

HB

314

<target><bill>HB 314</bill><subject>HB
314</subject><comm>HFIN26</comm></target>

HB 314
Summary of Changes
Version \A to Version \R (JUD)

During hearings in House Judiciary, HB 314 was amended.

Amendment \A.3 was adopted unanimously.

Amendment \A.3 deleted Section 1 of the bill. Because of this, the title was changed.

AS 23.30.250(a) was amended to make offenses listed in 250(a) workers' compensation fraud. Workers' compensation fraud and may be punishable under AS 11.

In Section 2 of the bill, the new subsection (D) was amended include category III charges as well as medical supplies, injections, emergency transportation and other medically related services. It also added a provision that the costs must reflect the cost in the geographical area where the services are provided and is at the 90th percentile.

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: HB 314
 (H) Publish Date: 2/5/10

Identifier (file name): HB314-Law-Crim-01-29-10 Dept. Affected: Law
 Title An Act relating to workers' compensation RDU Criminal
 Component Criminal Justice Litigation
 Sponsor Labor & Commerce
 Requester Labor & Commerce Component Number 2202

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2011	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
OPERATING EXPENDITURES								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES								
-----------------------------	--	--	--	--	--	--	--	--

CHANGE IN REVENUES ()								
-------------------------------	--	--	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2010) cost: _____

POSITIONS

Full-time								
Part-time								
Temporary								

ANALYSIS: (Attach a separate page if necessary)

This bill amends the existing statutes to provide that a person commits the crime of unsworn falsification in the first degree if the person submits a false written or recorded statement that the person does not believe to be true in an application for worker compensation benefits. This bill provides that the fee or other charge for medical treatment or service under the Workers' Compensation Act provided on or after December 31, 2010 may not exceed fees established by the board and include recent category I and category II codes published by the American Medical Association. The department does not anticipate any significant fiscal impact.

Prepared by: Eileen Donahue, Division Operations Manager
 Division Administrative Services Division
 Approved by: Daniel S. Sullivan, Attorney General
Department of Law

Phone (907)465-5427
 Date/Time 1/29/10 12:00 AM
 Date 1/29/2010

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: HB 314
 (H) Publish Date: 2/5/10

Identifier (file name): HB314-DOLWD-WC-01-28-10 Dept. Affected: Labor and Workforce Development
 Title: Workers' Compensation RDU: Workers' Compensation
 Sponsor: House Labor & Commerce Component: Workers' Compensation
 Requester: House Labor & Commerce Component Number: 344

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2011	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
OPERATING EXPENDITURES								
Personal Services								
Travel								
Contractual	75.0		75.0	75.0	75.0	75.0	75.0	75.0
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING	75.0	0.0	75.0	75.0	75.0	75.0	75.0	75.0

CAPITAL EXPENDITURES								
-----------------------------	--	--	--	--	--	--	--	--

CHANGE IN REVENUES ()								
-------------------------------	--	--	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
1157 Worker Safety Account	75.0		75.0	75.0	75.0	75.0	75.0	75.0
TOTAL	75.0	0.0	75.0	75.0	75.0	75.0	75.0	75.0

Estimate of any current year (FY2010) cost: None

POSITIONS

Full-time								
Part-time								
Temporary								

ANALYSIS: (Attach a separate page if necessary)

Anticipated costs are based on estimated contractual charges for a vendor to produce a workers' compensation medical fee schedule for the State of Alaska.

Prepared by: Trena Heikes, Director
 Division: Workers' Compensation
 Approved by: Click Bishop, Commissioner
 Agency: Department of Labor and Workforce Development

Phone 465-6045
 Date/Time 1/28/10 3:47 PM
 Date 1/28/10

CS FOR HOUSE BILL NO. 314(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered:

Referred:

Sponsor(s): HOUSE LABOR AND COMMERCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to fees and charges for medical treatment or services, civil damages,**
2 **and penalties as they relate to workers' compensation; and providing for an effective**
3 **date."**

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 *** Section 1.** AS 23.30.097(a) is amended to read:

6 (a) All fees and other charges for medical treatment or service are subject to
7 regulation by the board consistent with this section. A fee or other charge for medical
8 treatment or service may not exceed the lowest of

9 (1) the usual, customary, and reasonable fees for the treatment or
10 service in the community in which it is rendered, for treatment or service

11 (A) provided before August 1, 2007, not to exceed the fees in
12 the board's fee schedule dated December 1, 2004;

13 (B) provided on or after August 1, 2007, but before March 31,
14 2009, not to exceed the fees otherwise applicable in (A) of this paragraph

1 adjusted by the percentage change from 2004 to 2006 in the medical care
2 component of the Consumer Price Index for all urban consumers compiled by
3 the United States Department of Labor, Bureau of Labor Statistics;

4 (C) provided on or after March 31, 2009, but before
5 December 31, 2010, not to exceed the fees otherwise applicable in (A) of this
6 paragraph adjusted by the percentage change from 2004 to 2008 in the medical
7 care component of the Consumer Price Index for all urban consumers compiled
8 by the United States Department of Labor, Bureau of Labor Statistics;

9 **(D) provided on or after December 31, 2010, not to exceed**
10 **the fees or other charges as specified in a fee schedule established by the**
11 **board and adopted by reference in regulation; the fee schedule must be**
12 **based on statistically credible data, including charges for the most recent**
13 **category I, II, and III medical services maintained by the American**
14 **Medical Association and the Health Care Procedure Coding System for**
15 **medical supplies, injections, emergency transportation, and other**
16 **medically related services, and must result in a schedule that**

17 **(i) reflects the cost in the geographical area where**
18 **services are provided; and**

19 **(ii) is at the 90th percentile;**

20 (2) the fee or charge for the treatment or service when provided to the
21 general public; or

22 (3) the fee or charge for the treatment or service negotiated by the
23 provider and the employer under (c) of this section.

24 * Sec. 2. AS 23.30.250(a) is amended to read:

25 (a) A person who (1) knowingly makes a false or misleading statement,
26 representation, or submission related to a benefit under this chapter; (2) knowingly
27 assists, abets, solicits, or conspires in making a false or misleading submission
28 affecting the payment, coverage, or other benefit under this chapter; (3) knowingly
29 misclassifies employees or engages in deceptive leasing practices for the purpose of
30 evading full payment of workers' compensation insurance premiums; or (4) employs
31 or contracts with a person or firm to coerce or encourage an individual to file a

1 fraudulent compensation claim [IS CIVILLY LIABLE TO A PERSON ADVERSELY
2 AFFECTED BY THE CONDUCT, IS GUILTY OF THEFT BY DECEPTION AS
3 DEFINED IN AS 11.46.180, AND] may be prosecuted under AS 11 [PUNISHED
4 AS PROVIDED BY AS 11.46.120 - 11.46.150].

5 * **Sec. 3.** AS 23.30.250(c) is repealed and reenacted to read:

6 (c) In addition to criminal penalties under this section, a person who violates
7 this chapter is liable in a civil action brought by or on behalf of a person for
8 compensatory damages as a result of the violation and an award of three times the
9 amount of compensatory damages resulting from the violation, subject to adjustment
10 under AS 09.17, and an award of reasonable attorney fees.

11 * **Sec. 4.** This Act takes effect immediately under AS 01.10.070(c).

Adopted
3/22/10

26-LS1354\R.1
Bailey
3/9/10

AMENDMENT #1

STOLTZE
BY Request

OFFERED IN THE HOUSE
TO: CSHB 314(JUD)

1 Page 1, line 2:

2 Delete "investigations,"

3

4 Page 2, line 24, through page 3, line 6:

5 Delete all material and insert:

6 **** Sec. 2.** AS 23.30.250(a) is amended to read:

7 (a) A person who (1) knowingly makes a false or misleading statement,
8 representation, or submission related to a benefit under this chapter; (2) knowingly
9 assists, abets, solicits, or conspires in making a false or misleading submission
10 affecting the payment, coverage, or other benefit under this chapter; (3) knowingly
11 misclassifies employees or engages in deceptive leasing practices for the purpose of
12 evading full payment of workers' compensation insurance premiums; or (4) employs
13 or contracts with a person or firm to coerce or encourage an individual to file a
14 fraudulent compensation claim [IS CIVILLY LIABLE TO A PERSON ADVERSELY
15 AFFECTED BY THE CONDUCT, IS GUILTY OF THEFT BY DECEPTION AS
16 DEFINED IN AS 11.46.180, AND] may be prosecuted under AS 11 [PUNISHED
17 AS PROVIDED BY AS 11.46.120 - 11.46.150]."

18

19 Page 3, lines 13 - 28:

20 Delete all material.

21

22 Renumber the following bill section accordingly.

Adopted
3/22/10

Conceptual

Amendment # 2
to
HB 314 (Joo)

Gava

At ~~pp.~~ p 3 lines 9-10,
delete "who suffers
economic" and replace with
"for compensatory"

At p.3 line 10 replace "for" with
"and"

~~the~~



ALASKA STATE LEGISLATURE HOUSE LABOR & COMMERCE COMMITTEE

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Rep. Mark Neuman, V-Chair Rep. Mike Chenault
Rep. Bob Lynn Rep. Tammie Wilson
Rep. Lindsey Holmes Rep. Bob Buch

Sponsor Statement

Committee Substitute for House Bill 314 (JUD)

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

At the time of passage in 2005 of the revisions to the workers' compensation system, it was contemplated that the interested stakeholders, including the Workers' Compensation Legislative Task Force and the Medical Services Review Committee, would propose legislation acceptable to the various stakeholders before August 1, 2007. This proposal was to replace the repealed Usual, Customary and Reasonable (UCR) methodology for setting maximum fees for medical treatment and services under the Alaska Workers' Compensation Act. A replacement was not proposed and the repeal would have resulted in fees for medical treatment and services in workers' compensation matters going uncapped until such time as the law was changed to remedy the situation.

There have been two previous extensions to the workers' compensation schedule of fees for medical treatment and services in place since 2004 with adjustments made based on the Medical Component of the Consumer Price Index. The existing extension will expire on December 31, 2010. HB 314 proposes a full fee schedule again be established which would include the procedure codes that have been developed since the 2004 schedule was adopted as well as category II and III codes. The fee schedule would be constructed on the same basis as prior schedules using statistically credible data

The bill also clarifies that making false statements related to benefits or engaging in deceptive behaviors will constitute workers' compensation fraud and may be prosecuted under AS 11 - Criminal Law

I urge your support of this bill.

J. Michael James, MD
Larry A. Levine, MD

Michel L. Gevaert, MD
Shawn P. Johnston, MD

Sean D. Taylor, MD
Robert F. Valeritz, MD

Shawna H. Wilson, ANP-C
Brandy Moates Atkins, DNP, FNP-C
Linda D. Holmes, ANP
James L. Glenn, PA-C, ATC



The Honorable Kurt Olson
Alaska House of Representatives
House Labor & Commerce Committee
State Capitol, Room 24-A
Juneau, AK 99801-1182

February 2, 2010

Dear Chairman Olson:

The physicians at Alaska Spine Institute have concerns regarding HB 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."

First, we are concerned with the new language in Section 2, page 2, lines 14-21/ Subsection AS23.30.097 (a) (1) (D). The new subsection reads:

provided on or after December 31, 2010, not to exceed the fees or other charges as specified in a usual, customary, and referenced in regulation; the fee schedule must include the most recent Current Procedural Terminology codes for both category I and category II medical treatment or other services published by the American Medical Association; not withstanding AS 44.62.010 - 44.62.290, the board shall update the schedule annually by order;

This revised language provides "the board" with an undefined and unlimited scope of authority to make changes and establish policy with respect to the medical fee schedule.

There are no specifications re: the personnel who constitute board members or their special areas of interest. Those medical providers and practices who will be most impacted by the decisions of the "board" may not be adequately represented in this body.

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Diplomates American Board of Physical Medicine and Rehabilitation
Certified Subspecialty Pain Medicine ABPMR
Diplomates American Board of Electromyography, Medicine
Certified Independent Medical Examiner
Diplomates American Board of Pain Medicine
Certified Subspecialty Pain Medicine ABMS
Diplomates American Board of Anesthesiology

In addition, there are no listed frequencies as to how often the fee schedule can be or is required to be changed or updated. Further, there is no information as to how "board" representatives are selected or replaced should this be needed.

There are no provisions for making appeals to the "board's" determinations about fee schedule decisions as the language provided gives them complete authority to make these determinations. The "board" could in one year utilize the usual, reasonable and customary fees for this area using Ingenix but could then elect to use another standard for setting the fee schedule in another year such as a Medicare based fee schedule.

This would severely limit most medical practices in their ability to forecast financial risks associated with adding new equipment and new procedures and limit their ability to provide Alaska's injured workers the most current treatment technologies allowing them to remain in the state for care v/s traveling to other locations outside of Alaska.

Although we understand the need to address the fee schedule due to rising insurance costs to employers, significant changes in the medical fee schedule that include unilateral control by the "board" may limit access to local physicians in the same fashion that Medicare, Medicaid and Federal Workers' Compensation have impacted access. There are few medical providers willing to accept a new patient with Federal Workers' Compensation as the payer and these patients must travel outside Alaska for even simple procedures such as carpal tunnel release.

Second, Alaska Spine Institute has no objections to the update of the CPT (current procedural terminology) codes as this is long overdue. The code list has not been updated for many years and many new codes have been added or new procedures have been assigned codes from the AMA (American Medical Association) that are not reflected on the Alaska Workers' Compensation Fee Schedule.

However, there is no provision outlining which of these codes, both existing ones and additionally added ones, will be considered covered and reimbursable by the States' workers' compensation carriers. Will this then fall under the "board's" scope of authority to make these decisions?

Finally, the MSRC (Medical Services Review Committee) was formed under Gov. Murkowski's administration and was tasked with taking on this complex issue to provide their recommendations to the administration.

The MSRC worked for many months to review the issues and review several options to help create their report to the administration. Many of them volunteered time during the work week and on their own time as well to review an extensive reference manual that was created for them and to perform independent research on what other states were doing with regard to Worker's Compensation. It is unfortunate that none of the committee's recommendations are included in HB 314.

We appreciate your attention to, and consideration of, the concerns we have raised regarding this measure.

Respectfully,

Michel L. Gevaert, MD

On Behalf of:

A handwritten signature in cursive script, appearing to read "J. Michael James".

J. Michael James, MD

Larry A. Levine, MD

Shawn P. Johnston, MD



ALASKA STATE LEGISLATURE

HOUSE LABOR & COMMERCE COMMITTEE

REP. KURT OLSON

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Rep. Mark Neuman, V-Chair Rep. Mike Chenault
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Sectional Analysis

Committee Substitute for House Bill 314 (JUD)

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

This is a summary only. Note that this sectional analysis should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1. Amends AS 23.30.097(a) to provide that after December 31, 2010, the fee may not exceed the usual, customary and reasonable charges in a fee schedule adopted by the board which must include the most recent Current Procedural Terminology codes maintained by the American Medical Association for category I, II and III medical services and the Health Care Procedure Coding System for medical supplies, injections, emergency transportations and other medically related services. The fee schedule must reflect the cost in the geographical area where services are provided and is set at the 90th percentile.

Section 2. Amends AS 23.30.250(a) to clarify that the behaviors outlined are workers' compensation fraud which may be punished under AS 11.46.120 – 11.46.150 (criminal law).

Section 3. Amends AS 23.30.250 (c) clarifies that in addition to criminal penalties, a violation of this chapter may result in civil liability with an award of three times the amount of compensatory damages

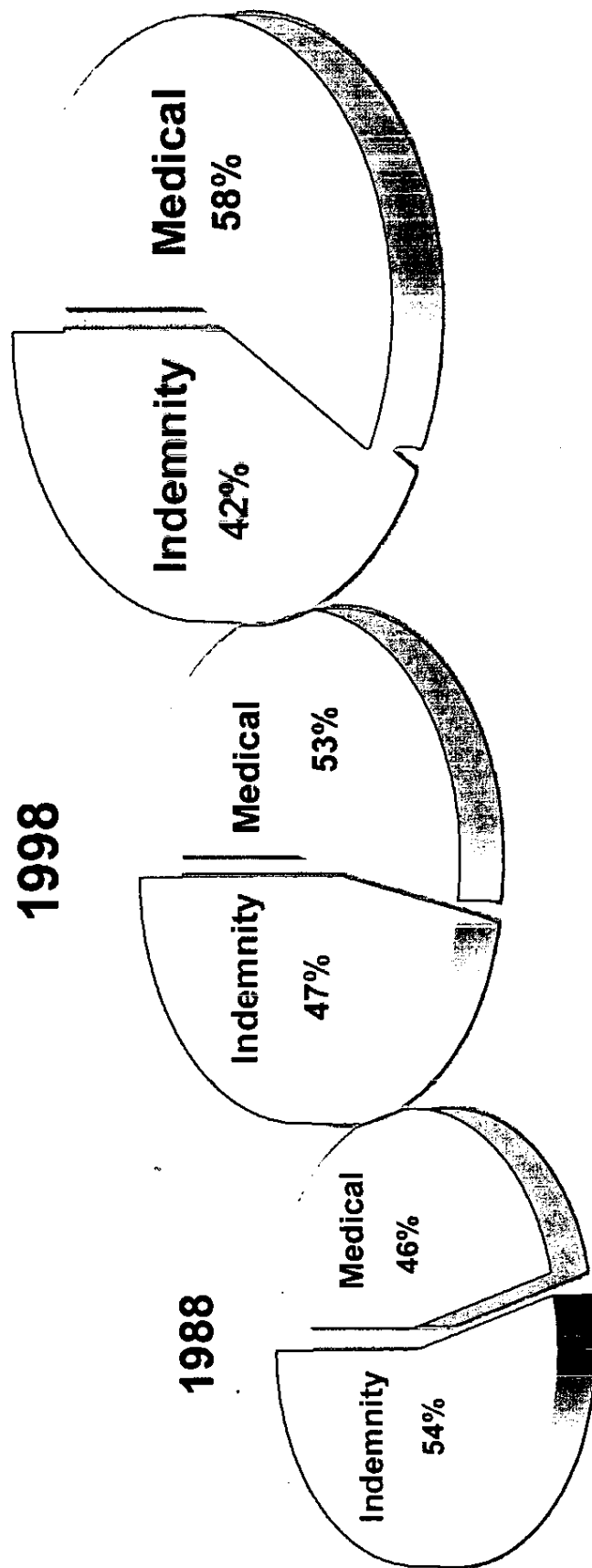
Section 4. Amends AS 23.30.280(a) to change the specific statute citation of AS 23.30.250 to "this chapter" to broaden the investigative authority to the entire chapter.

Section 5. Amends AS 23.30.280(b) to delete reference to AS 23.30.250(a) to broaden the reporting of fraudulent acts to the employer.

Section 6. Provides for an immediate effective date under AS 01.10.070(c)

Workers Compensation Medical Losses Are More Than Half of Total Losses

All Claims—NCCI States
2008p



Accident Year

2008p: Preliminary based on data valued as of 12/31/2008
 1988, 1998: Based on data through 12/31/2007, developed to ultimate
 Based on the states where NCCI provides ratemaking services, including state funds
 Excludes high deductible policies

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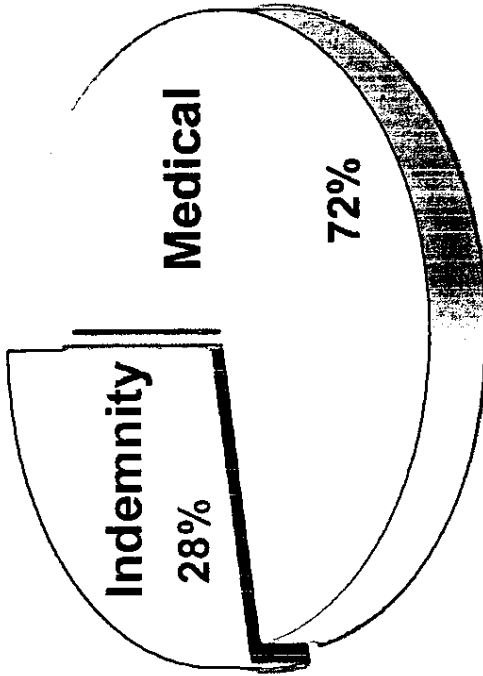


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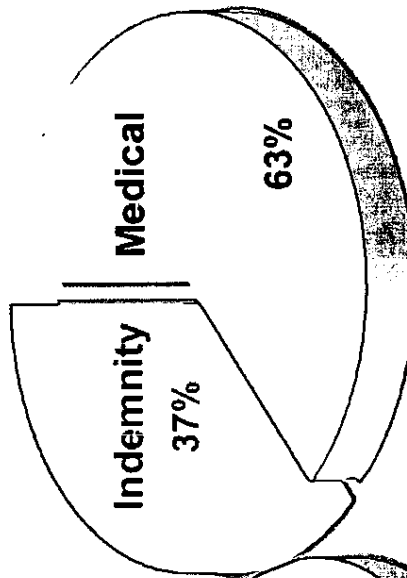
Workers Compensation Benefit Split in Alaska

All Claims—Alaska

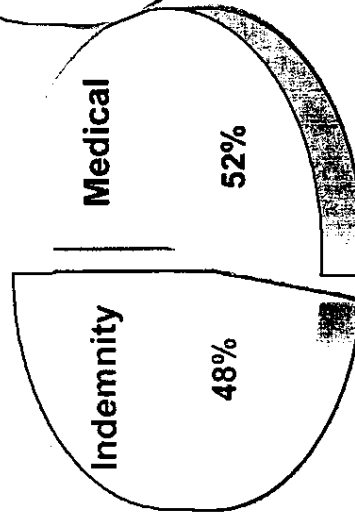
2008p



1998



1988



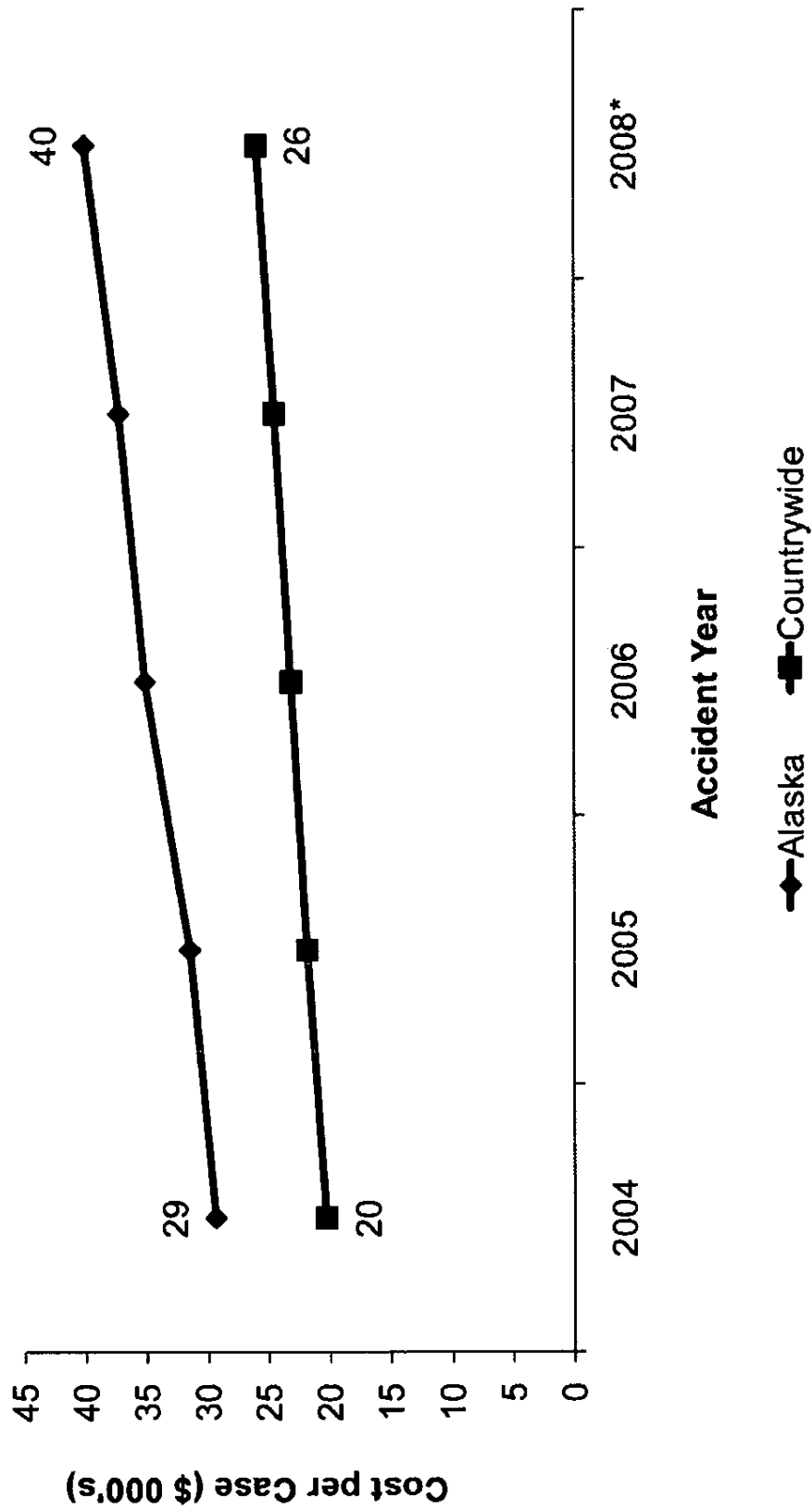
2008p: Preliminary based on data valued as of 12/31/2008
 1988, 1998: Based on data through 12/31/2007, developed to ultimate
 Based on the states where NCCI provides ratemaking services, including state funds
 Excludes high deductible policies

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Alaska Medical Average Cost per Case vs. Countrywide



* Countrywide figure is preliminary
Source: NCCI financial data valued as of 12/31/08

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Oregon Workers' Compensation Premium Rate Ranking ■ Calendar Year 2008

Table 1. Workers' compensation premium rate ranking

2008 ranking	2006 ranking	State	Index rate	Percent of study median	Effective date
1	1	Alaska	3.97	176%	January 1, 2008
2	5	Montana	3.50	155%	July 1, 2007
3	12	Ohio	3.32	147%	July 1, 2007
4	7	Vermont	3.14	139%	April 1, 2007
5	8	Maine	3.04	135%	January 1, 2008
7	3	Delaware	2.96	131%	December 1, 2007
7	4	Kentucky	2.96	131%	October 1, 2007
8	9	Alabama	2.90	129%	March 1, 2007
9	13	Oklahoma	2.89	128%	8/1/07 State Fund, 1/1/08 Private
10	21	Illinois	2.79	124%	January 1, 2008
11	11	Louisiana	2.76	122%	October 1, 2007
12	25	South Carolina	2.74	121%	May 7, 2007
13	2	California	2.72	121%	January 1, 2008
14	19	New Hampshire	2.70	120%	January 1, 2008
15	18	Pennsylvania	2.68	119%	April 1, 2007
16	23	New Jersey	2.66	118%	January 1, 2008
17	17	Texas	2.61	116%	January 1, 2008
18	30	Nevada	2.58	115%	March 1, 2007
19	10	New York	2.55	113%	October 1, 2007
20	14	Connecticut	2.46	109%	January 1, 2008
21	26	Tennessee	2.44	108%	July 1, 2007
22	37	North Carolina	2.43	108%	April 1, 2007
24	21	Minnesota	2.33	103%	January 1, 2008
24	32	Mississippi	2.33	103%	March 1, 2007
25	41	Georgia	2.29	102%	August 3, 2007
26	22	Rhode Island	2.26	100%	February 1, 2007
28	6	Florida	2.20	98%	January 1, 2008
28	25	Missouri	2.20	97%	January 1, 2008
29	16	District of Columbia	2.16	96%	November 1, 2007
32	27	New Mexico	2.15	95%	January 1, 2008
32	39	Michigan	2.15	95%	January 1, 2007
32	33	Nebraska	2.15	95%	February 1, 2007
34	35	Wisconsin	2.12	94%	October 1, 2007
34	32	Idaho	2.12	94%	January 1, 2008
36	15	Hawaii	2.08	92%	January 1, 2008
36	44	South Dakota	2.08	92%	July 1, 2007
37	29	Wyoming	2.06	91%	January 1, 2008
38	37	Washington	1.98	88%	January 1, 2008
39	42	OREGON	1.88	83%	January 1, 2008
41	34	West Virginia	1.86	83%	July 1, 2007
41	45	Iowa	1.86	82%	January 1, 2008
42	43	Kansas	1.77	78%	January 1, 2008
43	29	Colorado	1.76	78%	January 1, 2008
44	40	Maryland	1.72	76%	January 1, 2008
45	46	Arizona	1.67	74%	January 1, 2008
46	38	Utah	1.63	72%	December 1, 2007
47	48	Arkansas	1.61	71%	January 1, 2008
48	49	Virginia	1.43	63%	April 1, 2007
49	47	Massachusetts	1.39	62%	September 1, 2007
50	50	Indiana	1.23	55%	January 1, 2008
51	51	North Dakota	1.08	48%	July 1, 2007

Source: Research and Analysis Section, Information Management Division, Oregon Department of Consumer and Business Services (10/2008)

8 AAC 45.082 Medical treatment

(a) The employer's obligation to furnish medical treatment under AS 23.30.095 extends only to medical and dental services furnished by providers, unless otherwise ordered by the board after a hearing or consented to by the employer. The board will not order the employer to pay expenses incurred by an employee without the approval required by this subsection.

(b) In this section "provider" means any person or facility as defined in AS 47.08.140 and licensed under AS 08 to furnish medical or dental services, and includes an out-of-state person or facility that meets the requirements of this section and is otherwise qualified to be licensed under AS 08.

(c) Physicians may be changed as follows:

(1) An employee injured before July 1, 1988, may change treating physicians at any time without board approval by notifying the employer and the board of the change. Notice must be given in writing within 14 days after the change of treating physicians. If, after a hearing, the board finds that the employee's repeated changes were frivolous or unreasonable, the board will, in its discretion, refuse to order payment by the employer.

(2) Except as otherwise provided in this subsection, an employee injured on or after July 1, 1988, designates an attending physician by getting treatment, advice, an opinion, or any type of service from a physician for the injury. If an employee gets service from a physician at a clinic, all the physicians in the same clinic who provide service to the employee are considered the employee's attending physician. An employee does not designate a physician as an attending physician if the employee gets service

(A) at a hospital or an emergency care facility;

(B) from a physician

(i) whose name was given to the employee by the employer and the employee does not designate that physician as the attending physician;

(ii) whom the employer directed the employee to see and the employee does not designate that physician as the attending physician; or

(iii) whose appointment was set, scheduled, or arranged by the employer, and the employee does not designate that physician as the attending physician.

(3) For an employee injured on or after July 1, 1988, an employer's choice of physician is made by having a physician or panel of physicians selected by the employer give an oral or written opinion and advice after examining the employee, the employee's medical records, or an oral or written summary of the employee's medical records. To constitute a panel, for purposes of this paragraph, the panel must complete its examination, but not necessarily the report, within five days after the first physician sees the employee. If more than five days pass between the time the

first and last physicians see the employee, the physicians do not constitute a panel, but rather a change of physicians.

(4) Regardless of an employee's date of injury, the following is not a change of an attending physician:

(A) the employee moves a distance of 50 miles or more from the attending physician and the employee does not get services from the attending physician after moving; the first physician providing services to the employee after the employee moves is a substitution of physicians and not a change of attending physicians;

(B) the attending physician dies, moves the physician's practice 50 miles or more from the employee, or refuses to provide services to the employee; the first physician providing services to the employer thereafter is a substitution of physicians and not a change of attending physicians;

(C) the employer suggests, directs, or schedules an appointment with a physician other than the attending physician, the other physician provides services to the employee, and the employee does not designate in writing that physician as the attending physician;

(D) the employee requests in writing that the employer consent to a change of attending physicians, the employer does not give written consent or denial to the employee within 14 days after receiving the request, and thereafter the employee gets services from another physician.

(d) Medical bills for an employee's treatment are due and payable within 30 days after the date the employer received the medical provider's bill and a completed report on form 07-6102. Unless the employer controverts the prescription charges or transportation expenses, an employer shall reimburse an employee's prescription charges or transportation expenses for medical treatment within 30 days after the employer received the medical provider's completed report on form 07-6102 and an itemization of the prescription numbers or an itemization of the dates of travel, destination, and transportation expenses for each date of travel. If the employer controverts

(1) a medical bill or if the medical bill is not paid in full as billed, the employer shall notify the employee and medical provider in writing the reasons for not paying all or a part of the bill or the reason for delay in payment within 30 days after receipt of the bill and completed report on form 07-6102;

(2) a prescription or transportation expense reimbursement request in full, the employer shall notify the employee in writing the reason for not paying all or a part of the request or the reason for delay within the time allowed in this section in which to make payment; if the employer makes a partial payment, the employer shall also itemize in writing the prescription or transportation expense requests not paid.

(e) A written treatment plan under AS 23.30.095 is required for payment of services provided on an outpatient basis for an injury that occurs on or after July 1, 1988. A written treatment plan is not required before providing services while the employee is hospitalized.

(f) If an injury occurs on or after July 1, 1988, and requires continuing and multiple treatments of a similar nature, the standards for payment for frequency of outpatient treatment for the injury will be as follows. Except as provided in (h) of this section, payment for a course of treatment for the injury may not exceed more than three treatments per week for the first month, two treatments per week for the second and third months, one treatment per week for the fourth and fifth months, and one treatment per month for the sixth through twelfth months. Upon request, and in accordance with AS 23.30.095 (c), the board will, in its discretion, approve payment for more frequent treatments.

(g) The board will, in its discretion, require the employer to pay for treatments that exceed the frequency standards in (f) of this section only if the board finds that

(1) the written treatment plan was given to the employer and employee within 14 days after treatments began;

(2) the treatments improved or are likely to improve the employee's conditions; and

(3) a preponderance of the medical evidence supports a conclusion that the board's frequency standards are unreasonable considering the nature of the employee's injury.

(h) An employee or employer may choose to pay for a course of treatments that exceeds the frequency standards in (f) of this section even though payment is not required by the board or by AS 23.30.095.

(i) Fees for medical treatment are determined as follows:

(1) The fee may not exceed the physician's actual fee or the usual, customary, and reasonable fee as determined under this subsection, whichever is lower.

(2) The board will publish annually a bulletin for the "*Workers' Compensation Manual*," published by the department which gives the name and address of the organization whose schedule of providers' charge data must be used in determining the usual, customary, and reasonable fee for medical treatment or services for injuries that occur on or after July 1, 1988. The manual, and the organization's name and address are available upon request from the division.

(3) The usual, customary, and reasonable fee must be determined based on the 90th percentile of the range of charges for similar services reported to the organization described in (2) of this subsection. The organization charge data must be used as follows:

(A) The organization's annual publication of the schedule of usual, customary, and reasonable fees in effect at the time the employee received the treatment must be used. However, if the

organization publishes the schedule semi-annually, then the semi-annual publication for the period in which the employee received treatment must be used.

(B) If the community in which services were rendered is not included in the organization's data, or if the type of treatment the employee received is not included in the organization's data for the community in which services were rendered, the usual and customary fee must be based on the data reported for the community nearest to the community in which the services were rendered to the employee.

(C) If the type of treatment or service the employee received is not included in the organization's data and the employer has evidence that the fee exceeds the usual, customary, and reasonable fee charged in the community for the treatment or services rendered, the employer shall pay the physician based on the employer's evidence. In accordance with AS 23.30.110 and 8 AAC 45.070, the physician may request a hearing for a board determination of the usual, customary, and reasonable fee in the community for the treatment or service, and the board will determine and award the usual, customary, and reasonable fee.

History: Eff. 5/28/83, Register 86; am 12/14/86, Register 100; am 7/1/88, Register 107; am 10/28/88, Register 108; am 3/16/90, Register 113; am 7/20/97, Register 143; am 7/2/98, Register 146; am 2/3/2001, Register 157

Authority: AS 23.30.005

ASMA

Draft Language
HB 314 Sec. 2.

* Sec. 2. AS23.30.097(a) is repealed and reenacted to read:

- (a) All fees and other charges for medical treatment or service are subject to regulation by the board consistent with this section. A fee or other charge for medical treatment or service provided on or after December 31, 2010 may not exceed the lowest of the actual fee or charge submitted for a medical treatment or service, the fee or charge for the medical treatment or service when provided to the general public, or the fee or charge for the medical treatment or service at the 90th percentile for fees or charges submitted from the community in which care rendered for the associated Category I Current Procedural Terminology Code as published by the American Medical Association; but not, in any event, to exceed a fee or charge for the medical service or treatment negotiated by the provider and the employer under (c) of this section. The board must either develop or designate a source for a database that contains the submitted fees associated with each Category I Current Procedural Terminology code published by the American Medical Association and adopt that by regulation. The database must contain:
- (1) data for each community in Alaska, but may, if statistically credible amounts of data do not exist for a community, include data from other communities in an amount sufficient to provide statistically credible data. However, the data from each community used must be adjusted by an appropriate factor that reflects the difference in the cost of rendering care in those other communities. Likewise, if statistically credible data does not exist for any Category I Current Procedural Terminology Code in Alaska, data from outside of Alaska may be included in an amount necessary to provide for statistically credible data but an adjustment must be made to that data for the difference in the Consumer Price Index for all Urban Consumers as compiled by the United States Department of Labor, Bureau of Labor Statistics for the area outside Alaska to that of Anchorage;
 - (2) the database for each ensuing calendar year must include those submitted fees or charges for each Category I Current Procedural Terminology Code for the most recent, previous twelve month period, and for an amount of additional months necessary to produce statistically credible data should twelve months of data not provide an amount of statistically credible data; and
 - (3) Category II Current Procedural Terminology Codes published by the American Medical Association must be incorporated into the database and captured for each Category I Current Procedural Terminology Code for which fees or charges are submitted for a medical treatment or service.

2/1/10

ASMA

Draft Language
HB 314 Sec. 7.

Sec. 7. This Act takes effect immediately under AS.01.10.070(c) except that payments under Sec. 2. will only apply to those medical treatments or services provided on or after December 31, 2010.

2/1/10

863 submitted by Konrad Jackson
on behalf of House Labor & Commerce Committee

Alaska State Medical Association

4107 Laurel Street • Anchorage, Alaska 99508 • (907) 562-0304 • (907) 561-2063 (fax)

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 90th 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 90th 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 90th 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

RECEIVED

FEB 01 2010

NFIB

The Voice of Small Business

ALASKA

January 31, 2010

The Honorable Kurt Olson
State Capitol Building
Juneau, Alaska 99801-1182

Dear Representative Olson:

On behalf of the National Federation of Independent Business/Alaska, I wish to respectfully share our support for House bill 314 concerning the workers compensation program. The National Federation of Independent Business is the largest small-business advocacy group in Alaska.

HB 314 establishes a fee schedule for the Workers Compensation Program. We believe that this is a prudent first step toward reforming the program to reduce costs and improve the program.

As you know, the workers compensation premiums in Alaska are the highest in the nation. If we expect the program to continue to provide benefits without bankrupting employers, we must move to reduce the program costs and thus the premiums.

NFIB/AK members very much appreciate your willingness to begin addressing this critical problem.

Sincerely yours,



Dennis L. DeWitt
Alaska State Director

Cc: NFIB/AK Leadership Council

Konrad Jackson

From: Michael McNamara [mmcnamara@akhanddoc.com]
Sent: Wednesday, February 03, 2010 2:40 PM
To: Rep. Kurt Olson
Subject: HB 314 Workman's Comp

Honorable Kurt Olson,

Dear Representative Olson,

I am an orthopedic Surgeon in Anchorage and have been the President of the advisory board for Alaska Surgical Center for eight years. My practice consists of approximately 30-40% W/C patients. I have reviewed Dr Brion Beerle' letter to you, regarding HB 314, representing the Alaska State Medical Association. As a representative of 34 partners in the Alaska Surgical Center, I feel that the letter from Dr Beerle well represents most surgeons and physicians in our community that care for W/C patients. Please recognize that those of us that care for W/C patients expend a significant amount of extra time and energy to care for W/C patients especially regarding the excessive paperwork requirements that follow these patients. Reduction in reimbursement will only jeopardize patient's access to care. Please review the ASMA recommendations and consider them seriously.

Sincerely and respectfully,

Mike G McNamara MD
Hand, Elbow and Shoulder Surgery

February 3, 2010

State Representative Kurt Olson
State Capitol, Room 24-A
Juneau, AK 99801-1182
(907) 465-2693
(907) 465-3835

RECEIVED

FEB 04 2010

RE: House Bill 314 Amendments

Dear Chairman Olson,

It has come to my attention that there is to be a hearing this afternoon on House Bill 314. As a physical therapist in Alaska I am very concerned about the proposed addition of subsection (D) to Sec.2 AS23.30.097 (a) (1) as it is currently written in House Bill 314. My concern is specifically with the wording found on page 2, lines 14-17, where Workman's Compensation fees are, "not to exceed the fees or other charges as specified in a usual, customary, and reasonable fee schedule established by the board and adopted by reference in regulation".

The consequences of House Bill 314 would be a detrimental to Alaska's workers injured on the job and the health care professionals providing them with care. House Bill 314 would grant a great deal of power to this Board with the sovereignty to set fees without any basis other than "usual, customary, and reasonable". This wording is far too vague for such an important issue. It lacks an explanation of basis for fees, composition of board members, frequency of change for fees, or the process to appeal the fees determined by the board. At the very least, this board should have to recognize an established standard for fees, such as those from the United States Department of Labor. Failure to do so will drastically affect the care of injured workers and the providers that care for them.

Please do not allow House Bill 314 to be added into Alaska's Statutes. It has no place

Sincerely,



Paul Carlson, PT
PO Box 91451
Anchorage, AK 99509
(907) 770-3637