



To: The House Committee on Labor & Public Employment Hearing
LABtestimony@Capitol.hawaii.gov

From: Audrey Hidano

Date: February 4, 2008

Subject: HB 2388 Relating to Workers' Compensation
Hearing: Tuesday, February 5, 2008 at 8:30 a.m., Room 309

Honorable Alex Sonson, Chair and Committee Members
State Capitol Room 309
Honolulu, Hawaii 96813

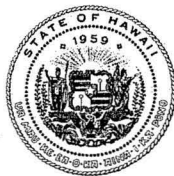
LATE TESTIMONY

Dear Chair Sonson and Members of the Committee

I am Audrey Hidano, Hidano Construction, Inc. testifying in strong OPPOSITION to HB 2388 which would require employers to continue medical services despite disputes over whether treatment(s) should be continued awaiting the director of DLIR to make a decision. Employees who want to "work the system" could prolong the time off the job and possibly not doing justice to the small employer who is waiting for the employee to return to work. Again, this is a complete erosion of employer's rights and our costs would increase. This proposed measure would also give NO incentive for workers to return to work in a timely manner.

Thank you for the opportunity to testify in OPPOSITION to this bill.

Audrey Hidano



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

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LATE TESTIMONY

February 4, 2008

To: The Honorable Alex Sonson, Chair
and Members of the House Committee on Labor and Public Employment

Date: February 5, 2008
Time: 8:30 a.m.
Place: Conference Room 309, State Capitol

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

**Testimony in OPPOSITION
To
RE: 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 cannot support H.B. 2388 for the following reasons:

1. The Department believes that the phrase in paragraph one in subsection 386-21(c) which states "Effective January 1, 1997, and for each succeeding calendar year thereafter," should not be deleted because this indicates the starting date of when fees were based on one hundred ten percent of the Medicare fees and also indicates that the Medical Fee Schedule in effect as of January 1 will be used throughout that year. This is important since fees listed in the Medicare Fee Schedule may change throughout the year.
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.

2. 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.
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.



**The Chamber of
Commerce of Hawaii**

Since 1850

LATE TESTIMONY

**Testimony to the House Committee on Labor and Public Employment
Tuesday, February 5, 2008; 8:30 a.m.
Conference Room 309**

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

Chair Sonson, Vice Chair Nakasone, 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"). I am here to state The Chamber's opposition to 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. 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.

Businesses recognize that an employee should seek medical treatment when necessary and supports his or her genuine effort in taking the proper steps to improve his or her health. They also believe that an employee should return to work if he or she is permitted to do so. It's important that these benefits be utilized as intended and not in such a way that benefits are activated simply because they exist.

The Chamber believes this bill may cause unreasonable and unnecessary treatment for non-related conditions. Employers including small businesses, which operate on limited resources, will face rising costs of providing workers' compensation insurance. Furthermore, colleagues of the absent employee, who otherwise is deemed mentally and physically capable of returning to work, will unfairly shoulder the additional responsibility. As a result, the negative consequences of this measure on businesses, especially small businesses could lead to not only a rise in workers' compensation insurance costs, but a rise in the overall cost of doing business.

Thus, The Chamber respectfully requests this measure be held.

Thank you for the opportunity to testify.