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**OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA**

M E M O R A N D U M

TO: Debbie Banaszak
Department of Labor & Workforce Development

FROM: Scott Meriwether, Office of the Lieutenant Governor *CS*
465.4081

DATE: February 21, 2017

RE: Filed Permanent Regulations: Alaska Workers' Compensation Board

Alaska Worker's Compensation Board and Department of Labor and Workforce Development update to regulations re: discovery, medical payments to injured employees, second independent medical examinations (SIMEs), related records, and technical conforming cha (8 AAC 45.054(e); 8 AAC 45.083(a),(m); 8 AAC 45.092; 8 AAC 45.114; 8 AAC 45.175; 8 AAC 45.186)

Attorney General File:	JU2016200978
Regulation Filed:	2/21/2017
Effective Date:	4/1/2017
Print:	221, April 2017

cc with enclosures: Linda Miller, Department of Law
Judy Herndon, LexisNexis

ORDER CERTIFYING THE CHANGES TO
REGULATIONS OF THE ALASKA WORKERS' COMPENSATION BOARD

The attached 13 pages of regulations, dealing with fees for medical treatment and services, second independent medical evaluation procedures, the Second Injury Fund, hearing briefs, discovery, and subpoenas are certified to be a correct copy of the regulation changes that the Alaska Workers' Compensation Board adopted at its January 12-13, 2017 meeting, under the authority of AS 23.30.005 and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

On the record, in considering public comments, the Alaska Workers' Compensation Board paid special attention to the cost to private persons of the regulatory action being taken.

The regulation changes described in this order take effect on April 1, 2017, as provided in AS 44.62.180.


Date: 1/19/17



Marie Marx, Director

FILING CERTIFICATION

I, Byron Mallott, Lieutenant Governor for the State of Alaska, certify that on February 21, 2017 at 11:47a m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.



Lieutenant Governor

Effective: April 1, 2017

Register: 221, April 2017

ORDER ADOPTING CHANGES TO REGULATIONS OF THE
ALASKA DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT

The attached 13 pages of regulations, dealing with fees for medical treatment and services, second independent medical evaluation procedures, the Second Injury Fund, hearing briefs, discovery, and subpoenas are adopted and certified to be a correct copy of the regulation changes that the Alaska Department of Labor and Workforce Development adopts under the authority of AS 23.30.005 and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

In considering public comments, the Alaska Department of Labor and Workforce Development paid special attention to the cost to private persons of the regulatory action being taken.


The regulation changes adopted under this order take effect on April 1, 2017, as provided in AS 44.62.180.

Date: 1/23/17


Heidi Drygas, Commissioner

FILING CERTIFICATION

I, Byron Mallott, Lieutenant Governor for the State of Alaska, certify that on February 17, 2017, at 940 a.m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.


Lieutenant Governor

Effective: April 1, 2017.

Register: 221, April 2017.

Register 221, April 2017 LABOR AND WORKFORCE DEV.

8 AAC 45.054 is amended by adding a new subsection to read:

(e) If an employer petitioned for failure to insure for workers' compensation liability fails to comply with the division's discovery demand not later than ~~within~~ 30 days after service, the division may petition the board for an order compelling the employer to provide the discovery. If the employer fails to comply with an order by the board or the board's designee concerning discovery matters, the board may impose appropriate sanctions, including dismissing the employer's defenses and accepting the division's proffered evidence regarding estimated uninsured employee workdays and workers' compensation insurance premiums the employer would have paid had it been insured. (Eff. 5/28/83, Register 86; am 7/20/97, Register 143; am 4/1/2017, Register 221)

Authority: AS 23.30.005 AS 23.30.115 AS 23.30.135
AS 23.30.080 AS 23.30.108

8 AAC 45.083(a) is amended to read:

(a) A fee or other charge for medical treatment or service may not exceed the maximums in AS 23.30.097. The fee or other charge for medical treatment or service

(1) provided on or after December 1, 2015, but before April 1, 2017, may not exceed the fee schedules set out in (b) – (d) of this section;

(2) provided on or after April 1, 2017, may not exceed the maximum allowable reimbursement established in the Official Alaska Workers' Compensation Medical Fee Schedule, effective April 1, 2017, and adopted by reference.

Register 221, April 2017 LABOR AND WORKFORCE DEV.

8 AAC 45.083(m)(9) is amended to read:

(9) Medicare Severity Diagnosis Related Groups, effective January 1, 2015,
produced by the federal Centers for Medicare and Medicaid Services, as may be amended; [.]

8 AAC 45.083(m) is amended by adding new paragraphs to read:

(10) Hospital Outpatient Prospective Payment System, effective January 1, 2017, produced by the federal Centers for Medicare and Medicaid Services;

(11) Ambulatory Surgical Center Payment System, effective January 1, 2017, produced by the federal Centers for Medicare and Medicaid Services. (Eff. 12/1/2015,

Register 216; am 3/11/2016, Register 217; am 4/1/2017, Register 221)

Authority: AS 23.30.005 AS 23.30.097 AS 23.30.098

2 **Editor's note:** The above-referenced materials may be found at: Department of Labor and Workforce Development, Division of Workers' Compensation at 1111 W. 8th St., Suite 305, Juneau, Alaska 99811.

On February 11, 2016, as required by AS 23.30.098 and AS 44.62.245, the department gave notice that the following amended versions of material, previously adopted by reference in 8 AAC 45.083(m), would be in effect on January 1, 2016: the *Current Procedural Terminology*, 2016 edition, produced by the American Medical Association; the *Healthcare Common Procedure Coding System (HCPCS)*, 2016 edition, produced by the American Medical Association; the *Relative Value Guide*, 2016 edition, produced by the American Society Of Anesthesiologists; the *Current Dental Terminology*, 2016 edition, published by the American

cc Publisher: Existing editor's note after 8 AAC 45.083 is unchanged, and need not be displayed. I expect to republish the editor's note by means of a separate revisor's memorandum.)))

Register 221, April 2017 LABOR AND WORKFORCE DEV.

(((Publisher: Existing editor's note after 8 AAC 45.083 is unchanged)))
~~Dental Association; the Resource-Based Relative Value Scale, effective January 1, 2016,~~

produced by the federal Centers for Medicare and Medicaid Services; the *Ambulatory Payment Classifications*, effective January 1, 2016, produced by the federal Centers for Medicare and Medicaid Services; and the *Medicare Severity Diagnosis Related Groups*, effective January 1, 2016, produced by the federal Centers for Medicare and Medicaid Services. The amended versions may be reviewed at the Department of Labor and Workforce Development, Division of Workers' Compensation, 1111 West 8th Street, Suite 305, Juneau, Alaska, 99811; telephone: (907) 465-2790.

The section heading of 8 AAC 45.092 is changed to read:

8 AAC 45.092. Second [SELECTION OF ^{AN} ~~A~~] independent medical evaluation [EXAMINER].

8 AAC 45.092(a) is amended to read:

(a) The board will maintain a list of physicians' names for second independent medical evaluations. The names will be listed in categories based on the physician's designation of [HIS OR HER] specialty or particular type of practice and the geographic location of the physician's practice. [A COPY OF THE LIST IS AVAILABLE UPON REQUEST FROM THE STATE OF ALASKA WORKERS' COMPENSATION DIVISION, P.O. BOX 25512, JUNEAU, ALASKA 99802-5512.]

8 AAC 45.092(b)(2) is amended to read:

Not later than (2) By December 15 of each year, the board will publish a bulletin [FOR THE WORKERS' COMPENSATION MANUAL, PUBLISHED BY THE DEPARTMENT,] listing the names of the physicians recommended by the Alaska Chiropractic Society, the Alaska Dental Society, the Alaska Optometric Society, and the Alaska State Medical Association as well as the names of second independent medical examiners [WHOSE TERMS OF APPOINTMENT WILL EXPIRE IN THE FOLLOWING YEAR. A COPY OF THE BULLETIN IS AVAILABLE UPON REQUEST FROM THE STATE OF ALASKA WORKERS' COMPENSATION DIVISION, P.O. BOX 25512, JUNEAU, ALASKA 99802-5512.]

8 AAC 45.092(b)(3) is amended to read:

(3) An attorney who meets the following criteria may, not later than by March 1 of each year, submit a letter to the commissioner volunteering to serve on a panel to select physicians for inclusion on the board's list as described in (5) of this subsection. The attorney must

(A) be admitted to the practice of law in this or another state;
(B) have personally presented a total of three [FIVE] cases, no more than one [TWO] of which was were resolved by agreed settlements, for board decision during the calendar year preceding volunteering to serve on a panel; and

(C) in the calendar year preceding volunteering, have represented one class of litigants, either employee or employer, 90 percent of the time; based on the class

of litigant that was represented 90 percent of the time, the commissioner will classify the attorney as either an employee or employer attorney.

8 AAC 45.092(b)(6) is amended to read:

(6) If the physician complies with (5) of this subsection, the physician's name will be added to the board's list of **second** independent medical examiners, effective November 1 of that year. Except as provided in (7) of this subsection and (c) of this section, the physician's name will remain on the list for three years. After three years, the physician must be reselected in accordance with (5) of this subsection. If reselected, the physician will remain on the list unless

(A) three members of the panel described in (4) of this subsection recommend that the physician be removed from the list and the department determines that the removal of the physician is not inconsistent with this chapter; or

(B) the physician is removed from the list under (7) of this subsection or
(c) of this section.

8 AAC 45.092(e) is amended to read:

(e) If the parties stipulate that a physician not on the board's list may perform an evaluation under AS 23.30.095(k), the board or its designee may select a physician in accordance with the parties' agreement. If the parties do not stipulate to a physician not on the board's list to perform the evaluation, the board or its designee will select a physician to serve as **a second**

[AN] independent medical examiner to perform the evaluation. The board or its designee will consider these factors in the following order in selecting the physician:

- (1) the nature and extent of the employee's injuries;
- (2) the physician's specialty and qualifications;
- (3) whether the physician or an associate has previously examined or treated the employee;
- (4) the physician's experience in treating injured workers in this state or another state;
- (5) the physician's impartiality; and
- (6) the proximity of the physician to the employee's geographic location.

8 AAC 45.092(f) is amended to read:

(f) If the board or its designee determines that the list of **second** independent medical examiners does not include an impartial physician with the specialty, qualifications, and experience to examine the employee, the board or its designee will notify the employee and employer that a physician not named on the list will be selected to perform the examination. The notice will state the board's preferred physician's specialty to examine the employee. **Not later than** [WITHIN] 10 days after notice by the board or its designee, the employer and employee may each submit the names, addresses, and curriculum vitae of no more than three physicians. If both the employee and the employer recommend the same physician, that physician will be selected to perform the examination. If no names are recommended by the employer or employee

or if the employee and employer do not recommend the same physician, the board or its designee will select a physician, but the selection need not be from the recommendations by the employee or employer.

8 AAC 45.092(h) is amended to read:

(h) If the board requires an evaluation under AS 23.30.095(k), the board will, in its discretion, direct

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((Copies)))
(1) a party to make a copy [TWO COPIES] of all medical records, including medical providers' depositions, regarding the employee in the party's possession, put the copies in chronological order by date of treatment with the initial report on top, [AND THE MOST RECENT REPORT AT THE END,] number the records [COPIES] consecutively, and put the records [COPIES] in a binder [TWO SEPARATE BINDERS];

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(2) the party making the copies to serve the binder [TWO BINDERS] of medical records upon the opposing party together with an affidavit verifying that the binder contains [BINDERS CONTAIN] copies of all the medical reports relating to the employee in the party's possession;

after
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((is the [THE]))
(3) the party served with the binder [BINDERS] to review the copies of the medical records to determine if the binder contains [BINDERS CONTAIN] copies of all the employee's medical records in that party's possession. The party served with the binder [BINDERS] must file the binder [TWO BINDERS] with the board not later than [WITHIN] 10 days of receipt and, if the binder is [BINDERS ARE]

(A) complete, the party served with the **binder** [BINDERS] must file the **binder** [TWO SETS OF BINDERS] upon the board together with an affidavit verifying that the **binder contains** [BINDERS CONTAIN] copies of all the employee's medical records in the party's possession; or

(B) incomplete, the party served with the **binder** [BINDERS] must file the

binder [TWO BINDERS] upon the board together with **a supplemental binder** [TWO] **SUPPLEMENTAL** [BINDERS] with copies of the medical records in that party's possession that were missing from the **binder** [BINDERS] and an affidavit verifying that

the **binders contain** [BINDERS CONTAIN] copies of all medical records in the party's possession. The copies of the medical records in the supplemental **binder** [BINDERS]

must be placed in chronological order by date of treatment, **with the initial report on top**, and numbered consecutively. The party must also serve the party who prepared the

first **binder** [SET OF BINDERS] with a copy of the supplemental binder together with an affidavit verifying that the binder is identical to the supplemental **binder** [BINDERS] filed with the board;

(4) the party, who receives additional medical records after the **binder has** [TWO BINDERS HAVE] been prepared and filed with the board, to make [THREE] copies of the additional medical records, put the copies in **two** [THREE] separate binders in chronological

order by date of treatment, **with the initial report on top**, and number the copies consecutively.

The party must file **one binder** [TWO OF THE ADDITIONAL BINDERS] with the board **within** seven days after receiving the medical records. The party must serve **the other additional**

binder [ONE OF THE ADDITIONAL BINDERS] on the opposing party, together with an affidavit stating the binder is identical to the **binder** [BINDERS] filed with the board, **not later than** [WITHIN] seven days after receiving the medical records;

(5) that, **not later than** [WITHIN] 10 days after a party's filing of verification that the binders are complete, each party may submit to the board designee up to three questions per medical issue in dispute under AS 23.30.095(k), as identified by the parties, the board designee, or the board, as follows:

(A) if all parties are represented by counsel, the board designee shall submit to the physician all questions submitted by the parties in addition to and at the same time as the questions developed by the board designee;

(B) if any party is not represented by counsel, only questions developed by the board designee shall be submitted to the physician; however, the board designee may consider and include questions submitted by the parties;

(C) if any party objects to any questions submitted to the physician, that party shall file a petition with the board and serve all other parties **not later than** [WITHIN] 10 days after receipt of the questions; the objection must be preserved in the record for consideration by the board at a hearing on the merits of the claim, or, upon the petition of any party objecting to the questions, at the next available procedural hearing day; failure by a party to file and serve an objection does not result in waiver of that party's right to later argue the questions were improper, inadequate, or otherwise ineffective;

(D) any questions submitted for purposes of this paragraph must be prepared in accordance with 8 AAC 45.114(3) and (4).

8 AAC 45.092(i) is amended to read:

(i) The report of the physician who is serving as **a second** [AN] independent medical examiner must be done **not later than** [WITHIN] 14 days after the evaluation ends. The evaluation ends when the physician reviews the medical records provided by the board, receives the results of all consultations and tests, and examines the injured worker, if that is necessary. The board will presume the evaluation ended after the injured worker was examined. If the evaluation ended at a later date, the physician must state in the report the date the evaluation was done. An examiner's report must be received by the board **not later than** [WITHIN] 21 days after the evaluation ended. If an examiner's report is not timely received by the board, a party may file a petition asking that another physician be selected to serve as **a second** [AN] independent medical examiner. The board or its designee ^{*may*} ~~will, in its discretion,~~ ^{*select*} select another physician to serve as **a second** [AN] independent medical examiner, and will make the selection in accordance with this section. Until the parties receive the second independent medical examiner's written report, communications by and with the second independent medical examiner are limited, as follows:

(1) a party or a party's representative and the examiner may communicate as needed to schedule or change the scheduling of the examination;

Register 221, April 2017 LABOR AND WORKFORCE DEV.

(2) the employee and the examiner may communicate as necessary to complete the examination;

(3) the examiner's communications with a physician who has examined, treated, or evaluated the employee must be in writing, and a copy of the written communication must be sent to the board and the parties; the examiner must request the physician report in writing and request that the physician not communicate in any other manner with the examiner about the employee's condition, treatment or claim.

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(Eff. 7/1/88, Register 107; am 10/28/88, Register 108; am 3/16/90, Register 113; am 7/20/97, Register 143; am 7/2/98, Register 146; am 2/27/2000, Register 153; am 3/13/2004, Register 169; am 2/28/2010, Register 193; am 4/1/2017, Register 221)

Authority: AS 23.30.005 AS 23.30.095 AS 23.30.110

Editor's note: A copy of the bulletin listing the physicians' names and recommendations is available upon request from the Department of Labor and Workforce Development, Division of Workers' Compensation, P.O. Box 115512, Juneau, Alaska 99811-5512.

8 AAC 45.114(3) is amended to read:

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0.5" tab //*

(3) be on 8 1/2 by 11-inch paper of at least 16-pound weight, have margins of at least one inch on all sides, exclusive of headers and page numbers, and have spacing of not less than one and one-half lines, except that quotations may be single-spaced and indented; **and**

Register 221, April 2017 LABOR AND WORKFORCE DEV.

8 AAC 45.114(4) is amended to read:

one more 0.5" tab))) (4) display the text in clear and legible hand printing or writing in black or blue ink or in black typeface equivalent in size to at least 12 point Courier or 13 point Times New Roman or New Century Schoolbook, [; AND]

8 AAC 45.114(5) is repealed:

all cases where 0.5" tab))) (5) repealed 4/1/2017. (Eff. 3/16/90, Register 113; am 7/20/97, Register 143; am 4/1/2017, Register 221)

Authority: AS 23.30.005 AS 23.30.135

8 AAC 45.175 is repealed:

8 AAC 45.175. Failure to insure: issuance of subpoena. Repealed. (Eff. 2/28/2010, Register 193; repealed 4/1/2017, Register 221)

8 AAC 45.186(a) is amended to read:

(a) In order to satisfy the notice provisions of **AS 23.30.205(e)** [AS 23.30.205(f)] an employer or carrier shall, no later than 100 weeks after receipt of knowledge of the injury or death, file form 07-6110 with the board and serve a copy of the form upon all interested parties in accordance with 8 AAC 45.060.

8 AAC 45.186(c) is amended to read:

(c) For the purposes of AS 23.30.205, it is conclusively presumed that the conditions listed in AS 23.30.205(f)(1) [AS 23.30.205(d)(1)] constitute a hindrance to employment or an obstacle to obtaining employment or reemployment.

(Eff. 5/28/83, Register 86; am 7/20/97, Register 143; am 7/2/98, Register 146; am 4/1/2017,

Register 221)

Authority: AS 23.30.005 AS 23.30.205

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8 AAC 45.186(d) is amended to read:

(d) Notice under AS 23.30.205(d) and (e) [AS 23.30.205(e) AND (f)] must be sent to the administrator of the second injury fund.

8 AAC 45.186(e) is amended to read:

(((bold/underline)))

(e) In order to satisfy the 200-week rating requirement of AS 23.30.205(f)(2) [AS 23.30.205(d)(2)], a condition must qualify for an award of compensation under AS 23.30.190(a) that, if paid every two weeks at the employee's temporary total disability compensation rate computed under AS 23.30.185 and 23.30.220 [AS 23.30.220] instead of in a single lump sum, would be paid for 200 weeks or more. A disabling condition or impairment does not automatically satisfy AS 23.30.205(f)(2) [AS 23.30.205(d)(2)] merely because it is permanent in quality.

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MEMORANDUM


State of Alaska Department of Law

To: Hon. Byron Mallott
Lieutenant Governor

Date: February 15, 2017

File No.: JU2016200978

Tel. No.: 465-3600

From: Steven C. Weaver 
Sr. Assistant Attorney General
and Assistant Regulations Attorney
Legislation and Regulations Section

Re: Alaska Workers' Compensation Board
and Department of Labor and
Workforce Development update to
regulations re: discovery, medical
payments to injured employees,
second independent medical
examinations (SIMEs), related
records, and technical conforming
changes to reflect the rearrangement
of AS 23.30.205 (8 AAC 45.054(e);
8 AAC 45.083(a), (m); 8 AAC 45.092;
8 AAC 45.114; 8 AAC 45.175;
8 AAC 45.186)

We have reviewed the attached regulations from the Alaska Workers' Compensation Board and the Department of Labor and Workforce Development against the statutory standards of the Administrative Procedure Act. I have reviewed this project under a specific delegation dated February 15, 2017 from the Regulations Attorney. The regulations update the requirements regarding discovery, medical payments to injured employees, second independent medical examinations (SIMEs), and related records, and make technical conforming changes to reflect the rearrangement of AS 23.30.205.

We find no legal problems. This memorandum constitutes the written statement of approval under AS 44.62.060(b) and (c) that authorizes your office to file the attached regulations. We note that the Department of Labor and Workforce Development adoption order and the Alaska Workers' Compensation Board certification of adoption order both set a special effective date of April 1, 2017 for these regulations.

The December 5, 2016 public notice, the January 19, 2017 certification of adoption order from the Alaska Workers' Compensation Board, and the January 23, 2017 adoption order from the Department of Labor and Workforce Development all state that this action is not expected to require an increased appropriation. Therefore, a fiscal note under AS 44.62.195 is not required.

Hon. Byron Mallott, Lieutenant Governor
Our file: JU2016200978

February 15, 2017
Page 2

We have made some technical corrections to the regulations, in accordance with AS 44.62.125 and as shown on the attached copy.

SCW

cc w/enc: (via email)

Hon. Heidi Drygas, Commissioner
Department of Labor and Workforce Development

Debbie Banaszak, Special Assistant and Regulations Contact
Department of Labor and Workforce Development

Marie Y. Marx, Director
Division of Workers' Compensation
Department of Labor and Workforce Development

Kimber D. Rodgers, Assistant Attorney General
Labor and State Affairs Section

MEMORANDUM

State of Alaska Department of Law

TO: Hon. Byron Mallott
Lieutenant Governor

DATE: February 15, 2017

FILE NO.: JU2016200978

TELEPHONE NO.: 465-3600

FROM: Susan R. Pollard *SRP*
Chief Assistant Attorney General
and Regulations Attorney
Legislation/Regulations Section

SUBJECT: Specific delegation of authority regarding regulations review on Alaska Workers' Compensation Board and Department of Labor and Workforce Development regulations re: discovery, medical payments to injured employees, second independent medical examinations (SIMEs), related records, and technical conforming changes to reflect the rearrangement of AS 23.30.205 (8 AAC 45.054(e); 8 AAC 45.083(a), (m); 8 AAC 45.092; 8 AAC 45.114; 8 AAC 45.175; 8 AAC 45.186)

By this memorandum, I am delegating my authority as Regulations Attorney under AS 44.62 to Assistant Attorney General Steven C. Weaver for the above-referenced regulations project. Under this delegation of authority, Steven Weaver has my full authority under AS 44.62 to conduct the legal review under AS 44.62 and take necessary actions on this regulations project.

If you have questions, please let me know.

SCW

cc w/enc:

Scott C. Meriwether, AAC Coordinator
Office of the Lieutenant Governor

Steven C. Weaver
Sr. Assistant Attorney General and Assistant Regulations Attorney
Legislation/Regulations Section

NOTICE OF PROPOSED CHANGES RELATING TO FEES FOR MEDICAL TREATMENT AND SERVICES, SECOND INDEPENDENT MEDICAL EVALUATION PROCEDURES, THE SECOND INJURY FUND, HEARING BRIEFS, DISCOVERY, AND SUBPOENAS IN THE REGULATIONS OF THE ALASKA DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT AND THE ALASKA WORKERS' COMPENSATION BOARD

BRIEF DESCRIPTION

The Alaska Department of Labor and Workforce Development and the Alaska Workers' Compensation Board propose to change regulations relating to fees for medical treatment and services, second independent medical evaluation procedures, the Second Injury Fund, hearing briefs, discovery, and subpoenas.

The Alaska Department of Labor and Workforce Development and the Alaska Workers' Compensation Board propose to adopt regulation changes in Title 8 of the Alaska Administrative Code, dealing with fees for medical treatment and services, second independent medical evaluation procedures, the Second Injury Fund, hearing briefs, discovery, and subpoenas, including the following:

- (1) 8 AAC 45.054 is proposed to be amended and 8 AAC 45.175 is proposed to be repealed: Change the procedures for discovery, including subpoenas, in cases involving an employer's failure to insure for workers' compensation liability.
- (2) 8 AAC 45.083 is proposed to be changed as follows: Amend to update and clarify the medical fee schedule for treatment and services provided to injured workers.
- (3) 8 AAC 45.092 is proposed to be changed as follows: Amend procedures relating to the second independent medical evaluation process.
- (4) 8 AAC 45.114 is proposed to be amended and 8 AAC 45.114(5) is proposed to be repealed: Eliminate the requirement of filing extra copies of legal memoranda in light of the move to electronic filing.
- (5) 8 AAC 45.186 is proposed to be changed as follows: Amend the regulation to reference the correct subsections of the second injury fund statute.

You may comment on the proposed regulation changes, including the potential costs to private persons of complying with the proposed changes, by submitting written comments to the Department of Labor and Workforce Development, Division of Workers' Compensation at P.O. Box 115512, Juneau, AK 99811-5512. Additionally, the Department of Labor and Workforce Development, Division of Workers' Compensation, will accept comments by facsimile at (907) 465-2797 and by electronic mail at Marie.Marx@alaska.gov. Comments may also be submitted through the Alaska Online Public Notice System, by accessing this notice on the system and using the comment link. The comments must be received not later than 5:00 p.m. on January 5, 2017.

Oral or written comments also may be submitted at a hearing to be held on January 12, 2017, in Room 208, 3301 Eagle St., Anchorage, Alaska 99503. Public comment will be heard from 10:15 a.m. to 11:15 a.m., and might be extended to accommodate those present before 10:15 a.m. who did not have an opportunity to comment.

You may submit written questions relevant to the proposed action to the Department of Labor and Workforce Development, Division of Workers' Compensation at P.O. Box 115512, Juneau, AK 99811-5512. The questions must be received at least 10 days before the end of the public comment period. The Department of Labor and Workforce Development, Division of Workers' Compensation will aggregate its response to substantially similar questions and make the questions and responses available on the Alaska Online Public Notice System and the Division of Workers' Compensation's website.

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact Alexis Hildebrand at (907) 465-6059 not later than December 22, 2016, to ensure that any necessary accommodations can be provided.

A copy of the proposed regulation changes and the material proposed for adoption by reference is available on the Alaska Online Public Notice System and by contacting Marie Marx at Marie.Marx@alaska.gov and (907) 465-2790.

After the public comment period ends, the Department of Labor and Workforce Development and the Alaska Workers' Compensation Board will either adopt the proposed regulation changes or other provisions dealing with the same subject, without further notice, or decide to take no action. The language of the final regulation may be different from that of the proposed regulation. You should comment during the time allowed if your interests could be affected.


Statutory authority: AS 23.30.005; AS 23.30.097; AS 23.30.098.

Statutes being implemented, interpreted, or made specific: AS 23.30.080; AS 23.30.095; AS 23.30.097; AS 23.30.098; AS 23.30.108; AS 23.30.110; AS 23.30.115; AS 23.30.135; AS 23.30.205.

Fiscal information: The proposed regulation changes are not expected to require an increased appropriation.

Date:

12/1/16



Heidi Drygas, Commissioner
Department of Labor and Workforce Development

ADDITIONAL REGULATION NOTICE INFORMATION

(AS 44.62.190(d))

1. Adopting agency: Department of Labor and Workforce Development and Alaska Workers' Compensation Board
2. General subject of regulation: Fees for medical treatment and services, second independent medical evaluation procedures, the Second Injury Fund, hearing briefs, discovery, and subpoenas
3. Citation of regulation (may be grouped): 8 AAC 45.083, 8 AAC 45.092, 8 AAC 45.186, 8 AAC 45.175, 8 AAC 45.114, and 8 AAC 45.054
4. Department of Law file number, if any: JU2016200978
5. Reason for the proposed action:

Streamline process and increase efficiencies. Compliance with state statute relating to medical fee schedules.
6. Appropriation/Allocation: Workers' Compensation - #344.
7. Estimated annual cost to comply with the proposed action to:

A private person: The Department and the Board anticipate that complying with the regulations will not increase costs to private persons. The proposed medical fee schedules are anticipated to lower payments made to healthcare providers who treat workers' compensation claimants. If medical costs decrease, it is anticipated that will help reduce workers' compensation insurance premium rates paid by employers.

Another state agency: The Department and the Board anticipate that complying with the regulations will not increase costs to other State agencies. The State of Alaska is self-insured for workers' compensation. Lower workers' compensation medical costs will benefit the State of Alaska as an employer.

A municipality: The Department and the Board anticipate that complying with the regulations will not increase costs to municipalities. As employers, lower workers' compensation medical costs will benefit municipalities.

8. Cost of implementation to the state agency and available funding (in thousands of dollars): No costs are expected in FY 2017 or in subsequent years.

9. The name of the contact person for the regulation:

Marie Marx
Director
Division of Workers' Compensation
Department of Labor and Workforce Development
1111 W. 8th, Suite 305
Juneau, AK 99811
Telephone: (907) 465-2790
E-mail: Marie.Marx@alaska.gov

10. The origin of the proposed action:

Staff of state agency

11. Date: November 29, 2016 Prepared by: 

Name (printed): Marie Marx

Title (printed): Director

Telephone: (907) 465-2790

AFFIDAVIT OF NOTICE OF PROPOSED REGULATION
AND FURNISHING OF ADDITIONAL INFORMATION

I, Debbie Banaszak, Legislative Liaison, of the Department of Labor and Workforce Development, being sworn, state the following:

As required by AS 44.62.190, notice of the proposed adoption of changes to 8 AAC 45.083, 8 AAC 45.092, 8 AAC 45.186, 8 AAC 45.175, 8 AAC 45.114, 8 AAC 45.054 relating to fees for medical treatment and services, second independent medical evaluation procedures, the Second Injury Fund, hearing briefs, discovery, and subpoenas has been given by being:

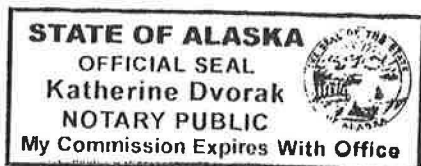
- (1) published in a newspaper or trade publication;
- (2) furnished to interested persons;
- (3) furnished to appropriate state officials;
- (4) furnished to the Department of Law, along with a copy of the proposed regulation;
- (5) furnished electronically to incumbent State of Alaska legislators;
- (6) furnished to the Legislative Affairs Agency, Division of Legal and Research Services;
- (7) posted on the Alaska Online Public Notice System as required by AS 44.62.175(a)(1) and (b) and 44.62.190(a)(1);
- (8) furnished electronically, along with a copy of the proposed regulation, to the Legislative Affairs Agency, the chair of the Labor and Commerce Committee of the Alaska Senate and House of Representatives, the Administrative Regulation Review Committee, and the legislative council.

As required by AS 44.62.190, additional regulation notice information regarding the proposed adoption of the regulation changes described above has been furnished to interested persons and those in (5) and (6) of the list above. The additional regulation notice information also has been posted on the Alaska Online Public Notice System.

Date: 12/8/2016

Debbie Banaszak
Debbie Banaszak, Legislative Liaison

Subscribed and sworn to before me at DLWD - Commissioner on 12.8.16



K. Dvorak
Notary Public in and for the State of Alaska

AFFIDAVIT OF ORAL HEARING

I, Marie Marx, Director of the Alaska Department of Labor and Workforce Development Division of Workers' Compensation, being sworn, state the following:

On January 12, 2017, at 10:15am, in Room 208, 3301 Eagle Street, Anchorage, Alaska, I presided over a public hearing held under AS 44.62.210 for the purpose of taking testimony in connection with the adoption of changes to 8 AAC 45.083, 8 AAC 45.092, 8 AAC 45.186, 8 AAC 45.175, 8 AAC 45.114, and 8 AAC 45.054, dealing with fees for medical treatment and services, second independent medical evaluation procedures, the Second Injury Fund, hearing briefs, discovery, and subpoenas.

Date: 1/18/17

Marie Marx
Marie Marx, Director

Subscribed and sworn to before me at Juneau, Ak. on

1/18/2017
(date)



Susan Reishus-O'Brien

Notary Public in and for the State of Alaska

#150601001

exp. 6/1/19

AFFIDAVIT OF AGENCY RECORD OF PUBLIC COMMENT

I, Marie Marx, Director for the Alaska Department of Labor and Workforce Development Division of Workers' Compensation, being duly sworn, state the following:

In compliance with AS 44.62.215, the Alaska Department of Labor and Workforce Development has kept a record of its use or rejection of factual or other substantive information that was submitted in writing and orally as public comment and that was relevant to the accuracy, coverage, or other aspect of the Alaska Department of Labor and Workforce Development regulation on fees for medical treatment and services, second independent medical evaluation procedures, the Second Injury Fund, hearing briefs, discovery, and subpoenas.

Date: 11/18/17


Marie Marx, Director

Subscribed and sworn to before me at Juneau, Ak. on
11/18/2017
(date)

[NOTARY SEAL]



Susan Reishus O'Brien
Notary Public in and for the State of Alaska
#150601001
exp. 6/1/19

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AFFIDAVIT OF PUBLICATION

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THIRD JUDICIAL DISTRICT

Emma Dunlap
being first duly sworn on oath deposes and
says that he/she is a representative of the
Alaska Dispatch News, a daily newspaper.
That said newspaper has been approved
by the Third Judicial Court, Anchorage,
Alaska, and it now and has been published
in the English language continually as a
daily newspaper in Anchorage, Alaska, and
it is now and during all said time was
printed in an office maintained at the
aforesaid place of publication of said
newspaper. That the annexed is a copy of
an advertisement as it was published in
regular issues (and not in supplemental
form) of said newspaper on

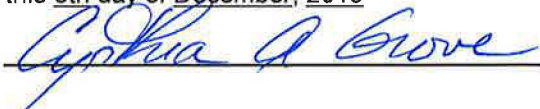
December 05, 2016

and that such newspaper was regularly
distributed to its subscribers during all of
said period. That the full amount of the fee
charged for the foregoing publication is not
in excess of the rate charged private
individuals.

Signed

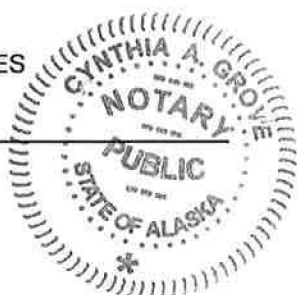


Subscribed and sworn to before me
this 6th day of December, 2016



Notary Public in and for
The State of Alaska.
Third Division
Anchorage, Alaska
MY COMMISSION EXPIRES

11/02/18



NOTICE OF PROPOSED CHANGES RELATING TO FEES FOR MEDICAL TREATMENT AND SERVICES, SECOND INDEPENDENT MEDICAL EVALUATION PROCEDURES, THE SECOND INJURY FUND, HEARING BRIEFS, DISCOVERY, AND SUBPOENAS IN THE REGULATIONS OF THE ALASKA DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT AND THE ALASKA WORKERS' COMPENSATION BOARD

BRIEF DESCRIPTION

The Alaska Department of Labor and Workforce Development and the Alaska Workers' Compensation Board propose to change regulations relating to fees for medical treatment and services, second independent medical evaluation procedures, the Second Injury Fund, hearing briefs, discovery, and subpoenas.

The Alaska Department of Labor and Workforce Development and the Alaska Workers' Compensation Board propose to adopt regulation changes in Title 8 of the Alaska Administrative Code, dealing with fees for medical treatment and services, second independent medical evaluation procedures, the Second Injury Fund, hearing briefs, discovery, and subpoenas, including the following:

- (1) 8 AAC 45.054 is proposed to be amended and 8 AAC 45.175 is proposed to be repealed: Change the procedures for discovery, including subpoenas, in cases involving an employer's failure to insure for workers' compensation liability.
- (2) 8 AAC 45.083 is proposed to be changed as follows: Amend to update and clarify the medical fee schedule for treatment and services provided to injured workers.
- (3) 8 AAC 45.092 is proposed to be changed as follows: Amend procedures relating to the second independent medical evaluation process.
- (4) 8 AAC 45.114 is proposed to be amended and 8 AAC 45.114(5) is proposed to be repealed: Eliminate the requirement of filing extra copies of legal memoranda in light of the move to electronic filing.
- (5) 8 AAC 45.186 is proposed to be changed as follows: Amend the regulation to reference the correct subsections of the second injury fund statute.

You may comment on the proposed regulation changes, including the potential costs to private persons of complying with the proposed changes, by submitting written comments to the Department of Labor and Workforce Development, Division of Workers' Compensation at P.O. Box 115512, Juneau, AK 99811-5512. Additionally, the Department of Labor and Workforce Development, Division of Workers' Compensation, will accept comments by facsimile at (907) 465-2797 and by electronic mail at Marie.Marx@alaska.gov. Comments may also be submitted through the Alaska Online Public Notice System, by accessing this notice on the system and using the comment link. The comments must be received not later than 5:00 p.m. on January 5, 2017.

Oral or written comments also may be submitted at a hearing to be held on January 12, 2017, in Room 208, 3301 Eagle St., Anchorage, Alaska 99503. Public comment will be heard from 10:15 a.m. to 11:15 a.m., and might be extended to accommodate those present before 10:15 a.m. who did not have an opportunity to comment.

You may submit written questions relevant to the proposed action to

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AFFIDAVIT OF BOARD ACTION

I, Marie Marx, Director of the Alaska Department of Labor and Workforce Development Division of Workers' Compensation, being duly sworn, state the following:

The attached motions dealing with fees for medical treatment and services, second independent medical evaluation procedures, the Second Injury Fund, hearing briefs, discovery, and subpoenas were passed by the Alaska Workers' Compensation Board during its January 12-13, 2017 meeting.

Date: 1/19/17

Marie Marx
Marie Marx, Director

Subscribed and sworn to before me at Juneau, Ak. on
1/19/17
(date)

[NOTARY SEAL]



Susan Reishus-O'Brien
Notary Public in and for the State of Alaska
exp. 6/11/19
#150601001

Alaska Workers' Compensation Board
January 12-13, 2017
Excerpt from Unapproved Minutes

Board member Chuck Collins moved and member Linda Hutchings seconded the following motion:

"I move to adopt discovery regulations at 8 AAC 45.054."

The motion carried unanimously.

Board member David Kester moved and member Mark Talbert seconded the following motion:

"I move to adopt fee schedule regulations at 8 AAC 45.083."

The motion carried unanimously.

Board member Robert Weel moved and member Brad Austin seconded the following motion:

"I move to adopt second independent medical evaluation regulations at 8 AAC 45.092."

The motion carried unanimously.

Board member Robert Weel moved and member Patricia Vollendorf seconded the following motion:

"I move to adopt hearing brief regulations at 8 AAC 45.114."

The motion carried unanimously.

Board member Chuck Collins moved and member Linda Hutchings seconded the following motion:

"I move to repeal subpoena regulations at 8 AAC 45.175."

The motion carried unanimously.

Board member Robert Weel moved and member Chuck Collins seconded the following motion:

"I move to adopt Second Injury Fund regulations at 8 AAC 45.186."

The motion carried unanimously.