or illegal use of a controlled substance by the employee, the burden of proving the exemption or forfeiture is ~~upon~~ the organization or ~~upon~~ the person alleging the same; however, an alcohol concentration level at or above the limit set by the United States secretary of transportation in the Code of Federal Regulations in effect on August 1, 2011, or a level of an illegally used controlled substance sufficient to cause impairment found by a test conducted by a physician, qualified technician, chemist, or registered nurse at or above the cutoff level in the Code of Federal Regulations in effect on August 1, 2011, creates a rebuttable presumption that the injury was due to impairment caused by the use of alcohol or the illegal use of a controlled substance. An employer who has a mandatory drug alcohol testing policy for work accidents, or an employer or a ~~doctor~~health care provider who has reasonable grounds to suspect an employee's alleged work injury was caused by the employee's voluntary impairment caused by use of alcohol or illegal use of a controlled substance may request that the employee undergo testing to determine if the employee had alcohol or the controlled substance in the employee's system at levels greater than the limit set by the United States department of transportation at the time of the injury. If an employee refuses to submit to a reasonable request to undergo a test to determine if the employee was impaired or if an employee refuses to submit to a test for drugs or alcohol after a work accident as mandated by company policy, the employee forfeits all entitlement to workforce safety and insurance benefits arising out of that injury. Any claimant against the fund, however, has the burden of proving by a preponderance of the evidence that the claimant is entitled to benefits. If a claim for death benefits is filed, the official death certificate must be considered as evidence of death and may not be used to establish the cause of death.

SECTION 4. AMENDMENT. Section 65-01-15 of the North Dakota Century Code is amended and reenacted as follows:

65-01-15. Yearly documentation required for firefighter and law enforcement officer.

Except for benefits for an exposure to a bloodborne pathogen as defined by section 23-07.5-01 occurring in the course of employment, a full-time paid firefighter or law enforcement officer who uses tobacco is not eligible for the benefits provided under section 65-01-15.1, unless the full-time paid firefighter or law enforcement officer provides yearly documentation from a ~~physician~~health care provider which indicates that the full-time paid firefighter or law enforcement officer has not used tobacco for the preceding two years.

SECTION 5. AMENDMENT. Section 65-02-20 of the North Dakota Century Code is amended and reenacted as follows:

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 and allied health care professionals are confidential and are not open to public inspection to the extent the information and analysis identify a specific health care provider or allied health care professional, except to the specific health care provider, allied health care professional, organization employees, or persons rendering assistance to the organization in the administration of this title. If an employee, employer, or ~~medical provider~~allied health care professional disputes a managed care decision, the employee, employer, or ~~medical provider~~allied health care professional 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~~an allied health care professional 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.

SECTION 6. AMENDMENT. Section 65-02-21.1 of the North Dakota Century Code is amended and reenacted as follows:

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~~Health care providers making utilization review determinations under sections 65-02-20 and 65-02-21 shall have current licenses from the ~~North Dakota board of medicine~~appropriate North Dakota licensing board. This requirement does not apply to psychologists or ~~physicians~~health care providers conducting independent medical examinations or independent medical reviews under section 65-05-28.

SECTION 7. AMENDMENT. Section 65-05-07 of the North Dakota Century Code is amended and reenacted as follows:

65-05-07. Injured employee given medical and hospital service required - Furnished artificial limbs and appliances for rehabilitation - Fee approval.

The fund shall furnish to an injured employee reasonable and appropriate medical, surgical, and hospital service and supplies necessary to treat a compensable injury. The fund may furnish artificial members and replacements the organization determines necessary to rehabilitate an injured employee.

1. The ~~health care provider or doctor~~allied health care professional must be acting within the scope of the ~~provider's or doctor's~~allied health care professional's license or fees will be denied.
2. Fees may not be approved for more than one ~~health care provider or doctor~~allied health care professional in a case ~~wherein which~~ treatment is provided over the same period of time except for the services of a consulting doctor, assistant surgeon, or anesthesiologist or in an emergency.
3. The organization, in cooperation with professional organizations of ~~doctors and health care providers~~allied health care professionals, shall establish a system of peer review to determine reasonableness of fees and payment denials for unjustified treatments, hospitalization, or visits. The ~~doctor or health care provider~~allied health care professional may appeal adverse decisions of the organization in accordance with the medical aid rules adopted by the organization.
4. ~~Health care providers and doctors~~An allied health care professional may not bill an injured employee for ~~any services~~a service rendered as a result of the compensable work injury.
5. Under this section, the organization may modify real estate and may provide for adaptations and modifications to motor vehicles as follows:
 - a. In the case of an injured employee who sustained a catastrophic injury, as defined in chapter 65-05.1, the organization may pay an amount not to exceed seventy-five

thousand dollars to provide permanent additions, remodeling, or adaptations to real estate it determines necessary. The dollar limit is for the life of the injured employee, regardless of any subsequent claim. This subdivision does not allow the organization to purchase any real estate.

- b. In the case of an injured employee who sustained a catastrophic injury, as defined in chapter 65-05.1, the organization may pay an amount not to exceed one hundred fifty thousand dollars to provide the most cost-effective, specially equipped motor vehicle or vehicle adaptations the organization determines medically necessary. The organization may establish factors to be used in determining whether a specially equipped motor vehicle or adaptation is necessary. Under this subdivision, the organization may not pay for insurance of or maintenance of the motor vehicle. Within the dollar limit and under this subdivision, the organization may pay for vehicle or adaptation replacement purchases. The dollar limit is for the life of the injured employee, regardless of any subsequent claim.
 - c. In the case of an injured employee who has not sustained a catastrophic injury, as defined in chapter 65-05.1, the organization may provide the benefits under subdivisions a and b if the organization determines the benefits would be cost-effective and appropriate because of exceptional circumstances as determined by the organization.
6. If a ~~doctor or health care provider~~ an allied health care professional who has treated or provided services to an injured employee fails or refuses without just cause to file with the organization a report required by section 65-05-02, 65-05-08, or 65-05-08.1, within thirty days of examination, treatment, or provision of other services rendered in connection with a compensable work injury, or within thirty days of a request for the report made by the claimant, the claimant's representative, or the organization, the organization shall assess as a penalty a sum of one hundred dollars. Health care providers and ~~doctors~~ allied health care professionals may not bill an injured worker for ~~any~~ a penalty assessed by the organization under this subsection.
7. The filing of an accident report or the rendering of treatment to an injured worker who comes under the organization's jurisdiction constitutes acceptance of the organization's medical aid rules and compliance with ~~the organization's~~ the organization's rules and fees.
8. The organization may not pay for:
- a. Personal items ~~that are~~ for the injured employee's personal use or hygiene, including toothbrushes, slippers, shampoo, and soap.
 - b. A product or item including clothing or footwear unless the items are considered orthopedic devices and are prescribed by the treating ~~doctor or health care provider~~ allied health care professional.
 - c. Furniture except hospital beds, shower stools, wheelchairs, or whirlpools if prescribed by the treating ~~doctor or health care provider~~ allied health care professional.
 - d. Vitamins and food supplements except in those cases in which the injury causes severe dietary problems, the injury results in the employee's paraplegia or quadriplegia, or the employee becomes wheelchair-bound due to the injury.
 - e. Eye examinations unless there is a reasonable potential for injury to the employee's eyes as a result of the injury.
 - f. Private hospital or nursing home rooms except in cases of extreme medical necessity and only when directed by the attending doctor. If the employee desires better accommodations than those ordered by the attending doctor, the employee will pay the difference in cost.

- g. Serological tests, including VDRL and RPR, or other tests for venereal disease or pregnancy, or any other routine tests unless clearly necessitated by the injury.
- h. Aids or programs primarily intended to help the employee lose weight or stop smoking unless ordered by the organization.
- i. Home gymnasium or exercise equipment unless ordered by the organization.
- j. Memberships or monthly dues to health clubs, unless ordered by the organization.
- k. Massage, unless ordered by the organization.
- l. Medical marijuana.

SECTION 8. AMENDMENT. Section 65-05-08.1 of the North Dakota Century Code is amended and reenacted as follows:

65-05-08.1. Verification of disability.

- 1. An injured employee's ~~doctor~~health care provider shall certify the period of disability and the extent of the injured worker's abilities and restrictions.
- 2. A ~~doctor~~health care provider certifying disability shall include in the report filed with the organization:
 - a. The medical basis established by medical evidence supported by objective medical findings for the certification of disability;
 - b. Whether the employee is totally disabled, or, if the employee is not totally disabled, whether the employee is able to return to any employment, and a statement of the employee's restrictions and physical limitations; and
 - c. A professional opinion as to the expected length of, and reason for, the disability.
- ~~3.3.~~ A ~~doctor~~health care provider may not certify or verify past disability commencing more than sixty days before the ~~doctor's~~health care provider's examination of the employee.
- ~~3.4.~~ The report must be filed on a form furnished by the organization, or on any other form acceptable to the organization.
- ~~4.5.~~ The injured employee shall ensure that the required reports for any period of disability are filed.
- ~~5.6.~~ Prior to the expiration of a period of disability certified by a ~~doctor~~health care provider, 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. 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 9. AMENDMENT. Section 65-05-08.3 of the North Dakota Century Code is amended and reenacted as follows:

65-05-08.3. Treating ~~doctor's~~health care provider's opinion.

1. A presumption may not be established in favor of any ~~doctor's~~health care provider's opinion. The organization shall resolve conflicting medical opinions and in doing so the organization shall consider the following factors:
 - a. The length of the treatment relationship and the frequency of examinations;
 - b. The nature and extent of the treatment relationship;
 - c. The amount of relevant evidence in support of the opinion;
 - d. How consistent the opinion is with the record as a whole;
 - e. Appearance of bias;
 - f. Whether the ~~doctor's~~health care provider specializes in the medical issues related to the opinion; and
 - g. Other relevant factors.
2. This section does not apply to managed care programs under section 65-02-20. For purposes of this section, the organization shall determine whether a ~~doctor's~~health care provider is an injured employee's treating ~~doctor's~~health care provider.

SECTION 10. AMENDMENT. Subsection 5 of section 65-05-12.2 of the North Dakota Century Code is amended and reenacted as follows:

5. A ~~doctor's~~health care provider evaluating permanent impairment shall include a clinical report in sufficient detail to support the percentage ratings assigned. The organization shall adopt administrative rules governing the evaluation of permanent impairment. These rules must incorporate principles and practices of the sixth edition of the American medical association's "Guides to the Evaluation of Permanent Impairment" modified to be consistent with North Dakota law, to resolve issues of practice and interpretation, and to address areas not sufficiently covered by the guides. Subject to rules adopted under this subsection, impairments must be evaluated under the sixth edition of the guides.

SECTION 11. AMENDMENT. Subsection 12 of section 65-05-12.2 of the North Dakota Century Code is amended and reenacted as follows:

12. If there is a medical dispute regarding the percentage of an injured employee's permanent impairment, all relevant medical evidence must be submitted to an independent ~~doctor's~~health care provider who has not treated the employee and who has not been consulted by the organization in relation to the injury upon which the impairment is based. The organization shall establish a list of ~~doctors~~health care providers who have the training and experience necessary to conduct an evaluation of permanent impairment and to apply the sixth edition of the American medical association's "Guides to the Evaluation of Permanent Impairment". The organization shall define, by rule, the process by which the organization shall choose an independent ~~doctor's~~health care provider or ~~doctors~~health care providers to review a disputed permanent impairment evaluation or rating. The decision of the independent ~~doctor's~~health care provider or ~~doctors~~health care providers chosen under this process is presumptive evidence of the degree of permanent impairment of the employee which can only be rebutted by clear and convincing evidence. This subsection does not impose liability on the organization for an impairment award for a rating of impairment for a body part or condition the organization has not determined to be compensable as a result of the injury. The employee bears the expense of witness fees of the independent ~~doctor's~~health care provider or ~~doctors~~health care providers if the employee disputes the findings of the independent ~~doctor's~~health care provider or ~~doctors~~health care providers.

SECTION 12. 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 injured employee refuses to reasonably participate.

An injured employee may select a ~~doctor~~health care provider of that 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~~health care provider to better direct the medical aspects of the injured employee's claim. The organization shall provide a list of three ~~doctors~~health care providers 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~~health care provider 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~~An injured employee may not change from one ~~doctor~~health care provider 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~~health care provider for purposes of certifying temporary disability.
 - a. Any injured employee requesting a change of ~~doctor~~health care provider shall file a written request with the organization stating all reasons for the change. Upon receipt of the request, the organization ~~will~~shall review the injured employee's claim and approve or deny the change of ~~doctor~~health care provider, notifying the injured employee and the requested ~~doctor~~health care provider.
 - b. Emergency care or treatment or referral by the attending ~~doctor~~health care provider does not constitute a change of ~~doctor~~health care provider 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/allied health care professionals designated or approved by the organization. The organization shall make a reasonable effort to designate a duly qualified doctors/allied health care professional licensed in the state in which the injured employee resides to conduct the examination before designating a duly qualified doctors/allied health care professional licensed in another state or shall make a reasonable effort to designate a duly qualified doctors/allied health care professional 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 doctors/health care provider designated by that employee present at the examination or later review the written report of the doctors/allied health care professional 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/allied health care professionals making an examination on the part of the organization and the injured employee's doctors/allied health care professional, the organization shall appoint an impartial doctors/allied health care professional 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 doctors/health care provider regarding the work injury, and the doctors/health care provider 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 doctors/health care provider.

SECTION 13. AMENDMENT. Subsection 2 of section 65-05-29 of the North Dakota Century Code is amended and reenacted as follows:

2. a. Notwithstanding paragraph 2 of subdivision c of subsection 1, during the sixty days immediately following the date of injury, if the organization accrues a ~~medical~~health care provider expense or makes a payment for a medical expense and the organization later determines the medical expense is for the care and treatment of a noncompensable injury, disease, or other condition, the injured employee is not liable for the medical expense accrued or paid by the organization before the earlier of:
 - (1) The third day following the date the organization makes a determination the medical expense is for a noncompensable injury, disease, or condition; or
 - (2) The third day following the date the injured employee or medical provider reasonably should have known the medical expense is for a noncompensable injury, disease, or condition.
- b. Medical expenses incurred under this subsection may not be charged against an employer's account for purposes of experience rating.

SECTION 14. 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~~health care provider.

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 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 pre-existing condition or other information the organization deems necessary for the administration of this title. The filing of a claim with the organization authorizes a health care provider, hospital, or clinic to disclose any information to the organization deemed necessary for the administration of this title to the organization's representative, or the employer, except any information directly disclosed to the employer must be relevant to the employee's work injury or to return-to-work issues.
3. If a health care provider 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 15. AMENDMENT. Subsection 3 of section 65-05-32 of the North Dakota Century Code is amended and reenacted as follows:

3. ~~Physicians or health care providers~~Allied health care professionals treating or examining employees claiming benefits under this title, or ~~physicians~~allied health care professionals giving medical advice to the organization regarding any claim may, at the discretion of the organization, inspect the claim files and records of injured employees.

SECTION 16. AMENDMENT. Subsection 5 of section 65-05.1-01 of the North Dakota Century Code is amended and reenacted as follows:

5. If the employee's first appropriate option is an option listed in subdivision c, d, e, or f of subsection 4, the organization may pursue retraining of one hundred four weeks or less. If an option listed in subdivision a, b, c, d, e, or f of subsection 4 has been identified as appropriate for an injured employee and the employee is initially released by the ~~doctor~~health care provider to return to part-time employment with the reasonable expectation of attaining full-time employment, the organization shall pay temporary partial disability benefits under section 65-05-10 until the ~~doctor~~health care provider determines the employee is medically capable of full-time employment.

SECTION 17. AMENDMENT. Subsection 6 of section 65-05.1-02 of the North Dakota Century Code is amended and reenacted as follows:

6. Establish medical assessment teams, the composition of which must be determined by the organization on a case-by-case basis, as the nature of the injury may require, for the purpose of assessing the worker's physical restrictions and limitations. The medical assessment team must be provided the medical records compiled by the worker's treating ~~physicians~~health care providers. The medical assessment team may consult the worker's treating ~~physicians~~health care providers prior to making its final assessment of the worker's functional capacities. The provisions of section 65-05-28 do not apply to the medical findings made under this section.

SECTION 18. AMENDMENT. Subsection 1 of section 65-07-03 of the North Dakota Century Code is amended and reenacted as follows:

1. The amount of money derived on an annual basis from the business of an employer or self-employed person as outlined in subdivision b of subsection ~~56~~ of section 65-01-02 for purposes of determining the premium for coverage of an employer, an employer's spouse, or a self-employed person. This amount may not be less than the limited payroll required to be reported for an employee in subsection 1 of section 65-04-04.2.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-sixth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2184.

Senate Vote: Yeas 47 Nays 0 Absent 0

House Vote: Yeas 84 Nays 2 Absent 8

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2019.

Approved at _____ M. on _____, 2019.

Governor

Filed in this office this _____ day of _____, 2019,

at _____ o'clock _____ M.

Secretary of State