

## The Fishermen's, Second Injury and Benefits Guaranty funds

**A**sk anyone on the street to name a statewide fund providing benefits to Alaskans and the likely answer will be the Permanent Fund. By paying state residents an annual dividend (\$1,106.96 in 2006) that \$34 billion fund has certainly earned its notoriety. For someone injured while commercial fishing, though, knowing about the state's Fishermen's Fund may have been even more important. In 2005, the lesser-known fund paid an average of \$1,121 per person for medical care provided to 841 people who were injured or fell ill while commercial fishing in Alaska.

The Fishermen's Fund, along with the Second Injury Fund and the newly formed Benefits Guaranty Fund, are small funds within the Alaska Department of Labor & Workforce Development's Workers' Compensation Division that can play large roles in the lives of injured workers. The benefits and the workers who qualify for them vary, but the funds all share the same goal – helping injured workers get back on the job.

The division's general workers' compensation program also aims to help injured workers get back to work, but these three funds operate separately. Each

is intended to address a specific problem or concern affecting particular groups of injured workers.

The Fishermen's Fund helps pay the medical bills of commercial fishermen not covered by health insurance. The payments reduce the concern that commercial fishermen, who are exempt from the requirement to have workers' compensation insurance, might be unable to get needed medical care.

The concern of the Second Injury Fund is employment discrimination. Without the fund, which was established in 1959 in the first Legislature after statehood, employers were often hesitant to hire a worker with a disability because they feared a relatively minor injury might combine with the existing disability and obligate them to pay large amounts of workers' compensation benefits.

To reduce those concerns, the Second Injury Fund reimburses employers' insurance companies and self-insured employers for some of the benefits they pay each year to the injured workers whom the employers knew had disabilities when they hired them. By reducing the financial impact on the employers and their insurance companies, the fund removes a potential barrier to the reemployment of those workers with disabilities.

The Benefits Guaranty Fund deals with the problems workers face when they're injured on the job and their employers don't have workers' compensation insurance. If the employers fail to pay their employees' medical bills themselves, the fund pays the bills, then goes through the Attorney General's Office to collect the money from the employers in civil court.

### The Fishermen's Fund

The Fishermen's Fund was established in 1951, prior to statehood, and lawmakers in 1959 voted to continue the fund in the first legislative session after statehood.

**Fishermen's Fund technicians Linda Crapo (left) and Noora Parish review claims from fishermen. The fund helps pay the medical bills of commercial fishermen who aren't covered by health insurance.**



Photo by Sam Dapevich

Thirty-nine percent of the amount crewmembers pay for their commercial fishing crewmember licenses each year goes into the fund, along with up to \$50 of the annual fee for each fishery limited entry permit. Those fees are then used to pay for medical care needed by crewmember license holders who are injured or become sick while fishing. The fund only pays bills that aren't covered by public or private health insurance coverage.

Linda Crapo and Noora Parish, the fund's two technicians, accept claims, establish coverage and then pay the health care providers or reimburse the fishermen if they've already paid the providers. Mike Monagle, the coordinator of Fishermen's Fund and other funds, said Crapo and Parish, working with a new computer system, have pared the claim approval process that took at least 30 days two years ago down to seven days. Using the new system, they verify the provider health care codes – to ensure they're paying the provider for treatment directly related to the injury – then upload their payment requests to the State of Alaska's accounting system, which issues and mails out the checks, or deposits the money in the providers' or fishermen's accounts, Monagle said.

In 2005, the fund paid out \$942,970 in benefits for 841 approved claims.

Monagle said filing a claim with Fishermen's Fund, or even appealing a claim, is a relatively simple process.

"Our experience is in relation to Workers' Compensation. Workers' Compensation is a system that follows administrative rules. It's sort of like a court case, with rules of evidence, discovery and depositions. Fishermen's Fund isn't anything like that," he said.

"It's a very uncomplicated process. There are no attorneys, no depositions, no sworn testimony," he said. Injured or sick fishermen file claims. If the claims are under \$2,500, Crapo and Parish approve them. If they're higher, they go to the fund's Advisory and Appeals Council for approval. The council, which usually meets in March and October each year, is made up of five fishermen appointed by the governor, one from each of the state's five fishery regions, and the Department of Labor's commissioner.

Appeals also go to the council. Fishermen can appear in person, but typically they fill out an appeal form. The council meets in executive session to decide on the appeal; if a fisherman doesn't like

the council's decision, he or she can file a second appeal with the commissioner.

## The Second Injury Fund

The Second Injury Fund is paid for by annual fees from employers' insurance companies and employers who are approved self-insurers. They pay an annual fee of 6 percent of the total amount they pay to workers with disabilities for lost wages.

The fund staff then uses the fund to pay back the insurance companies and self-insured employers for the money they pay each year in lost wages to workers with disabilities. The reimbursement is made when a second injury combines with an initial disability, requiring the payment of substantially greater benefits than what would have been owed for the second injury alone. The fund allows insurance companies and self-insured employers to spread out risk, said Monagle, who's also the administrator of the Second Injury Fund.

In 2005, the fund collected \$3.9 million and reimbursed \$3.1 million to the insurance companies and self-insured employers on 130 claims, Monagle said. Cindy Neff, a compensation officer, and Carol Carter, a technician, run the fund's day-to-day operations. (Their salaries, along with part of Monagle's, come out of the fund. The Fishermen's Fund works the same way.)

Monagle said workers who are completely disabled and can't work get monthly payments for lost wages for the rest of their lives. (Since they aren't working, they wouldn't be able to accrue the retirement they would have accrued if they were working. Any other disability payment, other than Medicare, is deducted from their lost wages payment.)

The law lists the disabling "permanent physical impairments" that qualify for reimbursement from the fund. While some qualifying impairments such as limb amputations are apparent, others aren't. Conditions such as arthritis, heart disease, diabetes and ruptured spinal disks often have no visible signs.

Therefore, it's up to employers to ask their employees about any disabilities after they're hired, (which complies with the Americans with Disabilities Act). If they don't, the employers can't show they documented the impairments before the second injuries occurred – an absolute requirement for reimbursement. Many employers ask their employees to complete a checklist of 28 qualify-

ing conditions. By placing these checklists in their files, often with supporting medical records, the employers, through their insurance companies, are ready to pursue reimbursement if second injuries occur.

## The Benefits Guaranty Fund

The Benefits Guaranty Fund, established in November 2005, is funded entirely from the civil penalties assessed against employers who fail to carry the required workers' compensation liability insurance. The Workers' Compensation Board has the authority to assess up to \$1,000 per day per employee in penalties.

The legislation that established the fund authorized the division to increase its investigators from the two it had in Anchorage to the five investigators it has now in Anchorage, Juneau and Fairbanks. Paul Grossi is the chief investigator; the others are Mark Lutz, Sandra Stuller, Richard Degenhardt and Richard Ellis. They track down uninsured employers, and investigate fraud in workers' compensation and the other funds, whether it's an employee's fraudulent workers' compensation claim or a health care provider's fraudulent charges. Insurance company wrongdoings are referred to the Division of Insurance within the Department of Commerce, Community and Economic Development.

The Benefits Guaranty Fund, unlike the others, employs no administrative staff. Instead, it was designed to function by using a contractor as a claims adjuster. Since penalties paid into the fund are now \$45,700, the Workers' Compensation

Division will solicit bids from contractors to do the claims adjusting. In the meantime, the division will continue to accept claims that will be forwarded to the eventual contractor.

"[The fund] will be a quicker remedy for the injured worker," Monagle said. Before the fund was established, the Workers' Compensation Board would order uninsured employers to pay their employees' benefits, and when they didn't, the division would ask the Attorney General's Office to collect the money for the employees (or health care providers if the employees couldn't pay them). Now that the fund is in place, the fund will be used to pay the employees or health care providers right away, then the division will ask the Attorney General's Office to collect the money for the state (to reimburse the fund). And, as before, the division refers employers in particularly egregious cases to the District Attorney's Office for prosecution.

Monagle said a lot of employers complain about having to pay for workers' compensation insurance, but what they dislike more is when their competitors don't have workers' compensation insurance and they get away with it. The Benefits Guaranty Fund – and the added investigators to track down uninsured employers – helps to level the playing field, he said.

"I'm real excited about all the programs, especially about the Benefits Guaranty Fund," Monagle said. "I think it's long overdue. I think it's been tragic when people who are injured through no fault of their own end up with severe disabilities and no resources available to them."

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