

**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: dlir.director@hawaii.gov

February 4, 2008

LATE TESTIMONY

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

Date: February 5, 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 Support
of
Senate Bill 2538 – Relating to Workers’ Compensation**

I. OVERVIEW OF CURRENT PROPOSED LEGISLATION

Senate Bill 2538 proposes to amend Section 386-21, Hawaii Revised Statutes, (“HRS”), by increasing the charges for medical care, services and supplies to one-hundred twenty percent (120%) 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, HRS, 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. SENATE BILL

The Department of Labor and Industrial Relations (“Department”) supports S.B. 2538 and offers the following comments:

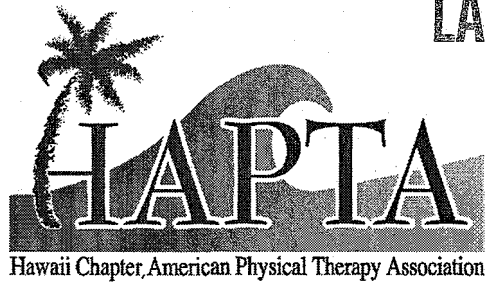
1. S.B. 2538 should be clarified with respect to the interim period between January 1, 1997 to December 31, 2008. For clarification we recommend the following language be included in the bill to read as follows:

Page 2, line 20 should read “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 one hundred thirty five 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 this increase from 110% to 120% 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 120% 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 cost and higher insurance premiums for employers. However, the Department believes that increasing the medical fee schedule from 110% to 120% will not adversely impact costs. The National Council on Compensation Insurance, Inc. estimates that costs would increase by only 0.6%, or \$3.1 million.

Testimony by:
Derrick Ishihara, PT

SB2538, Workers' Compensation
Sen JDL Committee
Feb. 5, 2008 - 9:00 am
Conference Room 016



Position: Support Intent, with Recommendations

Chair Taniguchi and Members of the Senate JDL 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% 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.