

# Alaska State Medical Association

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February 1, 2010

Honorable Kurt Olson  
State of Alaska  
House of Representatives  
Chair, House Labor and Commerce Committee  
State Capitol, Room 24  
Juneau, AK 99801

RE: HB 314 – Workers Compensation

Dear Representative Olson:

The Alaska State Medical Association (ASMA) represents physicians statewide and is primarily concerned with the health of all Alaskans.

ASMA's members are comprised of primarily, independently practicing physicians who practice in all types of subspecialties. Some of whom treat a substantial number of patients injured on the job and many other who treat few to no injured members. Those physicians who treat the few still have a keen interest in the Workers Compensation system in their capacity as employers. Indeed, those physicians with large numbers of injured workers in their practices have a keen interest as both care giver and as an employer.

ASMA will limit its comments to Sec. 2 of HB 314 and opposes the adoption of that section as currently written. Below, is a short description of ASMA's concerns about the current language and attached is draft language which will help to alleviate those concerns.

Since 2005 a "band aid" approach has been utilized to adjust the usual, customary, and reasonable fee schedule for physician payment. The fees have been frozen at the schedule in place on 12/1/2004, or increased by the percentage change in the Consumer Price Index. The latest was a percentage change in the CPI between 2008 and 2004 applied to that same fee schedule for dates of service stating 4/1/2009 and going through 12/30/2010. Now comes HB 314 which includes Sec. 2 which establishes the physician payment methodology for dates of service beginning 12/31/2010 and on into the future.

ASMA believes the language in Sec. 2 is not as clear as it could be and that the Legislature has the opportunity to make the payment methodology more efficacious and to make the policy decisions that are in your purview. Below is an outline for the changes that ASMA recommends and attached is draft language that would accommodate those changes.

1. define the appropriate fee as the lowest of:
  - a. the physician's actual charge or fee for the service or treatment;

- b. the charge or fee for the service or treatment when provided to the general public;
- c. the charge or fee for the service or treatment for all fees or charges submitted for the associated Category I Current Procedural Terminology code at the 90<sup>th</sup> percentile; or
- d. the charge or fee for the treatment or service negotiated by the provider and the employer under AS 23.30.097(c);

Note: This eliminates the terms “usual, customary, and reasonable” fee as no definition exists anyway in AS23.30 or in 8AAC45.082(i). Also, the 90<sup>th</sup> percentile is currently found in 8AAC45.082(i)(3).

2. direct the Board to either develop or designate a source (and adopt it by promulgating a regulation) for a database of current fees or charges for each Category I Current Procedural Terminology code that:
  - a. includes the charges or fees submitted by Alaska physicians;
  - b. includes the most recent 12 months of submitted charges but would allow for either older data to be included in order to have a statistically credible amount of data, or to allow submitted charges to be included from outside of Alaska in order to have a statistically credible amount of data. However, those charges from outside of Alaska need to be adjusted for the cost differential by a ratio of the CPI in Alaska versus where the fees came from; and

Note: It is assumed that the database is continually updated as Alaska submitted charges or fees are added. Therefore, no direction for an annual update, per se, is necessary. However, a review of the statistical credibility of the data probably needs to be reviewed annually and adjusted accordingly. It is recommended that setting of the percentile be a policy call made by the Legislature.

3. direct that the Board, should it determine that it wishes to change its designated source for the database, that it needs to accomplish through the promulgation of a regulation.

ASMA will not provide comments regarding the establishment of the percentile (currently the 90<sup>th</sup> percentile) other than in general terms. To provide a specific recommendation, ASMA would have to have collected fee or charge data from its member physicians. It is generally, prohibited from doing so by federal anti-trust law. ASMA expects that individual physicians will provide you comments related to that policy decision. However, ASMA recommends that the Legislature makes this policy call as it is an extremely important one. If the percentile is set too low, physicians could limit their practice as far as caring for injured workers in Alaska. This has happened regarding access to care for injured federal workers under the Federal Workers Compensation system and for Medicare beneficiaries.

Thank you for the opportunity to provide testimony on HB 314. ASMA and I stand ready to assist you in addressing this most important issue.

Sincerely,



By: Brion Beerle, MD, President  
For: Alaska State Medical Association