

Honolulu, Hawaii

MAR - 3 2006

RE: S.B. No. 3072
S.D. 1

Honorable Robert Bunda
President of the Senate
Twenty-Third State Legislature
Regular Session of 2006
State of Hawaii

Sir:

Your Committees on Labor and Commerce, Consumer Protection,
and Housing, to which was referred S.B. No. 3072 entitled:

"A BILL FOR AN ACT RELATING TO MOTOR VEHICLE INSURANCE,"

beg leave to report as follows:

The purpose of this measure is to streamline the process for
adjusting fee charges for medical services provided under a motor
vehicle insurance policy's personal injury protection provisions.

Specifically, this measure allows insurers to adjust fee
charges to conform them to the applicable fee schedule without
issuing formal denial notices. This measure also provides that
fee adjustments constitute the acceptance of treatments and not
the denials of benefits.

Testimony in support of this measure was submitted by the
Department of Commerce and Consumer Affairs, the Hawaii Insurers
Council, and State Farm Insurance Co. Testimony in opposition to
this measure was submitted by the Consumer Lawyers of Hawaii.

Your Committees find that recent litigation over an insurer's
practice of adjusting medical procedure codes provided to an
insured under a motor vehicle insurance policy, paying the
provider the undisputed amount billed, then seeking to negotiate
with the provider over the disputed portion of the bill has
revealed ambiguities in the current law. Pursuant to Orthopedic
Assoc. of Hawaii, Inc. v. Hawaiian Ins. & Guar. Co., Ltd., 109
Haw. 185 (2005), the Supreme Court ruled that in situations where



the insurer disputes billing codes or billing amounts, but not the treatment provided, and pays the undisputed portion of the bill, the insurer is still required to issue a formal denial notice pursuant to section 431:10C-304(3)(B), Hawaii Revised Statutes. Your Committees further find that, as a result of the Court's ruling in Orthopedic Assoc. of Hawaii, insurers are required to issue denial notices in the thousands, in triplicate, each month for billing discrepancies, even though the amount disputed may be as little as one dollar. The issuance of these denial notices has not only significantly increased the amount of paperwork required of insurers, but has also created a great deal of stress and concern for the insureds who are confused as to whether and why their treatments have been denied.

Your Committees believe that changes to the law are necessary to streamline the onerous process required by the Supreme Court and to clarify the legislative intent that treatment denials and payment disputes should be treated differently. Your Committees further believe that an insured or claimant should not be denied the opportunity to contest an insurer's decision to dispute a provider's charges. In Wilson v. AIG Hawaii Ins. Co., 89 Haw. 45 (1998), the Court held that the statutory scheme insulating claimants from personal liability for unpaid portions of medical bills reflected a legislative intent not to permit insureds to contest payment disputes, notwithstanding statutory language permitting any insured to contest such disputes. The law should provide a claimant with the ability to submit a dispute to the commission, arbitration, or a court, reflecting the legislative intent to allow claimants to contest fee disputes. Patients have a direct interest in proper payment to their doctors to maintain appropriate treatment and patient-doctor relationships. Your Committees find that it is necessary to permit claimants to contest fee disputes to maintain the pool of doctors willing to treat accident patients, as many doctors have stopped accepting accident patients because of the Wilson case, making needed medical treatment unavailable to many patients. Accordingly, claimants, insurers, and providers should be statutorily afforded real party in interest status and standing to contest all fee disputes.

Your Committees have amended this measure by:

- (1) Clarifying that section 431:10C-308.5, HRS, is not subject to the requirements of section 431:10C-304(3), HRS;



- (2) Clarifying that a payment or procedure code dispute is not a denial of benefits under section 431:10C-304(3), HRS, if the insurer:
 - (A) Pays the undisputed portion of the amount billed, and
 - (B) Furnishes a written explanation of any adjustment to the provider and claimant upon request and without charge;
- (3) Allowing a provider, claimant, or insurer to submit any dispute involving the billed amount, correct fee, or procedure code to the Commissioner, arbitration, or a court of competent jurisdiction; and
- (4) Making technical, nonsubstantive amendments for purposes of clarity and style.

As affirmed by the records of votes of the members of your Committees on Labor and Commerce, Consumer Protection, and Housing that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 3072, as amended herein, and recommend that it pass Second Reading in the form attached hereto as S.B. No. 3072, S.D. 1, and be placed on the calendar for Third Reading.

Respectfully submitted on
behalf of the members of the
Committees on Labor and
Commerce, Consumer Protection,
and Housing,



RON MENOR, Chair




BRIAN KANNO, Chair



The Senate
Twenty-Third Legislature
State of Hawaii

Record of Votes of the
Committee on Labor
(Bills and Resolutions)

Measure:* SB 3072	Committee Referral: LBR/CPH	Date: 2-24-06		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is to: <input type="checkbox"/> Pass, unamended (2312) <input checked="" type="checkbox"/> Pass, with amendments (2311) <input type="checkbox"/> Hold (2310) <input type="checkbox"/> Recommit (2313)				
Members	Ayes	Ayes(WR)	Nays	Excused
KANNO, Brian (C)	✓			
IHARA, Jr., Les (VC)				✓
TANIGUCHI, Brian T.	✓			
SLOM, Sam	✓			
TOTAL				
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Do not list more than one measure per Record of Votes.

