

# **PROPOSED CHANGES TO THE ALASKA WORKERS' COMPENSATION REEMPLOYMENT BENEFITS SYSTEM**

## **INTRODUCTION**

This paper provides a summary of the Alaska Workers' Compensation Division's Reemployment Benefits section, and the Department of Labor and Workforce Development's proposed changes to the workers' compensation reemployment benefit system. The Department is addressing this issue now because it has received repeated calls for reform by numerous stakeholder groups.

This paper is intended to identify best practices and promote discussion between workers, employers, insurance carriers, medical providers, state officials, and other parties striving to strike the correct balance between workers' compensation reemployment benefits and the cost of those benefits.

## **THE CURRENT REEMPLOYMENT BENEFITS SYSTEM**

The Alaska Workers' Compensation Act (Act) provides for the payment by employers or their insurance carriers of medical, disability, and reemployment benefits to injured workers. Under the Act, an employee who suffers a work-related injury and cannot return to the same job may request reemployment benefits to obtain retraining in a new occupation. The reemployment benefits administrator (RBA) determines whether an injured worker is eligible for reemployment benefits based primarily on a rehabilitation specialist's evaluation and report.

If an injured worker is found eligible for reemployment benefits, the injured worker must choose whether to pursue retraining, or waive retraining and receive a lump sum payment. If an injured worker chooses retraining, the retraining plan must provide the injured worker with the skills necessary to return to work in the shortest possible time, with a maximum of \$13,300 in plan costs. An employer pays the injured worker a stipend, equal to 70% of the injured worker's weekly wages, every two weeks while the injured worker is in the reemployment process.

## **CHALLENGES**

The Act requires a reemployment benefits eligibility evaluation when an injured worker has been off work for 90 days. This time frame is too short to be effective because often an injured worker is still receiving medical care and is not yet ready for an evaluation, has already returned to work and does not need retraining, or has no interest in participating in the reemployment process. The Act does not allow an injured worker to exit the reemployment benefits eligibility process once it has begun.

The Act lacks a fee schedule for rehabilitation services. This, combined with a small, declining pool of qualified rehabilitation specialists, has led to very high fees for what is often poor-quality work.

Currently, retraining plans focus on the quickest option to return an injured worker to work regardless of interest in that vocational goal, and at a maximum plan cost of \$13,300. This amount, which has not been adjusted since 2000, is often insufficient to create a plan that meets statutory requirements.

## **DEPARTMENT'S PROPOSED CHANGES**

In response to these challenges, the Workers' Compensation Board issued the attached Resolution No. 13-01 in 2013, which was unanimously approved by both labor and industry. The Department agrees with most of the Board's recommendations, but disagrees with some.

### ***The Department agrees with:***

- Shifting the focus from retraining to return to work. This would improve worker outcomes.
- Making eligibility evaluations voluntary instead of mandatory. This would keep the process from being forced upon injured workers who do not wish to participate in it, wasting valuable time, money, and resources.
- Establishing a fee schedule for rehabilitation services. This is critical to control increasing rehabilitation specialist fees.
- Increasing retraining costs. Retraining costs were last increased from \$10,000 to \$13,300 in 2000. The US Department of Labor CPI Inflation Calculator equates \$13,300 in 2000 to \$19,300 in 2017.
- Increasing evaluation time from 30 days to 60 days, providing a statutory provision for RBA reconsideration within 30 days of decision, and allowing employers to controvert benefits for employee noncooperation. This would make the reemployment benefit process much more efficient.

### ***The Department does not agree with:***

- Strengthening the criteria for an individual to provide reemployment services. This is unnecessary, as the Act already requires that credentialed individuals provide them, and there are already so few qualified individuals to provide such services in Alaska. Instead, the focus should be on enforcing the existing statutory requirements.
- Allowing a lump sum cash payment to be paid out for retraining. Such payment is ineffective in returning injured workers to work because injured workers often do not return to work independently. Instead they utilize other public systems to meet their needs (Division of Vocational Rehabilitation, Adult Public Assistance, Social Security Administration, etc.), effectively shifting the cost of a workers' compensation injury to other state and federal programs.

### ***The Department additionally recommends:***

- Focusing on retraining plans that allow training an injured worker for a job they are actually interested in, versus one that is merely the quickest option. This would allow greater flexibility in retraining plan development, provide more successful outcomes, and would allow altering a plan found to be flawed or if circumstances change.
- Obtaining stakeholder input on how to ensure employees receive benefits for basic living expenses during the retraining process, while incentivizing them to complete retraining and return to the workforce. The problem with paying an employee a stipend equal to 70% of the injured worker's weekly wages while in the reemployment process is that it disincentivizes an early return to work. The stipend is often used as a litigation tool and settlement tactic because the stipend is paid for up to two years, but the two-year time limitation does not begin to run until an injured worker agrees to a retraining plan.
- Establishing a method to exit the reemployment benefits system for circumstances such as when an injured worker no longer wishes to participate in retraining or has returned to work and no longer requires retraining.

**RESOLUTION NUMBER 13-01**  
**RESOLUTION IN SUPPORT OF ADDRESSING SYSTEM COSTS**  
**UNDER THE ALASKA WORKERS' COMPENSATION ACT**

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WHEREAS, the Alaska Workers' Compensation Board (Board) is a public organization that is accountable through its members to the residents, the Legislature, and the Governor of Alaska;

WHEREAS, the Board acts as the lead state agency for adjudicating disputes under the Alaska Workers' Compensation Act, to ensure quick, efficient, and fair payments of benefits to injured workers at a reasonable cost to employers;

WHEREAS, Alaska's workers' compensation premium rates are the highest in the nation according to the October 2012 Oregon Workers' Compensation Premium Rate Ranking Summary;

WHEREAS, medical costs comprise \$.75 of each dollar spent on workers' compensation benefits;

WHEREAS, medical benefit costs have risen 25% over the last 5 years despite a 14.2% decline in the frequency of workers' compensation claims over the same period;

WHEREAS, research is clear that inappropriate opioid use is an epidemic damaging lives and driving up costs, as stated in the August 28, 2013 joint policy recommendations of the International Association of Industrial Accident Boards and Commissions, the American College of Occupational and Environmental Medicine; the National Association of Insurance Commissioners, the National Alliance for Model State Drug Laws, and the National Council of Insurance Legislators;

WHEREAS, rehabilitation and reemployment of injured workers costs employers \$12.9 million in CY2012, with fewer than 8% of eligible injured workers successfully completing retraining;

NOW THEREFORE BE IT RESOLVED that the Board respectfully requests that the Alaska State Legislature amend the Alaska Workers' Compensation Act to provide the following:

1. That all fees and charges for medical treatment be subject to regulation by the Board;
2. That the physician fee schedule be based on Centers for Medicare and Medicaid Services (CMS) resource based relative value scale (RBRVS) increased by a board specified conversion factor;
3. That the outpatient hospital/ambulatory surgical center fee schedule be based on CMS ambulatory payment classification increased by a board specified conversion factor;

4. That the inpatient hospital fee schedule be based on CMS Medicare severity diagnostic related group (MSDRG) increased by a board specified base rate;
5. That the Board evaluate board specified conversion factors and rates every two years;
6. That air ambulance services be reimbursed at a board specified rate;
7. That medical providers be required to bill payers within 180 days of date of service;
8. That medical providers must submit a claim for disputed payment within 60 days of the disputed payment;
9. That reimbursement for out-of-state services be the lower of the workers' compensation fee schedule in the jurisdiction where the service is provided or the workers' compensation fee schedule adopted in Alaska;
10. That durable medical equipment not included in a covered medical procedure be reimbursed at manufacturer's invoice plus a board specified markup.
11. That reimbursement for prescription drugs be based on manufacturer's invoice plus a board specified mark-up and dispensing fee;
12. That prescription drugs dispensed by a physician include the manufacturer's national drug code (NDC) assigned by the U.S. Food and Drug Administration, and are subject to the same prescription drug formulary as retail pharmacies; and
13. Authorize the Board to adopt regulations relating to the prescription of opioids.

BE IT FURTHER RESOLVED that the Board respectfully requests that the Alaska State Legislature amend the Alaska Workers' Compensation Act to authorize the department, in adopting or amending a regulation that incorporates a document or other material by reference, to incorporate future amended versions of a document or other material if it is one of the following:

1. *Current Procedural Terminology Codes*, produced by the American Medical Association;
2. *Healthcare Common Procedure Coding System*, produced by the American Medical Association;
3. *International Classification of Diseases*, published by the American Medical Association;
4. *Relative Value Guide*, produced by the American Society of Anesthesiologists;
5. *Diagnostic and Statistical Manual of Mental Disorders*, produced by the American Psychiatric Association;
6. *Current Dental Terminology*, published by the American Dental Association;
7. *Resource Based Relative Value Scale*, produced by CMS;
8. *Ambulatory Payment Classifications*, produced by CMS;
9. *Medicare Severity Diagnosis Related Groups (MSDRG)*, produced by CMS;
10. *National Correct Coding Initiative Edits* produced by CMS; or
11. Any other document or material the board incorporates by reference.

BE IT FURTHER RESOLVED that that the Board respectfully requests that the Alaska State Legislature amend the Alaska Workers' Compensation Act to provide the following:

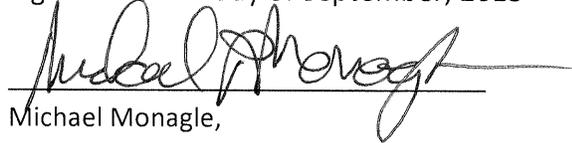
1. Transition from emphasis on retraining to emphasis on stay-at-work/return-to-work and on a voluntary basis, provide an initial consultation with the employer, the employee, and the employee's treating physician to determine the physical demands of the employer and the physical capacities of the employee to determine whether a stay-at-work/return-to-work plan can be implemented.
2. A repeal of the 90 day mandatory reemployment evaluation under AS 23.30.041, and return to evaluations on the request of either the employer or the employee.
3. Adopt the following:
  - a. Strengthen criteria by eliminating reemployment services by non-credentialed individuals and eliminating reemployment services being administered by firms not principally owned by credentialed individuals.
  - b. Authorize the Board to establish fees for reemployment specialist services.
  - c. Increase the benefit under .041(l) from \$13,300 to \$18,600, and adjust to cpi annually.
  - d. If found eligible, provide two choices
    - i. accept retraining with limit of 2 years and maximum benefit under .041(l), or
    - ii. accept a one-time cash payment of the maximum benefit under .041(l) plus 50%.
4. Increase evaluation time from 30 days to 60 days.
5. Provide statutory provision for RBA reconsideration with 30 days of decision.
6. Amend the statute to allow employers to controvert based on noncooperation & follow regular claim process.

BE IT FURTHER RESOLVED that copies of the Resolution be promptly transmitted to the Governor, the President of the Senate, the Speaker of the House, and the Chairman of the Senate and House Labor and Commerce Committees.

CERTIFICATION

The Alaska Workers' Compensation Board held a meeting duly and regularly called, noticed, and convened this 27<sup>th</sup> day of September, 2013, and the foregoing Resolution was adopted at said meeting.

Signed this 27<sup>th</sup> day of September, 2013

  
Michael Monagle,

Chair

  
Stacy Allen,

Labor Member

Labor Member

  
Brad S. Austin,

Labor Member

Labor Member

  
Pamela Cline,

Labor Member

Labor Member

  
Chuck Collins,

Industry Member

Industry Member

  
Linda Hutchings,

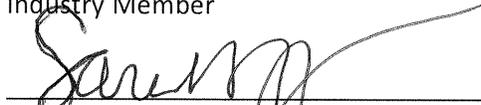
Industry Member

Industry Member

  
David Kester,

Industry Member

Industry Member

  
Sarah Lefebvre,

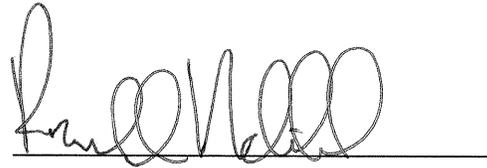
Industry Member

Industry Member

  
Krista Lord,

Industry Member

Industry Member

  
Ronald Nalikak,

Industry Member

Industry Member

ABSENT

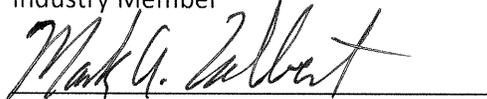
Michael O'Connor,

Industry Member

  
Amy Steele,

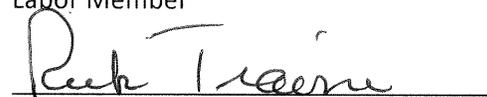
Industry Member

Industry Member

  
Mark G. Talbert,

Labor Member

Labor Member

  
Rick Traini,

Labor Member

Labor Member

  
Patricia Vollendorf,

Labor Member

Labor Member

  
Robert Weel,

Industry Member

Industry Member

  
Zeb Woodman,

Labor Member

Labor Member