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**OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA**

MEMORANDUM

TO: Debbie Banaszak
Department of Labor & Workforce Development

FROM: Scott Meriwether, Office of the Lieutenant Governor 
465.4081

DATE: June 27, 2017

RE: Filed Permanent Regulations: Workers' Compensation Board and Department of Labor and Workforce Development

Alaska Workers' Compensation Board and Department of Labor and Workforce Development update to regulations re: second independent medical evaluations (SIMEs) and the definition of "previously rehabilitated" under AS 23.30.041(f)(3) (8 AAC 45.092(b)(5); 8 AAC 45.900(j))

| | |
|------------------------|-------------------|
| Attorney General File: | JU2017200159 |
| Regulation Filed: | 6/27/2017 |
| Effective Date: | 7/27/2017 |
| Print: | 223, October 2017 |

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

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

The attached 3 pages of regulations, dealing with second independent medical evaluation procedures and the definition of previously rehabilitated 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 described in this order take effect on the 30th day after they have been filed by the lieutenant governor, as provided in AS 44.62.180.


Date: 5/17/17



Heidi Drygas, Commissioner

FILING CERTIFICATION

I, Byron Mallott, Lieutenant Governor for the State of Alaska, certify that on June 27, 2017, at 1051h a.m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.



Lieutenant Governor

Effective: July 27, 2017

Register: 223, October 2017

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

The attached 3 pages of regulations, dealing second independent medical evaluation procedures and the definition of previously rehabilitated are certified to be a correct copy of the regulation changes that the Alaska Workers' Compensation Board adopted at its May 11-12, 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 the 30th day after they have been filed by the lieutenant governor, as provided in AS 44.62.180.

Date: 5/15/17


Marie Marx, Director

FILING CERTIFICATION

I, Byron Mallott, Lieutenant Governor for the State of Alaska, certify that on June 27, 2017 at 1055 A.m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.


Lieutenant Governor

Effective: July 27, 2017

Register: 223, October 2017

Register 223, October 2017 LABOR AND WORKFORCE DEV.

8 AAC 45.092(b)(5) is amended to read:

Throughout: "Margins should be left justified, not full justified"

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(5) The panel members shall vote, or abstain from voting, upon the physicians whose names were listed in the bulletin published under (2) of this subsection or are suggested by a panel member, even if the physician's name did not appear in the bulletin. A physician who receives three affirmative votes will be sent by the board or its designee an application and a letter asking if the physician is interested in performing second independent medical examinations. Unless the board determines that good cause exists to extend the time, **not**

later than [WITHIN] 60 days after the date of the board's letter the physician must submit

one less 0.5" tab

(A) a completed application listing the physician's education, training, work experience, specialty, and the particular discipline in which the physician is licensed, as well as the names and addresses of professional organizations that have certified the physician or in which the physician is an active member;

one less 0.5" tab

(B) a copy [OF] or proof of the physician's current license from the appropriate licensing agency in the state in which the physician practices;

one less 0.5" tab

(C) a certificate of insurance for the physician's current and enforceable professional liability insurance for the services performed; [THE CERTIFICATE OF INSURANCE MUST PROVIDE FOR 30-DAY PRIOR NOTICE TO THE BOARD OF CANCELLATION, NONRENEWAL, OR MATERIAL CHANGE OF THE POLICY;] and

one less 0.5" tab

(D) a certificate of insurance for the physician's workers' compensation insurance if the physician has employees [; THE CERTIFICATE OF

INSURANCE MUST PROVIDE FOR 30-DAY PRIOR NOTICE TO THE BOARD OF
CANCELLATION, NONRENEWAL, OR MATERIAL CHANGE OF THE POLICY].

(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; am 7/27/2017, Register 223)

Authority: AS 23.30.005 AS 23.30.095 AS 23.30.110

8 AAC 45.900(j) is amended to read:

(j) For an injury occurring after December 22, 2011 "previously
rehabilitated" under AS 23.30.041(f)(3) means having

(1) completed a reemployment benefits plan under AS 23.30.041 or a

substantially similar law in another jurisdiction; or

(2) stipulated to eligibility, had an eligibility request approved or had an
eligibility evaluation ordered under AS 23.30.041(c) and waived reemployment benefits under
AS 23.30.041(q), 23.30.012 [AS 23.30.012], or a substantially similar law in another

jurisdiction. (Eff. 5/28/83, Register 86; am 12/14/86, Register 100; am 7/1/88, Register 107; am
3/16/90, Register 113; am 7/20/97, Register 143; am 7/2/98, Register 146; am 4/16/2010,
Register 194; am 12/22/2011, Register 200; am 12/1/2015, Register 216; am 7/27/2017,
Register 223)

Authority: AS 23.30.005 AS 23.30.097 AS 23.30.230

AS 23.30.030 AS 23.30.175 AS 23.30.240

Register 223, October 2017 LABOR AND WORKFORCE DEV.

AS 23.30.041

AS 23.30.220

AS 23.30.395

AS 23.30.090

MEMORANDUM


State of Alaska Department of Law

To: Hon. Byron Mallott
Lieutenant Governor

Date: June 26, 2017

File No.: JU2017200159

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: second independent
medical evaluations (SIMEs) and the
definition of "previously rehabilitated"
under AS 23.30.041(f)(3) (8 AAC
45.092(b)(5); 8 AAC 45.900(j))

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 June 26, 2017 from the Regulations Attorney. The regulations update the requirements regarding second independent medical examinations (SIMEs) and clarify the definition of "previously rehabilitated" under AS 23.30.041(f)(3).

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.

The March 31, 2017 public notice, the May 15, 2017 certification of adoption order from the Alaska Workers' Compensation Board, and the May 17, 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: JU2017200159

June 26, 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. Included in these edits is a technical edit to 8 AAC 45.900(j) to replace "the effective date of this subsection" with "December 22, 2011": the date that 8 AAC 45.900(j) first took effect. Under AS 44.62.180, the amendments to 8 AAC 45.900(j) adopted in this project will take effect 30 days after filing.

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: June 26, 2017

FILE NO.: JU2017200159

TELEPHONE NO.: (907) 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
update to regulations re: second
independent medical evaluations
(SIMEs) and the definition of
"previously rehabilitated" under
AS 23.30.041(f)(3) (8 AAC
45.092(b)(5); 8 AAC 45.900(j))

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—Juneau

NOTICE OF PROPOSED CHANGES RELATING TO SECOND INDEPENDENT MEDICAL
EVALUATION PROCEDURES AND THE DEFINITION OF PREVIOUSLY
REHABILITATED 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 second independent medical evaluation procedures and the definition of previously rehabilitated.

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 second independent medical evaluation procedures and the definition of previously rehabilitated, including the following:

- (1) 8 AAC 45.092 is proposed to be changed as follows: Amend procedures relating to the second independent medical evaluation process.
- (2) 8 AAC 45.900(j) is proposed to be changed as follows: Amend the definition of previously rehabilitated.

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 p.m. on May 4, 2017.

Oral or written comments also may be submitted at a hearing to be held on May 11, 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 Marie Marx at (907) 465-2790 not later than April 20, 2017, to ensure that any necessary accommodations can be provided.

A copy of the proposed regulation changes 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

Statutes being implemented, interpreted, or made specific: AS 23.30.041; AS 23.30.095; AS 23.30.110.

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

Date: _____

3/29/17



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: Second independent medical evaluation procedures and definition of previously rehabilitated.
3. Citation of regulation (may be grouped): 8 AAC 45.092, 8 AAC 45.900(j).
4. Department of Law file number, if any: JU2017200159
5. Reason for the proposed action: Streamline process and increase efficiencies.
6. Appropriation/Allocation: Workers' Compensation - #344.
7. Estimated annual cost to comply with the proposed action to:

A private person: The Department anticipates that complying with the regulations will not increase costs to private persons.

Another state agency: The Department anticipates that complying with the regulations will not increase costs to other State agencies.

A municipality: The Department anticipates that complying with the regulations will not increase costs to 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: March 28, 2017

Prepared by: Marie Marx

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 45.092 and 8 AAC 45.900(j), to change regulations relating to second independent medical evaluations procedures and the definition of previously rehabilitated 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.

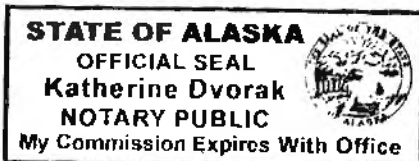
As required by AS 44.62.190, additional regulation notice information regarding the proposed adoption of the regulation changes described above has been furnished to interested persons and those in (5) and (6) of the list above. The additional regulation notice information also has been posted on the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

Date: 4/25/2017

Debbie Banaszak
Debbie Banaszak

Subscribed and sworn to before me at DOLWD - Commissioners Office on 4.25.17

[Signature]
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 May 11, 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 45.092 and 8 AAC 45.900(j), dealing with second independent medical evaluation procedures and the definition of previously rehabilitated.

Date: 5/15/17

Marie Marx
Marie Marx, Director

Subscribed and sworn to before me at 1st Judicial Dist. Juneau, AK on
5/15/17
(date)

[NOTARY SEAL]



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

AFFIDAVIT OF AGENCY RECORD OF PUBLIC COMMENT

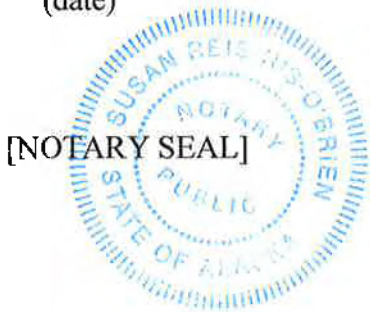
I, Marie Marx, Director for the Alaska Department of Labor and Workforce Development Division of Workers' Compensation, being duly sworn, state the following:

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 second independent medical evaluation procedures and the definition of previously rehabilitated.

Date: 5/15/17

Marie Marx
Marie Marx, Director

Subscribed and sworn to before me at 15th Judicial Dist. Juneau, Alaska
5/15/17
(date)



Susan Reishus-O'Brien
Notary Public in and for the State of Alaska

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#150601001

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AFFIDAVIT OF PUBLICATION

STATE OF ALASKA
THIRD JUDICIAL DISTRICT

Emma Dunlap
being first duly sworn on oath
deposes and says that 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

March 31, 2017

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

Emma Dunlap

Subscribed and sworn to before

me this

5 day of April

20

17
Britney Thompson

Notary Public in and for

The State of Alaska.

Third Division

Anchorage, Alaska

MY COMMISSION EXPIRES

2/23/2019
Notary Public
BRITNEY L. THOMPSON
State of Alaska
My Commission Expires Feb 23, 2019

NOTICE OF PROPOSED CHANGES RELATING TO SECOND INDEPENDENT MEDICAL EVALUATION PROCEDURES AND THE DEFINITION OF PREVIOUSLY REHABILITATED IN THE REGULATIONS OF THE ALASKA DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT AND THE ALASKA WORKERS' COMPENSATION BOARD

BRIEF DESCRIPTION

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Oral or written comments also may be submitted at a hearing to be held on May 11, 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.

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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

Statutes being implemented, interpreted, or made specific: AS 23.30.041; AS 23.30.095; AS 23.30.110.

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

Date: 3/29/17

Heidi Drygas, Commissioner
Department of Labor and Workforce Development

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 second independent medical evaluation procedures and the
definition of previously rehabilitated were passed by the Alaska Workers' Compensation Board
during its May 11-12, 2017 meeting.

Date: 5/15/17

Marie Marx
Marie Marx, Director

Subscribed and sworn to before me at 1st Judicial Dist. Juneau on at
5/15/17
(date)



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

Alaska Workers' Compensation Board
May 11-12, 2017
Excerpt from Unapproved Minutes

Board member Chuck Collins moved and member Brad Austin seconded the following motion:

“I move to adopt second independent medical evaluation procedures regulations at 8 AAC 45.092.”

The motion carried unanimously.

Board member Linda Murphy moved and member Lake Williams seconded the following motion:

“I move to adopt the definition of previously rehabilitated regulations at 8 AAC 45.900(j).”

The motion carried unanimously.