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TO THE HOUSE COMMITTEE ON  
CONSUMER PROTECTION & COMMERCE

TWENTY-FOURTH LEGISLATURE  
Regular Session of 2008

Wednesday, February 13, 2008  
2:00 p.m.

**TESTIMONY ON HOUSE BILL NO. 2573, H.D. 1 – RELATING TO WORKERS  
COMPENSATION.**

TO THE HONORABLE ROBERT HERKES, CHAIR, AND MEMBERS OF THE  
COMMITTEE:

My name is J.P. Schmidt, State Insurance Commissioner (“Commissioner”),  
testifying on behalf of the Department of Commerce and Consumer Affairs  
(“Department”). The Department supports this bill.

The purpose of this version of the bill is to increase the limitation on charges for  
medical care, services, and supplies for injured employees to an unstated percentage of  
the Medicare Resource Based Relative Value Scale system applicable to Hawaii  
effective July 1, 2009. The original version of this bill specified 120%. The current  
limitation of 110% in Hawaii Revised Statutes (“HRS”) § 386-21(c) was adopted in 1995.

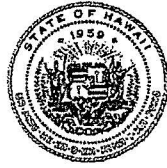
The workers’ compensation medical fee schedule is also referenced in the  
Insurance Code in HRS § 431:10C-308.5 and applies to medical treatment rendered in  
motor vehicle insurance cases.

The Department believes that an increase is justified and is necessary to ensure  
that employees and motor vehicle insurance claimants receive the necessary medical  
care and services for their injuries.

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**DCCA Testimony of J.P. Schmidt**  
**H.B. No. 2573, H.D. 1**  
**February 13, 2008**  
**Page 2**

We thank this Committee for the opportunity to present testimony on this matter and respectfully request that the Committee restore the July 1, 2008 effective date and specify the percentage.



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

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February 12, 2008

To: The Honorable Robert Herkes, Chair  
and Members of the House Committee on Consumer Protection and Commerce

Date: February 13, 2008  
Time: 2:00 p.m.  
Place: Conference Room 325, State Capitol

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

**Testimony in Support  
of  
House Bill 2573, H.D. 1 – Relating to Workers’ Compensation**

**I. OVERVIEW OF CURRENT PROPOSED LEGISLATION**

House Bill 2573, H.D. 1, proposes to amend Section 386-21, HRS, by increasing the charges for medical care, services and supplies to an unspecified percentage of fees prescribed in the Medicare Resource Based Relative Value Scale system applicable to Hawaii, effective January 1, 2009.

**II. CURRENT LAW**

Currently, Section 386-21 allows for charges for medical care, services and supplies to not exceed one hundred ten percent (110%) of fees prescribed in the Medicare Resource Based Relative Value Scale system applicable to Hawaii.

**III. HOUSE BILL**

The Department of Labor and Industrial Relations (“Department”) supports H.B. 2573, H.D. 1, and offers the following comments:

1. H.B. 2573, H.D. 1, should be clarified to ensure proper charges for medical services prior to January 1, 2009. For clarification, we recommend the following language in subsection 386-21(c), line 4 read as follows:

“Effective January 1, 1997 through December 31, 2008, the charges shall not exceed one hundred ten percent of fees prescribed in the Medicare Resource Based Relative Value Scale system applicable to Hawaii as prepared by the United States Department of Health and Human Services, except as provided in this subsection. Effective January 1, 2009, and for each succeeding calendar year thereafter, the charges shall not exceed XXXX percent of fees prescribed in the Medicare Resource Based Relative Value Scale system applicable to Hawaii, as prepared by the United States Department of Health and Human Services, except as provided in this subsection.”

2. The Department believes that any increase from 110% of Medicare will provide providers of medical services fair reimbursement for medical services provided to our injured workers. The Department believes 110% of Medicare is inadequate as Exhibit A of our medical fee schedule currently allows over 1,300 fees above the 110% of Medicare based upon surveys of prevalent charges. The Department believes low reimbursement is adversely impacting the number of physicians willing to provide medical treatment to our injured workers. An increase of XXX% above Medicare is important to ensure that injured workers will have access to timely medical care.
3. The Department is aware that any increase in reimbursement fees may result in additional costs and higher insurance premiums for employers. The National Council on Compensation Insurance, Inc. estimates that an increase to 120% of Medicare would increase costs by only 0.6%, or \$3.1 million.

Further, over the last four years, insurance premiums have decreased by almost 50% and a 10% increase in medical reimbursements should result in minimal increase in premiums, since medical costs account for only 40% of total workers' compensation costs in Hawaii.



# Hawaii State Chiropractic Association

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January 26, 2008

House of Representatives  
Committee on Consumer Protection & Commerce  
Chair Rep. Robert Herkes  
Vice Chair Rep. Angus McKelvey

Testimony for hearing  
Date: Wednesday, February 13, 2008  
Time: 2:00 pm  
Conference Room 325

Chair Herkes, Vice Chair McKelvey, and members of the committee

My name is Gary Saito and I am the President and Executive Director of the Hawaii State Chiropractic Association. We are in **support of HB 2573 HD1** but wish to make some comments.

While we would prefer that the Hawaii work comp fee scheduled be unhooked from the Medicare fee schedule altogether, we support the intent of this bill because it at least tries to respect the expertise and qualifications of our many treating physicians and other healthcare practitioners.

The Medicare fee schedule is an inadequate reimbursement system for work comp for the following reasons:

1. Medicare is not an injury-based health delivery system
2. It is not a system meant for acute care
3. It does not fairly compensate practitioners for their time and treatment of injured workers
4. It does not have reporting requirements as are mandated in the work comp system; the 10% over Medicare

rates is not an adequate compensation for the time required in the treatment of injured workers.

The Hawaii work comp fee schedule should never have been married to the Medicare fee schedule in the first place and many voices expressed this opinion 10 years ago. The growing failure of the work comp system to deliver quality care with accessibility to care demonstrates that the reimbursement component of the system is a failure. That so many doctors have abandoned the treatment of injured workers is a statement that reimbursements are not keeping up with the cost of living and the cost of doing business in Hawaii.

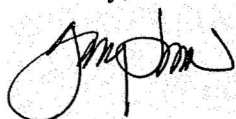
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An LRB study determined that compensation should have been 135% of Medicare six years ago. With the rise in the cost of living over the last 6 years and with the Medicare fee schedule staying the same or decreasing in that time, a fair compensation should be more than that in today's dollars.

The existing Medicare fee schedule inadequately compensates doctors for the work involved in injury treatment and for the administrative duties of doctors and staff to manage a work comp case. It is the primary reason for the great exodus of qualified doctors from the work comp program which was predicted 10 years ago in the LRB report to the legislature in 1998.

Thank you for allowing us to provide comment on this bill.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary Saito", written in a cursive style.

Gary Saito, DC  
President and ED, HSCA



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**Alison Powers**  
Executive Director

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**TESTIMONY OF ALISON POWERS**

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HOUSE COMMITTEE ON CONSUMER PROTECTION  
Representative Robert N. Herkes, Chair  
Representative Angus L.K. McKelvey, Vice Chair

Wednesday, February 13, 2008  
2:00 p.m.

**HB 2573, HD1**

Chair Herkes, Vice Chair McKelvey, 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.

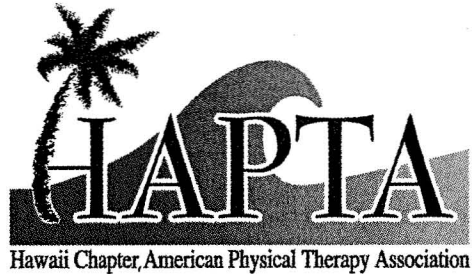
Hawaii Insurers Council **opposes** HB 2573, HD1. This bill changes the medical fee schedule reimbursement from 110% of Medicare to a yet to be determined percentage of Medicare. We believe this bill is unnecessary because the Director of the Department of Labor and Industrial Relations has the ability to increase certain codes when necessary. In fact, in 2006, the department adjusted fees for approximately 1,300 CPT codes. In addition, an across the board increase will also affect personal injury protection reimbursement rates in motor vehicle insurance and the Insurance Commissioner has similar powers to increase certain codes when appropriate.

We respectfully request that HB 2573, HD1 be held.

Thank you for the opportunity to testify.

Testimony by:  
Derrick Ishihara, PT

HB2573hd1, Workers' Compensation  
House CPC Committee  
Feb. 13, 2008 - 2:00 pm  
Conference Room 325



**Position: Support Intent, with Recommendations**

Chair Herkes and Members of the House CPC Committee:

I am Derrick Ishihara, P.T., a small business owner/physical therapist, member of HAPTA's Legislative Committee, and member of the Hawaii Chapter – American Physical Therapy Association. 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 appreciates the intent of this measure to increase the reimbursement for medical services from 110% to 120% (HB 2573 draft) and XX % (HB 2573hd1) of the Medicare RBRVS system. We note however that the level of reimbursement for Medicare services will be reduced by 10.1% on 7/1/08 unless action is taken in Congress prior to that date. This reduction in reimbursement is determined largely by the Federal budget and other issues not directly related to the actual cost of delivering medical services in the State of Hawaii.

We feel that an increase in the 130% to 140% range would be more appropriate for the short term given the unstable nature of Medicare reimbursement policy. We understand that the Director is statutorily empowered to update the WC fee schedule, however in practice this would be a cumbersome and time consuming task as there are literally hundreds of treatment codes commonly used in WC cases.

We also caution against arbitrarily using reimbursement rates set by private insurers as in recent years these rates have also been pushed downward in the wake of the sharp drop in the WC reimbursement rates in the mid-to-late 1990s.

The current statute states that "The rates or fees provided for in this section shall be adequate to ensure at all times the standard of services and care intended by this chapter to injured employees." We find that the fees allowed for medical services to injured workers are no longer adequate for these purposes. Not only are specialists difficult to find for injured workers, many primary care physicians no longer treat injured workers. Many injured workers who have longstanding relationships with their family doctors are having to find new doctors if they are injured at work. Many primary care physicians no longer participate because of the antagonistic atmosphere and the low reimbursement when working with the WC system in Hawaii. Such a personal choice of whom you see for medical care should not be disrupted by where you sustained your injury.

Over the years, HAPTA has testified that for WC cases, reimbursement rates should be modeled after the Federal WC rates (OWCP) rather than the Medicare reimbursement rates. We continue to recommend a study of the use of OWCP rates on WC in the State of Hawaii. In the meantime, 130% to 140% of Medicare RBRVS could be used as an alternative.

Thank you for the opportunity to provide testimony. I can be reached at (808) 593-2610 if there are any questions.

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February 12, 2008

TO: Representative Robert Herkes  
Chair, Committee on Consumer Protection & Commerce  
Hawaii State Capitol, Room 320  
Via Email: [CPCtestimony@Capitol.hawaii.gov](mailto:CPCtestimony@Capitol.hawaii.gov)

FROM: Anne T. Horiuchi, Esq.  
H.B. 2573, HD1 – Relating to Workers Compensation  
Hearing Date: Wednesday, February 13, 2008 at 2:00 p.m.

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Dear Chair Herkes and Members of the Committee on Consumer Protection & Commerce:

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. 2573, HD1 increases the workers' compensation fee schedule from one hundred ten percent to a blank percentage of the fees prescribed in the Medicare Resource Based Relative Value Scale system. As originally drafted, H.B. 2573 sought to increase the fee schedule from one hundred ten percent to one hundred twenty percent of the fees prescribed in the Medicare system.

AIA opposes this measure as unnecessary, given the ability of the Director of the Department of Labor & Industrial Relations to make determinations of the charges and to adopt fee schedules based upon those determinations. We respectfully request that H.B. 2573, HD1 be held.

Thank you very much for this opportunity to submit testimony.



HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE  
Rep. Robert Herkes, Chair

Conference Room 325  
February 13, 2008 at 2:00 p.m.

Testimony in support of HB 2573 HD 1.

I am Rich Meiers, President and CEO of the Healthcare Association of Hawaii, which represents the entire spectrum of health care, including acute care hospitals, two-thirds of the long term care beds in Hawaii, as well as home care and hospice providers. I regret that I shall not be able to testify in person due to a previous commitment. However, I appreciate this opportunity to submit written testimony in support of HB 2573 HD 1, which increases the ceiling for workers compensation payments to health care providers.

In recent weeks the media has featured health care in a number of articles, highlighting the adverse impacts of low payments to health care providers on Hawaii's health care system. Insufficient payments from various sources that do not cover the actual costs of care have resulted in the reduction or elimination of various programs. In fact, certain hospitals are on the verge of bankruptcy due to lack of sufficient revenue. Access to quality health care for all of Hawaii's residents is now at risk.

The workers compensation fee schedule is set statutorily at a maximum of 110% of the Medicare fee schedule, which itself does not cover the actual costs of care. The workers compensation fee schedule is also insufficient.

The inadequacy of workers compensation payments to health care providers is described in a report by the Legislative Reference Bureau entitled, "The Medical Fee Schedule Under the Workers' Compensation Law." The report concludes that, at 110% of the Medicare fee schedule, the workers compensation fee schedule is insufficient. The report describes how low payments cause some providers to refuse workers compensation cases, resulting in reduced access to quality care for patients. The report recommends increasing the workers compensation fee schedule to at least 125% of the Medicare fee schedule. That report is now 10 years old. Unfortunately, it is still as relevant today as it was then.

This bill takes a step toward bringing health care providers to stable financial footing. It also improves access to quality care for those who have been injured in workplace accidents.

For the foregoing reasons, the Healthcare Association of Hawaii strongly supports HB 2573 HD 1.



February 13, 2008

Please deliver to:  
Consumer Protection  
Committee.  
2-13-2008, Wed.  
2pm  
Conf. Rm.325

To: Rep. Robert N. Herkes, M.D., Chair  
Rep. Angus McKelvey, Vice Chair  
Consumer Protection Committee

From: Cynthia Goto, M.D., President  
Linda Rasmussen, M.D., Legislative Co-Chair  
Philip Hellreich, M.D., Legislative Co-Chair  
Paula Arcena, Executive Director  
Dick Botti, Government Liaison

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Executive Director

**RE: HB2573 RELATING TO WORKERS COMPENSATION.**

(Increases workers compensation fee schedule from one hundred ten percent to an undetermined percentage)

Hawaii Medical Association is tentatively in favor of this bill. HMA wishes to express that we are grateful that the lack of access of injured workers to care as a result of an inadequate reimbursement is finally being recognized. The prior draft of this bill was inadequate to reverse the ongoing trend of doctors refusing to accept workers' compensation cases. An HMA survey showed that 66% of doctors that had previously accepted workers' compensation no longer do so as a direct result of poor reimbursement under the Medicare plus 10% formula. When these same doctors were asked what level of reimbursement it would take for them to accept these cases, the average was 160% of Medicare. Interestingly, a recent Workers' Compensation Research Institute (WCRI) study pointed out that the national average of workers' compensation reimbursement is 155% of Medicare.

However, we are concerned that this bill is not structured in a way that best addresses the problem, since it continues to base the fee schedule directly on the Medicare system. WCRI studies have often expressed concern regarding this. Medicare is not an injury-based fee schedule, and it is based on demographics very different from those of workers' compensation.

Lastly, HMA is concerned that any blanket increase in fees, even if inadequate to bring skilled doctors back, will increase overall workers' compensation costs. Adequate increases targeted to specific

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procedure and management codes would better accomplish the goal of access to care.

Therefore, the following proposed changes would provide significantly greater flexibility in making targeted adjustments adequate to ensure at all times the standard of services and care intended by this chapter to injured employees (deleted text in parentheses, added text underlined):

(c) The liability of the employer for medical care, services, and supplies shall be limited to the charges computed as set forth in this section. The director shall make determinations of the charges and adopt fee schedules based upon those determinations. Effective January 1, 1997, and for each succeeding calendar year thereafter, the charges shall not exceed one hundred ten per cent of fees prescribed in the Medicare Resource Based Relative Value Scale system applicable to Hawaii as prepared by the United States Department of Health and Human Services, except as provided in this subsection. The rates or fees provided for in this section shall be adequate to ensure at all times the standard of services and care intended by this chapter to injured employees.

If the director determines that an allowance under the Medicare program is not reasonable, or if a medical treatment, accommodation, product, or service existing as of June 29, 1995, is not covered under the Medicare program, the director, at any time, may establish an additional fee schedule or schedules (not exceeding the prevalent charge for fees for services actually received by providers of health care services to cover charges for that) to ensure for the standard of treatment, accommodation, product, or service intended by this chapter to injured employees. If no prevalent charge for a fee for service has been established for a given service or procedure, the director shall adopt a reasonable rate that shall be the same for all providers of health care services to be paid for that service or procedure.

The director shall update the schedules required by this section every three years or annually, as required. The updates shall be based upon:

(1) Future charges or additions prescribed in the Medicare Resource Based Relative Value Scale system applicable to Hawaii as prepared by the United States Department of Health and Human Services; or

(2) (A statistically valid survey by the director of prevalent charges for fees for services actually received by providers of health care services or based upon the information provided to the director by the appropriate state agency having access to prevalent charges for medical fee information.) A determination by the director of fees for services sufficient to ensure at all times the standard of services and care

intended by this chapter to injured employees; provided that a provider shall not charge more than the provider's private patient charge for the service rendered.