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## Department of Commerce, Community and Economic Development

(No comments were submitted).

## Department of Labor and Workforce Development

### Marie Marx – Division of Workers' Compensation

*Wednesday, November 14, 2018*

*Dear Co-Chair MacKinnon and Co-Chair Claman:*

*Thank you for the opportunity to present to the Workers' Compensation Working Group Joint Committee on November 9th. During the meeting, Co-Chair MacKinnon requested I provide a white paper on proposed policy changes to Alaska's workers' compensation system, if the current administration allows. As I mentioned at the meeting, my role as Director of the Alaska Workers' Compensation Division is not to make policy, but rather to advise the administration as a subject matter expert on Alaska's workers' compensation matters. It is up to each administration to decide policy, and given the transition that will take place before the next working group meeting, it would be inappropriate for me to suggest policy positions on behalf of the current administration. Therefore, I am unable to provide the white paper you requested at this time. It will be up to the new administration to decide which, if any, policies to present to the working group.*

*If I am no longer in my position after the transition, I would be happy to sit down with the committee and share my ideas. However, until then, I am an employee of the administration and my role is to advise and work with the incoming administration.*

*If you have any questions, please feel free to email or call.*

*Best,*

*Marie Y. Marx*

*Director*

*Alaska Division of Workers' Compensation*



## The Medical Services Review Committee

(No comments were submitted).

## School District Administrators

### Kerry Boyd – Yukon Koyukon School District

*Saturday, December 1<sup>st</sup>, 2018*

*Good Morning Senator MacKinnon,*

*From the perspective of the YKSD business manager, HB 79 primarily changes language to give the WC Division latitude in prescribing filing formats (i.e. could be ability to receive electronically, on a form prescribed by them, in an email, by mail, etc). We didn't interpret anything in the bill that would be detrimental to YKSD. The bill also adds Independent Contractors to the list of persons not covered which actually could be advantageous.*

*Kerry Boyd, Superintendent*

*Yukon Koyukuk School District*



## Deena Bishop – Anchorage School District



### Anchorage School District

#### Education Center

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November 29, 2018

Senator Anna MacKinnon, Senate Co-Chair  
Representative Matt Claman, House Co-Chair

Dear Senator MacKinnon and Representative Claman:

Thank you for requesting input from the Anchorage School District (ASD) regarding recent changes to the Alaska Workers' Compensation Act. Upon reviewing available materials and collaborating with other educational institutions, several issues of concern prevail.

ASD remains concerned by the cost of workers' compensation, with the primary cost driver being medical services. Statistically, medical services represent approximately 60 percent of all annual worker compensation costs in the United States. However, ASD's medical costs comprised 63 percent of its workers' compensation costs in 2015, 67 percent in 2016, and 73 percent in 2017. Currently, employers are limited in what can be done to control medical costs. Employers cannot direct care or treatment of the employee. To gain control over medical costs, ASD would benefit from the implementation of objective, evidence-based medical treatment guidelines in conjunction with existing medical fee schedules. Now a national trend, evidence-based medicine treatment guidelines will lower medical costs while maintaining quality care.

Specifically, ASD feels it is important to have greater monitoring and control over opioid prescriptions and its use in the workers' compensation arena as they are a significant problem for employees with long-term, chronic pain. Other states often use pharmacy peer reviews which involve collaborative physician interaction, encompassing evidence-based medicine, clinical oversight, and jurisdictional guidelines. Such a program would involve a pharmaceutical review and direct conversations between physicians who conduct the reviews and the treating providers. However, under current case law and Alaska statutes, there is concern that this could constitute an improper independent medical examination or "directing care." Legislative changes are needed to allow this type of review to occur.

Another area of significant is the uncontrolled cost of attorney fees for claimants. Current statutes do not reasonably limit or control costs. In most cases, claimant counsel is paid actual fees at an "enhanced" rate which can exceed \$400 per hour, as opposed to a percentage of the value of the claim. The trend nationally is to pay approximately 20 percent of the award of benefits; in Alaska, claimant attorney fees may exceed the value of an award. ASD has been forced to go to hearings after making reasonable efforts to settle

*Educating All Students for Success in Life*

Anchorage School Board Starr Marsett, President

Deena Mitchell, Vice President

Alisha Hilde, Clerk

Elisa Snelling, Treasurer

Dave Donley

Mark A. Foster

Andy Hollman

Superintendent Dr. Deena Bishop

Senator Anna MacKinnon, Senate Co-Chair  
Representative Matt Claman, House Co-Chair  
November 29, 2018  
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claims, and the awards have been less than ASD's settlement offer and far less than the injured worker's demand, yet ASD is required to pay full, enhanced fees to the claimant attorneys, with no regard to the value of the award. If claimant attorney fees were proportionate to awards, similar to contingency fees in personal injury cases, there may be more incentive to resolve claims before incurring the expenses of full hearings.

Finally, reemployment benefits should be modified, with two issues to be considered. The first issue is that "mandatory referrals" for eligibility early in the process have not been effective in reducing costs. Injured workers often obtain a mandatory referral for an eligibility evaluation when they have no interest in retraining or are released to work shortly after the referral. This practice results in the wasted cost of paying a reemployment specialist to conduct an evaluation. The second issue is that under the current statute, the employee may be entitled to up to \$13,300 in vocational costs such as tuition, plus a two year a stipend benefit based on their wage. This can result in the "value" of reemployment benefits exceeding \$100,000 for high income earners. However, it is rare for injured workers to complete the reemployment process and obtain retraining. Instead, it is often used as a tool for increasing lump sum settlements. Other states offer either no reemployment benefits (due to the low number of individuals utilizing the program) or they offer a flat sum as a voucher which can only be redeemed if used for retraining costs. It is our position that employees should not receive large lump sum values if they have no intention of obtaining retraining.

Thank you for allowing us to provide feedback on HB 79. ASD is committed to educating students for success in life. Achieving and maintaining that commitment to our students and their families in the current economic climate has proven difficult. Legislation to reduce workers' compensation costs would allow us to put a greater portion of revenue in the classroom - a reinvestment in student education.

Sincerely, ^

A handwritten signature in black ink, appearing to read "Deena M. Bishop", with a stylized flourish at the end.

Deena M. Bishop, Ed.D.  
Superintendent

## Dave Jones – Kenai Peninsula Borough School District

*Thursday, November 29, 2018*

*Dear Senator MacKinnon,*

*My name is Dave Jones and I am the Assistant Superintendent for the Kenai Peninsula Borough School District (KPBSD). Superintendent Dusek has asked me to respond to your feedback request regarding the state's workers' compensation system.*

*Please review the attached letter related to workers' compensation that I submitted to Senator Giessel last March in support of SB 112. As stated in the letter, KPBSD's main concerns continue to be the need for implementation of evidence-based treatment guidelines, and a reduction in the cost of attorney's fees. Section 26 and section 63 of SSSB 112 offered on 01/22/2018 contain the proposed language that would help address our concerns.*

*A reduction in medical and legal costs will allow us to reinvest the savings in instructional related services for our classrooms, without requiring additional revenue measures.*

*Thank you for this opportunity to provide input, and please let me know if I can be of further assistance.*

*Dave Jones  
Assistant Superintendent  
KPBSD*







## KENAI PENINSULA BOROUGH SCHOOL DISTRICT

### Assistant Superintendent

Dave Jones

148 North Binkley Street Soldotna, Alaska 99669-7520  
Phone (907) 714-8888 Fax (907) 262-5867

March 30, 2018

The Honorable Cathy Giessel  
State Senate  
Alaska State Capitol  
Juneau, Alaska 9980-1182

Dear Senator Giessel:

My name is Dave Jones, I am the Assistant Superintendent for the Kenai Peninsula Borough School District (KPBSD).

I am writing to you concerning the rising workers' compensation costs KPBSD has been experiencing, and how SB 112 would help our district to reduce those costs.

The National Council on Compensation Insurance (NCCI) is the nation's most experienced provider of workers' compensation information. In a recent article by NCCI on medical cost trends, they stated that "Medical services are a key factor in the WC system. They account for about 60% of all annual WC costs in the United States today-up from 40% in the early 1980s."

The important take away from that statement is that medical service claims in Alaska far exceed the national standard of 60%. Last year for KPBSD, medical service claims were approximately 76% of our overall WC costs. That number needs to be reduced!

We feel strongly that the evidence-based treatment guidelines required in SB 112 when used in conjunction with the previously determined medical fee schedules will lead to lower medical service costs. Without these guidelines, there is no guarantee or control of proper medical utilization and related costs, and our medical service costs will continue to be the highest in the nation.

KPBSD is also concerned about the cost of attorney fees that we have been experiencing, and the fact that current statutes do not reasonably control or limit those costs. I will provide two specific recent examples illustrating our concerns.

The first is a case in which we settled and closed out a claim with our employee for the sum of \$10,000. We also had to pay associated attorney's fees of \$22,496.50 and costs of \$821.09. The attorney was paid more than twice what our employee was paid.

ANCHOR POINT COOPER LANDING HOMER HOPE KACHEMAK SELD KENAI MOOSE PASS NANWALEK NIKISKI NIKOLAEVSK NINILCHIK  
PORT GRAHAM RAZDOLNA SELDOVIA SEWARD SOLDOTNA STERLING TUSTUMENA TYONEK VOZNESENKA

The second is a case that originally reached settlement through mediation. Our employee agreed to accept \$45,000. and the attorney's fees were set at \$31,982. Unfortunately, our employee decided not to sign the agreement after it was reached. Somewhat over a year later, we again reached settlement through mediation. This time our employee agreed to accept \$57,500. and the attorney's fees were settled at \$85,000. So the employee settlement amount increased by \$12,500 while the attorney fees increased by \$53,018. Once again the attorney received far more than our employee.

These are just two examples of why the attorney fee language in SB 112 needs to be implemented so our overall workers' compensation costs can be reduced.

SB 112 will free up dollars currently being spent on higher than needed medical and legal costs and will allow us to move those dollars back into the classroom where they belong.

Thank you for your work on this bill and please let me know how I can help.



Dave Jones  
Assistant Superintendent  
KPBSD  
[REDACTED]

Dan Polta – Denali Borough School District

*Thursday, November 29, 2018*

*Senator MacKinnon and Representative Claman,*

*Thank you for the opportunity to provide input on these topics. I reviewed the issues with our business manager and currently we have no specific comments or thoughts to forward to you. If something does come up we will reach back out to you.*

*Sincerely,*

*Dan Polta  
Superintendent  
Denali Borough School District*



## Amy Lujan – Alaska Association of School Business Officials

*Tuesday, November 27, 2018*

*TO: Senator Anna MacKinnon, Representative Matt Claman and Members of the Legislative Workers Compensation Working Group Authorized by HB79*

*I am writing on behalf of the Alaska Association of School Business Officials (ALASBO), representing K-12 school business staff from across the state. Thank you for your work reviewing workers compensation in our state, which is been an issue raised by our organization for nearly a decade.*

*Workers compensation rates in Alaska remain the highest in the nation, and they continue to grow. These costs erode the funding available for classroom instruction, vital maintenance and other important school district spending priorities. Continued increases in this area and others are especially difficult to absorb in this time of flat or decreasing funding in many school districts. We are hopeful that the Legislature can take action that has been pursued successfully in other states to reign in workers compensation costs, and we are thankful for the incremental progress that has been made in recent years. Notably, legislative action in this area will be of no cost to the state and will even save money, since the cost for state employee benefits would also decrease.*

*Some of the actions we continue to advocate for include: adoption of medical treatment guidelines; improved management of claims; and an improved Reemployment Benefits process. Notably, we are not asking for anything bold or experimental here; these reforms have been implemented successfully in other states. The Workers Compensation Research Institute ([www.wcrinet.org](http://www.wcrinet.org)) has excellent documentation on the implementation and effectiveness of these and other reforms.*

*Please feel free to contact me if you need further information. Sincerely,*

*Amy Lujan*

*Executive Director*

*Alaska Association of School Business Officials (ALASBO)*



[www.alasbo.org](http://www.alasbo.org)

Mike Hanley – Chugach School District

*Monday, November 26, 2018*

*Senator MacKinnon,*

*Thank you for the opportunity to offer insight into the workers comp laws for the working group. I have reviewed the bill changes as well as reviewed our own experiences with workers comp. I also discussed it with our business manager who handles the initial components of all claims. At this time, I have no suggested changes to the current laws. Thankfully, our experience is limited in this area, and it seems to have met our needs as well as those of employees.*

*Mike Hanley  
Superintendent  
Chugach School District*

## Lisa Parady- Alaska Council of School Administrators

*Friday, November 16, 2018*

*Greetings Senator MacKinnon and Representative Claman:*

*Good morning. I am following up with you regarding this request that has been made to school administrators. As a reminder, the Alaska Council of School Administrators (ACSA) is a resource for you to reach all school administrators with requests like this. As such, I am forwarding your request to our members in hopes that you will get more input.*

*Please let us know how we may be of service as this effort moves forward. ACSA has had a joint position statement on reform of Alaska's Workers' Compensation for each of the last several years. As you know, these costs are very high for school districts. The statements is as follows: **The state should continue efforts to control the cost of Workers' Compensation claims, including adoption of medical treatment guidelines, improved management of claims, and an improved Reemployment Benefits process.***

*We stand ready to assist.*

*Thank you.*

*Best regards,*

*Lisa*

*Elizabeth Skiles Parady, J.D., Ed.D.*

*Executive Director / ACSA/ASA/AASSP /*

*tel [REDACTED] / direct [REDACTED] / [REDACTED] / [alaskaacsa.org](http://alaskaacsa.org)*

## Legal Professionals

### Michael Jensen - Law Offices of Michael J. Jensen

Wednesday, November 21<sup>st</sup>, 2018

Dear Mr. Atkinson,

*In response to the request of Representative Claman and Representative Josephson for comments regarding the four Workers Compensation Recommendations referenced on page 11 of the Workers' Compensation Working Group:*

#### ***Speed up dispute resolution-***

*This is really a non issue. In 2017 the number of claims, petitions, controversions filed decreased from the prior year. The number of hearings before the Board have significantly reduced. There has been a reduction in every year since 2014. The average number of days from a hearing record being closed to the issuance of a decision has gone down by 25%.*

*Hearing officers can facilitate the claims process by acting as mediators. This has proven very effective in resolving disputed claims. 83% of the mediated cases are resolved.*

*The vast majority of cases are heard quickly and handled efficiently.*

#### ***Strengthen provisions to prevent workers' compensation fraud by employers and employees-***

*In 2005 the Legislature addressed what it perceived as a problem of fraud. A Fraud Unit was created pursuant to AS 23.30.280 to investigate fraudulent acts and refer cases of fraud for prosecution. It is my understanding that in the past 13 years hundreds of employers have been fined for fraudulent acts of misrepresentation or failure to insure. Less than a handful of workers have been determined to have committed fraud.*

*The problem is that fines are being imposed, but the employers are not being pursued for payment. This is unfair to workers who are not being compensated when hurt and to the the vast majority of employers who must compete in the market.*

*In 2018 there have been 77 fraud tips against employers. In 2018 over 2.4 million dollars in fines were assed against these disreputable employers. The Board reduced these penalties to only \$700,000.00. It is unknown how much of this was actually collected.*

*The problem is unscrupulous employers taking advantage of the lax collection practices of the State which encourage further fraud and harms those conscientious employers who are complying with the law and must compete in the market for business.*

### ***Increase PPI and Death Benefits-***

*There has been no increase in PPI benefits for a permanent whole person impairment since 2000. In fact, PPI benefits have decreased due to the Legislature's enactment of AS 23.30.190(d) which automatically requires the Board to use the newest edition of the AMA Guides upon publication. In 2000 the 5th edition was being used. The current edition is the 6th edition. This edition has resulted in dramatic decreases in the ratings of permanent impairment for most injuries. The Legislature should not have abrogated its power to determine compensation to the authors of the AMA Guides.*

*The \$177,000 amount to be multiplied by the disabled worker's percentage of impairment of the whole person should be doubled. The 5th edition of the AMA Guides to the Evaluation of Permanent Impairment should be adopted and the Legislature should take back its power to determine the PPI benefits payable, not abrogate this power to the authors of the AMA Guides who are not funded by labor or workers.*

*In 2010 the legislature amended AS 23.30.215 to increase funeral expenses from \$5,000 to \$10,000.00. There was no other increase in death benefits. If the worker is unmarried and has no children or other dependents upon death no other benefits are owed other than the \$10,000.00 for funeral expense.*

*The Act prevents the non dependent parents or other immediate non dependent family members from pursuing a wrongful death civil action. In such cases a reckless employer whose failure to protect its worker resulting in death pays only \$10,000.00.*

*The Act at a minimum should permit spouses, parents or other family members to pursue a civil action against an employer if gross negligence, not simple negligence, resulted in the employee's death.*

### ***Reform Reemployment Benefits Program-***

*Rehabilitation costs have decreased over 27% from 2015 to 2017. Few workers are determined eligible for reemployment benefits. In 2017 only 137 workers were found eligible. Most workers select job dislocation benefits or settle their cases rather than selecting a vocational plan.*

*Reemployment plan costs were increased to \$13,300.00 from \$10,000.00 in 2005. There has been no change since. The \$13,300.00 simply does not cover the costs of tuition, books, and fees required for most plans to return a disabled worker to suitable gainful employment. Further, most workers see their weekly compensation benefits reduced to stipend benefits while participating in*



*rehabilitation plans. Viable plans cannot be developed if the maximum costs for retraining cannot exceed \$13,300.00. This along with the reduced weekly benefits compels workers to settle their claims in order to pay off their debts and hopefully retrain themselves. The costs of retraining are shifted to the State or Federal Government.*

*There are currently not enough professional rehabilitation counselors able to develop such plans.*

*Employers have no incentive to hire or rehire disabled workers. The Legislature recently eliminated the Second Injury Fund (SIF) which gave employers some incentive to hire or rehire a disabled worker. Perhaps the amounts previously paid for SIF coverage can be used towards offering incentives to employers to hire or rehire disabled workers.*

*There has been a dramatic decrease in reemployment benefits paid every year since 2015. The Division reported that \$4.4 million was paid in 2017 for 041(k) stipend benefits. This is a 41% reduction in such benefits being paid over 2015.*

*The Division's statistics regarding the amount of 041(k) benefits being paid may be misleading. The amount being reported is probably far less in actuality. This is because the insurer when settling a claim may attribute a portion of any settlement paid to 041(k) benefits for reporting purposes in order to avoid the 4% or 5% SIF contribution required for any temporary or permanent benefits paid.*

*I have attached the most recent reported statistics of the Board for your consideration. I hope this email is of some use.*

*Sincerely,*

*Michael Jensen*

*Law Offices of Michael J. Jensen*



## Public Comment

Kaya Kade

*Tuesday, November 20, 2018*

*Hello, I am sorry that it has taken me almost a month to get back to you. I am glad you won your seat back! I left a message about meeting with you and hope that we can work that out! I met with Senator Giesel back in the summer. She originally put forth the bill that would eliminate the vocational rehabilitation part of workers' compensation by making it a voucher system without sufficient guidance or financial support to be successful. She was very nice during our meeting and I think she heard some of what I was trying to explain. She also has a very different experience of recipients of workers' compensation than I do. I have been working with workers' compensation clients for over twenty years. I have worked with hundreds and potentially into a thousand clients. I have only had one fraudulent case in that whole time. People get scared when they are injured. Some people do not have the most solid mental health and an injury can make an already anxious or depressed person further depressed or anxious crossing them over into a place that they lose their ability to do everyday life tasks. My experience has been that people are honest about what is happening in their lives. I have never had anyone say they do not want to work. People, and especially men, gain their self worth through work. I do not believe and it is not my experience that people want to take workers' compensation and not work. I think that Ms. Giesel has had a different experience or believes something different. I would guess that my data numbers are larger than hers though..... I see that she is going to be the president of the Senate or something, which worries me in the hopes of getting a good bill through that protects injured workers.*

*i am of the opinion that if the insurance companies stopped trying to find fraud they would save a bundle of money. I have so many clients who are sent to what is called an IME (Independent medical evaluation) and that physician finds something really different than the treating physician or anything that makes it not the responsibility of the insurance company. The client then has to request what is called an SIME (Secondary Independent Medical Opinion). It usually takes from 9 - 12 months to obtain that appointment. In the twenty years I have been doing this, I have only seen one time that the SIME did not conclude the same thing as the treating physician and not what the IME physician stated. At this point the client gets their money re-installed and their medical treatment initiated. I have seen SIME reports state that since the client had to wait the nine months to obtain the SIME they are further injured and that their disability rating will be greater due to this wait. Can you imagine losing physical ability because the insurance company made you wait for your treatment? Even people with stellar mental health are challenged by such an experience. (I happen to see a recent bill for an SIME appointment and it was over \$20,000 just for the physician, never mind travel etc.)*

*Anyways it is such a complex topic and the people who are discussing it are not the ones working in it. So again I appreciate that you are willing to meet with me to discuss some of how I see the*

*whole dilemma Thank-you again for your time and attention to this matter. Kaya*

## Rhonda Konicki

Rhonda Y Konicki 359 Shannon Dr, Fairbanks AK 99701 email: [Konicki.Photo@gmail.com](mailto:Konicki.Photo@gmail.com)

October 3, 2018

The Honorable Matt Claman  
State Capitol Room 118  
Juneau, AK 99801

### Workers Compensation Working Group

Thank you for stepping up to take on the task of the Workers Compensation Working Group. I have been in contact with the Alaska Workers Compensation Board, please see the attached letter, and have been advised that I should contact the new Working Group regarding my concerns over recent system regulations that have been instituted over the past couple years on behalf of the WC Insurance Companies. Some of these regulations have a direct negative impact on your medical community, charged with caring for injured workers in Alaska.

The timely filing rules: 180 days for insurance to receive first claim filing, and 60 days to receive appeal of any denial. Timely filing rules have become an easy out for insurance carriers to avoid reimbursing doctors. Since my initial letter to the AWCB, I have continued with my own research, and made some new discoveries.

As you are aware, AWCB has approved the CMS billing guidelines for reimbursements. The Medical Office I work for receives back no less than 10% of all WC related filed claims in the form of an automated insurance denial. Consistently, each of these denials begin with the words, per CMS Medicare guidelines ....

What you probably don't know, is that apparently the WC Insurance carriers, along with AWCB have cherry picked the best parts of CMS Medicare rules. In fact, according to CMS Medicare, a provider has 365 days for first claim filing, 120 days from the date of remittance advice to file a first appeal, 180 from reconsideration to file a second appeal, and 60 days after the second appeal to submit a request for administrative review.

I would like to discuss this further with you and your committee. You need to be aware that the new regulations for timely filing have in fact created an adversarial relationship between the Medical Community and the WC Insurance carriers. The paperwork involved with caring for injured workers continues to increase as does the complicated billing system. Reducing the timely filing to such a short window puts excessive burden on the medical offices. In addition, one cannot treat a WC case like a basic healthcare medical bill. It is always more complicated and should be granted more time to process correctly.

Respectfully,

Rhonda Y Konicki

