



## **Workers' Compensation Committee of Alaska**

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**PO BOX 200361 ANCHORAGE, ALASKA 99520**

March 5, 2012

Dear Members of the Senate Labor and Commerce Committee:

Alaska has the distinction of being one of the most expensive places in the U.S. to do business, and for many employers, workers' compensation is their single largest insurance expense. The Workers' Compensation Committee of Alaska (WCCA) opposes CSSB 116 because it does not believe this legislation would reduce the cost of workers' compensation for Alaskan employers, or provide more effective delivery of benefits to Alaskan workers, and will more than likely increase the costs of workers' compensation to employers.

Several other states have created statutory authority for employers and labor organizations to negotiate "carve-outs" from the state workers' compensation systems by delivering workers' compensation benefits under collectively bargained agreements. These programs have had varying success in other states. One of the essential elements of success in other jurisdictions has been the use of agreed medical providers. Further, the successes realized in other states have not necessarily been in medical costs reduction.

In 2005, the legislature authorized employers to enter into preferred provider agreements for treatment of injured workers. (A.S. 23.30.095.) This gave employers the option to negotiate fees and services in advance, and injured workers could chose to use the employer's preferred providers. Although they have had this statutory right to create and use preferred provider networks for six years, Alaska's small population and the limited number of medical providers create an environment where providers have little incentive to negotiate special services or fee discounts. This is particularly true in the medical specialties critical to treatment of injured workers, such as orthopedic surgery.

However, the draft amendment "X" to CSSB 116 would eliminate the option for the parties to agree on exclusive medical providers in any collectively bargained "carve-out" agreements. Medical care is the single largest cost component in the Alaska workers' compensation system, and any revisions to the law should be targeted with that goal in mind.

The mediation provisions of Section 1 focus on a problem that affects only a small percentage of all workers' compensation claims. Most claims are paid routinely and without delay. Disputed claims are the exception rather than the rule. For disputed cases, the law already allows the parties to enter into voluntary mediation using the mediator of their choice. CSSB 116 would require all workers' compensation mediation to be done by Workers' Compensation Division employees, increasing the cost to the administrative system, and taking away this important choice for both employers and employees.

The language of CSSB 116 as now amended particularly causes WCCA strong concerns and does not assure union businesses of any cost savings. Instead, it provides that employers cannot choose their own IME Doctors and that cases that fail to be successfully mediated will go to arbitration pursuant to A.S. 09.43.300-09.43.595, that the arbitration will be heard by Alaska Workers' Compensation Hearing officers, and there will be no appeals to the Commission. There is simply no way that this is beneficial to employers. First, currently the employer has its own choice of IME doctors and can have an IME every 60 days. Also, currently, if the case goes to hearing, the case is heard by a panel consisting of a hearing officer and two lay members, one from labor and the other from management. The decision is then appealable on the merits to the Workers' Compensation Appeals Commission.

More problematic, however, is that A.S. 09.43.480 states, under remedies, that an arbitrator may award punitive damages, other exemplary relief or remedies the arbitrator considers just and appropriate. Currently, the Alaska Workers' Compensation Act (hereinafter the AWCA) limits what type of benefits are paid to the employee and provides employers the protection from having any punitive awards or awards outside the benefits contained in the AWCA. Also, the current AWCA provides the employer with some specific other legal defenses and the bill, as written, does not say, "All parties retain the same rights and benefits as exists under the AWCA." Rather, the bill says that this section may not reduce a benefit under this chapter, which only protects the employee not the employer.

The forgoing provision would have certain negative effects on the workers' compensation insurance environment in Alaska.

As for appeals under Title 9, A.S. 09.43.500 provides for vacating a decision under very limited circumstances such as fraud, corruption or arbitrator misconduct! A.S. 09.43.550 provides for a very limited right to appeal. The Alaska Supreme Court interpreted this section to state that the review of a decision from a binding arbitration is not reviewable on the merits and that judicial review of arbitration awards is closely circumscribed (i.e., the Superior Court has limited authority to correct and review arbitration awards and may only vacate, modify or correct an arbitration award pursuant to narrow statutory parameters.) See Sidney vs. Allstate Ins. Co., 187.P.3d 443 (Alaska 2008). Thus, even if the hearing officer's decision is contrary to law or the decision is not based upon substantial evidence there is no appeal.


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WCCA is perplexed on why a parallel system is being considered that will still involve Board hearing officers as in 2011 only 198 Board decisions were issued, spread out between eight hearing officers. There were 396 settlements and only 65 mediations. There certainly is not a backlog of cases at the Board and cases are being settled without a new system. Though WCCA always supports Alternative Dispute Resolution, we certainly do not support a system that takes away employers' rights and is not targeted to reducing workers' compensation insurance premiums.

The legislature can support Alaskan businesses by ensuring that our existing workers' compensation system encourages superior care for injured workers at a fair and reasonable cost to employers. The Workers' Compensation Committee of Alaska does not believe CSSB 116, and particularly draft amendment "X," would achieve this result.

Very truly yours,

WORKERS' COMPENSATION COMMITTEE OF ALASKA

  
Shelby L. Nuenke-Davison  
President