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# A BILL FOR AN ACT

RELATING TO EVALUATION OF MEDICAL OPINIONS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Chapter 431, Hawaii Revised Statutes, is  
2 amended by adding a new section to article 10A to be  
3 appropriately designated and to read as follows:  
4           "§431:10A-           Evaluation of medical opinions; treating  
5 source physician; opinions. Any other law to the contrary  
6 notwithstanding, each employer group health policy, contract,  
7 plan, or agreement issued or renewed in this State after  
8 December 31, 2006, shall evaluate every medical opinion  
9 received, regardless of source, concerning the policyholder and  
10 individuals covered under the policy, contract, plan, or  
11 agreement. Unless the policy, contract, plan, or agreement  
12 gives a treating source's opinion controlling weight under  
13 paragraph (2), all of the following factors shall be considered  
14 in deciding the weight given to any medical opinion:

15           (1) Examining relationship. Generally, more weight shall  
16           be given to the opinion of a source who has examined  
17           the policyholder or covered individual than to the

1           opinion of a source who has not examined the  
2           policyholder or covered individual;

3           (2) Treatment relationship. Generally, more weight shall  
4           be given to opinions from the treating sources, since  
5           these sources are likely to be the medical  
6           professionals most able to provide a detailed,  
7           longitudinal picture of any medical impairment and may  
8           bring a unique perspective to the medical evidence  
9           that cannot be obtained from the objective medical  
10           findings alone or from reports of individual  
11           examinations, such as consultative examinations or  
12           brief hospitalizations. If it is found that a  
13           treating source's opinion on the issue of the nature  
14           and severity of an impairment of a policyholder or  
15           covered individual is well-supported by medically  
16           acceptable clinical and laboratory diagnostic  
17           techniques and is not inconsistent with the other  
18           substantial evidence in the case record, controlling  
19           weight shall be given to that opinion. When  
20           controlling weight is not given to the treating  
21           source's opinion, the factors listed in subparagraphs  
22           (A) and (B) shall be applied, as well as the factors



1 in paragraphs (3) through (6) in determining the  
2 weight to give the opinion. Good reasons shall be  
3 given in any notice of determination or decision for  
4 the weight given to the treating source's opinion;

5 (A) Length of the treatment relationship and the  
6 frequency of examination. Generally, the longer  
7 a treating source has treated the policyholder or  
8 covered individual and the more times the  
9 policyholder or covered individual has been seen  
10 by a treating source, the more weight shall be  
11 given to the source's medical opinion. When the  
12 treating source has seen the policyholder or  
13 covered individual a number of times and long  
14 enough to have obtained a longitudinal picture of  
15 an impairment, the source's opinion shall be  
16 given more weight than would otherwise be given  
17 if it were from a nontreating source; and

18 (B) Nature and extent of the treatment relationship.  
19 Generally, the more knowledge a treating source  
20 has about an impairment, the more weight shall be  
21 given to the source's medical opinion. The  
22 treatment the source has provided and the kinds

1           and extent of examinations and testing the source  
2           has performed or ordered from specialists and  
3           independent laboratories shall be considered.

4           For example, if an ophthalmologist notices that  
5           the policyholder or covered individual has  
6           complained of neck pain during eye examinations,  
7           the ophthalmologist's opinion shall be considered  
8           with respect to the neck pain, but the opinion  
9           shall be given less weight than that of another  
10          physician who has treated the policyholder or  
11          covered individual for the neck pain. When the  
12          treating source has reasonable knowledge of an  
13          impairment, the source's opinion shall be given  
14          more weight than would otherwise be given if it  
15          were from a nontreating source;

16          (3) Supportability. The more a medical source presents  
17          relevant evidence to support an opinion, particularly  
18          medical signs and laboratory findings, the more weight  
19          shall be given that opinion. The better an  
20          explanation a source provides for an opinion, the more  
21          weight shall be given that opinion. Furthermore,  
22          because nonexamining sources have no examining or



1 treating relationship with the policyholder or covered  
2 individual, the weight given to their opinions shall  
3 depend on the degree to which they provide supporting  
4 explanations for their opinions. The degree to which  
5 these opinions consider all of the pertinent evidence  
6 in a claim, including opinions of treating and other  
7 examining sources, shall be evaluated;

8 (4) Consistency. Generally, the more consistent an  
9 opinion is with the record as a whole, the more weight  
10 shall be given to that opinion;

11 (5) Specialization. Generally more weight shall be given  
12 to the opinion of a specialist about medical issues  
13 related to the specialist's area of specialty than to  
14 the opinion of a source who is not a specialist; and

15 (6) Other factors. When considering how much weight to  
16 give to a medical opinion, any factors pointed out by  
17 the policyholder, covered individual, or others or  
18 which the policy, contract, plan, or agreement is  
19 aware of that tend to support or contradict the  
20 opinion, shall also be considered. For example, the  
21 degree of understanding of the evidentiary  
22 requirements of a policy, contract, plan, or agreement

1           that an acceptable medical source has, regardless of  
2           the source of that understanding, and the extent to  
3           which an acceptable medical source is familiar with  
4           the other information in the policyholder or covered  
5           individual's case record, are relevant factors that  
6           shall be considered in deciding the weight to be given  
7           to a medical opinion."

8           SECTION 2. Chapter 432, Hawaii Revised Statutes, is  
9 amended by adding a new section to be appropriately designated  
10 and to read as follows:

11           "§432-       **Evaluation of medical opinions; treating source**  
12 physician; opinions. Any other law to the contrary  
13 notwithstanding, each individual and group hospital or medical  
14 service plan, policy, contract, or agreement issued or renewed  
15 in this State after December 31, 2006, shall evaluate every  
16 medical opinion received, regardless of source, concerning the  
17 member under the plan, policy, contract, or agreement. Unless  
18 the plan, policy, contract, or agreement gives a treating  
19 source's opinion controlling weight under paragraph (2), all of  
20 the following factors shall be considered in deciding the weight  
21 given to any medical opinion:

1       (1) Examining relationship. Generally, more weight shall  
2       be given to the opinion of a source who has examined  
3       the member than to the opinion of a source who has not  
4       examined the member;

5       (2) Treatment relationship. Generally, more weight shall  
6       be given to opinions from the treating sources, since  
7       these sources are likely to be the medical  
8       professionals most able to provide a detailed,  
9       longitudinal picture of any medical impairment and may  
10      bring a unique perspective to the medical evidence  
11      that cannot be obtained from the objective medical  
12      findings alone or from reports of individual  
13      examinations, such as consultative examinations or  
14      brief hospitalizations. If it is found that a  
15      treating source's opinion on the issue of the nature  
16      and severity of an impairment of a member is well-  
17      supported by medically acceptable clinical and  
18      laboratory diagnostic techniques and is not  
19      inconsistent with the other substantial evidence in  
20      the case record, controlling weight shall be given to  
21      that opinion. When controlling weight is not given to  
22      the treating source's opinion, the factors listed in



1           subparagraphs (A) and (B) shall be applied, as well as  
2           the factors in paragraphs (3) through (6) in  
3           determining the weight to give the opinion. Good  
4           reasons shall be given in any notice of determination  
5           or decision for the weight given to the treating  
6           source's opinion;

7           (A) Length of the treatment relationship and the  
8           frequency of examination. Generally, the longer  
9           a treating source has treated the member and the  
10          more times the member has been seen by a treating  
11          source, the more weight shall be given to the  
12          source's medical opinion. When the treating  
13          source has seen the member a number of times and  
14          long enough to have obtained a longitudinal  
15          picture of an impairment, the source's opinion  
16          shall be given more weight than would otherwise  
17          be given if it were from a nontreating source;  
18          and

19          (B) Nature and extent of the treatment relationship.  
20          Generally, the more knowledge a treating source  
21          has about an impairment, the more weight shall be  
22          given to the source's medical opinion. The





1           treatment the source has provided and the kinds  
2           and extent of examinations and testing the source  
3           has performed or ordered from specialists and  
4           independent laboratories shall be considered.  
5           For example, if an ophthalmologist notices that a  
6           member has complained of neck pain during eye  
7           examinations, the ophthalmologist's opinion shall  
8           be considered with respect to the neck pain, but  
9           the opinion shall be given less weight than that  
10          of another physician who has treated the member  
11          for the neck pain. When the treating source has  
12          reasonable knowledge of an impairment, the  
13          source's opinion shall be given more weight than  
14          would otherwise be given if it were from a  
15          nontreating source;

16        (3) Supportability. The more a medical source presents  
17        relevant evidence to support an opinion, particularly  
18        medical signs and laboratory findings, the more weight  
19        shall be given that opinion. The better an  
20        explanation a source provides for an opinion, the more  
21        weight shall be given that opinion. Furthermore,  
22        because nonexamining sources have no examining or



1 treating relationship with the member, the weight  
2 given to their opinions shall depend on the degree to  
3 which they provide supporting explanations for their  
4 opinions. The degree to which these opinions consider  
5 all of the pertinent evidence in a claim, including  
6 opinions of treating and other examining sources,  
7 shall be evaluated;

8 (4) Consistency. Generally, the more consistent an  
9 opinion is with the record as a whole, the more weight  
10 shall be given to that opinion;

11 (5) Specialization. Generally more weight shall be given  
12 to the opinion of a specialist about medical issues  
13 related to the specialist's area of specialty than to  
14 the opinion of a source who is not a specialist; and

15 (6) Other factors. When considering how much weight to  
16 give to a medical opinion, any factors pointed out by  
17 the member or others or which the plan, policy,  
18 contract, or agreement is aware of that tend to  
19 support or contradict the opinion, shall also be  
20 considered. For example, the degree of understanding  
21 of the evidentiary requirements of a plan, policy,  
22 contract, or agreement that an acceptable medical



1 source has, regardless of the source of that  
 2 understanding, and the extent to which an acceptable  
 3 medical source is familiar with the other information  
 4 in the member's case record, are relevant factors that  
 5 shall be considered in deciding the weight to be given  
 6 to a medical opinion."

7 SECTION 3. Chapter 432D, Hawaii Revised Statutes, is  
 8 amended by adding a new section to be appropriately designated  
 9 and to read as follows:

10 **"§432D- Evaluation of medical opinions; treating source**  
 11 **physician; opinions.** Any other law to the contrary  
 12 notwithstanding, each policy, plan, contract, or agreement  
 13 issued or renewed in this State after December 31, 2006, shall  
 14 evaluate every medical opinion received, regardless of source,  
 15 concerning the enrollee or subscriber under the policy, plan,  
 16 contract, or agreement. Unless the policy, plan, contract, or  
 17 agreement gives a treating source's opinion controlling weight  
 18 under paragraph (2), all of the following factors shall be  
 19 considered in deciding the weight given to any medical opinion:

20 (1) Examining relationship. Generally, more weight shall  
 21 be given to the opinion of a source who has examined  
 22 the enrollee or subscriber than to the opinion of a

1 source who has not examined the enrollee or  
2 subscriber;

3 (2) Treatment relationship. Generally, more weight shall  
4 be given to opinions from the treating sources, since  
5 these sources are likely to be the medical  
6 professionals most able to provide a detailed,  
7 longitudinal picture of any medical impairment and may  
8 bring a unique perspective to the medical evidence  
9 that cannot be obtained from the objective medical  
10 findings alone or from reports of individual  
11 examinations, such as consultative examinations or  
12 brief hospitalizations. If it is found that a  
13 treating source's opinion on the issue of the nature  
14 and severity of an impairment of an enrollee or  
15 subscriber is well-supported by medically acceptable  
16 clinical and laboratory diagnostic techniques and is  
17 not inconsistent with the other substantial evidence  
18 in the case record, controlling weight shall be given  
19 to that opinion. When controlling weight is not given  
20 to the treating source's opinion, the factors listed  
21 in subparagraphs (A) and (B) shall be applied, as well  
22 as the factors in paragraphs (3) through (6) in



1 determining the weight to give the opinion. Good  
2 reasons shall be given in any notice of determination  
3 or decision for the weight given to the treating  
4 source's opinion;

5 (A) Length of the treatment relationship and the  
6 frequency of examination. Generally, the longer  
7 a treating source has treated the enrollee or  
8 subscriber and the more times the enrollee or  
9 subscriber has been seen by a treating source,  
10 the more weight shall be given to the source's  
11 medical opinion. When the treating source has  
12 seen the enrollee or subscriber a number of times  
13 and long enough to have obtained a longitudinal  
14 picture of an impairment, the source's opinion  
15 shall be given more weight than would otherwise  
16 be given if it were from a nontreating source;  
17 and

18 (B) Nature and extent of the treatment relationship.  
19 Generally, the more knowledge a treating source  
20 has about an impairment, the more weight shall be  
21 given to the source's medical opinion. The  
22 treatment the source has provided and the kinds



1           and extent of examinations and testing the source  
2           has performed or ordered from specialists and  
3           independent laboratories shall be considered.

4           For example, if an ophthalmologist notices that  
5           an enrollee or subscriber has complained of neck  
6           pain during eye examinations, the

7           ophthalmologist's opinion shall be considered  
8           with respect to the neck pain, but the opinion

9           shall be given less weight than that of another  
10          physician who has treated the enrollee or

11          subscriber for the neck pain. When the treating  
12          source has reasonable knowledge of an impairment,  
13          the source's opinion shall be given more weight  
14          than would otherwise be given if it were from a  
15          nontreating source;

16          (3) Supportability. The more a medical source presents  
17          relevant evidence to support an opinion, particularly  
18          medical signs and laboratory findings, the more weight  
19          shall be given that opinion. The better an  
20          explanation a source provides for an opinion, the more  
21          weight shall be given that opinion. Furthermore,  
22          because nonexamining sources have no examining or



1 treating relationship with the enrollee or subscriber,  
2 the weight given to their opinions shall depend on the  
3 degree to which they provide supporting explanations  
4 for their opinions. The degree to which these  
5 opinions consider all of the pertinent evidence in a  
6 claim, including opinions of treating and other  
7 examining sources, shall be evaluated;

8 (4) Consistency. Generally, the more consistent an  
9 opinion is with the record as a whole, the more weight  
10 shall be given to that opinion;

11 (5) Specialization. Generally more weight shall be given  
12 to the opinion of a specialist about medical issues  
13 related to the specialist's area of specialty than to  
14 the opinion of a source who is not a specialist; and

15 (6) Other factors. When considering how much weight to  
16 give to a medical opinion, any factors pointed out by  
17 the enrollee or subscriber or others or which the  
18 policy, plan, contract, or agreement is aware of that  
19 tend to support or contradict the opinion, shall also  
20 be considered. For example, the degree of  
21 understanding of the evidentiary requirements of a  
22 policy, plan, contract, or agreement that an

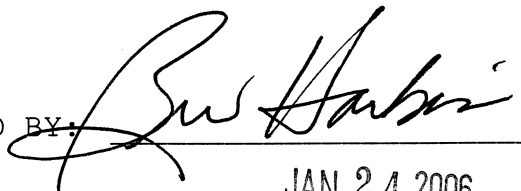


1           acceptable medical source has, regardless of the  
2           source of that understanding, and the extent to which  
3           an acceptable medical source is familiar with the  
4           other information in the enrollee's or subscriber's  
5           case record, are relevant factors that shall be  
6           considered in deciding the weight to be given to a  
7           medical opinion."

8           SECTION 4. New statutory material is underscored.

9           SECTION 5. This Act shall take effect on July 1, 2006.

10

INTRODUCED BY:   
JAN 24 2006



HB 2582

**Report Title:**

Medical Evaluations; Treating Source Physician; Opinions

**Description:**

Requires health insurers, mutual benefit societies, and health maintenance organizations to evaluate all medical opinions and to give greater weight to medical opinions of treating source physicians than non-treating source physicians. Prescribes factors to be considered in evaluating medical opinions.

