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Lieutenant Governor
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**OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA**

M E M O R A N D U M

TO: Becky Weimer
Department of Labor and Workforce Development

FROM: April Simpson, Office of the Lieutenant Governor 
465.4081

DATE: April 12, 2019

RE: Filed Permanent Regulations: Alaska Workers' Compensation Board

Alaska Workers' Compensation Board and Department of Labor and Workforce Development regulations re: fees for provisions of medical services, electronic filing, agency forms, hearings, filing notices, second independent medical evaluations, case files, reporting compensation, controversion notices, and employee status (8 AAC 45.020(d); 8 AAC 45.025(c); 8 AAC 45.060(b); 8 AAC 45.070; 8 AAC 45.083(m); 8 AAC 45.085; 8 AAC 45.092; 8 AAC 45.110; 8 AAC 45.134(c); 8 AAC 45.182(a); 8 AAC 45.890)

Attorney General File:	2018200987
Regulation Filed:	4/12/2019
Effective Date:	5/12/2019
Print:	230, July 2019

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 12 pages of regulations, dealing with electronic filing, agency forms, hearings, material adopted by reference, filing notices, second independent medical evaluations, case files, reporting compensation, controversion notices, and employee status, are certified to be a correct copy of the regulation changes that the Alaska Workers' Compensation Board adopted at its January 24-25, 2019 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: 2/15/19



Alexis Newman, Administrative Officer II

FILING CERTIFICATION

I, Kevin Meyer, Lieutenant Governor for the State of Alaska, certify that on

April 12, 2019 at 11:00 A.m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.



Lieutenant Governor

Effective: May 12, 2019.

Register: 230, July 2019.

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

The attached 12 pages of regulations, dealing with electronic filing, agency forms, hearings, material adopted by reference, filing notices, second independent medical evaluations, case files, reporting compensation, controversion notices, and employee status, 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 the 30th day after they have been filed by the lieutenant governor, as provided in AS 44.62.180.

Date:

4-4-19



Dr. Tamika L. Ledbetter, Commissioner

FILING CERTIFICATION

I, Kevin Meyer, Lieutenant Governor for the State of Alaska, certify that on

April 12, _____, 20 19, at 11 A m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.



Lieutenant Governor

Effective:

May 12, 2019.

Register:

230, July 2019.

Register 230, July 2019 LABOR AND WORKFORCE DEV.

8 AAC 45.020(d) is amended to read:

(d) Papers and documents filed by facsimile transmission or by electronic mail must be in compliance with **the following:** [DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT COMMISSIONER'S ORDER NO. 001, DATED APRIL 23, 2015.]

(1) a party may file a document by electronic mail with the division or the board by ^(sending) emailing the document, as an attachment, to the division's electronic mail address or by facsimile transmission, except that a party may file a reemployment benefits administrator document by electronic mail with the reemployment benefits administrator by ^(sending) emailing the document, as an attachment, to the administrator's electronic mail address or by facsimile transmission.

(2) a document

(A) sent by facsimile transmission to the division, board, or administrator may not exceed 50 pages;

(B) electronically mailed to the division, board, or administrator in an email submission may not exceed 10 MB; megabytes (MB);

(C) electronically mailed ~~to the~~ to the division, board, or administrator for filing must be sent as attachments in .pdf format.

(3) The filing party must attach proof of service as required by 8 AAC 45.060 by including it on, or attaching it to, the filed document.

(4) filing of a document by

(A) facsimile transmission is considered complete upon receipt of the entire document by the division's facsimile machine;

(B) electronic mail with the division or the board is considered complete upon receipt of the entire document at the division's electronic mail address;

(C) electronic mail with the administrator is considered complete upon receipt of the entire document at the administrator's electronic mail address;

(5) a document is considered filed upon receipt unless received on a Saturday, Sunday, a day the board is closed due to a state-recognized closure, or after 5:00 PM Alaska time. If the document is filed on a Saturday, Sunday, a state-recognized closure, or after 5:00 PM Alaska time, the filing date will be the next working day.

(Handwritten notes: "P.M." circled, "lowercase" with arrow, "a day the board is closed due to" circled)

(6) the division, the board, and the administrator are not responsible for verifying that documents filed electronically are received correctly, i.e., that all pages were transmitted, that the document is legible, etc. The division and the board are not responsible for technological problems that may occur as a party tries to transmit documents electronically. Electronic mail that is identified as having a virus will be deleted immediately, the filing party will be informed by the division, and a document attached to the electronic mail will be considered rejected.

(Handwritten notes: "or that receipt was correct in any other respect; the" circled, "is and the administrator" circled, "lowercase" with arrow)

(7) original documents of all electronically filed pleadings must be kept by the party to resolve questions pertaining to authenticity. No follow-up originals may be

(Handwritten note: "not" circled)

filed, electronically or otherwise, unless specifically ordered by the board, division, or administrator.

(8) a party filing documents by electronic mail must include in the subject line of the transmitting message email

(A) the division's case number for the attached documents; and

(B) a brief description of the documents to be filed.

(9) a party filing documents by facsimile must include a cover sheet with the division's case number and identify the documents to be filed.

(10) The party may not provide extraneous narrative or explanation in the body of the transmitting electronic mail message or on the facsimile cover sheet. Information in the electronic mail message or on the facsimile cover sheet is limited to the case name, case number, title of the document or documents that are attached for filing, and the number of pages to be filed.

(11) permission to deviate from this process may only be granted for good cause by order of the designee assigned to the case.

(12) failure to adhere to this process may result in rejection of the submitted documents. (In effect before 7/28/59; am 5/28/83, Register 86; am 4/9/2016, Register 218; am

5/12/2019, Register 230)

Authority: [AS 23.05.055] AS 23.30.005

« Publisher: Delete first sentence of editor's note that follows 8 AAC 45.020; retain the remainder of the editor's note. »

8 AAC 45.025(c) is amended to read:

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← (c) A list or form referred to in this chapter may be obtained by writing to the State of Alaska, Workers' Compensation Division, P.O. Box 115512 [25512], Juneau, Alaska 99811-5512 [99802-5512] or on the division's Internet website at

http://www.labor.alaska.gov/wc/pdf_list.htm. (Eff. 5/28/83, Register 86; am 3/16/90, Register 113; am 5/12/2019, Register 230)

at Publisher: The internet address has an underscore here -- please insert the underscore when putting the address in print.)))

Authority: AS 23.30.005

8 AAC 45.060(b) is amended to read:

(b) A party may file a document with the board, other than the annual report under AS 23.30.155(m), personally, by mail, or by electronic filing through facsimile transmission or electronic mail in compliance with 8 AAC 45.020(d) [DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT COMMISSIONER'S ORDER NO. 001, DATED APRIL 23, 2015]. Except for a claim, a party shall serve a copy of a document filed with the board upon all parties or, if a party is represented, upon the party's representative. Service must be done personally, by facsimile, by electronic mail, or by mail, in accordance with due process. Service by mail is complete when deposited [AT THE TIME OF DEPOSIT] in the mail if mailed with sufficient postage and properly addressed to the party at the party's last known address. If a right may be exercised or an act is to be done, three days must be added to the prescribed period when a document is served by mail.

Register 230, July 2019 LABOR AND WORKFORCE DEV.

(In effect before 7/28/59; am 5/28/83, Register 86; am 3/16/90, Register 113; am 7/20/97, Register 143; am 7/2/98, Register 146; am 4/9/2016, Register 218; am 5/12/2019, Register 230)

Authority: [AS 23.05.055] AS 23.30.110 AS 23.30.135

AS 23.30.005

« Publisher: Delete first sentence of editor's note that follows 8 AAC 45.060, retain the remainder of the editor's note. »»

The introductory language of 8 AAC 45.070(b) is amended to read:

(b) Except as provided in (1)(A) of this subsection ~~8 AAC 45.070(b)(1)(A)~~ [THIS SECTION] and 8 AAC 45.074(c), a hearing will not be scheduled unless a claim or petition has been filed, and an affidavit of readiness for hearing has been filed and that affidavit is not returned by the board or designee nor is the affidavit the basis for scheduling a hearing that is cancelled or continued under 8 AAC 45.074(b). The board has available an Affidavit of Readiness for Hearing form that a party may complete and file. The board or its designee will return an affidavit of readiness for hearing, and a hearing will not be set if the affidavit lacks proof of service upon all other parties, or if the affiant fails to state that the party has completed all necessary discovery, has all the necessary evidence, and is fully prepared for the hearing.

...

8 AAC 45.070(b)(1)(A) is amended to read:

AS 23.30.041

(A) For review of an administrator's decision issued under [AS

23.30.041 (d)], a party shall file a [CLAIM OR] petition asking for review of the

Register 230, July 2019 LABOR AND WORKFORCE DEV.

administrator's decision [AND AN AFFIDAVIT OF READINESS FOR HEARING.

THE AFFIDAVIT OF READINESS FOR HEARING MAY BE FILED AT THE SAME

TIME AS THE CLAIM OR PETITION. ^(transposed)) An affidavit of readiness for hearing form is

not required. In reviewing the administrator's decision, the board may not consider

evidence that was not available to the administrator at the time of the administrator's

decision unless the board determines the evidence is newly discovered and could not with

due diligence have been produced for the administrator's consideration.

8 AAC 45.070(f)(1) is amended to read:

(1) proceed with the hearing in the party's absence and, after taking evidence,
decide the issues in the **claim** [APPLICATION] or petition;

8 AAC 45.070(f)(2) is amended to read:

(2) dismiss the **claim or petition** [CASE] without prejudice; or

(In effect before 7/28/59; am 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

3/31/2012, Register 161; am 5 / 12 / 2019, Register 230)

Authority: AS 23.30.005 AS 23.30.110 AS 23.30.135

8 AAC 45.083(m) is repealed and readopted to read:

(m) The following material is adopted by reference:

(1) *Current Procedural Terminology Codes*, 2015 edition, produced by the American Medical Association, as may be amended;

(2) *Healthcare Common Procedure Coding System*, 2015 edition, produced by the federal Centers for Medicare and Medicaid Services, as may be amended;

(3) *International Classification of Diseases*, ^{10th Revision, Clinical Modification,} 2016 edition, valid October 1, 2015 ~~through September 30, 2016~~, ^{(developed by the National Center for Health Statistics,} published by the World Health Organization, as may be amended;

(4) *Relative Value Guide*, 2015 edition, produced by the American Society of Anesthesiologists, as may be amended;

(5) *Diagnostic and Statistical Manual of Mental Disorders*, 5th edition, produced by the American Psychiatric Association, as may be amended;

(6) *Current Dental Terminology*, 2015 edition, published by the American Dental Association, as may be amended;

(7) *Resource-Based Relative Value Scale*, effective January 1, 2015, produced by the federal Centers for Medicare and Medicaid Services, as may be amended;

(8) *Ambulatory Payment Classifications*, effective January 1, 2015, produced by the federal Centers for Medicare and Medicaid Services, as may be amended;

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

^{italizing the title} (10) ~~*International Classification of Diseases*~~, ^{Hospital Outpatient Prospective Payment System, effective January 1, 2019,} 10th Revision, Clinical Modification; ^{(produced by the federal Centers for Medicare and Medicaid Services;} ~~developed by the National Center for Health Statistics,~~ as may be amended;

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(11) *Clinical Diagnostic Laboratory Services*, produced by the federal Centers for Medicare and Medicaid Services, as may be amended;

(12) *Durable Medical Equipment, Prosthetics, Orthotics, and Supplies*, produced by the federal Centers for Medicare and Medicaid Services, as may be amended;

(13) *Payment Allowance Limits for Medicare Part B Drugs, Average Sale Price*, produced by the federal Centers for Medicare and Medicaid Services, as may be amended;

(14) *Ambulance Fee Schedule*, produced by the federal Centers for Medicare and Medicaid Services, as may be amended;

~~(15) *Hospital Outpatient Prospective Payment System*, effective January 1, 2018, 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; am 1/1/2019, Register 228; 1/1/2018, Register 224; am 5/12/2019, Register 230)

Authority: AS 23.30.005 AS 23.30.097 AS 23.30.098

Re Publisher: Please retain all editor's notes that follow 8 AAC 45.083.))

8 AAC 45.085 is amended to read:

(a) An insurer subject to this chapter shall file, **in a format** [ON A FORM] prescribed by the **director** [BOARD], notice with the **division** [BOARD] **not later than** [WITHIN] 10 days after the initiation or renewal of the employer's workers' compensation insurance.

(b) A self-insured employer or insurer subject to this chapter, unless exempted, shall file, **in a format** [ON A FORM] prescribed by the **director** [BOARD], notice with the **division** [BOARD] **not later than** [WITHIN] 10 days after changing insurance adjusting services.

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(Eff. 2/27/2000, Register 153; am 5 / 12 / 2019, Register 230)

Authority: AS 23.30.005 AS 23.05.005 AS 23.30.030 AS 23.30.085
AS 23.30.025

The introductory language of 8 AAC 45.092(g) is amended to read:

(g) If there exists a medical dispute under [IN] AS 23.30.095(k),

...

The introductory language of 8 AAC 45.092(h) is amended to read:

(h) In an [IF THE BOARD REQUIRES] ^{can} evaluation under AS 23.30.095(k), the board
or the board's designee will ~~shall~~ identify the medical disputes at issue and prepare and submit
questions addressing the medical disputes to the medical examiners selected under this
section. The [THE] board may direct

...

8 AAC 45.092(h)(5) is repealed:

^(i.e. lower case)
↓
(5) Repealed 5 / 12 / 2019.

8 AAC 45.092(j)(1) is amended to read:

(1) submit **written questions** [INTERROGATORIES] or depose the examiner, the party must

(A) file with the board and serve upon the examiner and all parties, **not later than** [WITHIN] 30 days after receiving the examiner's report, a notice of scheduling a deposition or copies of the **written questions** [INTERROGATORIES]; if notice or the **written questions** [INTERROGATORIES] are not served in accordance with this paragraph, the party waives the right to question the examiner unless the opposing party gives timely notice of scheduling a deposition or serves **written questions** [INTERROGATORIES]; and

(B) initially pay the examiner's charges to respond to the **written questions** [INTERROGATORIES] or for being deposed; after a hearing and in accordance with AS 23.30.145 or **AS** 23.30.155(d), the charges may be awarded as costs to the prevailing party;

(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; am 5 / 12 / 2019, Register 230)

Authority: AS 23.30.005 AS 23.30.095 AS 23.30.110

8 AAC 45.110(b) is amended to read:

Register 230, July 2019 LABOR AND WORKFORCE DEV.

(b) Exhibits submitted at hearings will be kept by the board during the time for appeal.

When the time for the filing of an appeal has passed, the exhibits may be returned to the party who submitted the evidence. If the party is either unavailable or declines to take the exhibits, the exhibits may be destroyed. Medical reports submitted into evidence will remain in the case file unless removed by an order of the board or the board's designee for good cause or under AS 23.30.108.

The introductory language of 8 AAC 45.110(c) is amended to read:

(c) The hearing before the board will be [TAPE] recorded by the board. The board's [TAPE] recording will be

...

(In effect before 7/28/59; am 5/28/83, Register 86; am 7/20/97, Register 143; am 7/2/98, Register 146; am 5 / 12 / 2019, Register 230)

Authority: AS 23.30.005 AS 23.30.107

8 AAC 45.134(c) is repealed:

(c) Repealed 5 / 12 / 2019. (Eff. 5/28/83, Register 86; am 3/16/90, Register 113; am

5 / 12 / 2019, Register 230)

Authority: AS 23.30.005 AS 23.30.155
[AS 23.30.005(h)] [AS 23.30.155(j)] AS 23.30.180

8 AAC 45.182(a) is amended to read:

Register 230, July 2019 LABOR AND WORKFORCE DEV.

(a) To controvert a claim the employer shall file form 07-6105 in accordance with AS 23.30.155(a) and shall serve a copy of the notice of controversion upon all parties in accordance with 8 AAC 45.060. **This notice must be filed in addition to the notice required under AS 23.30.155(c) and 8 AAC 45.136.**

(Eff. 5/28/83, Register 100; am 3/16/90, Register 113; am 7/2/98, Register 146; am 7/9/2011, Register 199; am 5/12/2019, Register 230)

Authority: AS 23.30.005 AS 23.30.155

8 AAC 45.890 is repealed:

8 AAC 45.890. Determining employee status. Repealed. (Eff. 3/16/90, Register 113; am 12/13/2009, Register 192; repealed 5/12/2019, Register 230)

MEMORANDUM

State of Alaska Department of Law

To: The Honorable Kevin Meyer
Lieutenant Governor

Thru: Susan R. Pollard *SPP*
Chief Assistant Attorney General
and Regulations Attorney
Legislation and Regulations Section

From: Steven C. Weaver *SCW*
Senior Assistant Attorney General
and Assistant Regulations Attorney
Legislation and Regulations Section

Date: April 10, 2019

File No.: 2018200987

Tel. No.: 465-3600

Re: Alaska Workers' Compensation Board and Department of Labor and Workforce Development regulations re: fees for provision of medical services, electronic filing, agency forms, hearings, filing notices, second independent medical evaluations, case files, reporting compensation, controversion notices, and employee status (8 AAC 45.020(d); 8 AAC 45.025(c); 8 AAC 45.060(b); 8 AAC 45.070; 8 AAC 45.083(m); 8 AAC 45.085; 8 AAC 45.092; 8 AAC 45.110; 8 AAC 45.134(c); 8 AAC 45.182(a); 8 AAC 45.890)

The Department of Law has reviewed the attached regulations of the Alaska Workers' Compensation Board and the Department of Labor and Workforce Development against the statutory standards of the Administrative Procedure Act. Based upon our review, 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 regulations were adopted by the Alaska Workers' Compensation Board and the Department of Labor and Workforce Development after the close of the public comment period. The regulations concern numerous changes to workers' compensation requirements and procedures to bring them up to date, and particularly to reflect changes to AS 23.30 under ch. 91, SLA 2018 (SCS CSHB 79(FIN)).

Changes to 8 AAC 45.083(m) are structured as a repeal and readoption of that subsection, But previously, the department gave notice under AS 23.30.098 and AS 44.62.245 that a number of later amended versions of items previously adopted by reference under 8 AAC 45.083(m) are now in use. Those later amended versions are identified in the editor's note that follows 8 AAC

45.083. The repeal and readoption of 8 AAC 45.083(m) does not affect the applicability of those later amended versions.

The December 4, 2018 public notice, the December 23, 2018 amended (i.e., supplemental) public notice, the February 15, 2019 certification of adoption order from the Alaska Workers' Compensation Board, and the April 4, 2019 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.

We have made some technical corrections to conform the regulations in accordance with AS 44.62.125. The corrections are shown on the attached copy of the regulations.

SCW

cc: Honorable Dr. Tamika L. Ledbetter, Commissioner
Department of Labor and Workforce Development

Becky Weimer, Regulations Contact
Department of Labor and Workforce Development

Grey R. Mitchell, Director
Division of Workers' Compensation
Department of Labor and Workforce Development

Alexis Newman
Division of Workers' Compensation
Department of Labor and Workforce Development

Rebecca E. Hattan, Assistant Attorney General
Labor and State Affairs Section

MEMORANDUM

DEPARTMENT OF LABOR AND
WORKFORCE DEVELOPMENT

STATE OF ALASKA

Commissioner's Office

TO: Scott Kendall
Chief of Staff

DATE: November 19, 2018

PHONE: 465-2700

FROM: Heidi Drygas
Commissioner

SUBJECT: Approval Delegation
November 29-30, 2018

Department of Labor and Workforce Development (DOLWD) Administrative Services Director Paloma Harbour has full delegation of authority while both Commissioner Heidi Drygas and Deputy Commissioner Greg Cashen are out of the office November 29 through November 30, 2018.

Please feel free to contact me if you have any questions regarding this delegation.

Sincerely,



Heidi Drygas
Commissioner

NOTICE OF PROPOSED CHANGES RELATING TO ELECTRONIC FILING, AGENCY FORMS, HEARINGS, MATERIAL ADOPTED BY REFERENCE, FILING NOTICES, SECOND INDEPENDENT MEDICAL EVALUATIONS, CASE FILES, REPORTING COMPENSATION, CONTROVERSION NOTICES, AND EMPLOYEE STATUS 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 electronic filing, agency forms, hearings, material adopted by reference, filing notices, second independent medical evaluations, case files, reporting compensation, controversion notices, and employee status.

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 electronic filing, agency forms, hearings, material adopted by reference, filing notices, second independent medical evaluations, case files, reporting compensation, controversion notices, and employee status, including the following:

- (1) 8 AAC 45.020 is proposed to be changed as follows: Amend procedures relating to filing a document.
- (2) 8 AAC 45.025 is proposed to be changed as follows: Amend the regulation to reference the correct agency mailing address and clarify where agency forms may be obtained.
- (3) 8 AAC 45.060 is proposed to be changed as follows: Amend procedures relating to filing and serving a document.
- (4) 8 AAC 45.070 is proposed to be changed as follows: Clarify hearing procedures.
- (5) 8 AAC 45.083 is proposed to be repealed and readopted as follows: Update fee schedule material adopted by reference.
- (6) 8 AAC 45.085 is proposed to be changed as follows: Amend procedures relating to filing a document.
- (7) 8 AAC 45.092 is proposed to be changed as follows: Amend procedures relating to the second independent medical evaluation process.
- (8) 8 AAC 45.110 is proposed to be changed as follows: Clarify hearing procedures.
- (9) 8 AAC 45.134 is proposed to be repealed: Change how compensation may be offset.

- (10) 8 AAC 45.136 is proposed to be repealed and readopted as follows: Change the procedures for reporting compensation.
- (11) 8 AAC 45.182 is proposed to be changed as follows: Clarify controversion notice filing procedures.
- (12) 8 AAC 45.890 is proposed to be repealed: Remove regulatory definition of employee status.

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 workerscompregs@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 3, 2019.

Oral comments may be submitted at a hearing to be held on January 10, 2019, in Room 208, 3301 Eagle St., Anchorage, Alaska 99503. Public comment will be heard from 10:15am to 11:15am, and might be extended to accommodate those present before 10:15am 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 or by electronic mail at workerscompregs@alaska.gov. 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 Newman at (907) 465-6059 or alexis.newman@alaska.gov not later than December 27, 2018 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 Alexis Newman at (907) 465-6059 or alexis.newman@alaska.gov.

After the public comment period ends, the Department of Labor and Workforce Development and the 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 23.30.025; AS 23.30.030; AS 23.30.085; AS 23.30.095; AS 23.30.097; AS 23.30.098; AS 23.30.110; AS 23.30.135; AS 23.30.155; AS 23.30.180

Statutes being implemented, interpreted, or made specific: AS 23.30.025; AS 23.30.030; AS 23.30.095; AS 23.30.097; AS 23.30.098; AS 23.30.110; AS 23.30.135; AS 23.30.155; AS 23.30.180

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

Date: November 29, 2018

A handwritten signature in blue ink, appearing to read "Heidi Drygas", is written over a horizontal line.

Heidi Drygas, Commissioner
Department of Labor and Workforce Development

ADDITIONAL REGULATION NOTICE INFORMATION
(AS 44.62.190(d))

1. Adopting agencies: Department of Labor and Workforce Development and Alaska Workers' Compensation Board
2. General subject of regulation: Electronic filing, agency forms, hearings, material adopted by reference, filing notices, second independent medical evaluations, case files, reporting compensation, controversion notice, employee status
3. Citation of regulation: 8 AAC 45.020, 8 AAC 45.025, 8 AAC 45.060, 8 AAC 45.070, 8 AAC 45.083, 8 AAC 45.085, 8 AAC 45.092, 8 AAC 45.110, 8 AAC 45.134, 8 AAC 45.136, 8 AAC 45.182, 8 AAC 45.890
4. Department of Law file number, if any: 2018200987
5. Reason for the proposed action:
Compliance with state statute, 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 and the Board anticipate that complying with the regulations will not increase costs to private persons.

Another state agency: The Department and the Board anticipate that complying with the regulations will not increase costs to other state agencies.

A municipality: The Department and the Board anticipate that complying with the regulations will not increase costs to municipalities.
8. Cost of implementation to the state agency and available funding:
No costs are expected in FY 2020 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

AMENDED NOTICE OF PROPOSED CHANGES RELATING TO ELECTRONIC FILING,
AGENCY FORMS, HEARINGS, MATERIAL ADOPTED BY REFERENCE, FILING
NOTICES, SECOND INDEPENDENT MEDICAL EVALUATIONS, CASE FILES,
REPORTING COMPENSATION, CONTROVERSION NOTICES, AND EMPLOYEE
STATUS 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 electronic filing, agency forms, hearings, material adopted by reference, filing notices, second independent medical evaluations, case files, reporting compensation, controversion notices, and employee status.

This amended notice extends the date for written public comment and changes the date for in-person public comment.

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 electronic filing, agency forms, hearings, material adopted by reference, filing notices, second independent medical evaluations, case files, reporting compensation, controversion notices, and employee status, including the following:

- (1) 8 AAC 45.020 is proposed to be changed as follows: Amend procedures relating to filing a document.
- (2) 8 AAC 45.025 is proposed to be changed as follows: Amend the regulation to reference the correct agency mailing address and clarify where agency forms may be obtained.
- (3) 8 AAC 45.060 is proposed to be changed as follows: Amend procedures relating to filing and serving a document.
- (4) 8 AAC 45.070 is proposed to be changed as follows: Clarify hearing procedures.
- (5) 8 AAC 45.083 is proposed to be repealed and readopted as follows: Update fee schedule material adopted by reference.
- (6) 8 AAC 45.085 is proposed to be changed as follows: Amend procedures relating to filing a document.
- (7) 8 AAC 45.092 is proposed to be changed as follows: Amend procedures relating to the second independent medical evaluation process.

and the 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 23.30.025; AS 23.30.030; AS 23.30.085; AS 23.30.095; AS 23.30.097; AS 23.30.098; AS 23.30.110; AS 23.30.135; AS 23.30.155; AS 23.30.180

Statutes being implemented, interpreted, or made specific: AS 23.30.025; AS 23.30.030; AS 23.30.095; AS 23.30.097; AS 23.30.098; AS 23.30.110; AS 23.30.135; AS 23.30.155; AS 23.30.180

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

Date: December 21, 2018

A handwritten signature in black ink, appearing to read "Tamika L. Ledbetter", is positioned above a horizontal line.

Dr. Tamika L Ledbetter, Commissioner
Department of Labor and Workforce Development

ADDITIONAL REGULATION NOTICE INFORMATION
(AS 44.62.190(d))

1. Adopting agencies: Department of Labor and Workforce Development and Alaska Workers' Compensation Board
2. General subject of regulation: Electronic filing, agency forms, hearings, material adopted by reference, filing notices, second independent medical evaluations, case files, reporting compensation, controversion notice, employee status
3. Citation of regulation: 8 AAC 45.020, 8 AAC 45.025, 8 AAC 45.060, 8 AAC 45.070, 8 AAC 45.083, 8 AAC 45.085, 8 AAC 45.092, 8 AAC 45.110, 8 AAC 45.134, 8 AAC 45.136, 8 AAC 45.182, 8 AAC 45.890
4. Department of Law file number, if any: 2018200987
5. Reason for the proposed action:
Compliance with state statute, 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 and the Board anticipate that complying with the regulations will not increase costs to private persons.

Another state agency: The Department and the Board anticipate that complying with the regulations will not increase costs to other state agencies.

A municipality: The Department and the Board anticipate that complying with the regulations will not increase costs to municipalities.

8. Cost of implementation to the state agency and available funding:
No costs are expected in FY 2020 or in subsequent years.

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

Grey Mitchell
Director
Division of Workers' Compensation
Department of Labor and Workforce Development

AFFIDAVIT OF NOTICE OF PROPOSED REGULATION
AND FURNISHING OF ADDITIONAL INFORMATION

I, Alexis, Newman, Administrative Officer II, of Alaska 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 45.020, 8 AAC 45.025, 8 AAC 45.060, 8 AAC 45.070, 8 AAC 45.083, 8 AAC 45.085, 8 AAC 45.092, 8 AAC 45.110, 8 AAC 45.134, 8 AAC 45.136, 8 AAC 45.182, and 8 AAC 45.890 relating to electronic filing, agency forms, hearings, material adopted by reference, filing notices, second independent medical evaluations, case files, reporting compensation, controversion notices, and employee status has been given by being

- (1) published in a newspaper or trade publication;
- (2) furnished to every person who has filed a request for notice of proposed action with the state agency;
- (3) furnished to appropriate state officials;
- (4) furnished to interested persons;
- (5) furnished to the Department of Law, along with a copy of the proposed regulation;
- (6) furnished electronically to incumbent State of Alaska legislators;
- (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).

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 (2), (4) and (6) of the list above. The additional regulation notice information also has been posted on the Alaska Online Public Notice System.

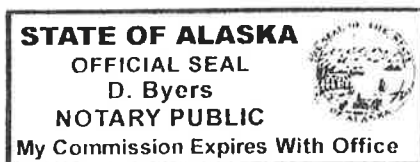
Date: 2/19/19

Alexis Newman
Alexis Newman, Administrative Officer II

Subscribed and sworn to before me at Juneau, Alaska on
2/19/19
(date)

D. Byers
Notary Public in and for the State of Alaska

[NOTARY SEAL]



AFFIDAVIT OF ORAL HEARING

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

On January 24, 2019, 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 45.020, 8 AAC 45.025, 8 AAC 45.060, 8 AAC 45.070, 8 AAC 45.083, 8 AAC 45.085, 8 AAC 45.092, 8 AAC 45.110, 8 AAC 45.134, 8 AAC 45.136, 8 AAC 45.182, and 8 AAC 45.890 dealing with electronic filing, agency forms, hearings, material adopted by reference, filing notices, second independent medical evaluations, case files, reporting compensation, controversion notices, and employee status.

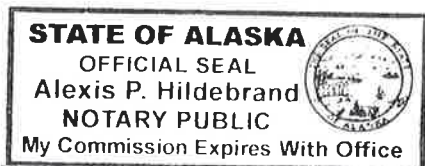
Date: February 19, 2019



Grey Mitchell, Director

Subscribed and sworn to before me at Dept. of Labor on
2/19/19

(date)





Notary Public in and for the State of Alaska

AFFIDAVIT OF AGENCY RECORD OF PUBLIC COMMENT

I, Alexis Newman, Administrative Officer II for the Department of Labor and Workforce Development, Division of Workers' Compensation, being duly sworn, state the following:

In compliance with AS 44.62.215, the Division of Workers' Compensation 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 electronic filing, agency forms, hearings, material adopted by reference, filing notices, second independent medical evaluations, case files, reporting compensation, controversion notices, and employee status.

Date: 2/15/19

Alexis Newman
Alexis Newman, Administrative Officer II

Subscribed and sworn to before me at Department of Labor on
2-15-2019
(date)

Stacie Estey
Notary Public in and for the State of Alaska



[illegible]

BRITNEY L. HANSON
State of Alaska
My Commission Expires Feb 23, 2019

AFFIDAVIT OF BOARD ACTION

I, Alexis Newman, Administrative Officer II for the Alaska Department of Labor and Workforce Development Division of Workers' Compensation, being duly sworn, state the following:

The attached motion dealing with electronic filing, agency forms, hearings, material adopted by reference, filing notices, second independent medical evaluations, case files, reporting compensation, controversion notices, and employee status was passed by the Alaska Workers' Compensation Board during its January 24-25, 2019 meeting.

Date: 2/19/19



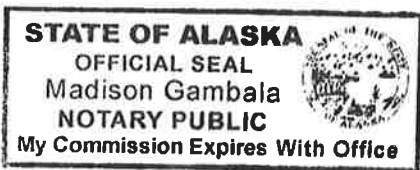
Alexis Newman, Administrative Officer II

Subscribed and sworn to before me at Department of Labor - WC on
2/19/2019
(date)



Notary Public in and for the State of Alaska

[NOTARY SEAL]



Alaska Workers' Compensation Board
January 24-25, 2019
Excerpt from Unapproved Minutes

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

"I move to adopt electronic filing procedures regulations at 8 AAC 45.020(d)."

The motion carried unanimously.

Board member Donna Philips moved and member Robert Weel seconded the following motion:

"I move to adopt board form procedures regulations at 8 AAC 45.025(c)."

The motion carried unanimously.

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

"I move to adopt electronic filing procedures regulations at 8 AAC 45.060(b)."

The motion carried unanimously.

Board member Linda Murphy moved and member Robert Weel seconded the following motion:

"I move to adopt review of a reemployment benefits administrator's decision procedures regulations at 8 AAC 45.070(b)."

The motion carried unanimously.

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

"I move to adopt review of a reemployment benefits administrator's decision procedures regulations at 8 AAC 45.070(b)(1)(A)."

The motion carried unanimously.

Board member Robert Weel moved and member Linda Murphy seconded the following motion:

"I move to adopt claims procedures regulations at 8 AAC 45.070(f)(1)."

The motion carried unanimously.

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

“I move to adopt claims procedures regulations at 8 AAC 45.070(f)(2).”

The motion carried unanimously.

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

“I move to adopt fee schedule regulations at 8 AAC 45.083(m).”

The motion carried unanimously.

Board member Linda Murphy moved and member Brad Austin seconded the following motion:

“I move to adopt electronic filing procedures regulations at 8 AAC 45.085.”

The motion carried unanimously.

Board member Brad Austin moved and member Linda Murphy seconded the following motion:

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

The motion carried unanimously.

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

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

The motion carried unanimously.

Board member Linda Murphy moved and member Robert Weel seconded the following motion:

“I move to repeal second independent medical evaluation regulations at 8 AAC 45.092(h)(5).”

The motion carried unanimously.

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

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

The motion carried unanimously.

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

“I move to adopt second independent medical evaluation regulations at 8 AAC 45.092(j)(1).”

The motion carried unanimously.

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

“I move to adopt case file record and board proceedings regulations at 8 AAC 45.110(a).”

The motion carried unanimously.

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

“I move to adopt case file record and board proceedings regulations at 8 AAC 45.110(b).”

The motion carried unanimously.

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

“I move to repeal case file record and board proceedings regulations at 8 AAC 45.110(c).”

The motion carried unanimously.

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

“I move to repeal compensation regulations at 8 AAC 45.134(c).”

The motion carried unanimously.

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

“I move to adopt insurer or adjuster reporting regulations at 8 AAC 45.182(a).”

The motion carried unanimously.

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

“I move to repeal employee status regulations at 8 AAC 45.890.”

The motion carried unanimously.

Workers' Compensation Board

Meeting Minutes

January 24-25, 2019

Thursday, January 24, 2019

I. Call to order

Workers' Compensation Director Grey Mitchell called the Board to order at 9:07 am on Thursday, January 24, 2019 in Anchorage, Alaska.

II. Roll call

Director Mitchell introduced himself and conducted roll call. The following Board members were present:

Brad Austin	Pamela Cline	Chuck Collins
Jacob Howdeshell	Sarah Lefebvre	Linda Murphy
Donna Philips	Nancy Shaw	Amy Steele
Rick Traini	Robert Weel	

Director Mitchell noted that Members Frye, Kester, Stubbs and Mack were excused. Members Evans, Letuligasenoa and Williams were absent. Members Philips and Traini arrived after roll call. Quorum was established.

III. Agenda Approval

A motion to approve the agenda was made by member Weel, and seconded by member Murphy. The agenda was approved by unanimous vote.

IV. Approval of Meeting Minutes

A motion to adopt the minutes from the October 4-5, 2018 regular Board Meeting was made by member Weel and seconded by member Austin. Member Cline noted that she was present and requested that her name be added to the list of present members. A motion to adopt the amended minutes from the October 4-5, 2018 regular Board Meeting was made by member Weel and seconded by member Austin. The amended minutes were adopted without objection.

V. Director's Report

Director Mitchell introduced senior staff present, and noted that some board member terms were expiring on March 1, 2019.

Administrative Officer Alexis Newman provided an overview of Division staffing, the various budget components within the Division, and the FY19 budget performance year-to-date.

Administrative Officer Alexis Newman reviewed the list of board designees. Member Collins moved that the Board approve the amended list of Board designees, which was seconded by member Murphy. The motion passed unanimously.

Director Mitchell discussed upcoming legislation.

Break 9:49am-10:15am

VI. Public Comment Period 10:15am- 11:15am

Brian Zematis – representing self

- Disagreed with the repeal of 8 AAC 45.890.
- Stated this repeal would create more gray areas.
- Stated the new definition of Independent Contractor is onerous.

Barbara Williams – representing self

- Stated she has had issues when submitting records electronically, and complained that the Division does not accept audio recordings electronically.
- Expressed dissatisfaction with the rehabilitation process in regards to disabilities.
- Disagreed with the movement towards “book based” Medical Fee Schedule.
- Disagreed with Fee Schedule rule that physical therapists are not reimbursed at 100% of the Physician MAR.
- Would like to see more community people and injured worker stakeholders involved with the regulatory process and serving on the Medical Services Review Committee.
- Stated that the proposed regulations look great on paper, but implications are not being considered.
- Expressed dissatisfaction with the Division’s template letters.
- Requested an audit of the WC System.
- Provided an ADA flier to each of the board members.

Michael Budzinski – representing Workers’ Comp Attorney

- Disagreed with the proposed amendments to 8 AAC 45.092, as the amendment removes the right of the parties to submit SIME questions.
- Stated there is a pending dispute before the Appeals Commission regarding the correctness of the Board’s standard questions.
- Feels the Board questions are misleading.
- Acting Chief of Adjudications Ron Ringel clarified the issue.
- Member Murphy stated that the Board’s intent with this change is that the hearing officer would develop questions.

Break 11:05am – 11:10am.

Heather Johnson – representing self

- Disagreed with amendments to 8 AAC 45.092.
- Feels SIME process is unfair to the employee and the proposed amendment obstructs due process.
- Requested change to Controversion form.

Sandy Travis – representing self

- Feels the proposed regulations are not in the public interest.
- Feels that the regulations are too technical and are difficult to understand.
- Feels that SIME doctors are not impartial.

Tana Noe – representing self

- Feels the website is too technical and not user friendly.
- Expressed that the Division needs to better accommodate injured workers with disabilities.
- Stated SIME doctors go over the same questions at each evaluation and the injured worker feels unheard.

Eric McDonald – representing self

- Expressed dissatisfaction with the Controversion form.

Ward Wells – representing self

- Feels his rights as a human being were violated by Workers' Compensation.
- Feels regulations are poorly organized to the rights of human beings.
- Feels the regulations are too technical and there is a lack of ability for Workers' Compensation as a whole to work with injured workers.

Butch McGavran – representing self

- Feels the workers' compensation process is difficult.
- Expressed that the WC website and offices do not meet ADA Guidelines.
- Stated he has requested ADA accommodations and they have been met.

Heidi Palmer – representing self

- Disagreed with Fee Schedule rule that physical therapists are not reimbursed at 100% of the Physician MAR.
- Requests carve out for work hardening programs.
- Provided a written document to the Board to illustrate concerns with the Fee Schedule adopted by the Board through the Medical Services Review Commission.

Bruce Williams – representing self

- Advocated for physical therapists to receive reimbursement at 100% of the physician MAR.

Samantha Atlas – representing self

- Expressed agreement with Butch and Heather.
- Feels that injured workers need help getting through the workers compensation process and getting the right treatment.

McKenna Wentworth – representing Wilton Adjustment Services

- Disagreed with repeal of 8 AAC 45.890.
- Feels some of the proposed regulations are premature and that the Board should wait to see what is proposed by the Legislative Workers' Compensation Working Group.
- Feel the Affidavit of Readiness for Hearing rushes the process and hurts the injured worker.
- Advocated for training of the SIME doctors.
- Recommended the addition of daily wage per diem for SIME travel.
- Feels the Division's template letters are misleading and requested changes.

Noel McCullough – representing self

- Expressed concern with medical evaluations.
- Believes SIMEs are unregulated and should be neutral.

Lunch Break 12:00pm-1:32pm

VII. Old Business

Director Mitchell requested to amend the agenda to move the case law review to the end of agenda. Member Weel moved, Murphy seconded. The motion passed unanimously.

Director Mitchell introduced the next item on the agenda for the Board to review proposed regulations and make decisions regarding approval.

Amend 8 AAC 45.020(d), relating to electronic filing. Member Murphy moved to adopt the amendment of 8 AAC 45.020(d). Member Weel seconded the motion. Member Murphy raised concern with the language of 45.020(d)(5), and suggested to remove the word "standard" from "Alaska Standard Time". Member Weel moved to amend the proposed amendment of AAC 45.020(d) and member Austin seconded. The motion passed unanimously. The members discussed 45.020(d)(6) and whether or not the board should be responsible for verifying that documents filed electronically are received correctly. Director Mitchell called the question and the motion did not pass on an 8 to 1 vote, with member Shaw voting against, and members Austin, Cline, Collins, Murphy, Howdeshell, Steele, Traini, and Weel voting in favor and member Philips abstaining.

Member Philips motioned for reconsideration to amend 8 AAC 45.020(d), and member Weel seconded. The motion passed without objection. The board continued discussion of the Division's responsibility for verifying that records sent by facsimile or electronic

mail are received correctly. A brief recess was held to distribute copies of Commissioner's Order No. 001. Member Shaw expressed concerns with 45.020(d)(6). Member Murphy emphasized that if the adoption does not pass, the language will still be in effect under the Commissioner's Order. Director Mitchell called the question. The motion did not pass on an 8 to 1 vote, with member Shaw voting against, members Austin, Cline, Collins, Howdeshell, Murphy, Steele, Traini, Weel, and Philips voting in favor. Member Philips moved to postpone action on this amendment until the following day. Member Weel seconded and the motion to postpone passed without objection.

Amend 8 AAC 45.025(c), relating to board forms. Member Austin moved to adopt the amendment of 8 AAC 45.025(c). Member Howdeshell seconded the motion. The motion passed unanimously.

Amend 8 AAC 45.060(b), relating to electronic filing. Member Austin moved to adopt the amendment of 8 AAC 45.060(b). Member Weel seconded the motion. After a brief discussion, the motion passed unanimously.

Break 3:06pm-3:19pm

Amend 8 AAC 45.070(b), relating to review of a reemployment benefits administrator's decision. Member Murphy moved to adopt the amendment of 8 AAC 45.070(b)(1)(A). Member Weel seconded the motion. The motion passed unanimously.

Amend 8 AAC 45.070(b)(1)(A), relating to review of a reemployment benefits administrator's decision. Member Austin moved to adopt the amendment of 8 AAC 45.070(b)(1)(A). Member Collins seconded the motion. The motion passed unanimously.

Amend 8 AAC 45.070(f)(1), relating to claims. Member Weel moved to adopt the amendment of 8 AAC 45.070(f)(1). Member Murphy seconded the motion. The motion passed unanimously.

Amend 8 AAC 45.070(f)(2), relating to claims. Member Austin moved to adopt the amendment of 8 AAC 45.070(f)(2). Member Weel seconded the motion. The motion passed unanimously.

Amend 8 AAC 45.083(m), relating to fees for medical treatment and services. The intent of amendment is to clarify the existing fee schedule and incorporate the most recent recommendations. Member Collins moved to adopt the amendment of 8 AAC 45.083(m) including material incorporated by reference. Member Murphy seconded the motion. The motion passed unanimously.

Amend 8 AAC 45.085, relating to electronic filing. Member Murphy moved to adopt the amendment of 8 AAC 45.085. Member Austin seconded the motion. The motion passed unanimously.

Amend 8 AAC 45.092(g), relating to second independent medical evaluations. Member Austin moved to approve the amendment of 8 AAC 45.092(g). Member Murphy seconded the motion. The motion passed unanimously.

Amend 8 AAC 45.092(h), relating to second independent medical evaluations. Member Austin moved to approve the amendment of 8 AAC 45.092(h). Member Weel seconded the motion. The board discussed implications of this repeal. The motion passed unanimously.

Repeal 8 AAC 45.092(h)(5), relating to second independent medical evaluations. Member Murphy moved to repeal 8 AAC 45.092(h)(5). Member Weel seconded the motion. The motion passed unanimously.

Amend 8 AAC 45.092(j)(1), relating to second independent medical evaluations. Member Austin moved to approve the amendment of 8 AAC 45.092(j). Member Collins seconded the motion. The motion passed unanimously.

Amend 8 AAC 45.110(a), relating to case file records and board proceedings. Member Weel moved to approve the amendment of 8 AAC 45.110(a). Member Austin seconded the motion. The motion passed unanimously.

Amend 8 AAC 45.110(b), relating to case file records and board proceedings. Member Austin moved to approve the amendment of 8 AAC 45.110(b). Member Weel seconded the motion. The motion passed unanimously.

Repeal 8 AAC 45.110(c), relating to case file records and board proceedings. Member Austin moved to repeal 8 AAC 45.110(c). Member Weel seconded the motion. The motion passed unanimously.

Repeal 8 AAC 45.134(c), relating to modification and offset of compensation. Member Collins moved to repeal 8 AAC 45.134(c). Member Murphy seconded the motion. The motion passed unanimously.

Amend 8 AAC 45.136, relating to insurer or adjuster reporting. Member Collins moved to approve the amendment of 8 AAC 45.136. Member Cline seconded the motion. The board invited McKenna Wentworth, representing Wilton Adjustment Services, to provide testimony. Member Weel moved to table this issue and member Murphy seconded. The motion to postpone action passed unanimously.

Amend 8 AAC 45.182(a), relating to insurer or adjuster reporting. Member Weel moved to approve the amendment of 8 AAC 45.182(a). Member Austin seconded the motion. Administrative Officer Alexis Newman explained that the intent of this change was to clarify that EDI denial transaction serves to terminate benefits, but does not satisfy the requirement to notify the parties that benefits have been denied. Form 07-6105

Controversion Notice must still be filed. Director Mitchell called the question and the motion passed unanimously.

Repeal 8 AAC 45.890, relating to determining employee status. Member Weel moved to adopt the repeal of 8 AAC 45.890. Member Collins seconded the motion. The motion passed unanimously.

Motion to adjourn was made by Member Weel at 5:00pm. Member Austin seconded the motion. The motion passed unanimously.

Meeting Adjourned 5:00pm

Friday, January 25, 2019

I. Call to order

Director Mitchell resumed the Alaska Workers' Compensation Board meeting at 9:05am on Friday, January 25, 2019, in Anchorage, Alaska. The following Board members were present:

Brad Austin	Pamela Cline	Chuck Collins
Jacob Howdeshell	Sarah Lefebvre	Linda Murphy
Donna Phillips	Nancy Shaw	Amy Steele
Robert Weel	Lake Williams	

Director Mitchell noted that Members Frye, Kester, Stubbs and Mack were excused. Members Evans, Letuligasenoa and Traini were absent. Quorum was established.

II. Old Business Continued

Amend 8 AAC 45.020(d), relating to electronic filing. A motion to approve remained on the floor from the previous day. Member Shaw clarified that her objection to this amendment was purely due to what she considered to be sloppy drafting. The Board discussed improvements to the amendment. Member Austin motioned to make non-substantive changes to the proposed amendment. He proposed to separate the second and third sentence of section 9 into their own paragraph to be numbered 10, and to renumber section 10 to 11 and 11 to 12. Member Shaw seconded the motion. The motion passed unanimously. Director Mitchell called the question and the motion to adopt the revised amendment of 8 AAC 45.020(d) passed unanimously.

Amend 8 AAC 45.136, relating to insurer or adjuster reporting. The Board again invited McKenna Wentworth to provide testimony. Ms. Wentworth raised concerns that the proposed language would cause an increase in late compensation report penalties. She stated that reports are currently considered on-time if the attempt to submit an EDI transaction has been made, and under this amendment those reports would be considered late if the transaction contains errors and is not accepted. Director Mitchell called the question. The motion did not pass on a 9 to 2 vote, with

members Cline and Austin voting against, and members Collins, Howdeshell, Lefebvre, Murphy, Shaw, Steele, Weel and Williams voting in favor.

Break 10:15am-10:30am

III. New Business

Hearing Officer Bill Soule reviewed 2018 Case Law from the Alaska Supreme Court and the Alaska Workers' Compensation Appeals Commission.

Lunch Break 12:00pm-1:32pm

Hearing Officer Soule continued his 2018 case law review.

Director Mitchell, through Workers' Compensation Officer Sue Reishus-O'Brien, introduced a proposal for the amendment of 8 AAC 45.090(b) to incorporate ancillary costs that may be necessary to conduct the SIME, namely additional imaging the physicians may require (which some do) and the costs of an interpreter, if required. This proposal would close a loophole that has caused some insurers to initially deny payment of an interpreter for non-English speakers, as the regulation does not specifically state they must provide that benefit. Ms. Reishus-O'Brien explained that some Board-ordered SIMEs had to be cancelled and rescheduled at considerable expense to the employer/insurer due to problems with interpreter payment and suggested additional language to read, "The cost of an examination, medical report, and ancillary costs to do the examination shall be paid by the employer." The board discussed this proposal, but did not take action.

Member Shaw brought an issue regarding an employer's failure to pay, and what could be done when an employer fails to cooperate.

Director Mitchell reminded the Board members the next regular board meeting is May 2-3, 2019. Meeting will be by teleconference.

Motion to adjourn was made by Member Austin at 3:38pm. Member Philips seconded the motion. The motion passed without objection.

Meeting Adjourned 3:38pm