

LINDA LINGLE
GOVERNOR OF HAWAII



MARIE C. LADERTA
DIRECTOR

CINDY S. INOUE
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT
235 S. BERETANIA STREET
HONOLULU, HAWAII 96813-2437

March 17, 2008

TESTIMONY TO THE
SENATE COMMITTEE ON JUDICIARY AND LABOR
For Hearing on Monday, March 17, 2008
9:00 a.m., Conference Room 016
BY
MARIE C. LADERTA, DIRECTOR

**House Bill No. 2388, H.D. 1
Relating to Workers' Compensation**

TO CHAIR BRIAN T. TANIGUCHI AND MEMBERS OF THE COMMITTEE:

The purpose of H.B. No. 2388, H.D. 1, amending Section 386-21(c), Hawaii Revised Statutes, is to require the employer to continue medical services to an injured employee despite disputes over whether treatment should be continued, until the director of labor and industrial relations decides whether treatment should be continued.

The Department of Human Resources Development supports the intent of Section 386-21, Hawaii Revised Statutes, which ensures that an injured employee receives appropriate medical care promptly as it will assist the injured worker to achieve a speedy recovery and return to gainful employment when able to do so. **However, the Department of Human Resources Development opposes this bill as there are, we believe, adequate safeguards within the statute, administrative rules, and current practices to insure that an individual receives appropriate medical care for as long as the nature of the injury requires.** If the treatment being provided is no longer related to the industrial injury, then those services should be billed to the private medical carrier and not be a burden on the workers' compensation system.

Respectfully submitted,

Cindy S. Inouye
for MARIE C. LADERTA

GOODSILL ANDERSON QUINN & STIFEL

A LIMITED LIABILITY LAW PARTNERSHIP LLP

GOVERNMENT RELATIONS TEAM:

GARY M. SLOVIN, ESQ.
CHRISTOPHER G. PABLO, ESQ.
ANNE T. HORIUCHI, ESQ.
MIHOKO E. ITO, ESQ.
JOANNA J. H. MARKLE*
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March 14, 2008

TO: Senator Brian Taniguchi
Chair, Committee on Judiciary & Labor
Hawaii State Capitol, Room 219
testimony@capitol.hawaii.gov

FROM: Anne T. Horiuchi, Esq.
H.B. 2388, HD1 Relating to Workers' Compensation
Hearing Date: Monday, March 17, 2008 at 9:00 a.m.

Dear Chair Taniguchi and Members of the Committee on Judiciary & Labor:

I am Anne Horiuchi, testifying on behalf of the American Insurance Association (AIA). AIA represents approximately 350 major insurance companies that provide all lines of property and casualty insurance and write more than \$123 billion annually in premiums. AIA members supply 23 percent of the property/casualty insurance sold in Hawaii. The association is headquartered in Washington, D.C., and has representatives in every state.

H.B. 2388, HD1 requires the employer to continue medical services to an injured employee despite disputes over whether treatment should be continued, until the Director of Labor & Industrial Relations decides whether treatment should be continued.

AIA submits that this measure creates the potential for abuse and will result in increased costs. AIA opposes H.B. 2388, HD1 and respectfully requests that it be held.

Thank you very much for this opportunity to submit testimony.

BIA-HAWAII

BUILDING INDUSTRY ASSOCIATION

Committee on Judiciary and Labor

March 17, 2008

9:00 a.m.

Conference Room 016

Testimony on HB 2388, HD1 "Relating to Workers Compensation"

Chair Taniguchi and Members of the Committee on Judiciary and Labor:

I am Karen Nakamura, Chief Executive Officer and Executive Vice President of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii.

BIA-Hawaii is strongly opposed to HB 2388, HD1 "Relating to Workers Compensation"

HB 2388, HD1 requires the employer to continue medical services to an injured employee despite disputes over whether treatment should be continued until the Director of the Department of Labor and Industrial Relations decides whether treatment should be continued. The provisions of this bill would give undue advantage to an employee who wishes to prolong the time off the job, even if the employee was deemed able to return to work. The provision relating to the employer or the employer's insurance carrier recovering the costs from the employee's health insurance carrier is also unfair and burdensome to the employer when the treatments were not approved in the first place. The DLIR may not be sufficiently staffed to provide a decision in a timely fashion.

This bill also erodes employers' rights and increases their costs of conducting their businesses because they must pay for treatments that subsequently are deemed unnecessary.

For these reasons, BIA-Hawaii is strongly opposed to HB 2388.

Thank you for the opportunity to express our views on this bill.

Karen I. Nakamura



***The Chamber of
Commerce of Hawaii***

Since 1850

**Testimony to the Senate Committee on Judiciary and Labor
Monday, March 17, 2008; 9:00 a.m.
Conference Room 016**

RE: HOUSE BILL NO. 2388 RELATING TO WORKERS' COMPENSATION

Chair Taniguchi, Vice Chair Hee and Members of the Committee:

My name is Jim Tollefson and I am the President and CEO of The Chamber of Commerce of Hawaii ("The Chamber"). The Chamber does not support House Bill No. 2388, relating to Workers' Compensation.

The Chamber is the largest business organization in Hawaii, representing over 1100 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

This measure requires the employer to continue medical services to an injured employee despite disputes over whether treatment should be continued, until the director of labor and industrial relations decides whether treatment should be continued.

The Chamber understands the intent of the bill and recognizes that an employee suffering from work-related injuries deservedly warrant proper and necessary treatment; however, we believe this bill may cause unreasonable and unnecessary treatment for non-related work injuries. Thus, passage of this measure could prolong time off the job, even if the employee is deemed able to return to his or her work. Eventually, this could impede an injured worker's recovery. It's important that these benefits be utilized as intended and not in such a way that benefits are activated simply because they exist.

Because of the bill's mandate to require continued medical treatment, this measure may hurt employers including small businesses, which operate on limited resources and smaller staffs. Colleagues of the absent employee will unfairly shoulder additional responsibilities, which could have a rippled effect, such as a stressful work environment, lower morale among the employees, and lost productivity. As a result, the negative consequences of this measure may hinder than promote progress.

In summary, HB 2388, while well-intended, will have unintended consequences and possibly lead to a rise in workers' compensation insurance costs and the overall cost of doing business. Thus, The Chamber respectfully requests this measure be held. Thank you for the opportunity to testify.



GENERAL CONTRACTORS ASSOCIATION OF HAWAII

1065 AHUA STREET • HONOLULU, HAWAII 96819-4493 • PHONE 808-833-1681 • FAX 808-839-4167

E-MAIL ADDRESS: gca@gcahawaii.org • WEBSITE: www.gcahawaii.org

March 14, 2008

TO: THE HONORABLE SENATOR BRIAN T TANIGUCHI, CHAIR AND
MEMBERS OF THE COMMITTEE ON JUDICIARY AND LABOR

SUBJECT: H.B. 2388, HD1 RELATING TO WORKERS COMPENSATION

NOTICE OF HEARING AND DECISION MAKING

DATE: Monday, March 17, 2008
TIME: 9:00 a.m.
PLACE: Conference Room 016

Dear Chair Taniguchi and Members of the Committee:

The General Contractors Association (GCA), an organization comprised of over five hundred and forty (540) general contractors, subcontractors, and construction related firms, **strongly opposes** the passage of H.B.2388, Relating to Workers Compensation.

H.B. 2388, HD1 requires the employer to continue medical services to an injured employee despite disputes over whether essential medical services should be continued until the Director of the Department of Labor and Industrial Relations decides whether treatment should be continued. The Director must make his decision within thirty days of the filing of a dispute. The provisions of this bill would give undue advantage to an employee who wishes to prolong the time off the job, even if the employee was deemed able to return to work. The DLIR may not be sufficiently staffed to provide a decision in a timely fashion.

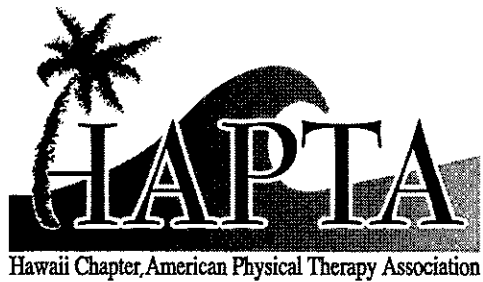
This bill also erodes employers' rights and increases their costs of conducting their businesses because they must pay for treatments that subsequently are deemed unnecessary.

For these reasons, the GCA **strongly opposed** H.B. 2388, HD1.

Thank you for considering our concerns on the above bill.

**Testimony by:
Derrick Ishihara, PT**

**HB 2388hd1, Relating to Workers'
Compensation
Senate JDL, Monday, March 17, 2008
Room 016, 9:00 am**



Position: Support Intent, With Recommendation

Dear Senator Taniguchi and Members of the Senate JDL Committee:

I am Derrick Ishihara, P.T., a small business owner/physical therapist and member of HAPTA's Legislative Committee. The Hawaii Chapter – American Physical Therapy Association (HAPTA) is comprised of 300 member physical therapists and physical therapist assistants employed in hospitals and health care facilities, the Department of Education school system, and private practice. We are part of the spectrum of care for Hawaii, and provide rehabilitative services for infants and children, youth, adults and the elderly. Rehabilitative services are a vital part of restoring optimum functioning from neuromusculoskeletal injuries and impairments.

HAPTA agrees with the intent of this proposal to "ensure that the injured employee shall continue to receive essential medical services by the treating physician necessary to prevent deterioration of the injured employee's condition or further injury..."

As written however, this bill will not achieve that objective. If the Director can retroactively deny care that has already been delivered, and an insurer can recover from the health care provider "...all the sums paid for medical services from that treatment plan rendered after the date designated by the director..." it would effectively terminate the medical care. No provider of service, medical or otherwise, would perform services without assurances that those services would be reimbursed. As written, HB 2388 does not even give guidelines to providers as to how the director will evaluate these utilization issues.

Recommendation:

To achieve the purposes of this bill, HAPTA recommends the bill be amended to ensure payment for medical services rendered in good faith at least until the date of the Director's decision.

I may be reached at 593-2610 if there are any questions. Thank you for the opportunity to present testimony.



HIIA

Hawaii Independent Insurance Agents Association

March 14, 2008

To: Senator Brian T. Taniguchi, Chair
Senator Clayton Hee, Vice- Chair
Judiciary and Labor Committee

From: Sonia M. Leong, Executive Director
Hawaii Independent Insurance Agents Association

Re: HB 2388 – Relating to Workers Compensation
Hearing: Monday, March 17, 2008 9:00 am Conference Room 016

The Hawaii Independent Insurance Agents Association (HIIA) **opposes** HB 2388 which will require employers to continue medical services to an injured employee despite disputes over whether treatment should be continued, until the director of labor and industrial relations decides whether treatment should be continued.

Points of Concern:

- Ensuring uninterrupted medical care under this bill could require payments by the insurer/employer for inappropriate & unnecessary treatments. This bill would allow provider to continue treatments under their own approved treatment plan until the Director's decision is issued.
- If the Director determines that the medical treatments were unreasonable and unnecessary, the insurer/employer will have the burden to pursue reimbursement from the personal health care provider which would cause a delay in closing the Workers Compensation claim.
- The employer's carrier may not be reimbursed fully because the personal health care provider may have a different reimbursement rate.

HIIA is a non profit trade association of independent insurance producers dedicated to assisting the insurance buying public with their insurance needs. Many of our clients are business owners who will be directly affected if this bill is passed. As you are all aware, workers compensation is a very complex issue with so many interrelated factors that one change could tip the delicate balance. The current business climate is extremely soft and this will put a real burden on many of the businesses.

Thank you for this opportunity to submit testimony.



Pauahi Tower, Suite 2010
1003 Bishop Street
Honolulu, Hawaii 96813
Telephone (808) 525-5877
Facsimile (808) 525-5879

Alison Powers
Executive Director

TESTIMONY OF ALISON POWERS

SENATE COMMITTEE ON JUDICIARY AND LABOR
Senator Brian T. Taniguchi, Chair
Senator Clayton Hee, Vice Chair

Monday, March 17, 2008
9:00 a.m.

HB 2388, HD1

Chair Taniguchi, Vice Chair Hee, and members of the committee, my name is Alison Powers, Executive Director of Hawaii Insurers Council. Hawaii Insurers Council is a non-profit trade association of property and casualty insurance companies licensed to do business in Hawaii. Member companies underwrite approximately 60% of all property and casualty insurance premiums in the state.

Hawaii Insurers Council **opposes** HB 2388, HD1. This bill is in essence Section 2 of HB 855 CD1, 2007 Regular Session, which ultimately was vetoed by the Governor and not overridden.

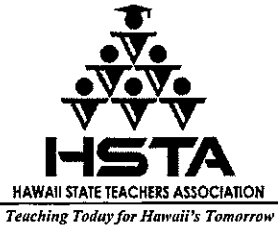
This bill would require the continuation of medical benefits until the Director renders a decision. This bill creates tremendous potential for abuse and will add unnecessary costs. For example, a medical provider could request treatment for numerous modalities and the employer/insurer would be forced to pay regardless of any other circumstance. The employer/insurer may be required to pay for treatment that is not even related to the work injury. If the director determines that the medical services pursuant to the treatment plan should be or should have been discontinued, the employer should have the right to reimbursement from the provider of service or reimbursement under Section 386-52 (a)(3) in absence of any personal health insurance. If the employer/insurer has to subrogate from the health insurer for

payments, it adds more adversity to the system, which will increase costs. What if the health insurer does not pay because treatment is excluded under their coverage or if they deem the treatment to be unnecessary? It appears then that the employer/insurer would not be able to subrogate and would have to pay for unnecessary treatment regardless of the Director's decision.

The bill mandates that the Director make a decision within 30 days of the filing of the dispute, but does not have any provision in the event the decision is not made within the 30 days. If he does not make a decision within the timeframe, it appears that the employer/insurer still must continue to pay medical benefits.

We respectfully request that HB 2388, HD1 be held.

Thank you for the opportunity to testify.



1200 Ala Kapuna Street λ Honolulu, Hawaii 96819
Tel: (808) 833-2711 λ Fax: (808) 839-7106 λ Web: www.hsta.org

Roger K. Takabayashi
President

Wil Okabe
Vice President

Karolyn Mossman
Secretary-Treasurer

Mike McCartney
Executive Director

TESTIMONY BEFORE THE SENATE COMMITTEE ON
JUDICIARY & LABOR

RE: HB 2388, HD1 – RELATING TO WORKERS' COMPENSATION

March 17, 2008

ROGER TAKABAYASHI, PRESIDENT
HAWAII STATE TEACHERS ASSOCIATION

Chair Taniguchi and Members of the Committee:

The Hawaii State Teachers Association supports HB 2388, HD1, that requires the employer to continue medical services to an injured employee despite disputes over whether treatment should be continue, until the director of labor and industrial relations decides whether treatment should be continued.

Thank you for the opportunity to testify.

TESTIMONY BEFORE THE SENATE COMMITTEE ON

JUDICIARY AND LABOR

Monday, March 17, 2008
9:00 a.m.

HB 2388 HD1
RELATING TO WORKERS' COMPENSATION

By Marleen Silva
Director, Workers' Compensation
Hawaiian Electric Company, Inc.

Chair Taniguchi, Vice Chair Hee and Members of the Committee:

Hawaiian Electric Co. Inc., its subsidiaries, Maui Electric Company, LTD., and Hawaii Electric Light Company, Inc. **respectfully oppose H.B. 2388, HD1.**

This bill requires employers to continue paying for medical treatment despite disputes over whether treatment should be continued until the Director of Labor and Industrial Relations (DLIR) can decide on the matter.

We can appreciate the intent of the bill and recognize the importance of insuring that injured employees receive prompt medical care when suffering from work related injuries. However, we feel that this bill changes the intent of the workers' compensation system by requiring employers to pay for treatment that may be unrelated to a work injury. If the treatment is not related to the work injury, then those services should be appropriately billed to the employee's private medical insurance carrier.

Passage of this bill will significantly increase workers' compensation costs, and may impose unintended negative consequences for employers, employees, and our State's economy. We believe the existing workers' compensation statutes, administrative rules and regulations have adequate safeguards to insure that an employee receives appropriate medical care for as long as the nature of the work injury requires.

For these reasons, we respectfully oppose H.B. 2388, HD1.

Thank you for the opportunity to testify.

THE SENATE
THE TWENTY-FOURTH LEGISLATURE
REGULAR SESSION OF 2008

COMMITTEE ON JUDICIARY AND LABOR

Sen. Brian T. Taniguchi, Chair
Sen. Clayton Hee, Vice Chair

Date: Monday, March 17, 2008

Time: 9:00 a.m.

Place: Conference Room 016, State Capitol

TESTIMONY FRED GALDONES/ILWU LOCAL 142

RE: HB 2388, HD 1, RELATING TO WORKERS' COMPENSATION

Thank you for the opportunity to present testimony regarding HB 2388, HD 1. We support this modest but constructive bill.

Where disputes arise about the approval of medical care, H.B. 2388, HD 1 mandates the continuation of essential medical care until there is a ruling from the department of labor and industrial relations. The bill also requires that a decision be made within 30 days of the filing of a dispute, which will go far toward assuring that needed care is not denied and that medical progress is not obstructed by legal disputes over coverage.

Disruption of medical care is a major impediment to returning injured workers to gainful employment promptly and efficiently, and HB 2388, HD 1 addresses this problem in a balanced and equitable fashion.

In conjunction with these protections for the injured worker, HB 2388, HD 1 carefully provides that if medical services are terminated under workers' compensation insurance, the employer and insurer may recover the costs they have expended from the claimant's individual health care provider. This is a workable remedy, because workers' compensation medical fees are uniformly lower than fees under regular pre-paid health insurance so such reimbursements will be financially feasible. Employers will also benefit because medical care was continuous, thus enhancing the likelihood of a prompt return to gainful employment, which in turn will lower expenditures for temporary disability benefit payments and vocational rehabilitation costs.

HB 2388, HD 1 is thus a proposal which helps to fulfill the rehabilitative potential of the workers' compensation statute and confers benefits to employees, employers, insurers, and the system itself. It is therefore eminently worthy of adoption, and we urge its passage.



Before the Senate Committee on Judiciary & Labor

DATE: March 17, 2008
TIME: 9:00 a.m.
PLACE: Conference Room 016

Re: HB 2388, HD1 Relating to Workers' Compensation Testimony of Melissa Pavlicek for NFIB Hawaii

Thank you for the opportunity to testify. On behalf of the thousands of business owners who make up the membership of the National Federation of Independent Businesses in Hawaii, we ask that you defer **HB 2388, HD1**. NFIB opposes this measure in its current form.

The National Federation of Independent Business is the largest advocacy organization representing small and independent businesses in Washington, D.C., and all 50 state capitals. In Hawaii, NFIB represents more than 1,000 members. NFIB's purpose is to impact public policy at the state and federal level and be a key business resource for small and independent business in America. NFIB also provides timely information designed to help small businesses succeed.

We oppose measures that may tend to increase workers' compensation costs and have unintended negative consequences for employers, employees and the economy. Thank you for the opportunity to testify.



**Property Casualty Insurers
Association of America**

Shaping the Future of American Insurance

1415 L Street, Suite 670, Sacramento, CA 95814-3972

To: The Honorable Brian T. Taniguchi, Chair
Senate Committee on Judiciary and Labor

From: Samuel Sorich, Vice President

RE: **HB 2388 HD1 – Relating to Workers’ Compensation**
PCI Position: Oppose

Date: Monday, March 17, 2008
9:00 a.m.; Conference Room 016

The Property Casualty Insurers Association of America (PCI) is an association of property/casualty insurers. There are more than 100 PCI member companies doing business in Hawaii. PCI members are responsible for approximately 45 percent of the property/casualty insurance premiums written in Hawaii.

PCI is opposed to HB 2388 HD1 because the bill is unnecessary, costly and impractical.

HB 2388 HD1 would require an employer who disputes an employee’s medical treatment to continue to pay for the treatment until the director of the department of labor and industrial relations makes a decision that the treatment should be discontinued. The bill would displace the existing system which gives the employee’s attending physician the right to administrative review of an employer’s dispute of medical treatment. In place of the existing system, HB 2388 HD1 would establish a system that would require an employer to continue to pay for disputed treatment and seek an administrative ruling in order to terminate payments. There is no evidence to justify the bill’s radical change.

HB 2388 HD1 would increase workers compensation costs for Hawaii employers. The bill would require an employer to pay for treatments that may not be related to workplace injuries and may not be effective in helping an employee to return to work. The reimbursement rights that the bill provides to employers are inadequate and costly to effectuate. The resulting unreimbursed costs would unjustly burden employers.

HB 2388 HD1 calls for the director to make decisions within 30 days. However, based on testimony from the department of labor and industrial relations, the 30-day time frame appears to be completely impractical, and the bill provides no consequences for missing the 30-day deadline. The reality is that HB 2388 HD1 would require the payment for disputed medical treatment for extended periods of time.

PCI requests that the Committee vote No on the bill.



Senator Brian Taniguchi, Chair
Senator Clayton Hee, Vice Chair
Committee on Judiciary & Labor

State Capitol, Honolulu, Hawaii 96813

HEARING Monday, March 17, 2008
 9:00 am
 Conference Room 016

RE: HB2388, HD1 Relating to Workers' Compensation

Chair Taniguchi, Vice Chair Hee, and Members of the Committee:

Retail Merchants of Hawaii (RMH) is a not-for-profit trade organization representing about 200 members and over 2,000 storefronts, and is committed to support the retail industry and business in general in Hawaii. The retail industry is the one of the largest single employer in the state, employing 20% of the labor force.

RMH opposes HB2388, HD1, which provides uninterrupted medical care to an injured employee despite disputes over whether treatment, should be continued, until the director of labor and industrial relations renders a final decision.

We do not dispute that an injured worker should receive quality and appropriate medical care as long as required. However, this measure does not provide any recourse to the employer to recover the costs of the disputed medical treatment from the employee should the director of labor and industrial relations render a ruling in the employer's favor. Whether these additional costs are covered by an employer's workers' compensation insurer or by his personal health care provider, the resulting increased premium costs will be borne by the employer.

The members of the Retail Merchants of Hawaii respectfully request that you hold HB2388, HD1. Thank you for your consideration and for the opportunity to comment on this measure.

A handwritten signature in cursive script, appearing to read 'Carol Regille', is written in black ink.

President

RETAIL MERCHANTS OF HAWAII
1240 Ala Moana Boulevard, Suite 215
Honolulu, HI 96814
ph: 808-592-4200 / fax: 808-592-4202



Chair, Senator Brian T. Taniguchi
Vice- Chair, Senator Clayton Hee
Senate Committee on Judiciary & Labor
From: Society for Human Resource Management (SHRM) Hawaii
(808) 447-1840 or e-mail: shrmhawaii@hawaiibiz.rr.com
Testimony date: Monday, March 17, 2008 – 9 a.m. – CR: 016

Opposition to
HB 2388, HD1

SHRM Hawaii is local chapter of a National professional organization of Human Resource professionals. Our 1,000+ local memberships include those from small and large companies, in every industry Hawaii has – all tasked with meeting the needs of employees and employers in a balanced manner, while ensuring compliance with laws affecting the workplace. We (HR Professionals) are the people that implement the legislation you pass, on a day-to-day front line level.

SHRM Hawaii Opposes ***HB 2388, HD1***, which would require the employer to continue medical services to an injured employee despite disputes over whether treatment should be continued, until the director of labor and industrial relations decides whether treatment should be continued.

As presently written this bill provides no disincentive for employees to receive unnecessary treatments, as they will not be responsible for repaying any of the costs if the DLIR Director determines the employee needed no further treatment and should have returned to work.

This Bill would create an incentive to stay out of work longer as there are no costs or other negative consequences for the employee.

The financial burden of unnecessary treatments would be born by the insurance carriers and employers through higher premiums – which would mean less money available for wage increases and training programs for those employees that wish to work.

SHRM Hawaii respectfully urges the committee to HOLD ***HB 2388, HD1*** until language is written that holds employees financially responsible for treatments deemed unnecessary.

Thank you for the opportunity to testify. SHRM Hawaii offers the assistance of its Legislative Committee members in discussing this matter further.

testimony

From: Joanna Amberger [joanna_amberger@hotmail.com]
Sent: Friday, March 14, 2008 11:02 PM
To: testimony
Subject: Please OPPOSE HB 2388 relating to Workers' Compensation

Chair Taniguchi:

My name is Joanna Amberger and I am the owner of 3 Financial Group LLC, a Hawaii financial consulting firm. I respectfully request that you do not pass HB 2388 relating to Workers' Compensation.

his measure requires the employer to continue medical services to an injured employee despite disputes over whether treatment should be continued, until the director of labor and industrial relations decides whether treatment should be continued.

This measure, if passed, may increase my workers' compensation premiums, and the overall cost of doing business.

If you have any questions, please do not hesitate to contact me at 808-489-2813. Thank you for the opportunity to submit written testimony.

Sincerely, Joanna Amberger

Joanna Amberger
1440 Kapiolani Blvd Ste 1525
Honolulu, HI 96814

testimony

From: tj@hawaii-attorney.com
Sent: Friday, March 14, 2008 1:23 PM
To: testimony
Subject: Support for HB 2386 & for HB 2388

To: Honorable Senator Taniguchi, Chair
Honorable Members, Judiciary & Labor Comm.
To be heard 3/17/2008

Dear Senator Taniguchi:

I support the passage of HB 2386 (requiring employer to pay TTD wage loss benefits regardless of whether employer/carrier controverts compensability, and, the ability of the injured worker to return to work is to be determined by the treating physician).

I also support the passage of HB 2388 (requiring employer to continue medical services despite treatment dispute until a DCD hearing decision).

I support both of these bills because as an injured workers/claimants' attorney for 22 years, I have seen many times where the injured worker is denied benefits up front "pending investigation". I represent injured workers currently who have had their benefits denied "pending investigation". Some employers/carriers like HEMIC seem to do this as policy. The denial of benefits to Hawaii's injured workers causes incredible hardship to the workers and their families because the worker cannot get the medical treatment he/she needs and the wage loss income they need to survive, get treated, get rehabilitated, and return to work.

It would seem that the treating physician is the best person to decide when an injured worker can go back to work and not in insurance financed doctor. Injured workers need uninterrupted medical care so that they can get rehabilitated as quickly as possible and return to the workplace as productive workers.

Please pass these bills. I am happy to answer your questions.

T.J. Lane
Claimants attorney
526-4000

T.J. Lane
Law Offices of T.J. Lane
745 Fort Street, 19th Floor
Topa Financial Center
Honolulu, HI 96813
tj@hawaii-attorney.com

tel. 808-526-4000
fax 808-777-1391

3/14/2008

testimony

From: Douglas Thomas Moore [Moore4640@hawaiiintel.net]
Sent: Friday, March 14, 2008 10:32 AM
To: testimony
Subject: Support for HB 2386 & for HB 2388

To: Honorable Senator Taniguchi, Chair
Honorable Members, Judiciary & Labor Comm.
To be heard 3/17/2008

Aloha:

I support the passage of HB 2386 (requiring employer to pay TTD wage loss benefits regardless of whether employer/carrier controverts compensability, and, the ability of the injured worker to return to work is to be determined by the treating physician).

I support the passge of HB 2388 (requiring employer to continue medical services despite treatment dispute until a DCD hearing decision).

I support both of these bills because as an injured workers/claimants' attorney, I have seen many times where the injured worker is denied benefits up front "pending investigation". I have cases like this right now. Some employers/carriers seem to do this as policy. The denial of benefits to the injured workers causes incredible hardship because they cannot get the medical treatment they need and the wage loss income they need to survive, get treated, get rehabilitated, and return to work. Further, the treating physician is the best person to decide when an injured worker can go back to work and not in insurance appointed IME doctor.

Injured workers need uninterrupted medical care so that they can get rehabilitated as quickly as possible and return to the workplace as productive workers.

Please pass these bills. I am happy to answer your questions. Mahalo.

Douglas Thomas Moore
Claimants' attorney
526-0056

3/14/2008

testimony

From: Sharon Ohata [sohata@islandinsurance.com]
Sent: Friday, March 14, 2008 8:45 AM
To: testimony
Subject: HB 2386 and HB2388 H.D.1 Committee: Committee on Judiciary and Labor Hearing Date: March 17, 2008 at 9:00 AM

Good morning.

I would like to submit my objections to both of these bills as I believe it will have a negative impact on employers.

HB 2386:

- Employer's will not be able to recoup any overpaid amounts if there is no further indemnity benefits to be paid or if the claim is denied.
- Employer will not be able to terminate benefits based on multiple independent medical evaluator's opinions that are contrary to the treating physician.
- Will result in increased cost of claims due to the higher compensation rate from 66 2/3% to 70%.

HB 2388 HD1:

- There are already statutory provisions in place where pre-paid health should pay in the event the workers' comp claim is being controverted. Therefore, if the prepaid health provider stepped up to the plate, there would be no interrupted medical care.
- Insurance adjuster's will become "collectors" for medical treatments that are found to be unrelated or unwarranted in the claim.
- If the injured employee has no medical plan, the employers will be liable to eat the cost.
- The reimbursement rate differs among medical plans and workers' comp adjusters will have to expand their knowledge on prepaid health coverage.
- Since the reimbursement rate differs, it is unlikely the employer will be able to recoup 100%.

Thank you very much.

Sharon K. Ohata

 The information in this email is confidential and may be legally privileged. It is intended solely for the addressee. If you have received this communication in error, please contact the sender immediately, return the original message to the sender, and delete the material from your computer. Thank you.

testimony

From: Rebecca C. Stolar [rstolar@starbulletin.com]
Sent: Friday, March 14, 2008 1:06 PM
To: testimony
Subject: Please OPPOSE HB 2388 relating to Workers' Compensation

Chair Taniguchi:

My name is Rebecca C. Stolar and I am with Honolulu Star-Bulletin/MidWeek. I respectfully request that you do not pass HB 2388 relating to Workers' Compensation.

Sincerely,

Rebecca C. Stolar
500 Ala Moana Blvd, Bldg 7 #500
Honolulu, HI 96813



**STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**

830 PUNCHBOWL STREET, ROOM 321
HONOLULU, HAWAII 96813

www.hawaii.gov/labor

Phone: (808) 586-8842 / Fax: (808) 586-9099

Email: dliir.director@hawaii.gov

March 15, 2008

To: The Honorable Brian Taniguchi, Chair
and Members of the Senate Committee on Judiciary and Labor

Date: March 17, 2008

Time: 9:00 a.m.

Place: Conference Room 016 State Capitol

From: Darwin L.D. Ching, Director
Department of Labor and Industrial Relations

**Testimony in OPPOSITION
to
H.B. 2388 – Relating to Workers’ Compensation**

I. OVERVIEW OF CURRENT PROPOSED LEGISLATION

House Bill 2388 proposes to amend Section 386-21, Hawaii Revised Statutes (“HRS”), by allowing uninterrupted medical care be provided to injured workers in the event of any dispute between the injured employee and the employer regarding treatment, until the Director determines if medical services shall be discontinued and specifies the date after which medical services are denied.

The employer or its insurer may recover from the claimant’s personal health care provider qualified pursuant to section 386-27, HRS, or from any other appropriate occupational or non-occupational insurer, all the sums paid for medical services rendered after the date designated by the Director in which medical services are denied.

II. CURRENT LAW

Injured workers are currently allowed 15 treatments during the initial 60 calendar days. No treatment plan is required if the employee does not exceed 15 treatments in the first 60 days. If an injured worker needs more than 15 treatments and/or further treatment beyond the initial 60 days, the attending physician must submit a treatment plan in accordance with the Hawaii Administrative Rules (“HAR”), section 12-15-32 of the Workers’ Compensation Medical Fee Schedule. Under this section, the attending physician must submit a treatment plan to the employer at least 7 calendar days prior to

the start of treatment. Treatment plans cannot exceed 15 treatments or extend beyond 120 calendar days.

If the employer opposes the treatment plan, the employer must properly notify the injured worker of the decision to deny further treatments. The employer is responsible for all treatments up to the employer's notice of denial. The injured worker or attending physician may request a review of the employer's denial of the proposed treatment plan within 14 calendar days.

Consequently, a hearing is held and a decision is issued either denying or approving the treatment plan. The employer is required to pay the provider of service if the treatments are determined to be reasonable and necessary or the fees can be disallowed if unreasonable or unnecessary. Disallowed fees shall not be charged to an injured worker. Either party can appeal the decision to the Labor and Industrial Relations Appeals Board.

Currently, the time required to schedule the hearing, notice the parties, conduct the hearing and render a decision takes 3 to 4 months.

III. HOUSE BILL

The Department of Labor and Industrial Relations ("Department") appreciates the issue that this bill seeks to resolve through ensuring that claimants that are entitled to medical treatment, receive those benefits. However, the Department opposes the bill due to the effect this measure would have on employers in those cases where a claimant was receiving unnecessary medical treatment. Specifically, the Department has the following concerns and comments:

1. This proposal allows employers or their insurers to seek reimbursement for sums that were paid for medical services after the medical cut off date from the prepaid health care contractors or from other appropriate occupational or non-occupational insurers. However, if the treatment is for unreasonable and unnecessary care, the prepaid health care contractors will not pay for the unreasonable or unnecessary treatment.

In addition, the reimbursement from the prepaid health care contractors may not be the same as allowed under workers' compensation and would also be reduced by the employee's co-payment share. While most health care providers do provide only reasonable and necessary care, we believe that this bill will provide incentives for some health care providers to provide and be reimbursed for unnecessary health care since this bill appears to require the insurance carrier to

pay for treatments until the director renders a decision. Unreimbursed costs paid by the insurance carriers will result in higher workers' compensation costs, resulting in a corresponding increase in employer insurance premiums.

2. The bill requires that the Department make a decision within thirty days of filing of a dispute. This proposal does not indicate whether a hearing must be held to address the dispute or if a decision can be rendered without a hearing based on records in file. If a hearing is required, thirty days is insufficient time to schedule a hearing, provide notice to the parties, hold the hearing, and render a decision. The minimum time required would be 2 to 3 months and this would result in delaying the scheduling of hearings for other issues such as compensability, termination of temporary total disability and permanent disability determinations.
3. The number of hearings will likely increase dramatically under this proposal. The Department will require more hearings and support personnel to conduct more hearings to address treatment plans and continued medical care issues. The Department estimates that it will require an additional 6 hearings officers (2 for Honolulu and 1 each for neighbor island offices) and 5 clerk typists statewide to timely service the additional hearings and decisions resulting from the passage of this measure.

The Department estimates this cost to be approximately \$460,652 initially and \$426,552 in salaries annually thereafter.

4. This proposal will increase the cost of doing business in Hawaii at a time when it may not be prudent to do so. The Department estimates that this proposal would add \$34 million in payouts from employer premiums and \$5 million increase for self insured employers.
5. This proposal is identical to two prior measures vetoed by the Governor in 2006 and 2007. Those same objections that the Governor had for vetoing those bills still exist in this proposal. Given this prior history, the Department recommends that the committee hold this bill and instead allow the Department to form a task force and to make recommendations on possible solutions to the 2009 legislature to address the concerns of this bill.

ASSOCIATED BUILDERS AND CONTRACTORS OF HAWAII

Committee on Judiciary and Labor

March 17, 2008

9:00 a.m.

Conference Room 016

Testimony in Opposition to HB 2388 Relating to Workers Compensation

Chair Taniguchi and Members of the Committee on Judiciary and Labor:

I am Karl Borgstrom, president of the Associated Builders and Contractors, representing merit shop contractors throughout the State of Hawaii.

HB 2388, HD1 requires the employer to continue medical services to an injured employee despite disputes over whether treatment should be continued until the Director of the Department of Labor and Industrial Relations decides whether treatment should be continued. The provisions of this bill would give undue advantage to an employee who wishes to prolong the time off the job, even if the employee was deemed able to return to work. The provision relating to the employer or the employer's insurance carrier recovering the costs from the employee's health insurance carrier is also unfair and burdensome to the employer when the treatments were not approved in the first place. The DLIR may not be sufficiently staffed to provide a decision in a timely fashion.

This bill also erodes employers' rights and increases their costs of conducting their businesses because they must pay for treatments that subsequently are deemed unnecessary.

For these reasons, ABC Hawaii strongly opposes this bill.

LATE**KING & NEEL, INC.**1184 Bishop Street • Suite 1710 • Honolulu, Hawaii 96813
Telephone: (808) 521-8311
Fax: (808) 526-3893

NATIONAL ASSOCIATE MEMBER



March 17, 2008

TO: THE HONORABLE SENATOR BRIAN T. TANIGUCHI, CHAIR AND MEMBERS
OF THE COMMITTEE ON JUDICIARY AND LABOR

SUBJECT: H.B. 2388, HD1 RELATING TO WORKERS COMPENSATION

NOTICE OF HEARING AND DECISION MAKING

DATE: Monday, March 17, 2008
TIME: 9:00a.m.
PLACE: Conference Room 016

Dear Chair Taniguchi and Members of the Committee:

The General Contractors Association (GCA), an organization comprised of over five hundred and forty (540) general contractors, subcontractors, and construction related firms, **strongly opposes** the passage of H.B. 2388, Relating to Workers Compensation.

H.B. 2388, HD1 requires the employer to continue medical services to an injured employee despite disputes over whether essential medical services should be continued until the Director of the Department of Labor and Industrial Relations decides whether treatment should be continued. The Director must make his decision within thirty days of the filing of a dispute. The provisions of this bill would give undue advantage to an employee who wishes to prolong the time off the job, even if the employee was deemed able to return to work. The DLIR may not be sufficiently staffed to provide a decision in a timely fashion.

This bill also erodes employers' rights and increases their costs of conducting their businesses because they must pay for treatments that subsequently are deemed unnecessary.

For these reasons, the GCA **strongly opposed** H.B. 2388, HD1.

Thank you for considering our concerns on the above bill.

Sincerely,

John N. Bustard
Executive Vice President



Working Together for Hawaii

888 Mililani Street, Suite 601
Honolulu, Hawaii 96813-2991
www.hgea.org

Telephone: 808.536.2351
Facsimile: 808.528.4059

Hawaii Government Employees Association
AFSCME Local 152, AFL-CIO

LATE

The Twenty-Fourth Legislature, State of Hawaii
Hawaii State Senate
Committee on Judiciary and Labor

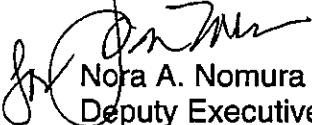
Testimony by
HGEA/AFSCME Local 152, AFL-CIO
March 17, 2008

**H.B. 2388, H.D. 1 – RELATING
TO WORKERS’ COMPENSATION**

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO strongly supports the purpose and intent of H.B. 2388. An injured employee’s medical care in workers’ compensation-related cases is vital to help the injured worker return to work. Such medical care should not be disrupted when there is an unresolved dispute between the injured employee and their employer or their employer’s insurer.

The HGEA/AFSCME believes that an employer should not be able to deny further medical treatment until a final decision on the workers’ compensation claim is rendered by the Director of Labor and Industrial Relations. Thank you for the opportunity to testify in support of H.B. 2388.

Respectfully submitted,


Nora A. Nomura
Deputy Executive Director

LATE



Hawaii State Chiropractic Association

P.O. Box 22668 Honolulu, HI 96823-2668

ph: (808) 926-8883 fx: (808) 926-8884

March 15, 2008

THE SENATE
COMMITTEE ON JUDICIARY AND LABOR

For Hearing on
Date: Monday, March 17
Time: 9:00 am
Place: Conference Room 016

Dear Chair Taniguchi, Vice Chair Hee, and members of the committee:

My name is Gary Saito. I am the President and Executive Director of the Hawaii State Chiropractic Association. Our organization **supports the intent of HB 2388 HD1.**

Time and time again, injured workers are denied their workers' compensation benefits because of denials of medical treatments by the employer and insurance carrier. Insurance carriers often do not give a valid reason for denying care. They do not have a valid medical reason to question the worker's claim of injury.

What happens when injured workers are denied benefits?

1. Weeks and months go by without reasonable and appropriate medical care. Conventional medical wisdom says that the longer an injury is allow to persist, the more difficult it may be to treat and the more complex it could become.
2. Injured workers do not get the proper tests performed that will lead to a proper diagnosis and treatment protocol.
3. Even though they request a DCD hearing to determine compensability, they do not get hearings scheduled in a timely manner (usually 6 months to a year). Even though the DCD professes that hearings are schedule within 80 days, I have yet to see it happen. Many legitimately injured employees face financial ruin because of a lack of caring by the employer/carrier and a lack of responsiveness to their dilemma from the DCD.

For years, carriers have denied benefits "pending investigation". They do not have to say:

1. what is being investigated
2. how the investigation is being conducted
3. when it will be concluded
4. or what the basis of the investigation is.

The system right now fails miserably to protect the injured worker's right to reasonable and appropriate medical treatment. Denials and delays often have nothing to do with the employee's injury. They have everything to do with denying benefits as a way to limit expenses and liability and to boost profits.

Every employer in the state should insist that their premium dollars go toward the treatment of their injured workers. Unfortunately, many employers subscribe to and encourage the existing pattern of denying their employees their rights under current workers' compensation law.

We ask for legislators to uphold the statutes by requiring the proper treatment of injured workers. This bill is one attempt to protect and preserve injured workers' rights to benefits.

We urge your support of HB 2388 HD1. Thank you for your consideration of our position on this issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary Saito". The signature is stylized and cursive, with a large loop at the beginning and a long, sweeping tail.

Gary Saito, DC

LATE

TESTIMONY
OF
RAFAELA W. L. LEWIS
89-346-B KAUWAHI AVENUE
WAIANAE, HAWAII 96792
Nahenahe@hawaiiintel.net
(808)668-6462

Senate Judiciary and Labor Committee
Monday, March 17, at 09:00 a.m., Room 016

Description:

Requires the employer to continue medical services to an injured employee despite disputes over whether treatment should be continued, until the director of labor and industrial relations decides whether treatment should be continued. (HB2388 HD1)

To: Senate Judiciary and Labor Committee
Date: March 16, 2008
Re: HB 2388 a.k.a. Uninterrupted Medical Treatment for Injured Workers

Dear Honorable Chair and Distinguished Committee Members:

My name is Rafaela Lewis, I am a State of Hawaii Employee, I am a patient of Dr. Scott McCaffrey at Work Star. My injury was in 2002, I have constantly been waiting for Medical Care, Services, Supplies, treatment's to be carried out by Dr. McCafirey along with other specialty Doctors. I've agreed to performed all the Independent Medical Examination as ordered and volunteered on four separate occasions. And as a result I have been denied the above services on behalf of the State of Hawaii, Department of Human Resources Development, State Workers Compensation Division. And what happens to me I wait, and wait, and wait, and till today I am still waiting.

I was doing was my job when I got hurt. The office that I worked for serviced the entire West Coast with approximately 16,000 mix cases, client's walk in, phones ringing, paper work to be done, support staff call in, etc. Has anyone taken this into consideration, has anyone improved the work environment? Go and check. But for this I continue to suffer in pain, wait, appeal, win, and still nothing is done, the problem isn't solved. I am a dedicated employee who was doing her job at the time of injury, why are they looking for way's of getting out of the ORDER that was given.

I've won my hearing's and the Director from the State of Hawaii Department of Labor and Industrial Relations, Disability Compensation Division, 830 Punchbowl Street, Room 209, Honolulu, Hawaii 96813, December 02, 2005 and August 13, 2007, has ordered: 1.) Medical care, services and supplies ___ as the nature of the ___ injuries may require, etc. 2.) said employer shall pay to claimant weekly compensation ___ for temporary total disability for the Lewis, Rafaela W. L.

Seante Judiciary and Labor Committee
Monday, March 17, at 09:00 a.m., Room 016
HB2388 TESTIMONY

___ beginning __ through __ for a total of __. Additional temporary total disability, if any, shall be paid upon receipt of medical certification. 3.) The matters of permanent disability and/or disfigurement, if any, shall be determined at a late date for the ____, and injuries. 4.) Pursuant to Section 386-93(a), HRS, said employer is assessed attorney's fees and costs, subject to the approval of the Director under the ____ injuries. 5.) Pursuant to 12-15-32, D. Scott McCaffrey, M. D., shall submit appropriate treatment plans for continued medical care under the ____ injuries. BY ORDER OF THE DIRECTOR.

What does this mean if the employer doesn't follow the order. Is it fair to me as the employee who has been back to work and has been trying to get back to work, but Medical Care, Services, Supplies, and Weekly Compensation has been denied or ignored. The constant waiting of the approval is un ethical and is Bad Faith to myself and other's like me.

Please submit this testimony for Monday, March 17, 2008, at 9:00 a.m., at Room 016, on behalf of myself Rafaela W. L. Lewis, State of Hawaii Employee.

Mahalo,

Rafaela W. L. Lewis
March 16, 2008