Associated Builders and Contractors, Inc.

Alaska Chapter

Memo

DATE: February 22, 2012

TO: Senate Labor and Commerce Committee

FROM: Suzanne Armstrong
President, ABC of Alaska

Re: Comments on SB 116

Thank you for the opportunity to provide comments on SB 116 Workers Comp: Collective Bargaining/Mediation.

Section 1: Adds a new subsection to AS 23.30.110
ABC of Alaska is opposed to Section 1. As proposed, the new subsection would require that mediation be conducted by a hearing officer or other classified employee of the Division of Workers' Compensation. It removes an employer's and employee's ability to mutually select a mediator and defaults to a classified employee of the State of Alaska. Under the current system, employees of the Division of Workers Compensation can be utilized for mediation but employers and injured workers also have the right to mutually select a mediator outside of the division. ABC of Alaska feels that this right should be protected and section 1 removed from the legislation.

Section 2: Creates an Alternative Dispute Resolution (ADR) process for certain employers and labor organizations
ABC of Alaska is opposed to Section 2 as written.

1. As in Section 1, Section 2 also requires that mediation be conducted by a hearing officer or other classified employee of the Division of Workers Compensation. This is actually the only requirement enumerated for an ADR negotiated in a collective bargaining agreement.

2. Section 2 allows for negotiated collective bargaining agreements to establish an Alternative Dispute Resolution (ADR) process "that supplements or replaces a part or all of a dispute resolution process," under the AWCA. This essentially gives authority to those engaged in negotiating a collective bargaining agreement carte blanche to devise an ADR that does not contain checks and balances on the rights of employers and the injured worker. Under the AWCA, a process is set forth that serves and protects the rights of employers and the injured workers and treats all parties to a fair system. Because of the AWCA, employers and employees know the rules of engagement. They know what recourse is available to each of them, and that there are checks and balances in place to protect their rights.

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At the very least, language should be included that defines what an ADR process may look like, with safeguards on employer and injured worker rights. Areas that we believe should be further discussed and defined (but certainly not limited to just these areas):

a. Trust formation and composition of trust
b. Physician, medical evaluators and vocational rehabilitation specialists selection practices and procedures – including procedures on how selected providers may be removed from approved lists
c. Fee negotiation practices and guidelines
d. Protection of employer's right to IME
e. Entire dispute resolution process after injury occurs including: role and responsibility of facilitator, mediator, arbitrator, and appeals to the AK Workers Compensation Commission and the Alaska Supreme Court. Careful attention to the rights and responsibilities afforded to all parties (injured employee and employer)

Also, we would support a provision that the ADR process negotiated under a CBA must be approved by the Director of the Division of Insurance. Much like Minnesota state law requires.

Many parallels have been drawn between SB 116 and existing laws in California and Minnesota. Most of the discussion has focused on costs savings realized once an ADR law has been implemented. If the basis of the argument is going to be that this reform worked well in other states, it is important to also compare the statutory construct of other states' laws and look at the issues or the problems that a particular states' workers comp system had and why ADR made sense for them to adopt. For instance, Minnesota law appears to have more structured guidelines and oversight, provides that any CBA in Minnesota has to perform and report to the division and the division must authorize or approve any CBA. And, it appears that Minnesota also retains IME's for employers.

An interesting point stands out when reading SB 116. Page 3, line 19-20 clearly states that a CBA negotiated under Section 2 of this bill may not reduce an employee benefit established under the AWCA. With this being spelled out so clearly, it makes one wonder why there is not a statement that a CBA negotiated under Section 2 of this bill may not reduce an employer's rights as they exist under the AWCA.

Discussion on Costs:

In public testimony taken in April of 2011 and in January of 2012, a substantial amount of time has been spent on discussing "cost savings" experienced in other states that have implemented "like" reforms to those in SB 116. However, no discussion has occurred about the costs for employers who will not participate in the "voluntary" system or employers who do not negotiate collective bargaining agreements with a labor organization. Is there data available to show that the costs savings experienced by one group of employers is not shifted as cost increases to another group of employers? Is there data available to show that costs of the entire system decreased due to this carve-out?

Discussion on the size of Alaska's Medical Community:
One area that has not really been included in the discussion at the legislative level is the relative size of Alaska's medical community as compared to states like California and Minnesota who have implemented "like" reforms to those proposed in SB 116. With such a small number of specialists in the state of Alaska (as it was pointed out that this is more about neck, back, and knee docs), it is hard to imagine a significant amount of cost savings or a willingness by specialists to negotiate lower fees. Will the adoption of SB 116 cause trusts to look outside of Alaska for doctors and specialists? What will this do to the cost of the system?

As a Wrap-Up:
Alaska's workers compensation system needs reform. There are problems. However, we do not believe that the provisions of SB 116, whether "voluntary" or not, is a solution to the problems that our entire system faces. A lot of time has been spent comparing Alaska's system to those of California, Minnesota, and other states. Drawing comparisons to the experiences of other states is not always in the best interest of identifying a good policy for Alaska. We face different circumstances which create different problems within our system. The best path forward for Alaska is to understand the problems with our system, identify the outcome we wish to achieve, and then work together, for the benefit of the whole to achieve reform. Adopting policy that attempts to carve-out employers from a system that needs reform isn't going to improve the whole system, which is where efforts should be aimed.

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