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

February 4, 2008

TESTIMONY TO THE
HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT
For Hearing on Tuesday, February 5, 2008
8:30 a.m., Conference Room 309
BY
MARIE C. LADERTA, DIRECTOR

House Bill No. 2388
Relating to Workers' Compensation

TO CHAIR ALEX M. SONSON AND MEMBERS OF THE COMMITTEE:

The purpose of H.B. No. 2388 is to amend Section 386-21(c), Hawaii Revised Statutes, and requires that the employer continue to pay for medical services provided to an injured employee despite disputes over whether treatment should be continued, until the director of labor and industrial relations decides whether or not 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 so 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,

A handwritten signature in cursive script that reads "Marie C. Laderta".
MARIE C. LADERTA



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Alison Powers
Executive Director

TESTIMONY OF ALISON POWERS

HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT
Representative Alex M. Sonson, Chair
Representative Bob Nakasone, Vice Chair

Tuesday, February 5, 2008
8:30 a.m.

HB 2388

Chair Sonson, Vice Chair Nakasone, 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** H.B. 2388. This bill is in essence Section 2 of H.B. 855 C.D. 1, 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 H.B. 2388 be held.

Thank you for the opportunity to testify.

HOUSE OF REPRESENTATIVES
THE TWENTY-FOURTH LEGISLATURE
REGULAR SESSION OF 2008

COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

Rep. Alex M. Sonson, Chair
Rep. Bob Nakasone, Vice Chair

Date: Tuesday, February 5, 2008

Time: 8:30 a.m.

Place: Conference Room 309, State Capitol

TESTIMONY FRED GALDONES/ILWU LOCAL 142

RE: HB 2388, RELATING TO WORKERS' COMPENSATION

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

Where disputes arise about the approval of medical care, H.B. 2388 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 addresses this problem in a balanced and equitable fashion.

In conjunction with these protections for the injured worker, HB 2388 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 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.



**Property Casualty Insurers
Association of America**

Shaping the Future of American Insurance

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

To: The Honorable Alex M. Sonson, Chair
House Committee on Labor and Public Employment

From: Samuel Sorich, Vice President

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

Date: Tuesday, February 5, 2008
8:30 a.m.; Conference Room 309

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 because the bill would create a system that could impede an injured worker’s recovery and return to work. The bill’s mandate to pay for service until there is a decision by the director creates an incentive for a medical provider carry on with the services that are underway. In some cases, this may be done even though the services may not help the employee get better, and may even make the employee’s condition worse.

PCI requests that the Committee vote No on the bill.



**Before the House
Labor and Public Employment Committee**

DATE: February 5, 2008

TIME: 8:30 a.m.

PLACE: Conference Room 309

**Re: HB 2388
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. 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.



Randy Perreira
President

HAWAII STATE AFL-CIO

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The Twenty-Fourth Legislature, State of Hawaii
Hawaii State House of Representatives
Committee on Labor and Public Employment

Testimony by
Hawaii State AFL-CIO
February 5, 2008

H.B. 2388 – RELATING TO WORKERS' COMPENSATION

The Hawaii State AFL-CIO strongly supports the purpose and intent of H.B. 2388. We agree that corrective action is warranted to stop the disruption of medical care in workers' compensation-related cases by employers. This disruption is counterproductive and becomes a serious impediment to the cost-effective treatment and recovery of injured workers. Unfortunately, this problem is symptomatic of efforts to systematically erode the rights of injured workers through so-called "reform." Real reform of the workers' compensation system is needed to help injured workers recover, not to make their recovery more difficult.

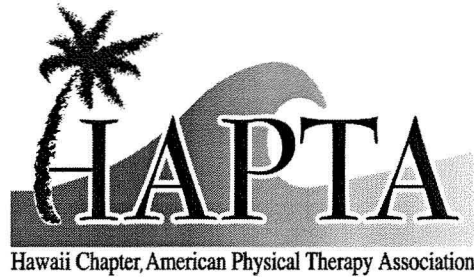
The Hawaii State AFL-CIO believes that an employer should not be able to deny further medical treatment until a final decision on the workers' compensation claim is rendered by the Director of Labor and Industrial Relations. Thank you for the opportunity to testify in support of H.B. 2388.

Respectfully submitted,

Randy Perreira
President

**Testimony by:
Derrick Ishihara, PT**

**HB 2388, Relating to Workers'
Compensation
House LAB, Tuesday, Feb. 5, 2008
Room 309, 8:30 am**



Position: Support Intent, With Recommendation

Dear Rep. Sonson and Members of the House LAB 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.

BIA-HAWAII
BUILDING INDUSTRY ASSOCIATION

February 5, 2008
Committee on Labor & Public Employment
8:30 a.m.
Room 309

Testimony on HB 2388 “Relating to Workers Compensation”

Chair Sonson and Members of the Committee on Labor & Public Employment:

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 “Relating to Workers Compensation”

HB 2388 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 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

GOODSILL ANDERSON QUINN & STIFEL

A LIMITED LIABILITY LAW PARTNERSHIP LLP

GOVERNMENT RELATIONS TEAM:

GARY M. SLOVIN, ESQ.
CHRISTOPHER G. PABLO, ESQ.
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February 4, 2008

TO: Representative Alex Sonson
Chair, Committee on Labor & Public Employment
Hawaii State Capitol, Room 323
Via Email: LABtestimony@Capitol.hawaii.gov

FROM: Anne T. Horiuchi, Esq.
H.B. 2388 Relating to Workers' Compensation
Hearing Date: Tuesday, February 5, 2008 at 8:30 a.m.

Dear Chair Sonson and Members of the Committee on Labor & Public Employment:

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 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 and respectfully requests that it be held.

Thank you very much for this opportunity to submit testimony.