



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.

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We appreciate your consideration of our concerns.

Sincerely yours,



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 contractors under its terms. Simply, it is far too broad.

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

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- 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