

# North Dakota Workers' Compensation



Representative George Keiser – Bismarck, ND



## North Dakota Workers' Compensation

# Background

- Workforce Safety and Insurance (WSI) was established in 1919 as an exclusive state fund for workers' compensation insurance.
- North Dakota is one of the four remaining monopolistic workers' compensation systems in the United States. The others are Ohio, Washington, and Wyoming.
- There are no provisions for self-insurance or private insurance for purposes of workers' compensation.



## North Dakota Workers' Compensation

# Background (cont.)

- Claims for occupational injury and disease are filed with WSI and adjudicated by in-house agency claim adjustors.
- WSI is a special fund agency funded solely by employer premiums.
- WSI administers a constitutionally created fund for the benefit of injured workers. Those funds are not available for other purposes.

# North Dakota Workers' Compensation 2017 Facts and Figures

<b>Population:</b>	<b>758,000</b>
<b>Covered Workforce:</b>	<b>408,000</b>
<b>Employer Accounts:</b>	<b>24,200</b>
<b>Number of Claims Filed Per Year:</b>	<b>20,025</b> (91% Accepted)
<b>WSI Staff:</b>	<b>260 FTE</b>
<b>Earned Premiums:</b>	<b>\$266 M</b>
<b>WSI Assets:</b>	<b>\$1.96 B</b>
<b>WSI Fund Surplus:</b>	<b>\$609 M</b>



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## North Dakota Workers' Compensation Benefit Structure

- Established by the Legislative and is set out in statute, Title 65 of the North Dakota Century Code
- Historically, the legislature has targeted benefit enhancements to the most severely injured



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## North Dakota Workers' Compensation Benefits **Provided**

- Medical
- Disability
  - Post-retirement Benefit
  - COLAs (cost of living adjustments)
  - Vocational Rehabilitation Benefits
- Permanent Partial Impairment (PPI)
- Death and Scholarship Benefits



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# Medical and Other Benefits

- WSI pays lifetime, deductible-free medical benefits related to the work injury
- There is no maximum dollar or duration limit on medical coverage
- In catastrophic cases, WSI can pay a lifetime allowance of up to \$75,000 for remodeling or adaptations to homes and up to \$150,000 for vehicles and vehicle adaptations.





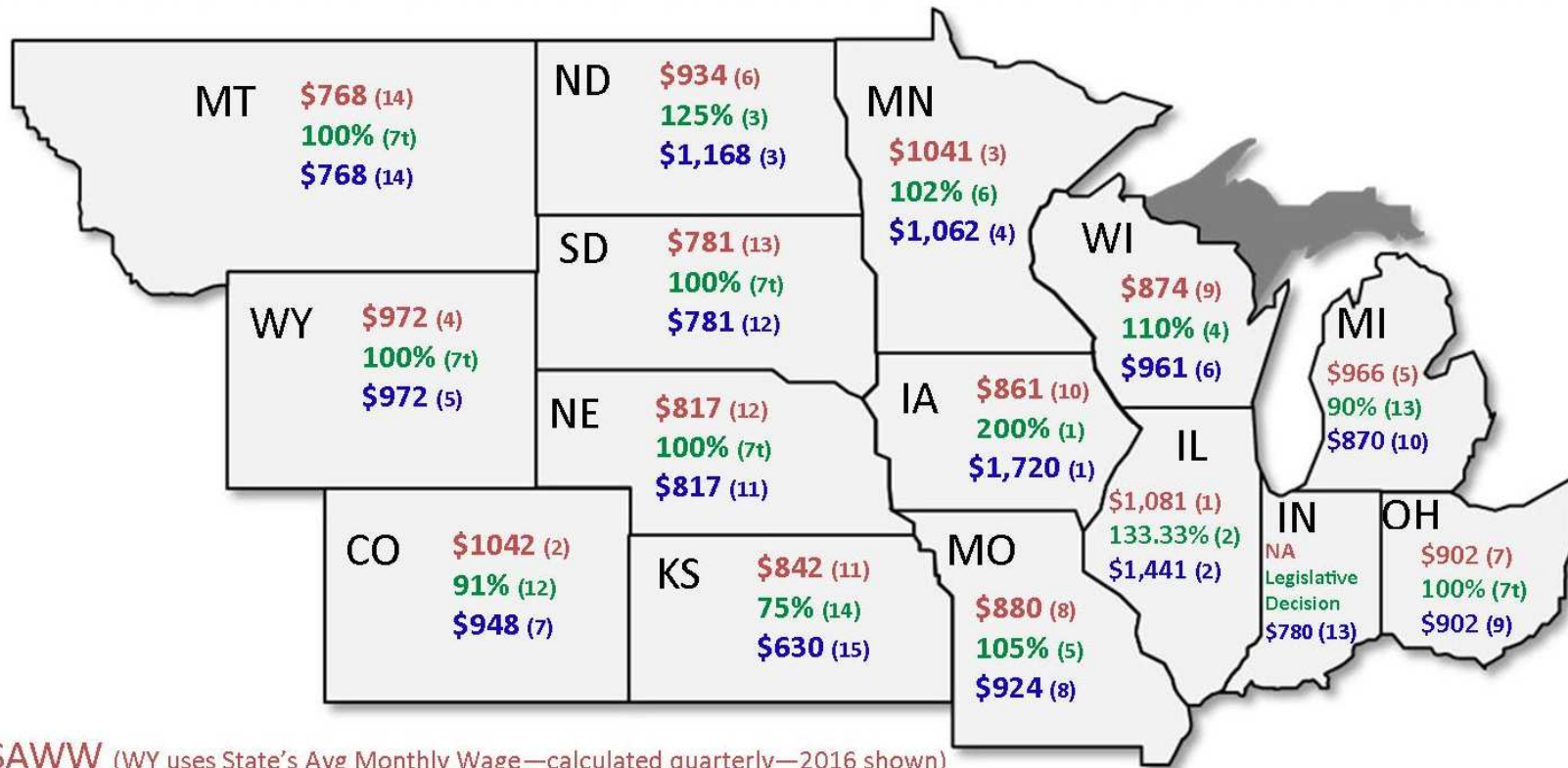
## Temporary Total Disability (TTD)

## Permanent Total Disability (PTD)

- An injured worker receives tax-free wage-loss benefits equal to 2/3rds (same as most states) of the worker's pre-injury gross weekly wage, plus \$15 per week for each dependent child, subject to statutory maximums and minimums.
- North Dakota's maximum weekly wage-loss benefit is \$1,168 per week (125% of North Dakota's State Average Weekly Wage (SAWW))
- The minimum weekly benefit is \$561 per week (60% of the SAWW) or 100% of the worker's pre-injury net wages, whichever is less.



## Midwest States: State's Average Weekly Wage, Maximum Benefit Rates and Maximum Weekly Benefit Amounts—2017



SAWW (WY uses State's Avg Monthly Wage—calculated quarterly—2016 shown)

Max. Weekly Benefit Rate

Max. Weekly Benefit Amount

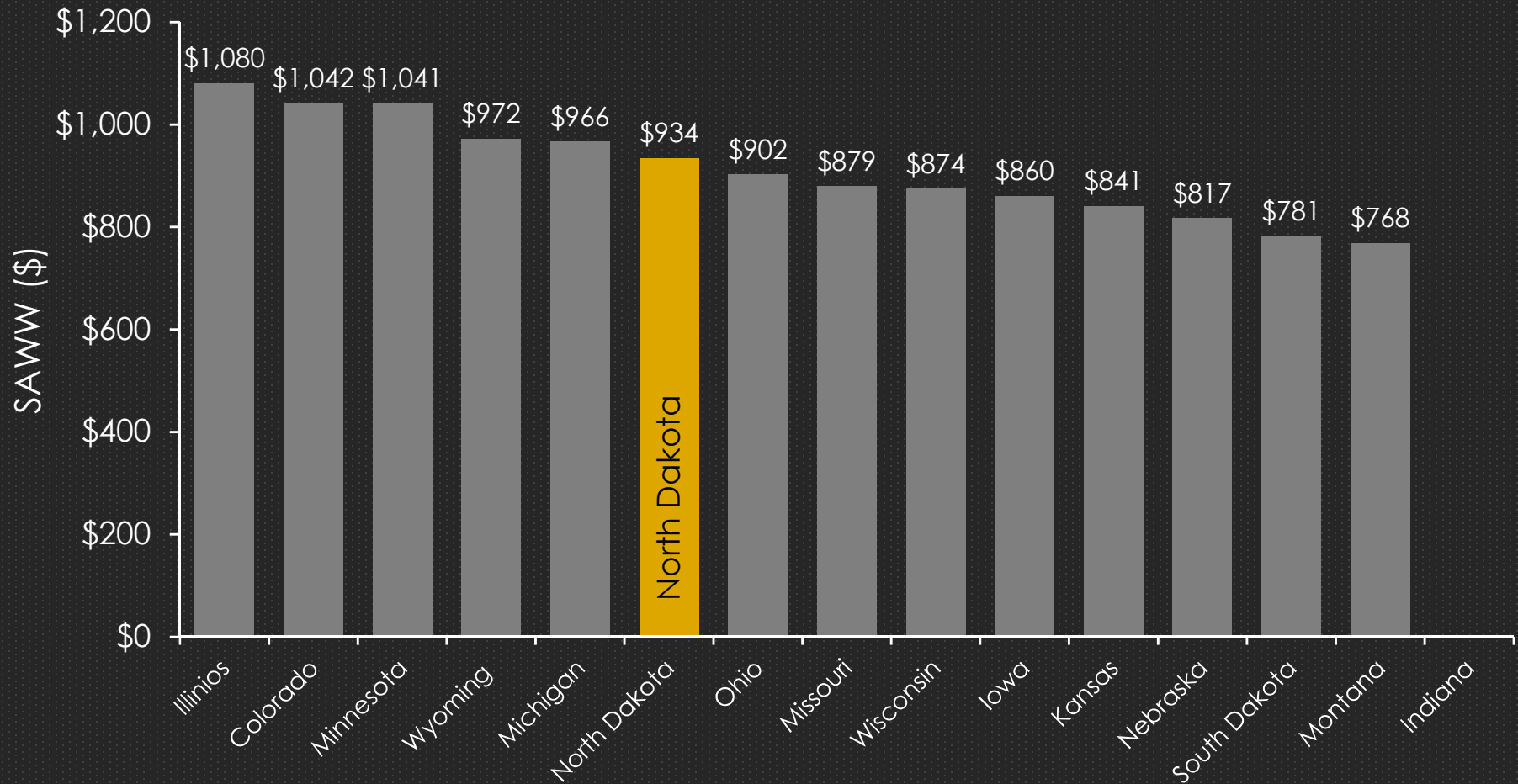
~ Information in Parenthesis = State Rank (#1 – highest to #15 – lowest)

~ Information Source: State Workers' Compensation Websites



Midwest State Benefits

# State's Average Weekly Wage by State (2017)



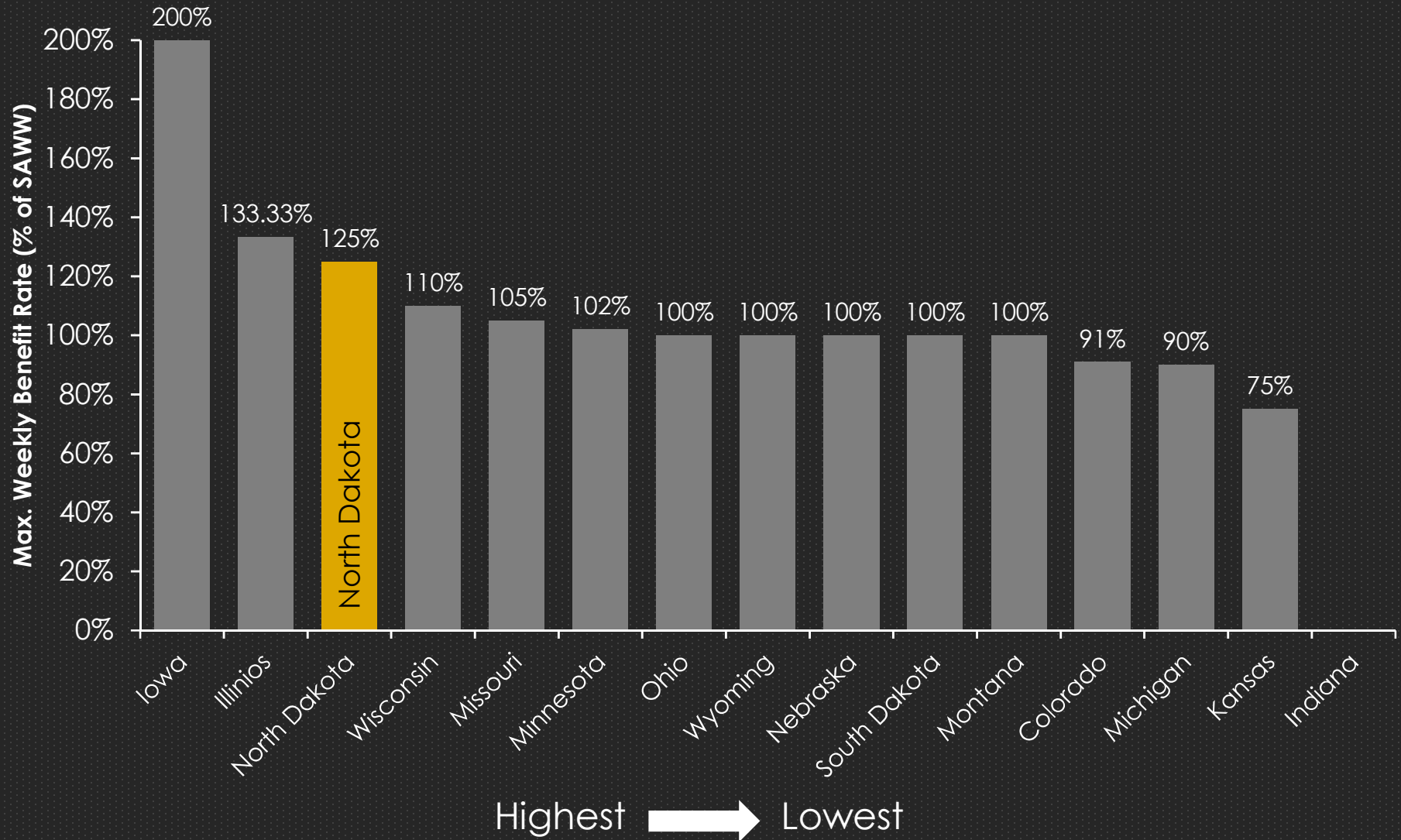
Wyoming data shown is from 2016

Highest  Lowest



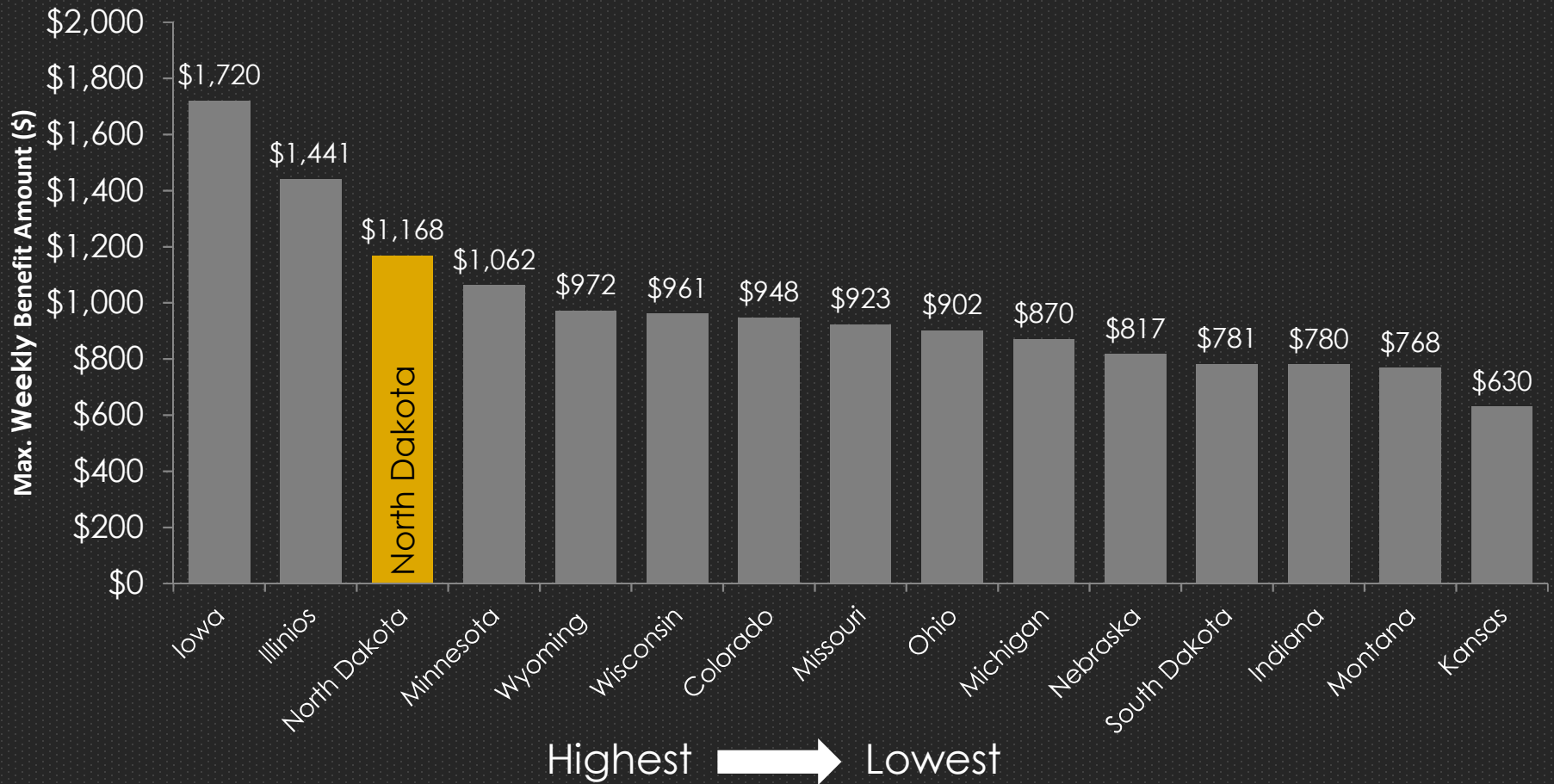
## State's Weekly Average Wage

# Maximum Weekly Benefit Rate by State



Maximum Weekly Benefit Rates

# Maximum Weekly Benefit Amount by State (2017)



Wyoming - 2/3 of monthly gross wage can not exceed 100% of the statewide average monthly wage  
- Data shown is from 2016



## Maximum Weekly Benefit Amounts



## Temporary Total Disability (TTD) Permanent Total Disability (PTD)

- TTD benefits are provided for a period of up to 104 weeks or the date the injured worker reaches maximum medical improvement, whichever occurs first.
- PTD benefits end at the time of social security retirement eligibility at which time the disability benefits convert to an Additional Benefit Payable (ABP), a post retirement benefit.



# Temporary Partial Disability (TPD)

- An injured worker who is able to return to work but earns a wage lower than their pre-injury wage receives temporary partial disability (TPD) benefits equal to 2/3rds of the difference between their pre-injury and post-injury earnings.
- The partial disability benefits may not exceed five years. The five year cap on benefits can be waived in catastrophic cases.





# Additional Benefit Payable (ABP)

- North Dakota offers a post-retirement benefit, Additional Benefit Payable (ABP), when total disability benefits cease at time of eligibility for social security retirement benefits.
- The amount of this benefit is a percentage of the benefit amount the injured worker was receiving at the time of retirement eligibility. The longer the disability period, the higher the amount.





# Additional Benefit Payable (ABP) (cont.)

- The duration of this benefit is commensurate with the length of time the worker was disabled before retirement eligibility.
- Catastrophically injured workers receive a benefit of 100% of their disability benefit at the time of their discontinuance for the remainder of their lifetime.







# Cost of Living Adjustments (COLAs)

- Long term disability (PTD) and death benefit recipients are eligible for COLAs after three consecutive years of disability.
- Annual adjustments equal the percent increase in the SAWW.
- COLAs have averaged 5.2% over the last decade and 4.2% over the last five years.
- The cumulative effect of COLAs over the past five years is a 23% increase in benefits.



# Vocational Rehabilitation **Benefits**

- Qualified injured workers may receive payment for up to 104 weeks of retraining including wage loss, tuition and costs.





# Permanent Partial Impairment **Benefits (PPI)**

- PPI benefits are one-time, lump-sum cash awards paid in addition to medical, wage-loss, and vocational rehabilitation benefits
- PPI benefits are determined as a percent of whole-body impairment utilizing the *6th Edition of the AMA's Guides to the Evaluation of Permanent Impairment*.
- PPI benefits are paid according to a schedule that assigns a statutory multiplier to each percent of impairment starting at 14%.



## Permanent Partial Impairment **Benefits (PPI)**

- No PPI benefits are awarded for impairment levels below 14%.
- The PPI benefit amount is determined by multiplying \$327 (35% of the SAWW) by the statutory multiplier.
- For impairment levels between 14% and 100%, PPI awards can range between \$3,270 and \$490,500.



# Death Benefits

- A surviving spouse receives a weekly benefit that is calculated in the same manner as total disability benefits.
- The lifetime cap on death benefits, paid on any one claim is \$300,000.
- WSI does not offset social security survivor's benefits.



## Death Benefits (cont.)

- A non-dependency death award in the amount of \$15,000 is issued to the estate of a worker who died as a result of a compensable work injury and has no surviving dependents.
- Burial expense reimbursement of up to \$10,000 is also provided.





## Scholarships

- Scholarships are provided for dependents and spouses of workers who died as a result of a compensable work related injury or for spouses and children of an injured worker deemed to be catastrophically injured.
- The maximum amount payable on behalf of an applicant is \$10,000 per year for no more than five years.
- The total amount of scholarships awarded for any one year cannot exceed \$500,000.



# Payment of Medical & Hospital **Services**

- Fair payment for medical and hospital services ensures access to quality healthcare professionals.
- Based on a recent medical and hospital fee schedule analysis:
  - ✓ WSI reimbursement for physician services equates to 190% of Medicare reimbursement; and
  - ✓ WSI reimbursement for hospital services was 153% (Inpatient) and 178% (Outpatient) of Medicare reimbursement.



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# North Dakota Workers' Compensation Premiums

- In North Dakota, manual classification premium rates are established annually for 141 rate classifications
- To the extent eligible, individual accounts are experience rated. Accounts with favorable loss experience receive an experience rate credit. Accounts with unfavorable loss experience receive an experience rate surcharge.



## North Dakota Workers' Compensation Premiums (cont.)

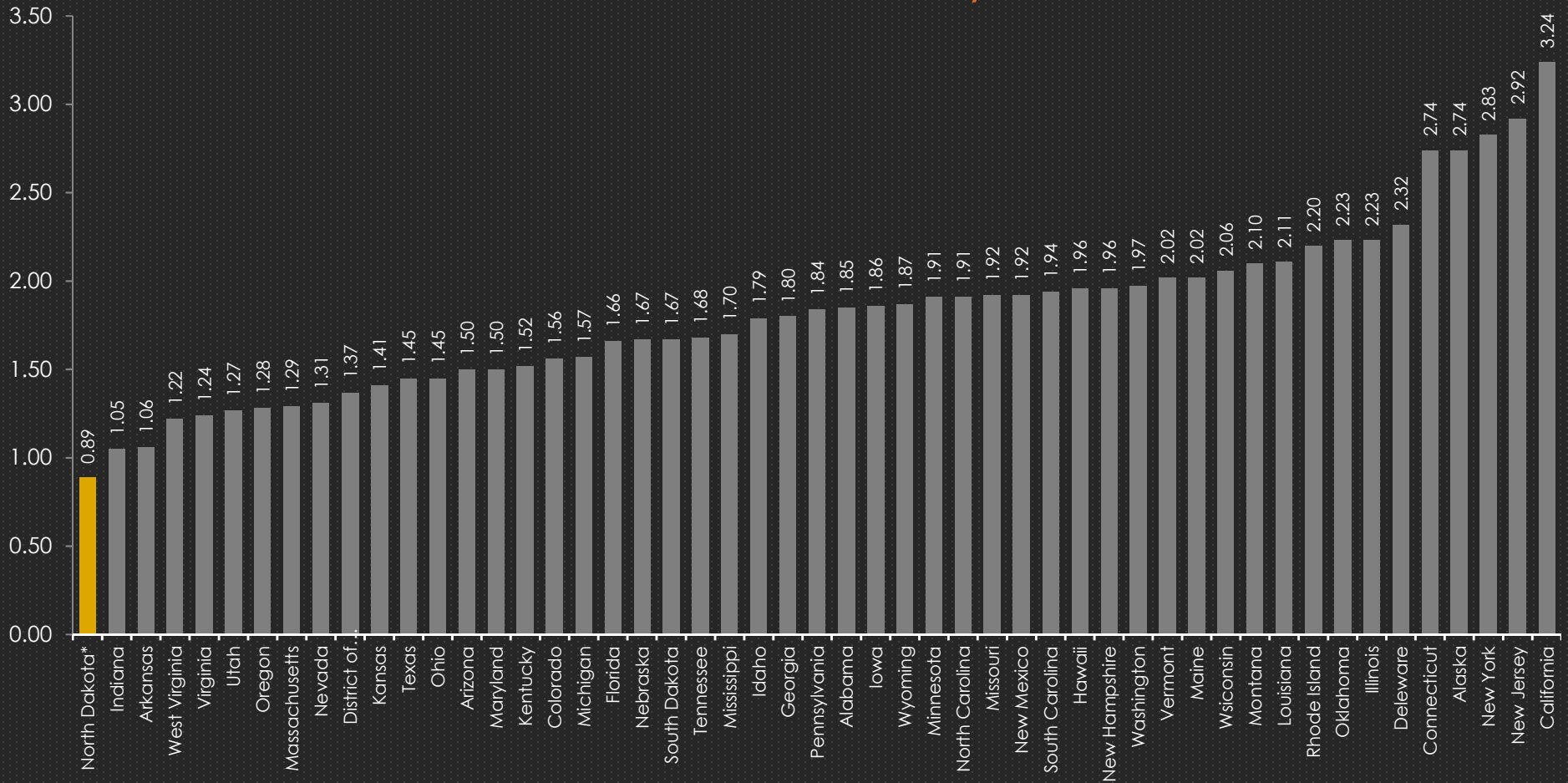
- Accounts providing sufficient security can opt for large deductible or retrospective rating policies.
- Per statute, employers are assessed the first \$250 in medical costs for every claim. WSI will waive the assessment if the claim is reported within 24 hours of injury.
- In North Dakota, 55% of claims filed are reported within 24 hours.



## North Dakota Workers' Compensation Premiums (cont.)

- North Dakota has continually been ranked the lowest premium state in the country (2016 Oregon Premium Study).
- North Dakota rates are the lowest in the country and 52% below the median state in the study.

# Premium Index Rate by State



~ Source – 2016 Oregon Premium Ranking Study

Lowest  Highest



## Premium Index Rates

## Per 2016 Oregon Study:

Neighbor state's rates compared to North Dakota (before any dividends)



**1.9x**  
Higher



**2.1x**  
Higher



**2.4x**  
Higher

## Monopolistic States:

State's rates compared to North Dakota (before any dividends)



**2.1x**  
Higher



**2.2x**  
Higher



**1.6x**  
Higher



Premium Comparisons



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# Financially Stable

- State law outlines WSI's required surplus levels which are 20% to 40% of reserve liabilities.
- If WSI's surplus exceeds statutory surplus requirements; the statute requires dividends to be issued to policyholders.



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# Financially Stable (cont.)

- Total dividends issued in twelve out of the past thirteen years have amounted to nearly \$1.15 billion in premium dividend credits returned to North Dakota employers; ranging anywhere between 30% and 62% per year.
- Historically, favorable returns from WSI's investment portfolio have resulted in additional surplus growth.



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# Financially Stable (cont.)

- WSI fund investment returns for the last five years (FYs 2013-2017) have averaged 7.0%, ranging between 3.3% and 11.7% per year.
- For the current year, a 50% dividend credit was declared, which equates to an estimated \$105 million dividend.





Good **Benefits.**  
Good **Payor.**  
Low **Premiums.**  
**How?**

- ✓ Proactive and Active Legislative Oversight
- ✓ Administratively Efficient
- ✓ Few Disputes and Low Litigation Levels
- ✓ Safety Focus
- ✓ Medical Cost Containment
- ✓ Return to Work Programs
- ✓ Good Service and Overall Customer Satisfaction



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## Proactive and Active Legislative Oversight

- Historically, there has existed an active business presence within the legislative process.
- In response to a nearly \$250 million unfunded liability and excessive premium adjustments in the early 1990s, the business groups became very active with reforming the system in the mid-1990s.
  - ✓ The largest reform package was referred to the voters and upheld.
  - ✓ Ongoing reforms have continued to this day.
  - ✓ 2015 Opioid Control Legislation



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## Proactive and Active Legislative Oversight (cont.)

- ND Legislature is active in responding to court decisions. Most recent examples:
  - ✓ Pre-existing condition erosion—Legislature responded immediately upon decision being issued potentially expanding the definition
  - ✓ Legislative action prior to the court addressing the treating physician presumption.



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## Proactive and Active Legislative Oversight (cont.)

- NDCC 54-03-25 requires that during legislative session, any workers' compensation bill and/or amendment affecting benefits or premium rates requires an actuarial impact statement prior to the measure being acted upon.
- During the interim, the legislature monitors system trends and workers' compensation developments through the interim legislative Workers' Compensation Review Committee.

# Administratively Efficient

- WSI has a 15.7% administrative expense ratio (FY 2017), meaning only sixteen cents of every premium dollar goes towards administering the system.
- Workers' compensation industry expense ratios average approximately 25%.



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# Administratively Efficient (cont.)

- Thus, WSI has 10 percentage points less than other jurisdictions built into the rate structure due to administrative efficiency.
- As a monopoly, North Dakota does not incur the marketing, broker, tax, and other fees incurred by other private workers' compensation insurers.



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# Few Disputes & Low Litigation Levels

- Litigation is a cost driver in many jurisdictions.
- In North Dakota, litigation is almost non-existent.
- Overall initial appeals of a WSI decision that proceed in the appeal process to an actual administrative court hearing is only 0.63%.



# Few Disputes & Low Litigation Levels (cont.)

- North Dakota has an alternative dispute resolution process via the Decision Review Office (DRO) which is independent of the WSI Claim's Department. This process is elective.
- An injured worker can request an independent review through this office in an attempt to resolve the issue prior to proceeding into the formal litigation process.





# Few Disputes & Low Litigation Levels (cont.)

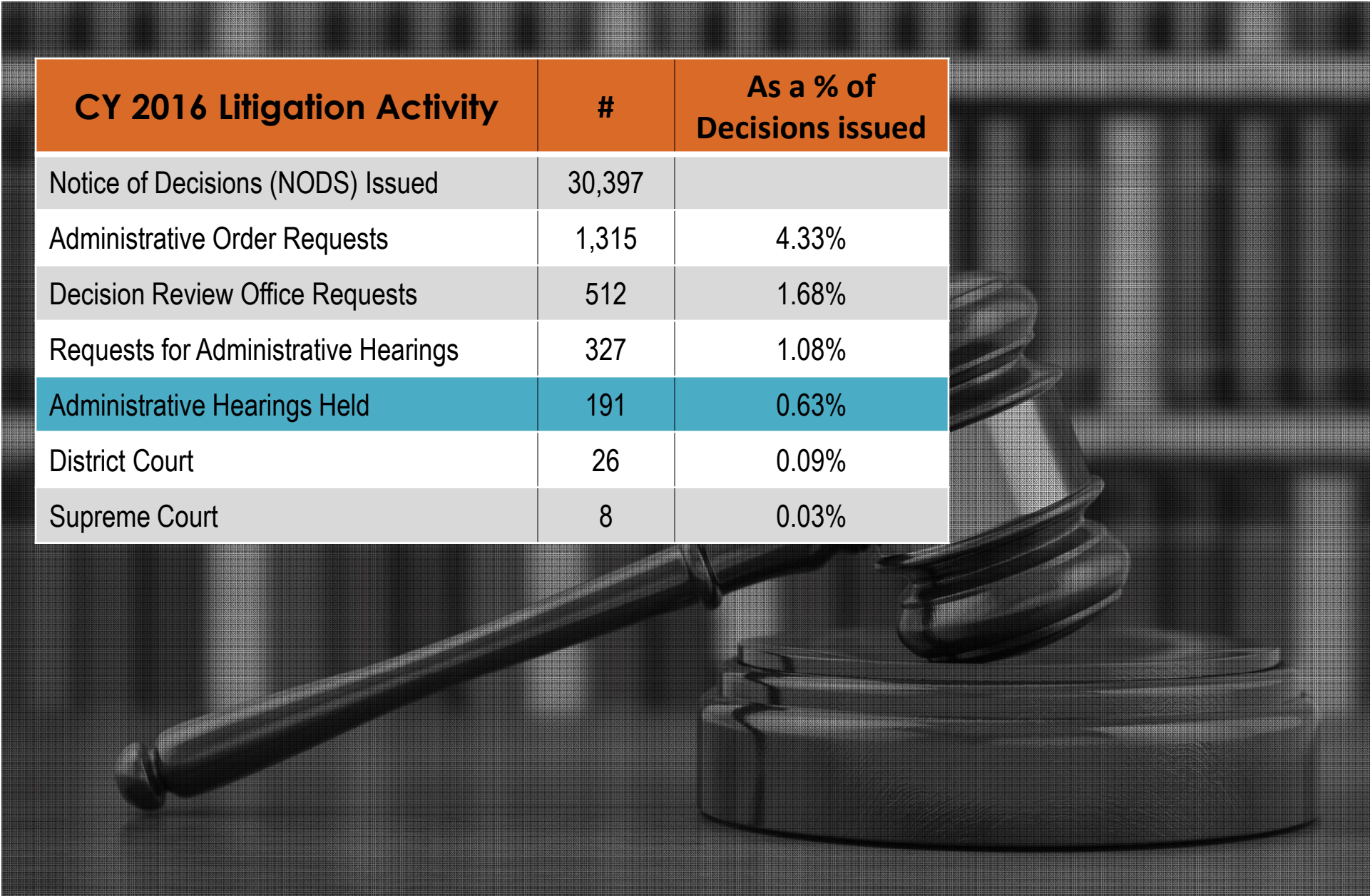
- Upon completion of the DRO process, and if still dissatisfied, the injured worker can request a review with an independent attorney of their choice.
- By statute, WSI pays attorney fees not exceeding \$500 for this independent consult.



# Few Disputes & Low Litigation Levels (cont.)

- Upon completion of this process, an injured worker can appeal the decision and request an administrative hearing. Subsequent to administrative hearing, an injured worker can appeal to district court and then supreme court.
- At the hearing, district and supreme court levels, WSI only pays attorney fees if the injured worker prevails, subject to fee caps, and only if the DRO process is utilized.





<b>CY 2016 Litigation Activity</b>	<b>#</b>	<b>As a % of Decisions issued</b>
Notice of Decisions (NODS) Issued	30,397	
Administrative Order Requests	1,315	4.33%
Decision Review Office Requests	512	1.68%
Requests for Administrative Hearings	327	1.08%
Administrative Hearings Held	191	0.63%
District Court	26	0.09%
Supreme Court	8	0.03%



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# Safety Focus

- WSI has a dedicated safety/loss control department consisting of thirteen WSI safety consultants (regionally located) that assist employers in the prevention of workplace injuries.
- WSI provides premium discounts to employers for successful participation in WSI approved safety programs.





## Safety **Focus** (cont.)

- Employers can receive up to a 25% premium discount for successfully participating in WSI safety programs.
- Premium discounts to employers for successfully implementing safety programs totaled \$26.6 million in FY 2017.



# Safety Focus (cont.)

Qualifying North Dakota associations and employee organizations can receive funding of up to \$175,000 annually for safety training and education programs.



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Since 2005,  
WSI has issued  
**\$49.2 million**  
in safety grants  
to employers  
and industry  
groups.



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# Medical Cost Containment

- WSI is a managed care organization.
- WSI has an active Utilization Review Department which includes RN, PT, and MD Utilization Review specialists.
- Much of the decision process is based upon evidence based treatment guidelines.
- Injury Services staff conducts medical case management triage of complex and time loss claims.



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# Medical Cost Containment (cont.)

- WSI has a Medical Bill Audit Dept. to review for medical necessity.
- WSI maintains a Pharmacy Formulary with review by WSI Pharmacy and Therapeutics Committee.
- There is an in-house prior authorization process for high dollar medications.
- Review of high dollar legacy claims is conducted by an outside vendor.
- Maximum Allowable Cost (MAC) pricing for Pharmacy.



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# Fee Schedules

WSI maintains the following:

- **Hospital Outpatient**
- **Ambulatory Surgical Center**
- **Physician Administered Drugs**
- **Pathology**
- **Medicine**
- **Durable Medical Equipment**
- **Clinical Laboratory**
- **Hospital Inpatient**



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# Fee Schedules (cont.)

WSI maintains the following:

- **Dental**
- **Evaluation & Management**
- **Physical & Occupational Therapy**
- **Radiology**
- **Surgery**
- **Ambulance**
- **Anesthesia**
- **Home Health Care**



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# Return to Work Programs

- Time-loss claims account for only 11.4% of the total claims in North Dakota compared to 20% in other jurisdictions.
- North Dakota employees have a good work ethic, and if they are injured, they want to get back to work.
- WSI's Return to Work programs greatly assist these efforts.





# Return to Work Programs (cont.)

- Statutory hierarchy for return to work (unless PTD). WSI will compile a plan for workers to return to gainful employment even if only at minimum wage.
- Unless a worker is declared PTD, North Dakota law sets the expectation that an injured worker will return to some type of employment.





# ND Workers' Compensation Good **Service** & Overall **Customer** **Satisfaction**

Periodic injured worker and employer customer satisfaction surveys independently conducted for WSI consistently rank in the "high" satisfaction category.



North Dakota Workers' Compensation



ND Workers' Compensation  
Good **Service** &  
Overall **Customer**  
**Satisfaction**

On a low to high satisfaction scale of 1 to 5, most recent surveys reflected an injured worker satisfaction rate of 3.99 and an employer satisfaction rate of 4.41.



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# Questions



Representative George Keiser – Bismarck, ND