



ALASKA

February 17, 2017

The Honorable Sam Kito, Chair  
House Labor & Commerce Committee  
State Capitol Building  
Juneau, Alaska 99801-1182

RE: House Bill 79

Dear Representative Kito:

On behalf of the National Federation of Independent Business/Alaska, I wish to respectfully share our opposition to House Bill 79. The National Federation of Independent Business is the largest small-business advocacy group in Alaska.

House Bill 79 attempts to craft a definition of an independent contractor for purposes of the workers compensation program. We believe it is far too narrow and prevents many Alaskan entrepreneurs functioning as the independent contractors they truly are. The proposed definition in Section 31, adding AS 23.30.230(a)(11) will lead to many more specific exemptions to the current law as it does not allow the flexibility necessary for small businesses and independent contractors to function in a customary and reasonable manner in Alaska.

Small businesses often contract with individuals to work as part of a team for a limited time to address a task or proposal when the small business may not have a specific expertise. Often they will contract with an individual that, in the same course of business, may have expertise to add to a project, such as preparing a contract bid. And many times independent individuals may maintain offices in the same location, perhaps even sharing rent in a suite of offices.

The Internal Revenue Service (IRS) has had a standard dealing with the definition of an independent contractor for many years. It has been litigated and is a fairly well understood standard. We suggest that Alaska use that standard for purposes of workers compensation coverage. I have attached information on that standard for your review.

The IRS standard also has a safe harbor found in Section 530. We believe that Alaska should also have a safe harbor process to accommodate new industries as our employment market changes. An example is current legislation that deals with transportation network company drivers.

The Honorable Sam Kito  
February 17, 2017  
Page 2

We appreciate your consideration of our concerns.

Sincerely yours,

A handwritten signature in blue ink that reads "Dennis L. DeWitt". The signature is written in a cursive style.

Dennis L. DeWitt  
Alaska State Director

Cc: NFIB/AK Leadership Council  
House Labor & Commerce Committee  
Commissioner Drygas, Department of Labor and Workforce Development

Attachments



ALASKA

March 5, 2017

The Honorable Heidi Drygas  
Department of Labor & Workforce Development  
P.O. Box 111149  
Juneau, Alaska 99811-1149

RE: Definition of Independent Contractor

Dear Commissioner Drygas:

On behalf of the National Federation of Independent Business/Alaska, I want to thank you for taking the time to meet with Chris Nettels and me to discuss the proposed definition of an independent contractor for purposes of the workers compensation program. The National Federation of Independent Business is the largest small-business advocacy group in Alaska.

We appreciate your desire to have a simple and concise definition of an independent contractor. As we have agreed, it is not a simple task. The definition proposed in HB 79 and SB 40 would include many valid independent contactors under its terms. Simply, it is far too broad.

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Last fall, NFIB/Alaska polled its membership. Approximately 60% of our members objected to any type of legislation that might more tightly define what constitutes an independent contractor for purposes of workers compensation. We asked this question in response to HB 307 introduced in the 29<sup>th</sup> Legislature that included a similar definition to the one found in the above noted bills.

After discussions with the NFIB/Alaska Leadership Council, we request that you recommend deleting the definition from HB 79 and SB 40.

If that is not possible, we recommend the following to replace the current language proposed in Section 31:

An independent contractor generally

- Maintains a business license
- Maintains a contract governing the relationship between parties
- Files or intends to file business or self-employed income tax returns
- Maintains freedom to seek out other business opportunities
- Has direct control in meeting and performing contract obligations
- Compensation is based on factors relating to contract work

Commissioner Drygas  
March 5, 2017  
Page 2

- Maintains ability to hire, fire, control and provide benefits to persons required to perform the work for which the person has contracted.
- Has the opportunity to realize a profit or loss based on the relationship of business receipts and expenses
- Functions consistent with industry practices

We believe these criteria will offer a reasonable guide without forcing independent contractors to surrender their freedom and become employees. It will also assist small businesses that use independent contractors to expand their capabilities to remain competitive in the marketplace.

Sincerely yours,



Dennis L. DeWitt  
Alaska State Director

Cc: NFIB/AK Leadership Council  
House Labor & Commerce Committee  
Senate Labor & Commerce Committee

March 14, 2017

The Honorable Sam Kito III  
Alaska House of Representatives  
Alaska State Capital Building  
Juneau, Alaska

Subject: HB79, workers' compensation

Dear Representative Kito:

This letter is offer written testimony in regards to HB79, the omnibus workers' compensation bill pending in the House Labor & Commerce Committee. As the Facility Administrator for the Alaska Surgery Center, please know my appreciation for your consideration of these comments.

Section 17 of HB79 contains language that adds additional reference guides from the federal Centers for Medicare and Medicaid Services. We are concerned about the inclusion of the references for both the Hospital Outpatient Prospective Payment System and the Ambulatory Surgical Center Payment System. Our request is that these two references be removed from the bill, and I would like to explain why.

First, basing workers' compensation medical compensation rates on Medicare and Medicaid is fundamentally flawed. Medicare and Medicaid are governmental programs for patients who are generally elderly, frail, physically challenged, or with special needs. Their medical needs are focused generally on long-term care for chronic conditions. These patients are deserving of care, and we are committed to helping them.

Workers' compensation patients are individuals covered under commercial insurance rates, but have been injured in the course of their employment. Based on their commercial insurance coverage, the expectation is that they will receive medical procedures for as full of a

recovery as possible in order for them to return to work. This is an entirely different set of patients than Medicare and Medicaid.

Second, Section 17 has been presented by the Department of Labor as a way to update the medical reimbursement regulations without going through the public process of hearings and review. While this may offer some efficiency in making changes, the entire medical system in Alaska is still adjusting to the new reimbursement system that has existed barely one year.

A major change in workers' compensation for medical providers was enacted in 2014 with the passage of HB316, which changed the entire reimbursement system. HB316 shifted reimbursement rates from a legislatively controlled statute rate over to a regulatory system within the Department of Labor. The new regulations for the medical fee schedule became permanent in March 2016.

An annual system of review was enacted by HB316, and this has yet to occur for the newly adopted regulations. Before making further changes in statute to the workers' compensation medical reimbursement system with more Medicare and Medicaid reference materials, it would help to ~~first complete a discussion and review of the impacts from the new~~ regulatory system.

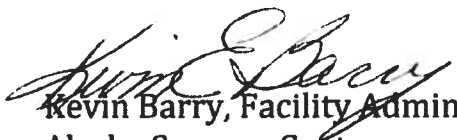
These new regulations have lowered rates for medical reimbursement in workers' compensation. Last summer my public testimony to the Medical Services Review Committee (MSRC) estimated a loss of over \$2 million per year. We are all seeing significant reductions, and we have yet to fully realize what impact this will have on the availability of medical services for injured workers.

Again, our request is that Section 17 be amended to remove the addition of Medicare and Medicaid references for Hospital Outpatient Prospective Payment System and Ambulatory Surgical Center Payment System. Until there is a review of the current system and its impacts, our fear is that we are only further institutionalizing more complexities and flawed premises into a system that is still adjusting to recent changes.

The Alaska Surgery Center is committed to working with the Legislature and the Department of Labor on creating affordable and responsive medical services for our state's workers' compensation system. We are dedicated members of the community, and we ask that you consider our concerns.

Thank you for this opportunity to offer comment.

Sincerely,

  
Kevin Barry, Facility Administrator  
Alaska Surgery Center

CC: Commissioner Heidi Drygas

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Dear Representative Knopp,

HB 79 and SB 40 attempt to add new definitions intended to force workers compensation coverage on independent contractors by amending AS 23.30.230(a).

Many small businesses use independent contractors/consultants to increase their ability to work on jobs that are limited in time or specific in scope. Many sole proprietors function as independent contractors bringing additional skills and ability to Alaska's small businesses. This allows small businesses working on small margins to be successful in Alaska's economy.

While the Dept of Labor & Workforce Development has suggested that there are problems with some folks not properly classifying some employees, all their examples shared with us were resolved under current law. We believe enforcing existing law makes more sense than creating a new definition of an independent contractor that does not work for many independent contractors or small businesses.

Forcing small businesses to cover contractors and consultants under their workers' compensation insurance needlessly increases costs for those businesses. It limits the freedom of independent contractors and reduces their income as the small business will be forced to move dollars from the independent contractor to the insurance carrier.

Sincerely,

Bradley Cross

Kenai, AK 99611

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Many small businesses use independent contractors/consultants to increase their ability to work on jobs that are limited in time or specific in scope. Many sole proprietors function as independent contractors bringing additional skills and ability to Alaska's small businesses. This allows small businesses working on small margins to be successful in Alaska's economy.

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Sincerely,

Chuck Cook

Soldotna, AK 99669

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Dear Representative Knopp,

Please do not support HB 79 and SB 40 attempting to add new definitions intended to force workers compensation coverage on independent contractors by amending AS 23.30.230(a). The current law is adequate. Taking independent contractor status away from these people will force them to change their business structure. Forcing them to pay insurance companies and not allowing their legitimate deductions allowed under the law. All of this will reduce the amount of money going back into the economy.

Many small businesses use independent contractors/consultants to increase their ability to work on jobs that are limited in time or specific in scope. Many sole proprietors function as independent contractors bringing additional skills and ability to Alaska's small businesses. This allows small businesses working on small margins to be successful in Alaska's economy.

While the Dept of Labor & Workforce Development has suggested that there are problems with some folks not properly classifying some employees, all their examples shared with us were resolved under current law. We believe enforcing existing law makes more sense than creating a new definition of an independent contractor that does not work for many independent contractors or small businesses.

Forcing small businesses to cover contractors and consultants under their workers' compensation insurance needlessly increases costs for those businesses. It limits the freedom of independent contractors and reduces their income as the small business will be forced to move dollars from the independent contractor to the insurance carrier.

Sincerely,

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David Bunts  
President  
Sterling Custom Homes

Soldotna, AK 99669

Dear Representative Knopp,

As a small business owner I want to protect my employees that regularly work for me. But I do not feel it is reasonable to force me to cover the insurance costs of independent contractors who perform periodic service work or very sporadic contract work for us. When I bought this business in 2003 my work comp bill was around \$5,000 annually. Since that time insurance rates have skyrocketed and I presently pay over \$16,000 per year in Work Comp coverage. About 8 years ago we lost our coverage. We were placed in the assigned risk pool for 4 years and were paying over \$22,000 for the same coverage. I believe independent contractors should be responsible for their own insurance and should not be required to be covered as employees esp for small businesses.

HB 79 and SB 40 attempt to add new definitions intended to force workers compensation coverage on independent contractors by amending AS 23.30.230(a).

Many small businesses use independent contractors/consultants to increase their ability to work on jobs that are limited in time or specific in scope. Many sole proprietors function as independent contractors bringing additional skills and ability to Alaska's small businesses. This allows small businesses working on small margins to be successful in Alaska's economy.

While the Dept of Labor & Workforce Development has suggested that there are problems with some folks not properly classifying some employees, all their examples shared with us were resolved under current law. We believe enforcing existing law makes more sense than creating a new definition of an independent contractor that does not work for many independent contractors or small businesses.

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Forcing small businesses to cover contractors and consultants under their workers' compensation insurance needlessly increases costs for those businesses. It limits the freedom of independent contractors and reduces their income as the small business will be forced to move dollars from the independent contractor to the insurance carrier.

Sincerely,

James Delker DVM- Twin Cities Vet Clinic

Soldotna, AK 99669

Dear Rep. Matt Claman

My name is David Randall, and I am a Podiatrist specializing in Foot and Ankle surgery.

I am writing with concerns about the adoption of HB79. Please let me briefly explain that concern. First some brief background about the current healthcare delivery system. CMS/Medicare strongly favors large hospital based healthcare delivery systems over small business medical practices with regards to reimbursement. Perhaps like all parts of big government regulations and reimbursement favor Hospital institutions to the detriment of a small business medical practice. What does this mean? Well essentially it means that a Hospital is payed more for doing the exact same outpatient work than a small business medical practice or a private practitioner. This extends in difference to Ambulatory Surgery Centers, so essentially if an outpatient procedure is done at a hospital the hospital will receive a larger (significantly) reimbursement than a Ambulatory Surgery Center receives despite the procedure being exactly the same.

What does this mean in practical terms? Well if you have discussed the ease of accessing care for one of your constituents with Medicare they will likely tell you that it is not easy for them to find a provider who accepts Medicare. Thus their access to care is limited - primarily to a choice between the Hospital based Medicare Clinics. Why? It is very difficult for a small business medical practice to keep the lights on if that practice has too large of a Medicare population (again they get paid less than the hospital based clinic for the same work). Thus the majority of small medical practices have either elected not to see Medicare or to significantly limit the number of patients with Medicare that they will see.

So what does this have to do with HB79?

As medical practitioners, we want to continue helping injured workers recover and return to work. One of the unanticipated consequences of the passage of HB79 will be to severely limit access to care for injured workers.

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Please do not advance HB79 with the federal medical reference guides for Hospital Outpatient Payment Systems and Ambulatory Surgery Center Payment Systems.

All stakeholders, including medical providers and the Department of Labor, need to reach a better understanding of the impacts from new medical reimbursement regulations adopted 12 months ago. Just as a reminder those regulations for some reason also favored the large hospital systems. Cost saving regulations cut the reimbursement to a Ambulatory Surgery Center significantly more than a Hospital Outpatient Surgery - For doing the Same Procedure!!!

Truly before reimbursement is reduced further I think it would be nice for an explanation to all stakeholders as to why reimbursement to an ASC needed to be reduced so much more than for a Hospital Outpatient Surgery Department - for doing the same work.

Perhaps if the goal is saving money we should try to avoid the unintended consequence of moving outpatient surgeries out of the more affordable Ambulatory Surgery Centers to the more expensive Hospital Outpatient Surgery Departments. The more reimbursement is reduced to the Ambulatory Surgery Centers as well as other small business based medical practices - the less those more affordable entities will be able to participate in caring for that patient population.

Adopting federal reference guides for Medicare and applying them to medical services for injured workers creates confusion for both medical providers and insurers. Medicare patients and injured

workers are two distinctly different types of patients, and the billing and coding procedures within these federal reference guides conflict with commercial insurance for workers' compensation.

As a medical practitioner, I am concerned about the future ability of injured workers to receive the care they need if these federal reference guides are adopted into law without a more meaningful opportunity to discuss these impacts with both the Legislature and the Administration.

Respectfully,  
David Randall, DPM

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My name is Steve Schaffer MD, and I am in the practice of Alaska Center for Ear, Nose and Throat (ACENT).

As medical practitioners, we want to continue helping injured workers recover and return to work.

Please do not advance HB79 with the federal medical reference guides for Hospital Outpatient Payment Systems and Ambulatory Surgery Center Payment Systems.

All stakeholders, including medical providers and the Department of Labor, need to reach a better understanding of the impacts from new medical reimbursement regulations adopted 12 months ago.

Adopting federal reference guides for Medicare and applying them to medical services for injured workers creates confusion for both medical providers and insurers. Medicare patients and injured workers are two distinctly different types of patients, and the billing and coding procedures within these federal reference guides conflict with commercial insurance for workers' compensation.

As a medical practitioner, I am concerned about the future ability of injured workers to receive the care they need if these federal reference guides are adopted into law without a more meaningful opportunity to discuss these impacts with both the Legislature and the Administration.

Steve Schaffer  
Sent from my iPhone

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My name is Brion Beerle, and I am in the practice of anesthesiology. I have been in practice in Anchorage for over 20 years and manage a practice primarily in an outpatient surgical setting and we take care of a large number and variety of workers compensation patients. I have played an active role in Alaska medicine and served as president of the Alaska State Medical Association in 2011.

I am an advocate of medical fee transparency and the necessity of placing all providers of medical services, both hospital and outpatient, on parity with one another to create the necessary market forces to drive medical costs down to a sustainable level. As medical practitioners, we want to continue helping injured workers recover and return to work. HB79 will place this ability and freedom of choice in serious jeopardy.

Please do not advance HB79 with the federal medical reference guides for Hospital Outpatient Payment Systems and Ambulatory Surgery Center Payment Systems. This legislation essentially creates a marginalized two tiered payment system with strong discrimination against medical care in an ambulatory setting, which is presently delivered at dramatically reduced rates when compared with those of hospitals. It is unlikely that this proposed legislation will do anything but raise costs of insuring workers and further divide our medical payment system and raise costs of care while also decreasing access.

All stakeholders, including medical providers and the Department of Labor, need to reach a better understanding of the impacts from new medical reimbursement regulations adopted 12 months ago.

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Thank you for your service in our legislature and please feel free to contact me for further information and perspective,

Brion Beerle, MD

My name is Chris Manion, M.D., and I am in the practice of orthopedic surgery at Orthopedic Physicians.

As medical practitioners, we want to continue helping injured workers recover and return to work.

Please do not advance HB79 with the federal medical reference guides for Hospital Outpatient Payment Systems and Ambulatory Surgery Center Payment Systems.

All stakeholders, including medical providers and the Department of Labor, need to reach a better understanding of the impacts from new medical reimbursement regulations adopted 12 months ago.

Adopting federal reference guides for Medicare and applying them to medical services for injured workers creates confusion for both medical providers and insurers. Medicare patients and injured workers are two distinctly different types of patients, and the billing and coding procedures within these federal reference guides conflict with commercial insurance for workers' compensation.

As a medical practitioner, I am concerned about the future ability of injured workers to receive the care they need if these federal reference guides are adopted into law without a more meaningful opportunity to discuss these impacts with both the Legislature and the Administration.

Additionally, I believe if you look at the reimbursement to Ambulatory Surgery Centers it is significantly below the reimbursement for the same procedures at our local hospitals. They are already the low cost alternative to the hospitals. They provide a better patient experience, lower cost and higher quality than what is received at any hospital in Alaska. This is not the location to carve out cost savings.

I hope to have your support in objecting to HB79. Thank you for your time.

Sincerely,

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Chris Manion, M.D.

Orthopedic Surgeon at OPA Anchorage.