

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

February 3, 2010

3:27 p.m.

MEMBERS PRESENT

Representative Kurt Olson, Chair
Representative Mike Chenault
Representative Bob Lynn
Representative Tammie Wilson
Representative Robert L. "Bob" Buch
Representative Lindsey Holmes

MEMBERS ABSENT

Representative Mark Neuman, Vice Chair

COMMITTEE CALENDAR

HOUSE BILL NO. 314

"An Act relating to fees and charges for medical treatment or services, the crime of unsworn falsification, investigations, and penalties as they relate to workers' compensation; and providing for an effective date."

- MOVED HB 314 OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 314

SHORT TITLE: WORKERS' COMPENSATION

SPONSOR(S): LABOR & COMMERCE

01/27/10	(H)	READ THE FIRST TIME - REFERRALS
01/27/10	(H)	L&C, JUD
02/03/10	(H)	L&C AT 3:15 PM BARNES 124

WITNESS REGISTER

KONRAD JACKSON, Staff
Representative Kurt Olson
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 314 on behalf of the prime bill sponsor, Representative Kurt Olson.

LINDA HALL, Director
Division of Insurance (DOI), Anchorage Office
Department of Community & Economic Development (DCCED)
Anchorage, Alaska

POSITION STATEMENT: Testified and answered questions during the discussion of HB 314.

JIM JORDAN, Executive Director
State Medical Association
Anchorage, Alaska

POSITION STATEMENT: Testified and answered questions during the discussion of HB 314.

JED WHITTAKER
Anchorage, Alaska

POSITION STATEMENT: Testified and answered questions during the discussion of HB 314.

ERIN POHLAND, Assistant Attorney General
Human Services Section
Civil Division (Anchorage)
Department of Law (DOL)
Anchorage, Alaska

POSITION STATEMENT: Answered questions during the discussion of HB 314.

ACTION NARRATIVE

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CHAIR KURT OLSON called the House Labor and Commerce Standing Committee meeting to order at 3:27 p.m. Representatives Buch, Lynn, Holmes, T. Wilson, and Olson were present at the call to order. Representative Chenault arrived as the meeting was in progress.

HB 314-WORKERS' COMPENSATION

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CHAIR OLSON announced only order of business would be HB 314, HOUSE BILL NO. 314, "An Act relating to fees and charges for medical treatment or services, the crime of unsworn falsification, investigations, and penalties as they relate to workers' compensation; and providing for an effective date."

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KONRAD JACKSON, Staff, Representative Kurt Olson, Alaska State Legislature, explained that the purpose of HB 314 is to replace the current medical fee schedule with an updated schedule. The Medical Services Review Committee recommended the current medical fee schedule be replaced with an updated schedule.

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LINDA HALL, Director, Division of Insurance (DOI), Anchorage Office, Department of Community & Economic Development (DCCED), provided the history of the medical fee schedule. In 2005, the statute inadvertently deleted the mechanism for the Workers' Compensation Board to adopt a new fee schedule. At that time the DOI anticipated the stakeholders would propose an updated schedule by August 1, 2007. However, that did not happen, the medical fee schedule was frozen, and the 2004 fee schedule still applied. A Consumer Price Index (CPI) was adopted and used from 2004 - 2006. Last year, the legislature adopted another CPI increase which expires December 31, 2010. She discussed a replacement for the current CPI. She referred to her handout in the committee packets and reviewed charts, pointing out the colored pie charts titled "Workers Compensation Medical Losses are More Than Half of Total Losses," [page 32]. In 2008, the National Council on Compensation Insurance, Inc. (NCCI) states, consisting of approximately 33 states, had medical fees that encompassed 58 percent of the medical costs, with the remaining 42 percent of the costs consisting of indemnity costs. The next chart refers to the "Workers Compensation Benefit Split in Alaska" with medical costs representing 72 percent of the medical claims, which has increased by 20 percent in the past 20 years [page 31].

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MS. HALL stated that the average cost per case in Alaska is \$40,000, while the countrywide average cost is \$26,000"Alaska Medical Average Cost per Case vs. Countrywide [page 35]. Thus, Alaska is substantially above the national average.

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MS. HALL stated that according to the Oregon Workers' Compensation Premium Rate Ranking, Calendar Year 2008, Alaska ranked number one [page 4]. She stated that Alaska has the highest Workers' Compensation premium rates in the country.

While Alaska's rates have remained high, California's premiums were once high, but California is now ranked thirteenth nationwide. The state must review what drives up the cost for Workers' Compensation insurance in Alaska. Although this bill is not a complete fix and will not lower premiums, it represents progress. This bill, HB 314, will replace the past CPI increases with a sustainable schedule until a more permanent solution can be found. This temporary fix approach has been recommended by the Medical Services Review Committee. She applauded the work the Medical Services Review Committee has done to examine the issues and to work to find solutions.

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MS. HALL explained that HB 314 provides a fee schedule that will eliminate the need for the DOI to come before the legislature each year. The bill contains a full fee schedule that contains all of the procedure codes, consisting of approximately 2,000 new procedure codes, which have been developed since 2004, at the time when the last fee schedule was updated and adopted. She suggested the importance in adopting the codes and assured members that the DOI still will continue to work to address rising transportation costs for air and ground transport, particularly for emergency transports. She emphasized that HB 314 will bring the fee schedule up to date. The overall system will not change, is the same system that has been in use for many years. In fact, the regulations have been in place for the past 20 years. She assured the committee that the DOI is not "reinventing the wheel" and changes are not being made to the regulatory process. A vendor compiles various bill charges and creates the fee schedule, which is purchased and subsequently adopted by the members of the Workers' Compensation Board. She explained that members of the Workers' Compensation Board are appointed by the Governor and are confirmed by the legislature. She said she found some reactions to this bill surprising because the system will remain the same and the overall effect of the bill is to update the fee schedule.

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MS. HALL explained that the bill will also update the provisions for prosecution of fraud. Workers' compensation fraud adds cost to the system and the DOI hopes to tighten up the language in the Division of Workers' Compensation statutes. In 2005, investigative authority was added with the understanding that fraud could be prosecuted, she noted. However, the Workers'

Compensation Board recently discovered it could not prosecute fraud under its statutes.

MS. HALL provided a section-by-section analysis of the bill. Section 1 would amend AS 11.56.205(a) to add the application for benefit under AS 23.20 to the crime of unsworn falsification in the first degree which is a class C felony. Thus, if a person, with the intent to mislead submits a false written or recorded statement that the person does not believe to be true at the time he/she applied for a benefit will be considered a crime of unsworn falsification, which will be a felony.

MS. HALL explained that Section 2 would amend AS 23.30.097(a)(1)(D), such that the new base fee may not exceed the usual, customary, and reasonable charges in a fee schedule adopted by the Workers' Compensation Board. The fee schedule is based on a credible profile of bill charges, and includes cost differential for geographical areas. She offered that currently only one vendor, Ingenix, creates fee schedules. The company uses geozips, or geographical zip codes to develop the fee schedule. Thus, the company analyzes the primary codes and groups together places where the charges are comparable. Ingenix is also used by health insurers to develop standard bill charges. The fee schedule charges are based only on Alaska data, not on Louisiana data, noting that Louisiana has the lowest charges in the nation. Thus, the costs in the fee schedule are not average costs. She explained that basically, Section 2 creates a base schedule to insert the procedure codes back into the statutes as a complete fee schedule. The fee schedule must include the most recent current procedural terminology codes for category I and category II medical treatment, or other services based on credible data for today's charges. The schedule must also adhere to the regulations from the Division of Workers' Compensation. The fee schedule is based on the 90th percentile, she said.

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MS. HALL explained that Section 3 would amend AS 23.30.250(a) to clarify that a crime that is a violation of the chapter is prosecuted under AS 11, which is Criminal Law, and that the violation may result in civil liability with an award of three times the amount of compensatory damages. Insurance fraud is a crime and Workers' compensation fraud is a similar crime.

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MS. HALL related that the changes in Section 4 would allow the director to establish a section within the DOI for investigation of fraudulent or misleading acts under this chapter. The DOI's investigators would be able to investigate any type of fraud under the chapter, which broadens the authority. This provision would allow the DOI director to investigate whether credible evidence exists that a person obtained a payment, compensation, medical treatment, or other benefit provided under this chapter by a fraudulent act or false or misleading statement.

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MS. HALL explained that Section 6 would repeal AS 23.30.250 (c) since this provision has been included and moved to Section 3 of this bill. She explained that is the sum extent of the bill.

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CHAIR OLSON thanked the director for the efforts made to bring this forward. He suggested that this bill is not perfect but is a step in the right direction.

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REPRESENTATIVE BUCH asked about the availability of enforcement and staff to conduct investigations.

MS. HALL related her understanding that a six-person investigative unit in the Division of Workers' Compensation would provide assistance and uses a two-pronged approach. Insurance companies must report suspected benefit fraud. The DOI can investigate, as well as the Division of Workers' Compensation, she stated. The two divisions agreed several years ago to avoid duplicate work and to prevent cases from "falling through the cracks." Thus, the DOI and the Division of Workers' Compensation divided their responsibilities through a formal Memorandum of Understanding (MOU). When the DOI receives a fraud referral it refers the case to the investigators at the Division of Workers' Compensation. Their investigators proceed and take the case to prosecutors in the Department of Law for prosecution. The Division of Insurance retained the bulk of the premium fraud, since it more closely aligns with insurance, and although the Workers' Compensation Board has some authority to investigate premium fraud, the bulk of those types of cases are investigated by its dedicated prosecutor. She related that the authority was not clear for the Department of Law to prosecute the DOI's cases.

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REPRESENTATIVE BUCH referred to a chart on page 4 of the handout listing Alaska as being number one in fraud. He asked whether the changes in HB 314 would affect Alaska's fraud status.

MS. HALL responded that the premium chart and the 90th percentile on the fee schedule are not related. This chart is a result of the premiums based on system costs as presented to the DOI, but the cost of claims is what drives up premium costs. This bill will not change any costs, but she said she hopes provisions in HB 314 will also not increase any costs. The DOI hopes for an overall solution so that the delivery system is improved since is not currently an efficient system. Whether the solution is obtained through health insurance or Workers' Compensation changes does not really matter. However, the state needs to discover efficiencies. The system should be adequate so that injured workers are treated and doctors should also be paid fairly, but the state must find ways to control costs since Alaska's costs should not be 14 percent higher than any other state in the country.

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CHAIR OLSON remarked that a Workers' Compensation bill will also be taken up before the committee at some point, and that bill may affect Workers' Compensation rates. However, the proposed bill does not have anything to do with HB 314, he said.

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REPRESENTATIVE T. WILSON inquired as to how often fees are reviewed.

MS. HALL responded that fees are reviewed annually or semi-annually.

REPRESENTATIVE T. WILSON asked who approves the fee schedule.

MS. HALL responded that the fee schedule is prepared by an outside vendor, who purchases the fee schedule based on bill charges comprised of Alaska data. The proposed fee schedule would be disbursed by the Workers' Compensation Board. The vendor does not tinker with the fees, but purchases a system based on credible data.

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REPRESENTATIVE HOLMES referred to the penalty provision in Section 1 that establishes a class C felony and asked how claims are currently handled for fraud.

MS. HALL offered her belief that some intent language set the bar so high that cases could not be prosecuted. She explained that the current standard was the "knowing standard" and seemed to be impossible to prove in the insurance arena. She explained that this bill establishes a reasonable standard of proof, but that the methods for an investigation or due process do not change under the bill. She noted that she is not an attorney.

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JIM JORDAN, Executive Director, State Medical Association, stated that the State Medical Association wholeheartedly agrees that HB 314 is a step in the right direction. He related that it is "not the most artful attempt at language drafting" but agreed with Ms. Hall's testimony. He remarked that he was interested in the intent of the Category 2 current procedural technology (CPT) codes. He said that essentially the CPT codes are supplemental tracking codes that are used to help measure performance. These were developed to minimize the administrative burden for those interested in measuring the quality of patient care. Data is developed so actual development of measurements of comparative effectiveness for treatments. A health care provider may have a number of ways to treat an injury, but this method uses evidence-based medicine to help determine the most effective treatment for an injury.

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MR. JORDAN, in response to Chair Olson related that he worked in the Division of Insurance in 1988. It has been nearly two decades since his involvement in the insurance regulatory profession, but he has an extensive work history in the industry.

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JED WHITTAKER stated that he is opposed to the felony charge for unsworn falsification. He said it seemed to him that when a worker is hurt that the injury needs to be verified by a doctor or medical community, but often an adversarial role exists between the interest of the worker and the interests of an insurance company. He said he would tend to trust the worker

and not medical community. He did not think the felony charge is a good idea since it would tie up a lot of resources in the legal system. In the event a person who is injured did make a false claim, even more money would be spent to incarcerate the person. He does not support false claims, but questioned the wisdom of this type of penalty.

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REPRESENTATIVE LYNN asked for the commonality between being hurt and lying.

MR. WHITTAKER offered that in the instance a person is injured and the doctor cannot find the person's source of pain and opines the person did not hurt his/her back. In the medical community doctors have varying opinions. He hazarded a guess that the percentage of fraudulent claims is small.

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ERIN POHLAND, Assistant Attorney General, Human Services Section, Civil Division (Anchorage), Department of Law (DOL), stated that she is available for questions.

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REPRESENTATIVE BUCH asked whether the falsification would also apply to the employer.

MS. POHLAND answered yes. She clarified that the statute applies to a person, so it could be anyone in the workers' compensation process.

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REPRESENTATIVE HOLMES asked about the current process for handling fraudulent cases and whether it would change under Section 1 of HB 314.

MS. POHLAND responded that under the current statutes the attorney general has been unable to prosecute workers' compensation cases. While she is not the prosecuting attorney, the current AS 23.30.250 contains inconsistent wording for the burden of proof and mental states. This statute would set out the standard of proof, which is the intent of a person to deprive another of property. However, the subsections require a different standard of proof, which is the intent of knowing.

Thus, the current law is muddled; the attorney general's office cannot prosecute cases and suggests a change should be made. The Division of Workers' Compensation fraud unit has investigators in Anchorage, Fairbanks, and Juneau. Under HB 314, the civil section remains the same, but the statute would refer to existing criminal code for prosecution rather than the inconsistent wording for the burden of proof contained in the DOI's statutes.

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CHAIR OLSON, after first determining no one else wished to testify, closed public testimony on HB 314.

CHAIR OLSON asked for the national percentage of fraud and whether it would be as high as 10 - 15 percent.

MS. HALL said she did not know the percentage of fraudulent cases. In further response to Chair Olson, said she doubted it was as high as ten percent, noting that her answer is based on intuition, not on any statistics.

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REPRESENTATIVE LYNN asked whether unsworn falsification means lying, but not under oath.

CHAIR OLSON said, "Let the record reflect that we have an attorney nodding her head yes [referring to Representative Holmes]."

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REPRESENTATIVE LYNN offered his belief that lying under oath would be perjury, while unsworn falsification would simply be writing or stating something false.

MS. HALL recalled from the division's investigations that a person taking a sworn statement must be sworn peace officer. Thus, it may not be possible for the investigators to take sworn statements, but simply statements since the parties are not under oath.

CHAIR OLSON noted the presence of the attorney generals present for any additional questions.

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REPRESENTATIVE LYNN moved to report HB 314 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 314 was reported from the House Labor and Commerce Standing Committee.

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ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 4:11 p.m.