

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

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

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

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

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

(Eff. 12/1/2015, Register 216; am 3/11/2016, Register 217; am 4/1/2017, Register 221)

Authority: AS 23.30.005 AS 23.30.097 AS 23.30.098

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

8 AAC 45.092. Second [SELECTION OF AN] independent medical evaluation [EXAMINER].

8 AAC 45.092(a) is amended to read:

(a) The board will maintain a list of physicians' names for second independent medical evaluations. The names will be listed in categories based on the physician's designation of [HIS OR HER] specialty or particular type of practice and the geographic location of the physician's

practice. [A COPY OF THE LIST IS AVAILABLE UPON REQUEST FROM THE STATE OF ALASKA WORKERS' COMPENSATION DIVISION, P.O. BOX 25512, JUNEAU, ALASKA 99802-5512.]

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

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

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

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

(A) be admitted to the practice of law in this or another state;

(B) have personally presented a total of **three** [FIVE] cases, no more than **one** [TWO] of which **was** [WERE] resolved by agreed settlements, for board decision during the calendar year preceding volunteering to serve on a panel; and

(C) in the calendar year preceding volunteering, have represented one class of litigants, either employee or employer, 90 percent of the time; based on the class of litigant that was represented 90 percent of the time, the commissioner will classify the attorney as either an employee or employer attorney.

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

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

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

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

8 AAC 45.092(e) is amended to read:

(e) If the parties stipulate that a physician not on the board's list may perform an evaluation under AS 23.30.095(k), the board or its designee may select a physician in accordance with the parties' agreement. If the parties do not stipulate to a physician not on the board's list to perform the evaluation, the board or its designee will select a physician to serve as **a second** [AN] independent medical examiner to perform the evaluation. The board or its designee will consider these factors in the following order in selecting the physician:

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

8 AAC 45.092(f) is amended to read:

(f) If the board or its designee determines that the list of **second** independent medical examiners does not include an impartial physician with the specialty, qualifications, and experience to examine the employee, the board or its designee will notify the employee and employer that a physician not named on the list will be selected to perform the examination. The notice will state the board's preferred physician's specialty to examine the employee. **Not later**

than [WITHIN] 10 days after notice by the board or its designee, the employer and employee may each submit the names, addresses, and curriculum vitae of no more than three physicians. If both the employee and the employer recommend the same physician, that physician will be selected to perform the examination. If no names are recommended by the employer or employee or if the employee and employer do not recommend the same physician, the board or its designee will select a physician, but the selection need not be from the recommendations by the employee or employer.

8 AAC 45.092(h) is amended to read:

(h) If the board requires an evaluation under AS 23.30.095(k), the board **may** [WILL, IN ITS DISCRETION,] direct

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

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

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

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

(B) incomplete, the party served with the **binder** [BINDERS] must file the **binder** [TWO BINDERS] upon the board together with **a** [TWO] supplemental **binder** [BINDERS] with copies of the medical records in that party's possession that were missing from the **binder** [BINDERS] and an affidavit verifying that the binders contain copies of all medical records in the party's possession; **the** [. THE] copies of the medical records in the supplemental **binder** [BINDERS] must be placed in chronological order by date of treatment, **with the initial report on top**, and numbered consecutively; **the** [. THE] party must also serve the party who prepared the first **binder** [SET OF BINDERS] with a copy of the supplemental binder together with an affidavit verifying that the binder is identical to the supplemental **binder** [BINDERS] filed with the board;

(4) the party, who receives additional medical records after the **binder has** [TWO

BINDERS HAVE] been prepared and filed with the board, to make **two** [THREE] copies of the additional medical records, put the copies in **two** [THREE] separate binders in chronological order by date of treatment, **with the initial report on top.** and number the copies consecutively; **the** [. THE] party must file **one binder** [TWO OF THE ADDITIONAL BINDERS] with the board **no later than** [WITHIN] seven days after receiving the medical records; **the** [. THE] party must serve **the other additional binder** [ONE OF THE ADDITIONAL BINDERS] on the opposing party, together with an affidavit stating the binder is identical to the **binder** [BINDERS] filed with the board, **not later than** [WITHIN] seven days after receiving the medical records;

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

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

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

(C) if any party objects to any questions submitted to the physician, that party shall file a petition with the board and serve all other parties **not later than**

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

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

8 AAC 45.092(i) is amended to read:

(i) The report of the physician who is serving as **a second** [AN] independent medical examiner must be done **not later than** [WITHIN] 14 days after the evaluation ends. The evaluation ends when the physician reviews the medical records provided by the board, receives the results of all consultations and tests, and examines the injured worker, if that is necessary. The board will presume the evaluation ended after the injured worker was examined. If the evaluation ended at a later date, the physician must state in the report the date the evaluation was done. An examiner's report must be received by the board **not later than** [WITHIN] 21 days after the evaluation ended. If an examiner's report is not timely received by the board, a party may file a petition asking that another physician be selected to serve as **a second** [AN] independent medical examiner. The board or its designee **may** [WILL, IN ITS DISCRETION,] select another physician to serve as **a second** [AN] independent medical examiner, and will make

the selection in accordance with this section. Until the parties receive the second independent medical examiner's written report, communications by and with the second independent medical examiner are limited, as follows:

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

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

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

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

Authority: AS 23.30.005 AS 23.30.095 AS 23.30.110

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

8 AAC 45.114(3) is amended to read:

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

8 AAC 45.114(4) is amended to read:

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

8 AAC 45.114(5) is repealed:

(5) repealed 4/1/2017. (Eff. 3/16/90, Register 113; am 7/20/97, Register 143; am 4/1/2017, Register 221)

Authority: AS 23.30.005 AS 23.30.135

8 AAC 45.175 is repealed:

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

8 AAC 45.186(a) is amended to read:

(a) In order to satisfy the notice provisions of **AS 23.30.205(e)** [AS 23.30.205(f)] an

employer or carrier shall, no later than 100 weeks after receipt of knowledge of the injury or death, file form 07-6110 with the board and serve a copy of the form upon all interested parties in accordance with 8 AAC 45.060.

8 AAC 45.186(c) is amended to read:

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

8 AAC 45.186(d) is amended to read:

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

8 AAC 45.186(e) is amended to read:

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

Register 221, April 2017

LABOR AND WORKFORCE DEV.

(Eff. 5/28/83, Register 86; am 7/20/97, Register 143; am 7/2/98, Register 146; am 4/1/2017, Register 221)

Authority: AS 23.30.005 AS 23.30.205

THE REGULATIONS REPRODUCED HERE HAVE BEEN PROVIDED BY THE DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT AS A PUBLIC COURTESY. WHILE EVERY EFFORT HAS BEEN MADE TO ASSURE THE ACCURACY OF THE REPRODUCED VERSION, THE DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT CANNOT GUARANTEE ITS ABSOLUTE ACCURACY. A COPY OF THE REGULATIONS AS ORIGINALLY FILED BY THE LIEUTENANT GOVERNOR ARE AVAILABLE FROM THE DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT, DIVISION OF WORKERS' COMPENSATION OR ON THE ALASKA ONLINE PUBLIC NOTICE SYSTEM.

THE REGULATIONS HAVE AN EFFECTIVE DATE OF 04/01/2017, ARE IN REGISTER 221, AND WILL APPEAR IN OFFICIAL PUBLISHED FORM IN THE APRIL 2017 SUPPLEMENT TO THE ALASKA ADMINISTRATIVE CODE.