

11848

SENATE

JUDICIARY

1 the intent of the legislature that

2 (1) this chapter be interpreted so as to ensure the quick, efficient, fair,
3 and predictable delivery of indemnity and medical benefits to injured workers at a
4 reasonable cost to the employers who are subject to the provisions of this chapter;

5 (2) workers' compensation cases shall be decided on their merits
6 except where otherwise provided by statute;

7 (3) this chapter may not be construed by the courts in favor of a party;

8 (4) hearings in workers' compensation cases shall be impartial and fair
9 to all parties and that all parties shall be afforded due process and an opportunity to be
10 heard and for their arguments and evidence to be fairly considered.

11 * Sec. 7. AS 23.30.005(a) is amended to read:

12 (a) The Alaska Workers' Compensation Board consists of a southern panel of
13 three members sitting for the first judicial district, a northern panel of three members
14 sitting for the second and fourth judicial districts, four southcentral panels of three
15 members each sitting for the third judicial district, and one panel of three members
16 that may sit in any judicial district. Each panel must include the commissioner of
17 labor and workforce development or a hearing officer designated to represent [THE
18 DESIGNATED REPRESENTATIVE OF] the commissioner, a representative of
19 industry, and a representative of labor. The latter two members of each panel shall be
20 appointed by the governor and are subject to confirmation by a majority of the
21 members of the legislature in joint session. The board shall by regulation provide
22 procedures to avoid conflicts and the appearance of impropriety in hearings.

23 * Sec. 8. AS 23.30.005(b) is amended to read:

24 (b) The commissioner shall act as chair [CHAIRMAN] and executive officer
25 of the board and chair [CHAIRMAN] of each panel. The commissioner may
26 designate a representative to act for the commissioner as chair and executive
27 officer of the board. The commissioner may designate hearing officers to serve as
28 chairs of panels for hearing claims [IF THE COMMISSIONER DESIGNATES A
29 REPRESENTATIVE TO ACT FOR THE COMMISSIONER, THE
30 REPRESENTATIVE SHALL SERVE IN THAT CAPACITY ON THE BOARD
31 AND ON EACH PANEL].

3

Summary of CSSB 130 Prepared for Senate Judiciary Committee

Fair Benefits at Reasonable Employer Cost

- Sec. 30 Cap non-resident compensation rates at those paid to Alaskan residents. (Pages 18-19)
- Sec. 34 Coordinate payments of workers' compensation benefits, and disability benefits under a plan to which an employer also contributed, so combined benefits do not exceed the injured worker's take home pay. (Pages 19-21)
- Sec. 38 Broaden and strengthen anti-fraud provisions enforced by the Board. (Pages 22-25)
- Sec. 39 Improve criminal anti-fraud provisions to facilitate effective prosecution. (Pages 25-26)
- Sec. 40 Adopts "Ad Hoc Committee" recommendations authorizing the courts to award punitive damages, compensatory damages, and attorney's fees for violations of fraud provisions. (Page 26)
- Sec. 36 Confirm that Limited Liability Company members need not have workers' compensation coverage but allow Company to add them to its insurance policy if desired. (Page 22)
- Sec. 26 Speed processing of medical bills by requiring injury report to include release of medical records for treatment of the injury. (Pages 17-18)
- Sec. 27 Maintain confidentiality of worker's medical and rehabilitation records held by Division or Board. (Page 18)
- Sec. 28 Ban the Division from assembling or providing individual records for commercial purposes. (Page 18)

1 death, and be signed by the employee or by a person on behalf of the employee, or, in
 2 case of death, by a person claiming to be entitled to compensation for the death or by a
 3 person on behalf of that person.

4 * Sec. 27. AS 23.30.107(b) is amended to read:

5 (b) Medical or rehabilitation records in an employee's file maintained by the
 6 division or held by the board are not public records subject to public inspection and
 7 copying under AS 40.25. This subsection does not prohibit

8 (1) the reemployment benefits administrator, the division, the board,
 9 or the department from releasing medical or rehabilitation records in an employee's
 10 file, without the employee's consent, to a physician providing medical services under
 11 AS 23.30.095(k) or 23.30.110(g), a party to a claim filed by the employee, or a
 12 governmental agency; or

13 (2) the quoting or discussing of medical or rehabilitation records
 14 contained in an employee's file during a hearing on a claim for compensation [.] or in
 15 a decision and order of the board.

16 * Sec. 28. AS 23.30.107 is amended by adding a new subsection to read:

17 (c) The division may not assemble, or provide information respecting,
 18 individual records for commercial purposes that are outside the scope of this chapter.

19 * Sec. 29. AS 23.30.122 is repealed and reenacted to read:

20 **Sec. 23.30.122. Credibility of witnesses.** The board has the sole power to
 21 determine the credibility of testimony presented by a witness. When credibility is
 22 disputed in a proceeding before the board, the board's determination of credibility
 23 must be supported by specific findings.

24 * Sec. 30. AS 23.30.175(b) is amended to read:

25 (b) The following rules apply to benefits payable to recipients not residing in
 26 the state at the time compensation benefits are payable:

27 (1) the weekly rate of compensation shall be calculated by multiplying
 28 the recipient's weekly compensation rate calculated under AS 23.30.180, 23.30.185,
 29 23.30.190, 23.30.200, or 23.30.215 [.] by the ratio of the cost of living of the area in
 30 which the recipient resides to the cost of living in this state;

31 (2) the calculation required by (1) of this subsection does not apply if

1 the recipient is absent from the state for medical or rehabilitation services not
2 reasonably available in the state;

3 (3) if the gross weekly earnings of the recipient and the resulting
4 compensation rate are determined under AS 23.30.220(a)(6), (7), or (10), the
5 calculation required by this subsection applies only to the portion of the recipient's
6 weekly compensation rate attributable to wages earned in the state;

7 (4) application of this subsection may not reduce the weekly
8 compensation rate to less than \$154 a week, except as provided in (a) of this section;

9 (5) application of (1) - (4) of this subsection may not result in
10 raising a recipient's weekly compensation rate to an amount that exceeds the
11 weekly compensation rate that the recipient would have received if the recipient
12 had been residing in the state.

13 * Sec. 31. AS 23.30.175(c) is amended to read:

14 (c) The department [BOARD] shall provide by regulation for the
15 determination and comparison of living costs for this state and the other areas in which
16 recipients reside and for the [ANNUAL] redetermination and comparison of these
17 costs every three years.

18 * Sec. 32. AS 23.30.205(e) is amended to read:

19 (e) The second injury fund may not be bound as to any question of law or fact
20 by reason of an award or an adjudication to which it was not a party or in relation to
21 which the director [COMMISSIONER] was not notified at least three weeks before
22 the award or adjudication [,] that the fund might be subject to liability for the injury or
23 death.

24 * Sec. 33. AS 23.30.205 is amended by adding a new subsection to read:

25 (g) Claims for reimbursement may not be submitted to the fund after
26 September 1, 2005. The fund shall continue to make reimbursement payments on
27 claims accepted before July 1, 2006, or ordered by the board, until the fund's liabilities
28 for the claim are extinguished.

29 * Sec. 34. AS 23.30 is amended by adding a new section to read:

30 **Sec. 23.30.224. Coordination of benefits.** (a) Notwithstanding other
31 provisions of this chapter, an employer's liability for payment of weekly compensation

1 under AS 23.30.180 or 23.30.185 to an employee eligible for a disability benefit under
2 AS 14.25.130, AS 39.35.400, or 39.35.410 may not exceed the lesser of

3 (1) the difference between the disability benefit payable to the
4 employee under AS 14.25.130, AS 39.35.400, or 39.35.410, converted to a weekly
5 basis, and 100 percent of the employee's spendable weekly wage as calculated under
6 AS 23.30.220; or

7 (2) the maximum compensation rate calculated under AS 23.30.175.

8 (b) An employer's liability for payment of compensation under
9 AS 23.30.041(k) to an employee eligible for a disability benefit payable under
10 AS 14.25.130, AS 39.35.400, or 39.35.410 may not exceed the lesser of

11 (1) the difference between the disability benefit payable to the
12 employee under AS 14.25.130, AS 39.35.400, or 39.35.410, converted to a weekly
13 basis, and 80 percent of the employee's spendable weekly wage as calculated under
14 AS 23.30.220; or

15 (2) 105 percent of the average weekly wage calculated under
16 AS 23.30.175(d).

17 (c) Notwithstanding other provisions of this chapter, the liability of an
18 employer for payment of compensation for an injury or illness under AS 23.30.180 or
19 23.30.185 to an employee who is covered by a union or group retirement system to
20 which the employer makes contributions under a collective bargaining agreement or
21 by membership in a welfare or pension plan or trust may not exceed the lesser of

22 (1) the difference between 100 percent of the employee's spendable
23 weekly wage and an amount equal to the disability benefit, disability pension, or
24 medical retirement benefit that the employee is eligible to receive as a result of the
25 injury or illness, as calculated on a weekly basis, under the retirement system or
26 welfare or pension plan or trust; or

27 (2) the maximum compensation rate calculated under AS 23.30.175.

28 (d) If the union or group retirement system, pension plan, or trust referred to in
29 (c) of this section provides by its terms that its benefits are precluded or reduced if
30 benefits are awarded under this chapter, the limitation provided in (c)(1) of this section
31 is not applicable to the extent of the amount precluded or reduced.

1 (c) Notwithstanding other provisions of this chapter, the liability of an
 2 employer for payment of compensation for an injury or illness under AS 23.30.041(k)
 3 to an employee who is covered by a union or group retirement system to which the
 4 employer makes contributions under a collective bargaining agreement or by
 5 membership in a welfare or pension plan or trust may not exceed the lesser of

6 (1) the difference between 80 percent of the employee's spendable
 7 weekly wage and an amount equal to the disability benefit, disability pension, or
 8 medical retirement benefit that the employee is eligible to receive as a result of the
 9 injury or illness, calculated on a weekly basis, under the retirement system or welfare
 10 or pension plan or trust; or

11 (2) 105 percent of the average weekly wage calculated under
 12 AS 23.30.175(d).

13 (f) If the union or group retirement system, pension plan, or trust referred to in
 14 (e) of this section provides by its terms that its benefits are precluded or reduced if
 15 benefits are awarded under this chapter, the limitation provided in (c)(1) of this section
 16 is not applicable to the extent of the amount precluded or reduced.

17 (g) If the employee receives a lump sum distribution of disability benefits,
 18 disability pension, or medical retirement benefits, the combined workers'
 19 compensation and weekly disability or medical retirement benefit specified in this
 20 section shall be calculated by assuming that the employee received weekly disability
 21 or medical retirement payments under the applicable plan from the date of eligibility
 22 for the disability benefit or medical retirement until the total of the weekly payments
 23 equals the amount of the lump sum, exclusive of that portion of the lump sum
 24 specifically set aside under the applicable plan for retraining expenses, medical and
 25 transportation expenses, and attorney fees or other legal costs.

26 * Sec. 35. AS 23.30.240 is amended to read:

27 **Sec. 23.30.240. Officers of corporations, municipal corporations and**
 28 **nonprofit corporations and members of limited liability companies as employees.**
 29 An executive officer elected or appointed and empowered in accordance with the
 30 charter and bylaws of a corporation, other than an official of a municipal corporation
 31 or a charitable, religious, educational, or other nonprofit corporation, is an employee

1 of the corporation under this chapter. However, an executive officer of a corporation
 2 may waive coverage under this chapter, subject to the approval of the director
 3 [COMMISSIONER OF LABOR AND WORKFORCE DEVELOPMENT],
 4 notwithstanding AS 23.30.245(b). Notwithstanding any other provision of this
 5 chapter, an executive officer of a municipal corporation or of a charitable, religious,
 6 educational, or other nonprofit corporation may be brought within the coverage of its
 7 insurance contract by the corporation by specifically including the officer in the
 8 contract of insurance. The election to bring an executive officer within the coverage
 9 continues in force for the period the contract of insurance is in effect. During that
 10 period, an executive officer brought within the coverage of the insurance contract is an
 11 employee of the corporation under this chapter.

12 * Sec. 36. AS 23.30.240 is amended by adding a new subsection to read:

13 (b) Except as provided in this subsection, a member of a limited liability
 14 company organized under AS 10.50 is not an employee of the company under this
 15 chapter. Notwithstanding any other provision of this chapter, a limited liability
 16 company may bring a member of the company within the coverage of the company's
 17 insurance contract by specifically including the member in the contract of insurance.
 18 The election to bring the member within the company's coverage continues in force
 19 for the period the contract of insurance is in effect. During that period, a member
 20 brought within the coverage of the insurance contract is an employee of the company
 21 under this chapter.

22 * Sec. 37. AS 23.30.247(c) is amended to read:

23 (c) This section may not be construed to prohibit an employer from requiring a
 24 prospective employee to fill out a preemployment questionnaire or application
 25 regarding the person's prior health or disability history as long as it is meant to
 26 [EITHER DOCUMENT WRITTEN NOTICE FOR SECOND INJURY FUND
 27 REIMBURSEMENT UNDER AS 23.30.205(c) OR] determine whether the employee
 28 has the physical or mental capacity to meet the documented physical or mental
 29 demands of the work.

30 * Sec. 38. AS 23.30 is amended by adding a new section to read:

31 **Sec. 23.30.249. Fraudulent acts and false or misleading statements. (a)**

1 An employer, insurer, or other person may petition for an order to reimburse a
2 payment and the cost of compensation, medical treatment, or other benefit provided
3 under this chapter obtained by a fraudulent act or false or misleading statement or
4 representation. If the board, after a hearing as provided by AS 23.30.110, finds by a
5 preponderance of the evidence that a person has obtained a payment, compensation,
6 medical treatment, or another benefit provided under this chapter by a fraudulent act
7 or by knowingly making a false or misleading statement or representation for the
8 purpose of obtaining that benefit or payment, the board shall order that person to make
9 full reimbursement of the payment or cost of all benefits obtained. Upon entry of an
10 order authorized under this subsection, the board shall also order that person to pay all
11 reasonable costs and attorney fees incurred in obtaining an order under this section and
12 in defending a fraudulent claim made for benefits under this chapter. If a person fails
13 to comply with an order requiring reimbursement of payment or cost of benefits and
14 payment of costs and attorney fees, the employer, insurer, or other party may declare
15 the person in default and proceed to collect any sum due in the same manner as
16 provided under AS 23.30.170(b) and (c)

17 (b) Except as provided in (c) of this section, a person is not liable for civil
18 damages for filing a report concerning a suspected, anticipated, or completed
19 fraudulent act or a false or misleading statement or representation with, or for
20 furnishing other information, whether written or oral, concerning a suspected,
21 anticipated, or completed fraudulent act or false or misleading statements or
22 representation to

23 (1) law enforcement officials or their agents and employees;

24 (2) the division of workers' compensation, the division of insurance in
25 the Department of Commerce, Community, and Economic Development, or an agency
26 in another state that regulates insurance or workers' compensation;

27 (3) an insurer or adjuster or its agents, employees, or designees, or the
28 risk manager of a self-insured employer under this chapter.

29 (c) The provisions of (b) of this section do not preclude liability for civil
30 damages as described in (b) of this section if the liability arose as a result of reckless,
31 wilful, or intentional misconduct.

1 (d) An insurer, an adjuster, or a risk manager of a self-insured employer that
2 has reason to believe that a fraudulent workers' compensation demand or claim has
3 been made against it shall send the director a report disclosing information that the
4 director may require. An insurer or an adjuster or its employee or agent, or a risk
5 manager of a self-employed employer, or another person acting in good faith is not
6 civilly liable for damages resulting from the filing of the report or the furnishing of
7 information required by this section or by the director.

8 (e) The director may investigate facts reported under this section and may
9 refer facts indicating a possible violation of law to the appropriate prosecutor or
10 agency. If the director determines that there is credible evidence that a person
11 obtained a payment, compensation, medical treatment, or other benefit provided under
12 this chapter by a fraudulent act or false or misleading statement or representation as
13 provided in (a) of this section, the director shall notify the affected employer, insurer,
14 and adjuster upon conclusion of the investigation. If the fraudulent act or false or
15 misleading statement or representation was perpetrated against the division, the
16 director may file a petition as provided in AS 23.30.110 for an order of forfeiture
17 against the person, precluding, in whole or in part, the person from future payment,
18 compensation, medical treatment, or other benefit provided under this chapter.

19 (f) The papers, reports, documents, and evidence received under this section or
20 in an investigation arising from information received under this section are not subject
21 to public inspection for so long as the director considers confidentiality to be in the
22 public interest or reasonably necessary to complete an investigation or protect the
23 person investigated from unwarranted injury. Papers, reports, documents, and
24 evidence relative to an investigation under this section are confidential and not subject
25 to subpoena unless, after notice to the director and a hearing, a court determines that
26 the director would not be unduly hindered by public inspection.

27 (g) If the material that the director seeks to obtain is located outside the state,
28 the material may be made available to the director to examine at the place where the
29 material is located. The director may designate representatives, including officials of
30 the state in which the material is located, to inspect the material on behalf of the
31 director. The director may respond to a request from an official of another state for

1 similar material.

2 (h) In this section, "fraudulent act" includes

3 (1) to knowingly pretend injury or disability with intent to defraud or
4 obtain a benefit under this chapter;

5 (2) to knowingly conceal, suppress, destroy, remove, or alter records
6 with intent to defraud or obtain a benefit under this chapter;

7 (3) to knowingly assist or prepare another person to submit a false or
8 misleading statement in support of a claim for benefits under this chapter with reckless
9 disregard that the person is not entitled to benefits under this chapter;

10 (4) to use force against a person, damage the property of a person, or
11 threaten a person with intent to improperly influence the opinion of a witness, a
12 physician, or other health care provider;

13 (5) except as otherwise authorized under this chapter, to knowingly
14 confer, offer to confer, solicit, agree to accept, or accept property, services, or a
15 benefit

16 (A) to refer an employee to a physician or other health care
17 provider; or

18 (B) for providing medical treatment, services, medicines, or
19 supplies to an employee if the property, services, or benefit is in addition to
20 payment by the employer, insurer, or adjuster allowed under this chapter.

21 * Sec. 39. AS 23.30.250 is amended to read:

22 **Sec. 23.30.250. Penalties for fraudulent or misleading acts.** (a) A person,
23 including an employee, employer, physician, medical provider, or the
24 representative of a person who (1) knowingly makes a false or misleading statement,
25 representation, or submission related to a benefit under this chapter; (2) knowingly
26 assists, abets, solicits, or conspires in making a false or misleading submission
27 affecting the payment, coverage, or other benefit under this chapter; (3) knowingly
28 misclassifies employees or engages in deceptive leasing practices for the purpose of
29 evading full payment of workers' compensation insurance premiums; or (4) employs
30 or contracts with a person or firm to coerce or encourage an individual to file a
31 fraudulent compensation claim is civilly liable to a person adversely affected by the

1 AS 23.30.095.

2 (c) An employer or group of employers may negotiate with physicians and
 3 other treatment service providers under this chapter to obtain reduced fees and service
 4 charges and may take the fees and charges into account when forming a list of
 5 preferred physicians and providers. In no event may an employer or group of
 6 employers attempt to influence the treatment, medical decisions, or permanent
 7 impairment ratings by physicians in the course of the negotiations regarding a
 8 preferred physician and provider fee list.

9 (d) An employer shall pay an employee's bills for medical treatment under this
 10 chapter, excluding prescription charges or transportation for medical treatment, within
 11 30 days after the date that the employer receives the provider's bill or a completed
 12 report as required by AS 23.30.095(c), whichever is later.

13 (e) Unless the employer controverts a charge, an employer shall reimburse an
 14 employee's prescription charges under this chapter within 30 days after the employer
 15 received the health care provider's completed report and an itemization of the
 16 prescription charges for the employee. Unless the employer controverts a charge, an
 17 employer shall reimburse transportation expenses for medical treatment under this
 18 chapter within 30 days after the employer received the health care provider's
 19 completed report and an itemization of the date, destination, and transportation
 20 expenses for each date of travel for medical treatment. If the employer does not plan
 21 to make or does not make payment or reimbursement in full as required by this
 22 subsection, the employer shall notify in writing the employee and the employee's
 23 health care provider that payment will not be timely made and the reason for the
 24 nonpayment. The notification must be provided on or before the date that payment is
 25 due under this subsection or (d) of this section.

26 (f) An employee may not be required to pay a fee or charge for medical
 27 treatment or service provided under this chapter.

28 * Sec. 26. AS 23.30.100(b) is amended to read:

29 (b) The notice must be in writing, contain the name and address of the
 30 employee, [AND] a statement of the time, place, nature, and cause of the injury or
 31 death, and authority to release records of medical treatment for the injury or

1 death, and be signed by the employee or by a person on behalf of the employee, or, in
 2 case of death, by a person claiming to be entitled to compensation for the death or by a
 3 person on behalf of that person.

4 * Sec. 27. AS 23.30.107(b) is amended to read:

5 (b) Medical or rehabilitation records in an employee's file maintained by the
 6 division or held by the board are not public records subject to public inspection and
 7 copying under AS 40.25. This subsection does not prohibit

8 (1) the reemployment benefits administrator, the division, the board,
 9 or the department from releasing medical or rehabilitation records in an employee's
 10 file, without the employee's consent, to a physician providing medical services under
 11 AS 23.30.095(k) or 23.30.110(g), a party to a claim filed by the employee, or a
 12 governmental agency; or

13 (2) the quoting or discussing of medical or rehabilitation records
 14 contained in an employee's file during a hearing on a claim for compensation [,] or in
 15 a decision and order of the board.

16 * Sec. 28. AS 23.30.107 is amended by adding a new subsection to read:

17 (c) The division may not assemble, or provide information respecting,
 18 individual records for commercial purposes that are outside the scope of this chapter.

19 * Sec. 29. AS 23.30.122 is repealed and reenacted to read:

20 **Sec. 23.30.122. Credibility of witnesses.** The board has the sole power to
 21 determine the credibility of testimony presented by a witness. When credibility is
 22 disputed in a proceeding before the board, the board's determination of credibility
 23 must be supported by specific findings.

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25 (b) The following rules apply to benefits payable to recipients not residing in
 26 the state at the time compensation benefits are payable:

27 (1) the weekly rate of compensation shall be calculated by multiplying
 28 the recipient's weekly compensation rate calculated under AS 23.30.180, 23.30.185,
 29 23.30.190, 23.30.200, or 23.30.215 [,] by the ratio of the cost of living of the area in
 30 which the recipient resides to the cost of living in this state;

31 (2) the calculation required by (1) of this subsection does not apply if

4

Summary of CSSB 130 Prepared for Senate Judiciary Committee

Improving Return-to-Work Benefits While Reducing Costs

- Sec 33 Phase out limited, archaic Second Injury Fund, gradually reducing current 6% contribution rate to 0%. (Page 19)
- Sec. 13 Require improved reporting of reemployment benefits, including plan status and tracking of injured workers' employment status at intervals following retraining plan completion, in order to provide more accurate and detailed information about the functioning and effectiveness of the reemployment benefits system. (Pages 7-9)
- Sec. 14 Reduce delays in determining reemployment benefits eligibility, and resulting costs, by allowing workers and employers to stipulate to eligibility. Further reduce delays by simplifying standards for entitlement to evaluation. (Page 9)
- Sec. 16 Encourage utilization of reemployment benefits, and reduce costs, by requiring worker to either choose to begin the current retraining process within 15 days of eligibility determination or choose to accept new cash job dislocation benefits (\$5,000-13,500) based upon percentage of permanent partial impairment. (Pages 10-11)

1 the recipient is absent from the state for medical or rehabilitation services not
2 reasonably available in the state;

3 (3) if the gross weekly earnings of the recipient and the resulting
4 compensation rate are determined under AS 23.30.220(a)(6), (7), or (10), the
5 calculation required by this subsection applies only to the portion of the recipient's
6 weekly compensation rate attributable to wages earned in the state;

7 (4) application of this subsection may not reduce the weekly
8 compensation rate to less than \$154 a week, except as provided in (a) of this section;

9 (5) application of (1) - (4) of this subsection may not result in
10 raising a recipient's weekly compensation rate to an amount that exceeds the
11 weekly compensation rate that the recipient would have received if the recipient
12 had been residing in the state.

13 * Sec. 31. AS 23.30.175(c) is amended to read:

14 (c) The department [BOARD] shall provide by regulation for the
15 determination and comparison of living costs for this state and the other areas in which
16 recipients reside and for the [ANNUAL] redetermination and comparison of these
17 costs every three years.

18 * Sec. 32. AS 23.30.205(e) is amended to read:

19 (e) The second injury fund may not be bound as to any question of law or fact
20 by reason of an award or an adjudication to which it was not a party or in relation to
21 which the director [COMMISSIONER] was not notified at least three weeks before
22 the award or adjudication [,] that the fund might be subject to liability for the injury or
23 death.

24 * Sec. 33. AS 23.30.205 is amended by adding a new subsection to read:

25 (g) Claims for reimbursement may not be submitted to the fund after
26 September 1, 2005. The fund shall continue to make reimbursement payments on
27 claims accepted before July 1, 2006, or ordered by the board, until the fund's liabilities
28 for the claim are extinguished.

29 * Sec. 34. AS 23.30 is amended by adding a new section to read:

30 **Sec. 23.30.224. Coordination of benefits.** (a) Notwithstanding other
31 provisions of this chapter, an employer's liability for payment of weekly compensation

1 (c) An amount recovered by the employer under an assignment, whether by
2 action or compromise, shall be distributed as follows:

3 (1) the employer shall retain an amount equal to

4 (A) the expenses incurred by the employer with respect to the
5 action or compromise, including a reasonable attorney fee determined by the
6 board;

7 (B) the cost of all benefits actually furnished by the employer
8 under this chapter;

9 (C) all amounts paid as compensation [AND SECOND-
10 INJURY FUND] payments [,] and, if the employer is self-insured or
11 uninsured, all service fees paid under AS 23.05.067;

12 (D) the present value of all amounts payable later as
13 compensation, computed from a schedule prepared by the board, [;] and the
14 present value of the cost of all benefits to be furnished later under
15 AS 23.30.095 as estimated by the board; the amounts so computed and
16 estimated shall [TO] be retained by the employer as a trust fund to pay
17 compensation and the cost of benefits as they become due and to pay any
18 finally remaining excess sum to the person entitled to compensation or to the
19 representative; and

20 (2) the employer shall pay any excess to the person entitled to
21 compensation or to the representative of that person.

22 * Sec. 12. AS 23.30.041(a) is amended to read:

23 (a) The director [BOARD] shall select and employ a reemployment benefits
24 administrator. The director [BOARD] may authorize the administrator to select and
25 employ additional staff. The administrator is in the partially exempt service under
26 AS 39.25.120.

27 * Sec. 13. AS 23.30.041(b) is amended to read:

28 (b) The administrator shall

29 (1) enforce regulations adopted by the board to implement this section;

30 (2) recommend regulations for adoption by the board that establish
31 performance and reporting criteria for rehabilitation specialists;

1 (3) enforce the quality and effectiveness of reemployment benefits
2 provided for under this section;

3 (4) review on an annual basis the performance of rehabilitation
4 specialists to determine continued eligibility for delivery of rehabilitation services;

5 (5) submit to the department, on or before May 1 of each year, a report
6 of reemployment benefits provided under this section for the previous calendar year;
7 the report must include a general section, sections related to each rehabilitation
8 specialist employed under this section, and a statistical summary of all rehabilitation
9 cases, including

10 (A) the estimated and actual cost of each active rehabilitation
11 plan;

12 (B) the estimated and actual time of each rehabilitation plan;

13 (C) a status report on all individuals requesting, waiving,
14 beginning, completing, or terminating a reemployment benefits program
15 including

16 (i) reasons for denial, waiver, suspension, or
17 termination;

18 (ii) dates of completion and [A] return to work; and

19 (iii) other information required by the director

20 [DATE];

21 (D) the cost of reemployment benefits;

22 (E) status reports of all individuals who successfully
23 completed a reemployment plan that includes

24 (i) the plan's occupational goal and whether the
25 individual obtained work after completion in the planned or
26 another occupation; and

27 (ii) the individual's employment status six months,
28 one year, and two years after reemployment plan completion;

29 (c) maintain a list of rehabilitation specialists who meet the
30 qualifications established under this section;

31 (7) promote awareness among physicians, adjusters, injured workers,

1 employers, employees, attorneys, training providers, and rehabilitation specialists of
 2 the reemployment program established in this subsection.

3 * Sec. 14. AS 23.30.041(c) is repealed and reenacted to read:

4 (c) An employee and an employer may stipulate to the employee's eligibility
 5 for reemployment benefits at any time. If an employee suffers a compensable injury
 6 and, as a result of the injury, the employee is totally unable, for 45 consecutive days,
 7 to return to the employee's employment at the time of injury, the administrator shall
 8 notify the employee of the employee's rights under this section within 14 days after the
 9 45th day. If the employee is totally unable to return to the employee's employment for
 10 60 consecutive days as a result of the injury, the employee or employer may request an
 11 eligibility evaluation. The administrator may approve the request if the employee's
 12 injury may permanently preclude the employee's return to the employee's occupation
 13 at the time of the injury. If the employee is totally unable to return to the employee's
 14 employment at the time of the injury for 90 consecutive days as a result of the injury,
 15 the administrator shall, without a request, order an eligibility evaluation unless a
 16 stipulation of eligibility was submitted. If the administrator approves a request or
 17 orders an evaluation, the administrator shall, on a rotating and geographic basis, select
 18 a rehabilitation specialist from the list maintained under (b)(6) of this section to
 19 perform the eligibility evaluation.

20 * Sec. 15. AS 23.30.041(f) is amended to read:

21 (f) An employee is not eligible for reemployment benefits if

22 (1) the employer offers employment within the employee's predicted
 23 post-injury physical capacities at a wage equivalent to at least the state minimum wage
 24 under AS 23.10.065 or 75 percent of the worker's gross hourly wages at the time of
 25 injury, whichever is greater, and the employment prepares the employee to be
 26 employable in other jobs that exist in the labor market;

27 (2) the employee previously declined the development of a
 28 reemployment benefits plan under (g) of this section, received a job dislocation
 29 benefit under (g)(2) of this section, and returned to work in the same or similar
 30 occupation in terms of physical demands required of the employee at the time of
 31 the previous injury;

1 (3) the employee has been previously rehabilitated in a former
2 worker's compensation claim and returned to work in the same or similar occupation
3 in terms of physical demands required of the employee at the time of the previous
4 injury; or

5 (4) [(3)] at the time of medical stability, no permanent impairment is
6 identified or expected.

7 * Sec. 16. AS 23.30.041(g) is amended to read:

8 (g) Within 15 days after the employee receives the administrator's notification
9 of eligibility for benefits, an employee [WHO DESIRES TO USE THESE
10 BENEFITS] shall give written notice under oath, on a form provided by the
11 division, to the administrator and the employer of the employee's election to
12 either use the reemployment benefits or to accept a job dislocation benefit under
13 (2) of this subsection. The following apply to an election under this subsection:

14 (1) an employee who elects to use the reemployment benefits also
15 shall notify the employer of the employee's selection of a rehabilitation specialist who
16 shall provide a complete reemployment benefits plan; failure [. FAILURE] to give
17 notice of selection of a rehabilitation specialist required by this paragraph
18 [SUBSECTION] constitutes noncooperation under (n) of this section; if [. IF] the
19 employer disagrees with the employee's choice of rehabilitation specialist to develop
20 the plan and the disagreement cannot be resolved, then the administrator shall assign a
21 rehabilitation specialist; the [. THE] employer and employee each have one right of
22 refusal of a rehabilitation specialist;

23 (2) an employee who elects to accept a job dislocation benefit in
24 place of reemployment benefits and who has been given a permanent partial
25 impairment rating by a physician shall be paid

26 (A) \$5,000 if the employee's permanent partial impairment
27 rating is greater than zero and less than 15 percent;

28 (B) \$8,000 if the employee's permanent partial impairment
29 rating is 15 percent or greater but less than 30 percent; or

30 (C) \$13,500 if the employee's permanent partial
31 impairment rating is 30 percent or greater;

1 (3) the form provided by the division for election must specify that
 2 the employee understands the scope of the benefits and rights being waived by
 3 the election: the administrator shall serve a copy of the executed election form on
 4 the parties within 10 days after receiving the form from the employee; the
 5 election and waiver of unchosen benefits is effective upon service to the parties; a
 6 waiver and election effective under this subsection discharges the employer's
 7 liability for the benefits or rights under this section that were not elected; a
 8 waiver may not be modified under AS 23.30.130.

9 * Sec. 17. AS 23.30.041(j) is amended to read:

10 (j) The employee, rehabilitation specialist, and [THE] employer shall sign the
 11 reemployment benefits plan. If the employer and employee fail to agree on a
 12 reemployment plan, either party may submit a reemployment plan for approval to the
 13 administrator. The [; THE] administrator shall approve or deny a plan within 14 days
 14 after the plan is submitted. Within [; WITHIN] 10 days after [OF] the decision,
 15 either party may seek review of the decision by requesting a hearing under
 16 AS 23.30.110. The [; THE] board shall uphold the decision of the administrator
 17 unless evidence is submitted supporting an allegation of abuse of discretion on the part
 18 of the administrator. The [; THE] board shall render a decision within 30 days after
 19 completion of the hearing.

20 * Sec. 18. AS 23.30.041(p) is amended to read:

21 (p) When the United States Department of Labor publishes a new edition,
 22 revision, or replacement for the "Selected Characteristics of Occupations Defined in
 23 the Revised Dictionary of Occupational Titles" referred to in (e) of this section, the
 24 director [BOARD] shall, not later than 90 days after the last day of the month in
 25 which the new edition, revision, or replacement standard is published, hold an open
 26 meeting under AS 44.62.310 to select the proposed date on which the new edition,
 27 revision, or replacement standard will be implemented to make all eligibility
 28 determinations required under (e) of this section. The date selected by the
 29 department [BOARD] for implementing the new edition, revision, or replacement
 30 standard may not be later than 90 days after the last day of the month in which the new
 31 edition, revision, or replacement standard is published. After the meeting, the

5

Maintaining Medical Benefits While Reducing Costs

- Sec. 25 Reduce health care costs incrementally by resetting the current maximum reimbursement rates for health care services at the maximum level applied to bills for services rendered in 2004. (By using the Medical Fee Schedule originally adopted by the Alaska Workers' Compensation Board on July 1, 2003.) (Page 16)
- Sec. 23 Maintain those maximum reimbursement rates until completion of an appointed medical review committee's comprehensive examination of the workers' compensation health care delivery system. (Page 15)
- Sec. 51 The committee must report to the Commissioner of Labor & Workforce Development no later than March 1, 2007. (Page 28)
- Sec. 25 Continue to protect workers by providing that they may not be required to pay any fee or charge for health care services provided under the Act. (Page 17)
- Sec. 24 Seek to promote injured workers' safe and efficient return to health and function by presuming their injuries require the treatments described in the national, peer-reviewed Occupational Medicine Practice Guidelines of the American College of Occupational and Environmental Medicine. Presumption may be rebutted by injured worker's physician's written certification of the treatment at variance with the guidelines and the basis of the physician's conclusion that varying treatment was reasonably required by the nature of the injury or process of recovery. (Page 16)
- Sec. 24 The Board must also adopt other guidelines for injuries not covered by the ACOEM Guidelines. Presumption application and means of rebuttal of those standards same as those for ACOEM Guidelines. (Pages 15-16)
- Sec. 24 Take advantage of generic drug cost savings by requiring their use unless a name brand is medically necessary. (Page 15)
- Sec. 24 Take advantage of potential cost reductions by requiring the Department Of Labor & Workforce Development to adopt a preferred drug list like that developed by the Department of Health & Social Services. (The Department of Labor & Workforce Development must also set procedures for establishing need to depart from list.) (Page 15)
- Sec. 25 Remove roadblocks to potential cost savings by allowing employers to develop preferred provider lists and negotiate fee rates. Workers are not required, and must be informed, that they can choose physicians not on the list. (Page 16)

1 (p) The presumptions established under (o) of this section may be rebutted by
2 an employee's physician's written certification explaining

3 (1) the nature, extent, and scope of provided medical treatment or
4 service that is at variance with the applicable guidelines or standards; and

5 (2) the basis for the physician's conclusion that the provided medical
6 treatment or service at variance was reasonably required by the nature of the injury or
7 process of recovery.

8 * Sec. 25. AS 23.30 is amended by adding a new section to article 2 to read:

9 **Sec. 23.30.097. Fees for medical treatment and services; payment of bills.**

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

13 (1) the usual, customary, and reasonable fees for the treatment or
14 service in the community in which it is rendered, not to exceed the fees in the fee
15 schedule specified by the board in its published bulletin dated ^{in effect} December 15, 2003; or

16 (2) the payment made by the employer as negotiated by the provider
17 and the employer ~~under (e) of this section~~.

18 (b) An employer, or group of employers, may establish a list of preferred
19 physicians and treatment service providers to provide medical, surgical, and other
20 attendance or treatment services to the employer's employees under this chapter;
21 however,

22 (1) the employee's right to choose the employee's attending physician
23 under AS 23.30.095(a) is not impaired;

24 (2) when given to the employee, the employer's preferred physician list
25 must clearly state that the list is voluntary, that the employee's choice is not restricted
26 to the list, that the employee's rights under this chapter are not impaired by choosing
27 an attending physician from the list, and that, if the employee chooses an attending
28 physician from the list, the employee may, in the manner provided in AS 23.30.095,
29 make one change of attending physician, from the list or otherwise; and

30 (3) establishment of a list of preferred physicians does not affect the
31 employer's choice of physician for an employer medical examination under

1 or more claims.

2 (g) In this section, "fund" means the workers' compensation benefits guaranty
3 fund.

4 * Sec. 23. AS 23.30.095(j) is amended to read:

5 (j) The commissioner shall [BOARD MAY] appoint a medical services
6 review committee, or contract with an existing organization in the state or another
7 state, to assist and advise the department and the board in matters involving the
8 appropriateness, necessity, and cost of medical and related services provided under
9 this chapter.

10 * Sec. 24. AS 23.30.095 is amended by adding new subsections to read:

11 (n) A generic drug product must be used when dispensing a drug product to an
12 employee under this chapter unless the prescribing physician provides justification in
13 writing explaining the medical necessity for the name-brand drug product. The
14 department, by regulation, shall establish a preferred drug list and a procedure for
15 establishing medical necessity to depart from the list and to use a name-brand drug
16 product. In this subsection, "generic drug product" has the meaning given the term
17 "equivalent drug product" in AS 08.80.480.

18 (o) For purposes of this chapter, the medical treatment or service that the
19 nature of the injury or the process of recovery requires under (a) of this section means
20 treatment or service that is within the recommended guidelines set out in the American
21 College of Occupational and Environmental Medicine's Occupational Medicine
22 Practice Guidelines in effect at the time the treatment or service is provided. The
23 American College of Occupational and Environmental Medicine's Occupational
24 Medicine Practice Guidelines shall be presumed correct on the issue of the nature,
25 extent, and scope of medical treatment or services. For an injury not covered by the
26 American College of Occupational and Environmental Medicine's Occupational
27 Medicine Practice Guidelines, the treatment or service shall be in accordance with
28 standards based on other scientific, evidence-based medical treatment guidelines
29 generally recognized by the national medical community and adopted by the board by
30 regulation, and those standards shall also be presumed correct on the issue of the
31 nature, extent, and scope of medical treatment or services.

1 * Sec. 50. The uncodified law of the State of Alaska is amended by adding a new section to
2 read:

3 IMPLEMENTATION OF REPEAL OF SECOND INJURY FUND. The balance of
4 the second injury fund created by former AS 23.30.040 is transferred to the general fund on
5 the effective date of this section.

6 * Sec. 51. The uncodified law of the State of Alaska is amended by adding a new section to
7 read:

8 TRANSITION: MEDICAL SERVICES REVIEW COMMITTEE STUDY AND
9 REPORT. The medical services review committee appointed by the commissioner of labor
10 and workforce development under AS 23.30.095(j), as amended by sec. 23 of this Act, shall
11 proceed to study medical and related benefits provided under AS 23.30 to determine the
12 appropriateness, necessity, and cost of the benefits and shall, by March 1, 2007, provide to the
13 commissioner of labor and workforce development a report of the results of the study.

14 * Sec. 52. Section 49 of this Act takes effect immediately under AS 01.10.070(c).

15 * Sec. 53. Sections 1 - 4, 30, and 51 of this Act take effect September 1, 2005.

16 * Sec. 54. Sections 5, 11, 37, 46, and 50 of this Act take effect on the date that the
17 commissioner of labor and workforce development certifies to the revisor of statutes and the
18 lieutenant governor that all liability for previously accepted claims to the second injury fund
19 created by former AS 23.30.040, and claims ordered to be paid from that fund, have been
20 satisfied.

21 * Sec. 55. Except as provided in secs. 52 - 54 of this Act, this Act takes effect August 1,
22 2005.

1 AS 23.30.095.

2 (c) An employer or group of employers may negotiate with physicians and
3 other treatment service providers under this chapter to obtain reduced fees and service
4 charges and may take the fees and charges into account when forming a list of
5 preferred physicians and providers. In no event may an employer or group of
6 employers attempt to influence the treatment, medical decisions, or permanent
7 impairment ratings by physicians in the course of the negotiations regarding a
8 preferred physician and provider fee list.

9 (d) An employer shall pay an employee's bills for medical treatment under this
10 chapter, excluding prescription charges or transportation for medical treatment, within
11 30 days after the date that the employer receives the provider's bill or a completed
12 report as required by AS 23.30.095(c), whichever is later.

13 (e) Unless the employer controverts a charge, an employer shall reimburse an
14 employee's prescription charges under this chapter within 30 days after the employer
15 received the health care provider's completed report and an itemization of the
16 prescription charges for the employee. Unless the employer controverts a charge, an
17 employer shall reimburse transportation expenses for medical treatment under this
18 chapter within 30 days after the employer received the health care provider's
19 completed report and an itemization of the date, destination, and transportation
20 expenses for each date of travel for medical treatment. If the employer does not plan
21 to make or does not make payment or reimbursement in full as required by this
22 subsection, the employer shall notify in writing the employee and the employee's
23 health care provider that payment will not be timely made and the reason for the
24 nonpayment. The notification must be provided on or before the date that payment is
25 due under this subsection or (d) of this section.

26 (f) An employee may not be required to pay a fee or charge for medical
27 treatment or service provided under this chapter.

28 * Sec. 26. AS 23.30.100(b) is amended to read:

29 (b) The notice must be in writing, contain the name and address of the
30 employee, [AND] a statement of the time, place, nature, and cause of the injury or
31 death, and authority to release records of medical treatment for the injury or

1 (p) The presumptions established under (o) of this section may be rebutted by
2 an employee's physician's written certification explaining

3 (1) the nature, extent, and scope of provided medical treatment or
4 service that is at variance with the applicable guidelines or standards; and

5 (2) the basis for the physician's conclusion that the provided medical
6 treatment or service at variance was reasonably required by the nature of the injury or
7 process of recovery.

8 * Sec. 25. AS 23.30 is amended by adding a new section to article 2 to read:

9 **Sec. 23.30.097. Fees for medical treatment and services; payment of bills.**

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

13 (1) the usual, customary, and reasonable fees for the treatment or
14 service in the community in which it is rendered, not to exceed the fees in the fee
15 schedule specified by the board in its published bulletin dated December 15, 2003; or

16 (2) the payment made by the employer as negotiated by the provider
17 and the employer under (c) of this section.

18 (b) An employer, or group of employers, may establish a list of preferred
19 physicians and treatment service providers to provide medical, surgical, and other
20 attendance or treatment services to the employer's employees under this chapter;
21 however,

22 (1) the employee's right to chose the employee's attending physician
23 under AS 23.30.095(a) is not impaired;

24 (2) when given to the employee, the employer's preferred physician list
25 must clearly state that the list is voluntary, that the employee's choice is not restricted
26 to the list, that the employee's rights under this chapter are not impaired by choosing
27 an attending physician from the list, and that, if the employee chooses an attending
28 physician from the list, the employee may, in the manner provided in AS 23.30.095,
29 make one change of attending physician, from the list or otherwise; and

30 (3) establishment of a list of preferred physicians does not affect the
31 employer's choice of physician for an employer medical examination under

1 or more claims.

2 (g) In this section, "fund" means the workers' compensation benefits guaranty
3 fund.

4 * Sec. 23. AS 23.30.095(j) is amended to read:

5 (j) The commissioner shall [BOARD MAY] appoint a medical services
6 review committee, or contract with an existing organization in the state or another
7 state, to assist and advise the department and the board in matters involving the
8 appropriateness, necessity, and cost of medical and related services provided under
9 this chapter.

10 * Sec. 24. AS 23.30.095 is amended by adding new subsections to read:

11 (n) A generic drug product must be used when dispensing a drug product to an
12 employee under this chapter unless the prescribing physician provides justification in
13 writing explaining the medical necessity for the name-brand drug product. The
14 department, by regulation, shall establish a preferred drug list and a procedure for
15 establishing medical necessity to depart from the list and to use a name-brand drug
16 product. In this subsection, "generic drug product" has the meaning given the term
17 "equivalent drug product" in AS 08.80.480.

18 (o) For purposes of this chapter, the medical treatment or service that the
19 nature of the injury or the process of recovery requires under (a) of this section means
20 treatment or service that is within the recommended guidelines set out in the American
21 College of Occupational and Environmental Medicine's Occupational Medicine
22 Practice Guidelines in effect at the time the treatment or service is provided. The
23 American College of Occupational and Environmental Medicine's Occupational
24 Medicine Practice Guidelines shall be presumed correct on the issue of the nature,
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26 American College of Occupational and Environmental Medicine's Occupational
27 Medicine Practice Guidelines, the treatment or service shall be in accordance with
28 standards based on other scientific, evidence-based medical treatment guidelines
29 generally recognized by the national medical community and adopted by the board by
30 regulation, and those standards shall also be presumed correct on the issue of the
31 nature, extent, and scope of medical treatment or services.

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18 (b) An employer, or group of employers, may establish a list of preferred
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22 (1) the employee's right to chose the employee's attending physician
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 26 to the list, that the employee's rights under this chapter are not impaired by choosing
 27 an attending physician from the list, and that, if the employee chooses an attending
 28 physician from the list, the employee may, in the manner provided in AS 23.30.095,
 29 make one change of attending physician, from the list or otherwise; and

30 (3) establishment of a list of preferred physicians does not affect the
 31 employer's choice of physician for an employer medical examination under

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: SB 130
 (S) Publish Date: 3/3/05

Revision Date/Time (Note if correction): _____ Department: Labor and Workforce Development
 Title: "An Act relating to Workers' Compensation..." RDU: Workers' Compensation
 Component: Workers' Compensation
 Sponsor: Rules
 Requester: Governor Component Number: 344

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	209.3	209.3	209.3	209.3	209.3	209.3
Travel	69.8	69.8	36.8	36.8	36.8	36.8
Contractual	418.7	268.7	184.9	184.9	184.9	184.9
Supplies	22.5	12.5	12.5	12.5	12.5	12.5
Equipment	50.0	6.0	6.0	6.0	6.0	6.0
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	770.3	566.3	449.5	449.5	449.5	449.5

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (1157)	6.0	6.0	6.0	6.0	6.0	6.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1157 Workers' Safety Account	770.3	566.3	449.5	449.5	449.5	449.5
TOTAL	770.3	566.3	449.5	449.5	449.5	449.5

Estimate of any current year (FY2005) cost: None
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time	3	3	3	3	3	3
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

(See attached.)

Prepared by: Paul F. Lisankie, Director Phone: 465-6059
 Division: Workers' Compensation Date/Time: 2/24/05 3:42 PM
 Approved by: Greg O'Claray, Commissioner Date: 2/24/2005
 Agency: Department of Labor and Workforce Development

FISCAL NOTE #1

STATE OF ALASKA
2005 LEGISLATIVE SESSION

BILL VERSION: SB 130

ANALYSIS: (continued)

This legislation establishes a Workers' Compensation Appeals Commission within the Alaska Department of Labor & Workforce Development. The Appeals Commission is composed of 4 volunteer members and 3 new positions:

Commission Chair - range 27, will be responsible for general supervision and administrative functions of the Appeals Commission.

Administrative Assistant - range 13, will provide administrative support to the commission chair.

Administrative Clerk III - range 10, will maintain and index the administrative decisions and orders of the commission. Although the Commission doesn't start until September 2005, personal services have been calculated at a full year to allow the commission to be formed and fully operating by the implementation date.

Travel: The Commission will hold its appeal hearings in Anchorage and be staffed in that location. Planned travel includes 3 trips (ANC/JNO) for the commission chair and the division's administrative manager and travel costs and per diem for the volunteer commission members. Travel and per diem is included for the members of the medical review committee for FY06 and FY07 (\$33.0).

Contractual: This item includes costs for interagency services, leasing space, etc. as well as the honorariums for the volunteer commission members. To implement section 9 (contracting with a non-profit organization to provide legal representation for employees) \$75,000 has been included in FY06 and \$50,000 in FY07. There is a one-time cost in FY06 to create the office space for the commission (\$50.0). Costs for a consultant and Workers' Compensation board honorariums (\$86 ^) are included in the first two fiscal years for the medical review committee to study the medical delivery system for workers' compensation (due date 3/1/07).

Supplies and Equipment: There are one-time costs in FY06 to set up the Appeals Commission office; FY07 forward are for on-going supplies and equipment necessary to operate the commission.

New Fees/Fines:

This bill authorizes the Appeals Commission to charge a \$100 fee for the filing of an appeal. This is expected to amount to a yearly total of approximately \$6,000 payable to the Workers' Safety & Compensation Administration Account.

This bill authorizes the Workers' Compensation Board to impose civil penalties against employers that violate the statutory requirement to insure or properly self-insure their employees for workers' compensation benefits. Penalties may be up to \$1000 per employee per day. In FY04 over 150 employers were found without workers' compensation insurance; however, the amount of any penalties cannot be determined. Any penalties assessed will be deposited to the Workers' Compensation Guaranty Fund established by this legislation. The Guaranty Fund will use those funds to pay benefits to workers injured while employed by an uninsured employer. The amount of those benefits is also indeterminate.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number 2
 Bill Version: SB 130
 (S) Publish Date: 3/3/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Commerce, Community & Econ. Devel.
 Title Workers' Compensation RDU Insurance 116
 Component Insurance
 Sponsor Governor
 Requester _____ Component No. 354

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 This bill has no fiscal impact on the Division of Insurance

Prepared by: Linda S. Hall, Director Phone 907-269-7900
 Division: Insurance Date/Time 2/23/05 12:54 PM
 Approved by: Edgar Blatchford, Commissioner Date 2/23/2005
 Agency: Commerce, Community & Economic Development

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 3
 Bill Version: SB 130
 (S) Publish Date: 3/3/05

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title "An Act relating to a special deposit for workers' RDU CIVIL
compensation and employers' liability insurers..." Component Labor & State Affairs
 Sponsor Rules Committee
 Requester Governor Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	69.6	69.6	69.6			
Travel	0.2	0.2	0.2			
Contractual	8.2	8.2	8.2			
Supplies	1.1	1.1	1.1			
Equipment	7.1	7.1	7.1			
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	86.2	86.2	86.2	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	86.2	86.2	86.2			
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	86.2	86.2	86.2	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time	1					
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 This bill amends AS 21 and AS 23 in order to increase the efficiency and flexibility of the current workers' compensation system. A significant change proposed in this bill is the creation of an appeal commission specific to workers' compensation rather than the current system in which superior court judges hear appeals on a rotating basis. The bill also increases the responsibility for oversight of the system on the workers' compensation division. Additionally, the bill makes the division responsible for addressing rising medical costs which now make up 60 cents of every workers' compensation dollar paid; and it gives workers and employers greater flexibility over certain portions of the worker's claim. The bill enhances efficiency by expanding workers' access to legal counsel and medical information and it allows the division to contract with a non profit agency to provide legal services to injured workers. Under this proposed legislation employers would no longer be encouraged to hire under conditions of

Prepared by: Kathryn A. Daughhete, Director Phone 465-3673
 Division Administrative Services Division Date/Time 2/24/05 2:44 PM
 Approved by: K. Daughhete for Scott Nordstrand, Acting Attorney General Date 2/24/2005
 Agency Department of Law

FISCAL NOTE #3

STATE OF ALASKA
2005 LEGISLATIVE SESSION

BILL NO. SB 130

ANALYSIS CONTINUATION

the Second Injury fund, instead replacing that out-dated mechanism with contemporary standards in the Americans with Disabilities Act. Finally the bill increases the coordination of benefits between the workers' compensation system and other disability systems.

Although difficult to predict, passage of this legislation has the potential to increase the workload of the Labor and State Affairs Section by one half-time attorney needed to assist with revision to statutes that may ensue from the medical cost study and representation of the new commission. The cost associated with a half time attorney is in accordance with the Department of Law's FY 2006 timekeeping and billing rate and includes overhead costs and equipment consistent with the addition of a new attorney position in the Department of Law.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 4
 Bill Version: SB 130
 (S) Publish Date: 3/3/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title: An act relating to workers' compensation benefits RDU: Risk Management
 Component: Risk Management
 Sponsor: Rules
 Requester: By request of the Governor Component No.: 71

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*	*	*	*	*	*

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	*	*	*	*	*	*

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

As a self insured employer, the state will experience significant savings in future claims costs due to the changes proposed in this comprehensive reform to workers' compensation benefits and adjudication process.

continued page 2

Prepared by: J. Brad Thompson Phone 465-5723
 Division: Director Date/Time 2/24/05 2:28 PM
 Approved by: Michael A. Tibbles Deputy Commissioner Date 2/24/2005
 Agency: Administration

FISCAL NOTE #4

STATE OF ALASKA
2005 LEGISLATIVE SESSION

BILL NO. SB 130

ANALYSIS CONTINUATION

Many provisions will provide savings to the state's self insured workers' compensation claims...the more significant changes include but are not limited to the following:

workers' compensation appeals commission - streamlining adjudication process thereby reducing expenses presently incurred in resolving disputes in determining claim and benefit obligations.

ability to settle - if claimant is represented by an attorney licensed in Alaska settlements no longer need to be reviewed and approved by the board.

medical fee schedule, generic drug, medical treatment guidelines, and ability to create PPO's - reducing skyrocketing costs in the medical services component of workers' compensation claims expense.

coordination of disability benefits - eliminates present situation where injured employees may receive dual remedies that exceed pre-injury spendable wage.

fraud prevention - increased penalty and prosecution will reduce fraudulent claims and their inherent additional expense

repeal of the second injury fund - delayed implementation until present claims are resolved, future assessments will be eliminated.

If RM was authorized continuing funds for each FY (held in reserve until all outstanding liabilities from that period are paid - as an insurance carrier operates), then immediate reduction of cost of risk assessments to each agency - (a negative fiscal note) could be provided to reflect cost savings expected within these reforms.

However, the state funds its claims costs on a "cash flow" basis (appropriating only the amounts expected to be paid the next fiscal year) collected solely through interagency receipts (cost of risk allocations) assessed each agency based on relative share of exposure (payroll) and experience (past claims).

In time, RM cost of risk allocations will reflect the cost reductions generated by these reform measures as rates are developed from actual claims expenses realized.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 5
 Bill Version: CSSB 130 (L&C)
 (S) Publish Date: 4/4/05

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title Workers' Compensation BRU Alaska Court System
 Component Trial Courts
 Sponsor Senate Rules
 Requester Governor Component No. 768

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Matcr						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The court system does not anticipate any fiscal impact from the passage of CSSB 130 (L&C).

Prepared by: Douglas Wooliver, Administrative Attorney Phone 463-4750
 Division Alaska Court System Date/Time 4/1/05 1:11 PM
 Approved by: Doug Wooliver for Stephanie Cole, Administrative Director Date 4/1/2005
 Agency Alaska Court System

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 6
 Bill Version: CSSB 130(L&C)
 (S) Publish Date: 4/4/05

Revision Date/Time (Note if correction): _____ Department: Labor and Workforce Development
 Title: Workers' Compensation RDU: Workers' Compensation
 Component: Workers' Compensation
 Sponsor: Senate Rules
 Requester: Senate JUD Component Number: 344

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel	45.0	45.0				
Contractual	270.0	245.0	145.0	145.0	145.0	145.0
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	315.0	290.0	145.0	145.0	145.0	145.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (1157)	* 0.0	* 0.0	* 0.0	* 0.0	* 0.0	* 0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1157 Workers' Safety Account	315.0	290.0	145.0	145.0	145.0	145.0
TOTAL	315.0	290.0	145.0	145.0	145.0	145.0

Estimate of any current year (FY2005) cost: None
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

(See attached.)

Prepared by: Paul F. Lisankie, Director Phone: 465-6059
 Division: Workers' Compensation Date/Time: 4/4/05 2:32 PM
 Approved by: Greg O'Claray, Commissioner Date: 4/4/2005
 Agency: Department of Labor and Workforce Development

FISCAL NOTE # 6

STATE OF ALASKA
2005 LEGISLATIVE SESSION

BILL VERSION: CSSB 130(L&C)

ANALYSIS: (continued)

Travel: Funding of \$45.0 is necessary for travel and per-diem for the staff and members of the medical review committee for FY06 and FY 07.

Contractual: To implement section 9 (contracting with a non-profit organization to provide legal representation for employees) \$75.0 is requested in FY06 and \$50.0 in FY07 and following years. Funds of \$100.0 for a consultant and other costs associated with the Medical Services Review Committee are included in the first two fiscal years for the committee to study the medical delivery system for workers' compensation (due date 3/1/07). On-going contractual services funding of \$95.0 for fraud detection through an interagency contract with the Employment Security Division (\$60.0) and for rehabilitation program outcome tracking by the Labor Market Information component (\$35.0) is required.

New Fees/Fines:

This bill authorizes the Workers' Compensation Board to impose civil penalties against employers that violate the statutory requirement to insure or properly self-insure their employees for workers' compensation benefits.

* Penalties may be up to \$1,000.00 per employee per day. In FY04 over 150 employers were found without workers' compensation insurance, however, the amount of any penalties cannot be determined. Any penalties assessed will be deposited to the Workers' Compensation Guaranty Fund established by this legislation. The Guaranty Fund will use those funds to pay benefits to workers injured while employed by an uninsured employer. The amount of those benefits is also indeterminate.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: CSHB 130(L&C)
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Commerce
 Title Workers' Compensation RDU Insurance (116)
 Component Insurance
 Sponsor Rules by Request of the Governor
 Requester Senate Judiciary Component No. 354

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill has no fiscal impact on the operations of the Division of Insurance.

Prepared by: Linda S. Hall, Director Phone 907-269-7900
 Division Insurance Date/Time 4/4/05 5:09 PM
 Approved by: Edgar Blatchford, Commissioner Date 4/4/2005
 Agency Commerce, Community & Economic Development

ASHNHA Position on CSSB 130
Presented by Rod Betit, President/CEO
Before Senate Judiciary Committee on April 6, 2005

CSSB 130 is an improved version of the Administration's workers compensation reform package, but ASHNHA seeks the following changes before we can support this legislation.

1) Section 24, page 15, Physician Practice Guidelines:

- ASHNHA's previous discussions with the Department left us with the understanding that the final language in this section would be negotiated with Alaska physicians to insure they agree that the practice guidelines dictated are medically appropriate. It would do little good to impose unacceptable medical practice guidelines on the small number of physicians treating workers compensation patients as they will simply choose not to participate.

2) Section 25, page 16, Medical Rate Roll Back:

- ASHNHA requests that the roll back to 2004 rates be replaced with a freeze at "2005" rates. This change is consistent with the discussion ASHNHA has had with Commissioner O'Claray on several occasions. We understood this was acceptable to the Commissioner.
- Language should be added to cause the rate freeze to be automatically repealed no later than March 1, 2007. We understand this to be the intent of the Department but request that specific language be added to reflect that. This provides a 15 month "window" during which the Committee can do its business after the 2005 rates would normally expire. Any rate reductions beyond that "window" would be a matter for the 25th Legislature to take up after reviewing the Committee's and the Department's long term recommendations.

3) Section 51, page 28:

- ASHNHA requests language be added making it clear a hospital representative will be included on the Review Committee.
- ASHNHA requests language requiring that any financial analysis provided to the Review Committee will either be done by, or validated by, an independent actuary to insure all information on which policy recommendations will be made is accurate.

4) General Concern:

- ASHNHA is unaware of the final outcome of the Administration's recent discussions with the Ad-hoc Committee regarding their concerns with this bill. Many of the Ad-hoc Committee's concerns are also concerns of ASHNHA membership as employers as well as health care providers. We will watch and listen in hopes of getting a better sense of how these discussions ended up, and what concerns remain unresolved to address at a later time.

Yes! – I want to help fix Alaska's workers' compensation system

Fax to: Anchorage Governor's Office at 269-7463

Name Swellen Nelles, Executive Director
 Business Farthest North Girl Scout Council
 Address 431 Old Steese Hwy., Ste. 100, Fairbanks, AK 99701
 Phone/fax Ph. 907-456-4782, Fax 907-452-2320
 Email fngsc4@alaska.com

No. of employees 7

Workers comp costs 1999-2005 (approx) 2000 - \$1,630. 2001 - \$1,796.
2002 - \$1,939. 2003 - \$3,602. 2004 - \$5,322. 2005 - \$6,445

Effect on business _____

Girl Scouts in Fairbanks is a small, non-profit business with only 7 year-round employees and 8 seasonal camp employees. Our annual budget is approximately \$435,000. As you can see from our figures, our worker's compensation premiums have more than quadrupled in the last five years, most notably in the area of camp staff. Currently we offer staff competitive wages, health care benefits, dental, disability, and life insurance. In addition, we offer a retirement benefit and annual leave. If the Worker's Compensation rates continue to climb at current levels, we will be forced to cut some of these benefits to employees. With a high turnover in our work force already, cutting benefits will only make employee turnover worse.

Message for Alaska Legislature _____

Please consider a responsible means to revamp Worker's Compensation while protecting employees and employers. Alaska needs to attract more insurance carriers to allow for more competition. The legislature also needs to examine the current enforcement systems to cut down on fraud and employer non-compliance. Employers are currently held hostage by a system that is out of our control. We cannot shop around for a better rate, we cannot opt out of the program, and we cannot control costs by educating employees regarding safer work conditions and therefore lower our rate



March 28, 2005

6411 South Airport Place
Anchorage, Alaska 99502-1809
(907) 245-1544
Fax (907) 245-1744

Honorable Con Bunde
Alaska State Senate
State Capitol, Rm 506
Juneau, Alaska 99801-1182

Re: Alaska Workers' Compensation Reform Act

Dear Senator Bunde,

The Lynden family of companies is proud to employ approximately 560 Alaskans and we strongly support the 2005 Workers' Compensation Reform Act. We value our employees at Lynden. We pay excellent wages, provide among the best benefits in our industry, and strive to create the safest possible workplace. Unfortunately, accidents and injuries do occasionally occur. When they do, we want our employees to receive the best medical care and rehabilitation services available. Sadly, however, Alaska's current workers' compensation system is broken. It is driving expenses to unmanageable levels, which thwarts our ability to grow and is costing our economy jobs.

It was noted in the February 23, 2005 Alaska Department of Labor and Workforce Development News Release that Alaska's rates are the second highest in the nation and have increased 36% over the last two years. There are other telling statistics. According to the National Council on Compensation Insurance, since 1990, countrywide workers' compensation benefit levels have risen a mere 3.2%. Alaska's corresponding increase has been 12.2% - nearly four times the national average. Also, while the countrywide change in premium level has *dropped* 22.2% since 1993, Alaska's premium level has *increased* 5.2% in the voluntary market and a whopping 30.1% in the assigned risk market.

This disparity is due, in part, to the fact that workers' compensation reform has already been instituted by many states. Clearly the time has arrived for Alaska to adopt proven reforms that do not harm injured workers.

Although benefit levels may be partly to blame, the inability to prudently control medical costs and generally manage a claim is the real problem. In Alaska the employee and his or her lawyer decide on appropriate medical treatment. The employer cannot even require preferred providers with negotiated fee rates. This impacts self-insured employers as much or more than those with traditional insurance policies.

Typically, treatments called for in the American Medical Association guides are blindly followed by the Alaska system. No discretion is used. As a result, the maximum treatments for chiropractic care, massage and physical therapy available under the required guidelines are viewed as entitlements and have become the minimum. Nearly every injured worker takes advantage of the full benefit, driving costs up. Doctors, fearing malpractice

Honorable Con Bunde
March 28, 2005
Page 2



liability, readily agree that the maximum scheduled benefit may have some medical indication. And, with small effort even the liberal AMA guidelines can be exceeded allowing long-term, purely palliative care at the employer's expense.

Alaska Supreme Court decisions in cases like *Egemo v. Egemo Construction Co.* 998 P.2d 434, 2000; *Phillip Weldner & Associates, Inc. v. Hibdon* 989 P.2d 727, 1999; and *Municipality of Anchorage v. Carter* 818 P.2d 661, 1991 have turned the statutes on their heads, and tied the hands of the Alaska Workers' Compensation Board (AWCB) from making common sense decisions. For all practical purposes, *Hibdon* extended workers' compensation benefits to cover any pre-existing injury if it is aggravated in the slightest by a person's work activities. If, for example, work contributes at all to accelerating a degenerative condition, a presumption requires the employer to pay for full treatment – even if the injury is an old athletic injury mostly exacerbated by shoveling snow, moose hunting, or simply aging. *Egemo* effectively eliminated the two year statute of limitations on claims. *Carter* opened the door widely to purely palliative care by requiring the AWCB to presume that any continuing care requested by an employee is medically indicated and must be paid by the employer unless the employer can prove otherwise – an impossible standard.

Using constructive tools such as return to work programs and vocational rehabilitation are too often unreasonably challenged by the AWCB following these precedents. Ironically, the injured worker pays the price and can be effectively placed on involuntary welfare.

Only the legislature has the power to restore legislative intent and common sense to the law.

Looking at Lynden's workers' compensation losses, you can understand our frustration. In 2000, our workers' compensation losses (i.e., paid and reserved for future payments) totaled \$573,669 six months after the policy term expired. Today, with no new claims, those same cases have escalated to \$863,881. 2001 was even worse. Six months after that policy term expired, the losses were \$569,775. Today we expect to pay at least \$1,526,969. Again, this is with no new losses. How costs continue to escalate so dramatically? It happens because there are no controls on medical costs, the AWCB cannot apply common sense, vocational rehabilitation is underutilized, and more. The worker's compensation reform bill will go a long way toward solving these problems.

We strongly urge passage of the 2005 Workers' Compensation Reform Act.

Sincerely,

A handwritten signature in black ink, appearing to read "David W. Haugen". The signature is written in a cursive style with a long, sweeping tail that extends to the right.

David W. Haugen
Vice President

cc: Hon. Ben Stevens
Hon. Ralph Seekins

Marjorie T. Linder, M.A., CRC, CLCP
PO Box 230029
Anchorage, AK 99523-0029
(907) 346-8345 (fax); (907) 346-2474 (ph)
mtlservices@gci.net

MTL Services

Fax

To: Brian Hovey **From:** Margie Linder
Fax: (907) 465-5241 **Pages:** 4 to follow
Phone: [Click here and type phone number] **Date:** 4/6/2005
Re: SB 130 - Testimony of Marjorie Linder **CC:** [Click here and type name]

Urgent **For Review** **Please Comment** **Please Reply** **Please Recycle**

• **Comments:** Please, please let me testify as soon as possible tomorrow a.m. because there are four amendments i am suggesting and also the rationale for removing the stipulation and especially the job dislocation benefit. I will call in on the 800 # tomorrow at 8 a.m. on 800-395-5073.

Thank you for listening to me today. I believe what I have to say has merit and that the judiciary committee is the place for the problems to be dealt with. The job dislocation benefit is really a back door settlement of retraining in future claims, not just the present claim. We are worried that insurance representatives will stipulate to the re-employment benefit, even when workers would not be eligible, and for \$5000 get them to sign away retraining forever! This will be done with no supervision or oversight by the Board to workers who may not be able to read, write, speak English or who are desperate for immediate cash, young, and non-English speaking.

This is going to set employers up for claims for permanent and total disability when these workers suffer a future injury and find they are not entitled to retraining but can't work. It will also attract expensive litigation down the road. Do we really want laws this unfair for Alaska? Thanks.
~Margie Linder



MTL Services

MEMO TO SENATE JUDICIARY COMMITTEE

FROM: Marjorie T. Under, M.A., CRC, CLCP, 346-7474, PO Box 230029, Anchorage, AK 99523-0029; (907) 346-8345 (fax); mtlservices@aci.net

RE: SENATE BILL 130 AND PROPOSED AMENDMENTS

DATE: April 5, 2005

THE JOB DISLOCATION BENEFIT IS A RISK MANAGEMENT TOOL AND SETTLEMENT IN DISGUISE:

Contrary to the hype on this bill, SB130 reduces benefits to injured workers in very crafty ways. The most serious is the so-called "job dislocation benefit" described in SECTIONS 15 and 16 of this bill. This job dislocation benefit is no benefit to the vulnerable injured worker. It is really a settlement FOR LIFE of the retraining benefit (aka re-employment benefit). The injured worker who opts for this so-called "benefit" in his youth, will find that this youthful decision will disqualify him for the re-employment benefit if he ever gets injured again.

Oh, yes, I know that the bill calls for compensation of up to \$13,500 for accepting the job dislocation benefit but most workers will get only \$5000, a measly sum by anyone's standards.

- In 2003, only 8 workers, who had any retraining costs reported in carrier cost reports, had ratings above 30% and could possibly qualify to be paid that sum.
- Only 89 such workers had ratings between 15 and 29% and could qualify to get the additional \$8000.
- The remainder, some 653 out of 750 injured workers, who might possibly qualify for the re-employment benefit, had ratings under 14% and would only qualify for \$5000.

This is a permanent settlement of retraining benefits with no legal counsel or review by a panel of the board as you have in SECTION 10. This job dislocation benefit needs only to be communicated to the worker by the insurance company. The only Board oversight is a form that the claimant signs and mails in. There is no assurance that the injured worker can truly understand what he is waiving, that he can read, speak English, or not be on medications. There is no way for the injured worker to afford legal counsel and no way for legal counsel to lawfully be paid the \$2700 or so that they would charge to review the file. Moreover, it is highly unlikely that credible attorneys would recommend that claimants accept this benefit because the risks to the worker are just too high.

The upshot is that this so-called job dislocation benefit is a backdoor settlement masquerading as a benefit. It is not noble, it is not just, and it is not the way I hope that we Alaskans want to treat our fellow man. So why is something like this really in this bill?

PROBLEMS WITH STIPULATION:

Because of the provision in SECTION 14, we in the vocational rehabilitation community are worried that insurance companies will stipulate to eligibility for injured workers (whether they need the benefit or not) and offer them this job dislocation benefit as a cheap and easy way to manage future risks for insurance companies. So often, we hear from claimants, "This is the first time I was told I would not be getting my impairment award in a lump sum," or "I didn't know that when I got rated I'd be paid out of my impairment money," or "I thought if I waived the benefit all I'd be giving up is the \$13,500 for tuition, books, and supplies," or "I didn't realize I could be paid income while going to school," or "I was hopeless and you have given me hope and ideas for my future."

We think it is bad public policy to give workers a handout instead of a hand up. We don't think Alaska wants more people on the public dole without real buying power. We also don't want employers to wind up paying workers compensation for life when they are reinjured and now no longer qualify for the re-employment benefit (aka retraining). It would be so much simpler to retrain them in the first place than be saddled with a claim for permanent and total disability. It is much easier to stop this job dislocation benefit in this committee and reduce future legal costs to fight for retraining in future claims.

I urge the following amendments be offered and passed.

1. **SECTION 14: REMOVE** from AS 23.30.041(c) the language: "An employee and an employer may stipulate to the employee's eligibility for reemployment benefits at any time."

RATIONALE FOR CHANGE: According to present insurance company expense reports, eligibility evaluations account for only .8% of the claims dollar. **A key motivation behind stipulating to the benefit is not only to speed up the process but to keep desperate injured workers in ignorance and away from anyone who will provide them information about the system so that insurers can offer employees the waiver or the job dislocation benefit in lieu of retraining.** These workers are told a minimum of information about how the re-employment system under workers' compensation operates. Claimants won't understand what they are missing until it is too late.

2. **SECTION 15: REMOVE** AS 23.30.041(f)(2) from the bill. This provision adds another disqualifier for the re-employment benefit called the job dislocation benefit.

RATIONALE FOR CHANGE: This is not a benefit but a permanent settlement of retraining billed as a "benefit". The worker who accepts this "benefit" and later has a more disabling work injury and needs retraining will no longer qualify for it. This is tricky, disingenuous and exploitive of young workers, workers with learning disabilities, non-English speaking claimants, and those workers desperate to pay their bills. Moreover, there is **no oversight** by the Division of Workers' Compensation on accepting the job dislocation benefit as there is on settlements, there is **no legal representation** required in this bill, and there is no provision for the insurance companies to pay for legal assistance on this matter.

Another down side to the job dislocation benefit is that **employers could be liable for more permanent and total claims.** If a person who needs retraining later on is barred from it and can't return to work without it, the worker may possibly be eligible to be paid wage replacement benefits forever.

3. **SECTION 16: REMOVE** the job dislocation benefit described in 23.30.041 g 1-3.

RATIONALE FOR CHANGE: The vast majority of Injured workers opting for this benefit would be eligible for only an additional \$5000 and yet be barred from retraining FOREVER. The data reported for 2003 show that claimants typically have ratings of 5% or less.

With private negotiations limited to insurance adjustors and claimants, there is no assurance that workers will really understand the long-term risks they are taking by accepting the so-called job dislocation benefit. There is no provision to pay attorneys for advice on what amounts to a settlement of future re-employment benefits. There is no real oversight by the Division as there is in other settlements for unrepresented claimants.

Moreover, there is no real connection between an Impairment rating and the ability to work. Look at my chart (EXH. 9). Sixty-three percent of workers with impairment ratings had no vocational rehabilitation costs reported. Moreover, not all of the remaining 47% of workers with impairment and rehab costs reported were eligible for the benefit. That is because non-rehab expenses are characterized as rehab expenses to avoid paying a 6% assessment into the second injury fund.

4. SECTION 16: ADD to AS 23.30.041(g)(1): Any rehabilitation specialist who works for a company to which the insurer/employer assigned work regarding a particular injured worker will be exempted from writing the re-employment services plan for the same worker.

RATIONAL FOR CHANGE: This provision avoids conflicts of interest and undue influence on the selection of the rehabilitation specialist by the insurer/employer. Companies performing contract services for the insurance company cannot be expected to switch roles and advocate for the most appropriate plan for the claimant. **THIS WAS PASSED AS A CONCEPTUAL AMENDMENT BY THE SENATE LABOR & COMMERCE COMMITTEE**

MEMO TO MEMBERS OF THE SENATE JUDICIARY & HOUSE LABOR & COMMERCE COMMITTEES:

FROM: Name, address, phone, fax, and email

RE: ENDORSEMENT OF PROPOSED AMENDMENTS TO SENATE BILL 130, HOUSE BILL 180

DATE: April 4, 2005

I am a rehabilitation counselor and am concerned that reducing benefits to injured workers will not translate into reduced premiums for employers. First of all, there is "fuzzy math" going on and little, if any, oversight by the Division of Workers' Compensation or Insurance Commission. How can reducing costs that have gone up less than 9% in two years impact premiums that are increasing 200% and 400%?

I am concerned that SB 130 and HB 180 have provisions that masquerade either as benefits and/or slicker methods of service delivery when their intention is to limit the amount of information communicated to claimants and to privately (without real oversight by the Division) convince injured workers to waive retraining in current claims or forfeit retraining in both current and future claims for a measly sum of money. In particular, I am concerned about the disadvantages to the claimant of stipulating to the re-employment benefit and accepting the job dislocation benefit.

As written, the claimant can accept the job dislocation benefit (which is really a backdoor settlement of future retraining benefits even with a new claim) without legal counsel or oversight by the Division. There is no way for attorneys to be paid to provide legal advice to the claimant regarding the job dislocation benefit. It appears that the only person who will communicate with the claimant at this juncture is likely to be the insurance adjuster who has a different interest than does the claimant. This is inherently unfair and lop-sided.

I urge the following amendments be offered and passed.

SECTION 14: REMOVE from AS 23.30.041(c) the language: "An employee and an employer may stipulate to the employee's eligibility for reemployment benefits at any time."

RATIONALE FOR CHANGE: According to present insurance company expense reports, eligibility evaluations account for only .8% of the claims dollar. **A key motivation behind stipulating to the benefit is not only to speed up the process but to keep desperate injured workers in ignorance and away from anyone who**

will provide them information about the system so that insurers can offer employees the waiver or the job dislocation benefit in lieu of retraining. It is more common than not that workers tell us rehabilitation counselors during the eligibility process, "This is the first time I understood that I'll be paid my own impairment money during rehab, that I won't get a lump sum at the end of my plan, that my rating is likely to be less than the VA, that if I waive retraining I'll be losing more than \$13,500 in benefits." These workers are told a minimum of information about how the re-employment system under workers' compensation operates. Claimants won't understand what they are missing until it is too late.

SECTION 15: REMOVE AS 23.30.041 (f)(2) from the bill. This provision adds another disqualifier for the re-employment benefit called the job dislocation benefit.

RATIONALE FOR CHANGE: This is not a benefit but a permanent settlement of retraining billed as a "benefit". The worker who accepts this "benefit" and later has a more disabling work injury and needs retraining will no longer qualify for it. This is tricky, disingenuous and exploitive of young workers, workers with learning disabilities, non-English speaking claimants, and those workers desperate to pay their bills. Moreover, there is **no oversight by the Division of Workers' Compensation on accepting the job dislocation benefit as there is on settlements, there is **no legal representation** required in this bill, and there is no provision for the insurance companies to pay for legal assistance on this matter.**

Another down side to the job dislocation benefit is that **employers could be liable for more permanent and total claims**. If a person who needs retraining later on is barred from it and can't return to work without it, the worker may possibly be eligible to be paid wage replacement benefits forever.

SECTION 16: REMOVE the job dislocation benefit described in 23.30.041 g 1-3.

RATIONALE FOR CHANGE: The vast majority of injured workers opting for this benefit would be eligible for only an additional \$5000 and yet be barred from retraining FOREVER. The data reported for 2003 show that claimants typically have ratings of 5% or less. Each percentage point of impairment is worth \$1770. Out of 750 workers with costs reported in vocational rehabilitation fields on the annual report, 653 or 87% of workers who might be eligible for an eligibility evaluation had ratings of less than 15%. Only 89 workers with costs recorded in rehab fields had ratings between 29 and 15%. Only 8 workers who had costs listed in rehab fields had ratings above 30%.

With private negotiations limited to insurance adjustors and claimants, there is no assurance that workers will really understand the long-term risks they are taking by accepting the so-called job dislocation benefit. There is no provision

to pay attorneys for advice on what amounts to a settlement of future re-employment benefits. There is no real oversight by the Division as there is in other settlements for unrepresented claimants.

Moreover, **there is no real connection between an impairment rating and the ability to work.** Look at my chart (EXH. 9). Sixty-three percent of workers with impairment ratings had no vocational rehabilitation costs reported. Moreover, not all of the remaining 47% of workers with impairment and rehab costs reported were eligible for the benefit. That is because non-rehab expenses are characterized as rehab expenses to avoid paying a 6% assessment into the second injury fund.

Thank you for having an open mind. My heart goes out to both employers saddled with these excessive premium hikes and injured workers whose benefits are being reduced. Unfortunately, nothing we do in the way of reducing benefits is going to impact the losses insurers experienced in the stock market, the Fremont debacle, the fact that we have a small market up here of 291,000 workers, and the entitlement insurance companies feel to earn excessive profits.

ALASKA STATE MEDICAL ASSOCIATION

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

FAX COVER SHEET

Date: 4/7/2005

Number of Pages (Including Cover Sheet): 13

TO: Senator Ralph Seekins
Senator Hollis French

FROM: Jim Jordan

SUBJECT: SB 130 – Workers Compensation

MESSAGE:

Senator Seekins and Senator French:

Here is the ASMA Testimony provided in Senate Labor and Commerce that includes copies of the letters from the California Medical Association that I referred to this morning and which you requested.

Regards,



Jim Jordan,
Executive Director

Alaska State Medical Association

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

March 9, 2005

Honorable Con Bunde
Chair, Senate Labor and Commerce Committee
State Capitol, Room 506
Juneau AK 99801

Re: SB 130 – Workers Compensation

Dear Senator Bunde:

The Alaska State Medical Association (ASMA), represents physicians throughout Alaska, and is primarily concerned with the health care for all Alaskans.

ASMA strongly recommends that section 24 and 25 of SB 130 be removed and that we support a longer term study of the very complex medical issues involved with the workers compensation system.

The questions provided in ASMA's written testimony would provide a good start for the research needed for a long term study.

ASMA urges you to consider this recommendation of careful study of the complicated issues raised to avoid adverse impact on access to care.

Sincerely,



By: Paul Worrell, MD President
For: The Alaska State Medical Association

cc: Senator Ralph Seekins
Senator Ben Stevens
Senator Bettye Davis
Senator Johnny Ellis

Alaska State Medical Association

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

March 8, 2005

Honorable Con Bunde
Chair, Senate Labor and Commerce Committee
State Capitol, Room 506
Juneau AK 99801

Re: SB 130 – Workers Compensation

Dear Senator Bunde:

The Alaska State Medical Association (ASMA), represents physicians throughout Alaska, and is primarily concerned with the health care for all Alaskans.

ASMA's primary concerns regarding SB 130 are the potential unintended consequences that would be harmful to an injured worker, would be harmful to the patient/physician relationship, create medical liability questions relating to standard of care, or would create burdensome paperwork that does not add value to patient care.

ASMA has more questions than suggestions at this time. The workers compensation system is complex and deserving of in-depth analysis. The following comments are in the order found in SB 130.

1. Section 24 P. 19 lines 4 through 26
 - A. Subsection (n) creates a requirement for use of a generic drug unless the physician explains in writing the medical necessity of using a brand name drug. It also establishes a "preferred drug list" (PDL) and directs the department to establish a policy for departure from that list.
 1. Physician Assistants and Advanced Nurse Practitioners also prescribe. This language only refers to physicians. Does this mean that PAs and ANPs are not required to follow the same rules?
 2. Physicians do not have a financial stake in the sale of a prescription drug. Their interest is to get the most efficacious drug to the patient. The physician's stake in this process is the administrative / paperwork effort necessary to get a prescription filled. This adds additional hassle to the process with no discernable benefit to the patient. Departure from the PDL in the Medicaid program requires only that the prescriber state that the use of a particular drug is "medically necessary". This subsection also infers a pre-authorization process in the exception cases. This raises questions as to who will do the prior – authorization – an insurance company employee (clerk, nurse, pharmacist, doctor, etc), a department employee (clerk, nurse, pharmacist, doctor, etc.)? In

any event, an increased hassle factor is added with perhaps standard of care implications that might pertain to medical injury lawsuits.

3. The threshold question regarding establishing a PDL is whether or not a PDL is appropriate for the worker compensation system. The PDL developed for the Medicaid program may not be appropriate. If a PDL is appropriate for workers compensation, physicians specializing in treating workers compensation patients need to be an integral part in its development. The final questions are what are the projected cost savings for adopting a PDL and what is the impact on access to care?
- B. Subsection (o) establishes the presumptive standard of care for treatment of an injured worker that must be followed for payment to be made for the medical services provided. The American College of Occupation and Environmental Medicine's (ACOEM) Occupational Medicine Practice Guidelines are adopted as the presumptive standard.
1. What is the evidence that the ACOEM guidelines are the definitive, presumptive standards? At its face, it is suspect that one book of guidelines can encompass every possible treatment scenario for every injured worker. California adopted the ACOEM guidelines about a year ago. Attached are copies of two letters from the California Medical Association (by Dr. Hertzka, CMA President) to Ms. Hoch, the Administrative Director of the California Division of Workers' Compensation, dated 1/06/2005 and 12/12/2004. You will note that CMA recommends to also include the practice guidelines developed by national specialty societies listed in the 1/6/05 letter. The concerns and recommendations made by CMA should be investigated as to their applicability in Alaska.
 2. The CMA letter dated 12/12/2004 also states that 80% of services provided by physicians are not addressed in treatment guidelines. If that is the case in Alaska, what will be the cost savings impact?
 3. What is the value added to patient treatment and care by the adoption of the ACOEM guidelines? Or is this just added hassle that may adversely impact access to care and create standard of care implications in medical injury lawsuits?

II. Section 25 p 19 lines 27-31, p 20 lines 1-31. and p21 lines 1-15

- A. AS 23.30.097 (a) would roll back the fees paid for treatment of an injured worker to the lesser of the fee schedule in place at 12/15/99 or an employer negotiated amount of payment.
1. It is presumed that the workers compensation system is primarily established to treat and care for an injured worker in an expeditious manner in order to get the worker back on the job. It would seem that a primary determination would be that optimal outcomes are achieved. How do outcomes in the Alaska Workers Compensation compare to other states? Will there be outcome studies in the future?

2. What are the cost savings estimated to be achieved by the fee rollback? What are the cost breakdowns for the last 5 years by type of medical care provider? What are the costs by CPT code for physician charges for the last 5 years?
 3. What are the implications for access to care?
 4. What are the implications in recruiting needed physicians to Alaska?
- B. AS 23.30.097 (b) allows employers to establish a list of preferred physicians.
1. What are the cost saving to be achieved by forming groups of preferred physicians?
 2. What would be the cost to the employer to negotiate such arrangements with individual physicians?
 3. Will an employer become a co-defendant in any lawsuit pertaining to a medical injury allegedly caused by a physician on the preferred list?
- C. AS 23.30.097 (c) allows an employer or groups of small employers to negotiate reduced fees with physicians.
1. Independently practicing physician may not jointly negotiate fees. How will the State oversee this process so that harmful monopsonic or oligopsonic situations do not occur?
 2. Considering that employers will need to negotiate with individual physicians that would seemingly be costly, what are the anticipated savings projected by this provision?

ASMA believes that careful study is required of the complex issues raised in this testimony as well as others that come up in the course of your deliberations. Undue interference with the patient/physician relationship and adverse impact on access to care needs to be avoided.

Sincerely,



By: James Jordan, Executive Director
For: The Alaska State Medical Association

cc: Senator Ralph Seekins
Senator Ben Stevens
Senator Bettye Davis
Senator Johnny Ellis



California Medical Association
Physicians dedicated to the health of Californians

January 6, 2005

Ms. Andrea Hoch
Administrative Director
Division of Workers' Compensation
455 Golden Gate Avenue
San Francisco, CA 94102

Dear Ms. Hoch:

As promised, here is a comprehensive list of the national specialty society guidelines that meet the current labor code requirements for treatment/utilization guidelines. We strongly urge you to adopt these guidelines in conjunction with the ACOEM guidelines. Each of the national specialty societies listed below are American Board of Medical Specialties (ABMS) or Medical Board of California (MBC) recognized specialties.

The American Society of Anesthesiologists

<http://www.asahq.org/publicationsAndServices/practiceparam.htm>

- chronic pain: www.asahq.org/publicationsAndServices/chronic_pain.html
- treating cancer pain: www.asahq.org/publicationsAndServices/cancer.html
- treating perioperative pain: www.asahq.org/publicationsAndServices/pain.pdf

American College of Emergency Physicians

Clinical policies and guidelines: <http://www.acep.org/1.18.0.html>

American Academy of Neurology

<http://www.aan.com/professionals/practice/guideline/index.cfm>

The Society of Nuclear Medicine

<http://interactive.snm.org/index.cfm?PageID=1377&RPID=969>

American Academy of Ophthalmology

<http://www.aao.org/aao/education/library/upload/Summary-Benchmarks-2002.pdf>

American Academy of Orthopaedic Surgeons

<http://www.aaos.org/wordhtml/research/guidelin/guide.htm>

American Osteopathic Association

Protocols For Osteopathic Manipulative Treatment (OMT)

Andrea Hoch, Administrative Director
Division of Workers' Compensation
January 6, 2005
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American Academy of Pain Medicine
Wisconsin Medical Society -Chronic Pain
http://www.wisconsinmedicalsociety.org/uploads/wmi/pain_manageguides.pdf

AHCPR Guideline - Acute Pain
<http://www.ncbi.nlm.nih.gov/books/bv.fcgi?rid=hstat6.chapter.8991>

AHCPR Guideline - Acute Low Back Pain
<http://www.ncbi.nlm.nih.gov/books/bv.fcgi?rid=hstat6.chapter.25870>

AHCPR Guideline - Cancer Pain Link below
<http://www.ncbi.nlm.nih.gov/books/bv.fcgi?rid=hstat6.chapter.18803>

(The documents listed below were previously forwarded to the DWC, CHSWC and RAND.)

Acute Pain and Cancer Pain – A position statement

AAPM – Basic Principles of Ethics for the Practice of Pain Medicine

AAPM – Long-term Controlled Substances Therapy for Chronic Pain Sample Agreement

AAPM – Federal Criminal Penalties for Illegal Trafficking of Prescription Drugs

AAPM – Definitions Related to the Use of Opioids for the Treatment of Pain

AAPM - The Necessity for Early Evaluation and Treatment of the Chronic Pain Patient

AAPM – Consent for Chronic Opioid Therapy

AAPM and American Pain Society

The Use of Opioids for the Treatment of Chronic Pain

AAPM – A Pledge

AAPM – Quality Care at the End of Life

AAPM – Undergraduate Medical Education on Pain Management, End-of-Life Care, and Palliative Care

AAPM, Amer. Pain Society and Amer. Society of Addiction Medicine Public Policy Statement on the Rights and Responsibilities of Healthcare Professionals in the use of Opioids for the Treatment of Pain

American Academy of Physical Medicine and Rehabilitation
[http://www.aapmr.org/hpl/pracguide/resource.htm#\"Clinical%20Practice%20Guidelines:%20The%20Management%20of%20Chronic%20Pain%20in%20Older%20Persons\"](http://www.aapmr.org/hpl/pracguide/resource.htm#\)

Andrea Hoch, Administrative Director
Division of Workers' Compensation
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American Psychiatric Association

http://www.psych.org/psych_pract/treatg/pg/prac_guidc.cfm

American Thoracic Society

- ATS Guide – Asthma
<http://www.thoracic.org/adobe/statements/eval1-6.pdf>
- ATS Standards - Pulmonology Disease (see attached)
<http://www.thoracic.org/adobe/statements/copd1-45.pdf>

We appreciate your consideration of these treatment guidelines. The CMA contact is Elizabeth McNeil 415-882-3376; emcneil@cmanet.org.

Sincerely,

RE Hertz MD

Robert E. Hertzka, MD
President

cc: Ann Searcy, MD, DWC
Executive Committee
Workers' Compensation Committee



December 12, 2004

Andrea Hoch
Administrative Director
Division of Workers' Compensation
455 Golden Gate Avenue
San Francisco, CA 94102

Dear Ms. Hoch:

The California Medical Association appreciates the opportunity to comment on the RAND report, "Evaluating Medical Treatment Guideline Sets for Injured Workers In California," and the Commission on Health and Safety and Workers' Compensation's recommendations regarding the Workers' Compensation Utilization Schedule. In general, we support the recommendations with a few additions. Our comments are specifically outlined below.

CMA Opposes Adoption of Commercial Proprietary Guidelines

CMA continues to oppose the adoption of commercial proprietary guidelines because they are developed solely for cost containment purposes and do not take quality outcomes into consideration. Moreover, physicians do not have the opportunity to provide input into the development of such guidelines. Please see the attached October 14, 2004 letter in which CMA commented on this issue in great detail.

CMA Supports the Adoption of the ACOEM Guidelines

CMA supports the permanent adoption of the ACOEM Guidelines. These are appropriate, comprehensive guidelines written by occupational physicians dedicated to workplace injury. Moreover, ACOEM is developing support software that will assist both physicians and payers in interpreting the guidelines.

CMA Supports the Adoption of the AAOS Guidelines for Spinal Surgery

CMA endorses the adoption of the American Academy of Orthopaedic Surgeons Guidelines for spinal surgery as recommended by RAND and CHSWC. However, we also support the adoption of all national specialty society guidelines. Please see the discussion below.

CMA Urges the Adoption of the National Specialty Society Guidelines

The physician reviewers used by RAND stated that they preferred the national specialty society guidelines to ACOEM and the other Commercial Guidelines they were asked to review. Unfortunately, the physician reviewers were never asked to review the other national specialty guidelines because the staff at RAND had disqualified the specialty society guidelines on the grounds they were not "comprehensive" – meaning they were too specialty specific. CMA emphatically agrees with the assessment of the RAND physician reviewers. We strongly urge the DWC to adopt all American Board of Medical Specialties (ABMS) and Medical Board of California (MBC) recognized medical specialties who have developed treatment guidelines applicable to workers' compensation cases. We are currently working with the specialty societies to submit a consolidated list of their applicable guidelines to you.

Physicians appropriately seek and follow the guidelines adopted by their national specialty societies. The national specialties provide the most respected clinical guidance to physicians in this country either through evidence-based guidelines developed by the most respected physicians in the specialty or by making the latest literature available to their members. These guidelines attempt to provide physicians with a thoughtful course of treatment based on the most current knowledge and available resources. However, while grounded in science, the practice of medicine is an art. The variety and complexity of the human condition makes it impossible to always reach the correct diagnosis or to predict the response to treatment with precision. Therefore, the sole purpose of guidelines is to assist physicians who are using their reasonable judgment to develop an accurate diagnosis and successful treatment. Therefore, if any guideline is adopted for the workers' compensation system, it should be the professional standard of care that respected physicians in each specialty work to achieve. That professional standard of care, in part, comes from the national specialty guidelines.

The national specialty guidelines will also address some of the gaps and weaknesses in the ACOEM guidelines. The physician reviewers used by RAND already identified the AAOS guidelines as being superior to ACOEM in the area of spinal surgery. Further, ACOEM is admittedly silent in the areas of psychiatry and pain medicine. Those specialty society guidelines should be adopted immediately.

There has been some concern expressed that the payers won't be able to manage multiple sets of guidelines. It should be noted that during the RAND stakeholder meeting prior to the release of the RAND report, two health plans, that also provide private health care, reported that they currently use multiple sets of guidelines and they do not think it to be inordinately difficult to manage. In fact, they thought it was extremely helpful to be able to use all potential evidence-based guidelines in determining the appropriateness of care.

The importance of adopting national specialty society guidelines, in addition to ACOEM, is that they would then carry the "presumption of correctness." Most physicians treating workers' compensation patients will eventually use their specialty society guidelines to justify a course of treatment that may differ from ACOEM. It is inefficient utilization management and inappropriate to not presume a physician is correct if they are adhering to their national specialty society guidelines. Not adopting the specialty guidelines in addition to ACOEM will force physicians to appeal more payer decisions and backlog the already backlogged utilization review system. Therefore, we strongly urge you to adopt the ACOEM guidelines and the national specialty society guidelines and presume them both to be correct. It will create the most effective utilization schedule in the long term.

Finally, ACOEM is attempting to work more collaboratively with the other national specialty societies to develop a consensus set of guidelines. We believe this collaboration will result in a more consolidated set of workers' compensation guidelines that could eventually be adopted by the DWC. But in the meantime, the only solution is to adopt all of the applicable ABMS or MBC-recognized specialty societies' guidelines.

CMA Urges A Prior Authorization System for the Physical Modalities

The RAND reviewers also identified major weaknesses in the ACOEM guidelines related to the physical modalities, such as physical therapy, chiropractic care and acupuncture. CMA certainly does not oppose the adoption of evidenced-based guidelines in these areas, such as the new NIH guidelines on acupuncture that will be released in the near future. However, we believe in the absence of appropriate guidelines, the adoption of a prior authorization system is preferable as long as it is clinically-based and performed in a timely manner.

Moreover, CMA would like to propose that we work with you to develop a system that identifies the 10 most common diagnoses that are also the major cost drivers in the worker's compensation system. The high risk diagnoses should also be included. For these 10 diagnoses, we would propose that a specific number of visits in a specific time period be automatically authorized for initial treatment. Any requests for subsequent treatments would need to be authorized by the payer in a timely way based on the patient's functional improvement. This kind of prior authorization system is successfully applied in all well-managed health care systems today.

However, in order for this system to work, the payers will need to significantly improve the way they are conducting utilization review. Physicians report to CMA that payers are currently taking 5, 10 and sometimes 30 days to approve treatments. The workers' comp community needs the DWC's utilization review regulations to be promulgated as soon as possible. We need a formal process to file complaints with the DWC and most importantly, we need enforcement action against the payers who do not comply with the utilization review timelines, appropriate utilization review procedures and the guidelines that are adopted. We also need to require that under certain circumstances only a physician within the same specialty as the treating physician may deny care.

CMA Urges that the Treating Physician Be Presumed Correct For Treatments That Are Not Addressed in the Guidelines

- A. If a physician deviates from the guidelines, CMA believes that the burden should be on the physician to demonstrate to the payer why the treatment is medically necessary and appropriate.
- B. Where there are gaps in the guidelines, CMA urges the DWC to adopt the following amendment. Current law states that adherence to the ACOEM guidelines is presumed to be correct. However, the law goes on to say that where ACOEM is silent, physicians must rely on other evidence-based guidelines. However, 80% of the services physicians provide their patients are not addressed in treatment guidelines – and certainly not evidence-based treatment guidelines. Therefore, CMA proposes the following language as a balanced approach to allow the judgment of the treating physician to be presumed correct within certain parameters – when there is no guiding evidence-based treatment protocol. Two major health plans have adopted this CMA language as part of our RICO lawsuit settlement agreements.

To cure and relieve shall mean health care services that a physician, exercising prudent clinical judgment, would provide to a patient for the purpose of preventing, evaluating, diagnosing or treating an illness, injury, disease or its symptoms, and that are (a) in accordance with generally accepted standards of medical practice; (b) clinically appropriate, in terms of type, frequency, extent, site and duration, and considered effective for the patient's illness, injury or disease; and (c) not primarily for the convenience of the patient, physician, or other health care provider, and not more costly than an alternative services or sequence of services at least as likely to produce equivalent therapeutic or diagnostic results as to the diagnosis or treatment of that patient's illness, injury or disease. For these purposes, "generally accepted standards of medical practice" means standards that are based on credible scientific evidence published in peer-reviewed medical literature generally recognized by the relevant medical community, physician specialty society recommendations, the views of physicians practicing in the relevant clinical areas and any other relevant factors.

- C. In conjunction with the amendment set forth above, CMA urges the DWC to adopt a hierarchy of evidence that should be used by both physicians and the payers when justifying treatment or payment decisions. The following hierarchy was enacted for the Knox-Keene health plans in California for independent medical review.
- i. Scientific-Evidence Based Guidelines
 - ii. Professional Standards of Care
 - iii. Expert Opinion

CMA Urges the DWC To Adopt Best Practices for Chronic Care

As outlined in the attached October 14, 2004 letter, CMA urges the DWC to establish a physician advisory committee to assist the DWC in developing "best practices" for chronic care which is an area that is not addressed in any of the guidelines under your consideration and in desperate need of attention. We believe this project would provide the most meaningful utilization management tool to control the cases that are the real cost drivers in the workers' compensation system. Such treatment protocols would also help guide physicians in providing better care to patients whose conditions have become chronic.

We appreciate your consideration of these positions related to the treatment guidelines. The CMA contact is Elizabeth McNeil 415-882-3376; emcneil@cmanet.org

Sincerely,

RE Hertz MD

Robert E. Hertzka, MD
President

cc: Ann Searcy, MD, DWC
Executive Committee
Workers' Compensation Committee

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION



Central Microfilm Services
Department of Education & Early Development
State of Alaska

CMA Urges the DWC To Adopt Best Practices for Chronic Care

As outlined in the attached October 14, 2004 letter, CMA urges the DWC to establish a physician advisory committee to assist the DWC in developing "best practices" for chronic care which is an area that is not addressed in any of the guidelines under your consideration and in desperate need of attention. We believe this project would provide the most meaningful utilization management tool to control the cases that are the real cost drivers in the workers' compensation system. Such treatment protocols would also help guide physicians in providing better care to patients whose conditions have become chronic.

We appreciate your consideration of these positions related to the treatment guidelines. The CMA contact is Elizabeth McNeil 415-882-3376; emcneil@cmanet.org

Sincerely,

RE Hertzka MD

Robert E. Hertzka, MD
President

cc: Ann Searcy, MD, DWC
Executive Committee
Workers' Compensation Committee

Testimony For House Judiciary:

I recently received the new changes to the current workers compensation bill. There are serious problems with the new amendments that will affect thousand of injured Alaskans. Changing the palliative care provisions and preexisting condition provisions will eliminate claims yes, but it is merely a tool to shift cost for insurance companies.

This means more cuts to benefits for workers and not equal cuts or freezes for insurance companies or employers. In this whole workers compensation system, there is a lot of measurable waste. While we are whittling away at important benefits that worker need to return to work. We are not looking at the actual problems in this very broken system.

The Legislative Audit that was completed showed significant usable information that has been ignored. We need to save money and provide benefits. Reviews or audits are necessary as each time we have acted to adjust the workers compensation law, it has created a greater imbalance or disparagement between workers who need benefits to return to work and employers who are paying expensive premiums.

Acting out of ignorance could be the biggest disservice to both workers and employers. Complex changes can be enacted but will be meaningless and will not work if we do not talk to the employee and the employers. Restoring balance in the system and looking at the complex fixes must be based on factual data and not fuzzy math or the power of the influential insurance carriers.

Thank you

Barbara Williams
Alaska Injured Workers Alliance
P. O. Box 101093
Anchorage, Alaska 99510



Alaska State Legislature

Please enter into the record my testimony to the SENATE JUDICIARY
Committee name

Committee on SB 130 dated FIXED 4-7-05
Bill/Subject

LA
AGRS
Including Cover -

Signed: LAURENCE BUCHHOLZ
Testifier

FORMER WORKERS COMPENSATION OFFICER - Retired 1987
Representing (Optional)

PO BOX 254 SUTTON, ALASKA 99674
Address

745-4332 ideas@POBOX.mtaonline.net
Phone number



Alaska State Legislature

Please enter into the record my testimony to the House of Commerce, Judiciary & Finance committee name

committee on HB 180 & SB 130 bill/subject, dated 4-6-2005

I came to testify at the LHO in Wasilla on Wednesday but will be out of state on Monday. It is difficult to testify against the Bill to change workers' compensation as it was in 1994 & 98 because the changes are so drastic and so numerous that it looks like I am simply against change. I have previously accused of being a Luddite, but here goes - most important change is the elimination of workers' civil right to the court. #23,30,007 A rubber stamp commission doesn't begin to improve on the oversight of the court. Workers gave up their right to sue but expected justice at the hands of the system. Abrogating the responsibility of the administration to provide information to its constituents #23,30,005 MAY eliminate the problem of facing the people damaged by this law (ever)

Signed:

Lawrence Paul Buchholz (ever)
Testifier Former Workers Compensation Officer

Representing (Optional)

P.O. Box 254

Mailing Address

Sutton ALASKA 99674-0254

Phone Number

(907) 745-4332

E-MAIL

ideas@pobox.mtaonline.net

But it will not help the injured worker - Non Profit
or any other entity could represent under current
law - only restriction was against charging fees -
providing a low profit alternative guarantees sub-
standard & second class representation. The
Establishment of Company Doctors @ 23.30.09 & Drug and
Treatment Codes @ 23.30.09S guarantees reduced
quality of treatment hope at recovery for
any injured worker. The elimination of the
"Outmoded" Second Injury fund may be appropriate
in the same way that the "Job Dislocation" benefit
replaces any vocational rehabilitation effort
under the law and may signal the end of the
"Exclusive Remedy", No Fault System altogether.
Perhaps it is time to review ~~Dr. Carlson's~~ Carlson's
suggestion from the 70's to dispossess the
workers' compensation altogether & rely on the
social systems currently established for
workers injured accidentally and the court
for people injured by some cause. ALASKA
could be the first to attempt such a system.
~~All~~ All the money spent on insurance could be
spent on prevention.

I know it is HARD to resist the pressure of
the Insurance lobby & the Employee Groups but
please remember when you were a worker &
the trust that you had in the system - think
of your children & grand children & the danger
in the work place. Nobody studies up to be
hurt & when it happens their life is
changed forever. Without exception, for the
worse. How much worse is up to you.

But it will help the injured worker - Now he's
or any other entity could represent under current
and only restriction was against - charging fees -
providing a low cost alternative guarantees sub-
standard & second class representation. The
establishment of Company Doctors in 23 30 09 & Dangan
treatment codes in 23 30 09s guarantees reduced
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Alaska State Legislature

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Committee name

Committee on HB 180 & SB 130 dated 4.6.2005
Bill/Subject

P.S. At least replace the insulting
phrase "Appearance of impropriety" with
something that implies fairness.

Thanks

Signed: Lawrence P. Buchholz
Testifier

Former Workers' Compensation Officer Retired 1987
Representing (Optional)

P.O. Box 254 Sutton Alaska 99674
Address

(907) 745-4332
Phone number

E-mail ideas@PO Box.mtsonline.net