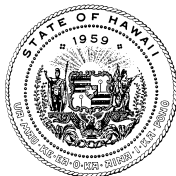


TESTIMONY

SB 695



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: dllr.director@hawaii.gov

February 9, 2009

To: The Honorable Dwight Takamine, Chair
and Members of the Senate Committee on Labor

Date: February 10, 2009

Time: 2:45 p.m.

Place: Conference Room 224, State Capitol

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

Testimony in OPPOSITION

to

S.B. 695 – Relating to Workers' Compensation

I. OVERVIEW OF CURRENT PROPOSED LEGISLATION

Senate Bill 695 proposes to amend section 386-21, 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. SENATE 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. Un-reimbursed 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 hearing 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 \$495,440 initially and \$461,340 in salaries annually thereafter.

4. This proposal will result in increasing employer insurance premiums during a period when employers will not be able to afford any increases the cost of doing business in Hawaii.
5. This proposal is similar to a prior measure vetoed by the Governor in 2008. Those same objections that the Governor had for vetoing those bills still exist in this proposal.

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

February 9, 2009

TESTIMONY TO THE
SENATE COMMITTEE ON LABOR
For Hearing on Tuesday, February 10, 2009
2:45 p.m., Conference Room 224

BY

MARIE C. LADERTA, DIRECTOR

Senate Bill No. 695
Relating to Workers' Compensation

TO CHAIR DWIGHT Y. TAKAMINE AND MEMBERS OF THE COMMITTEE:

The purpose of S.B. No. 695, is to amend Section 386-21(c), Hawaii Revised Statutes, is to require the employer 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 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 black ink, appearing to read "Marie C. Laderta", written over a horizontal line.

MARIE C. LADERTA

Division of Industrial Safety and Workers' Compensation

Department of Human Resources

City and County of Honolulu

650 South King Street, 6th Floor

Honolulu, Hawaii 96813

Phone: 768-8560 Fax: 550-6221

Testimony to the Twenty-fifth Legislature 2009

Testifier's name/position title and organization: Ken Y. Nakamatsu, Director
Department of Human Resources
City & County of Honolulu

The Committee the comments are directed to: Committee on Labor
The Senate

The date and time of hearing: February 10, 2009
2:45 P.M.

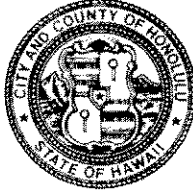
Measure number: SB 695

The number of committee requested copies: 1

DEPARTMENT OF HUMAN RESOURCES
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 10TH FLOOR
HONOLULU, HAWAII 96813

MUFI HANNEMANN
MAYOR



KENNETH Y. NAKAMATSU
DIRECTOR

February 10, 2009

The Honorable Dwight Y. Takamine, Chair
and Members of the Committee on Labor
The Senate
Hawaii State Capitol
Honolulu, Hawaii 96813

Dear Chair Takamine and Members:

RE: SENATE BILL NO. 695 RELATING TO WORKERS' COMPENSATION

The City and County of Honolulu strongly opposes Senate Bill No. 695, amending Section 386-21 of the Hawaii Workers' Compensation Law by requiring employers to continue to pay an injured employee's medical benefits despite disputes over whether treatment should continue, until the Director of Labor and Industrial Relations issues a decision on the matter. This bill makes unnecessary changes to the current law that will increase the cost of workers' compensation and business in the State of Hawaii.


The 1995 Legislature enacted major reforms to the Hawaii Workers' Compensation Law resulting in hundreds of millions of dollars being saved over the last 12 years. The magnitude of the savings can be assessed using data from the State's Department of Labor and Industrial Relations Workers' Compensation Data Book, published annually (see Attachment I). In short, statewide workers' compensation costs 3 years prior to the reform averaged \$331 million annually. Workers' compensation costs for the 12 years immediately following the reform averaged \$253 million annually; a \$78 million annual savings. Put in the proper perspective, over the last 12 years the State of Hawaii has saved \$936 million in workers' compensation costs as a result of the changes made by the 1995 Legislature.

Now in 2009, the Twenty-fifth Legislature is proposing changes to the Hawaii Workers' Compensation Law that will inevitably increase the cost of workers' compensation in the State. In times of economic turmoil requiring fiscal austerity and innovative solutions, it is most disturbing to see bills introduced by this Legislature that further add to the already critical financial crises in the State.

The Honorable Dwight Y. Takamine
February 10, 2009
Page 2

We respectfully urge your committee to file Senate Bill No. 695 because it so severely restricts the ability of self-insured employers like the City and County of Honolulu and private workers' compensation insurance carriers to administer workers' compensation claims by changing a law that already weighs heavily in favor of the claimant. Further, the proposed changes will add unnecessary hearings to an already overburdened Department of Labor and Industrial Relations.

Sincerely,


for KEN Y. NAKAMATSU
Director of Human Resources

Attachment

STATEWIDE WORKERS' COMPENSATION COSTS BY TYPE OF PAYMENT

Type of Payment	2000	2001	2002	2003	2004	2005	2006	2007	Type
TTD	55,312,588	62,586,914	65,056,903	67,654,807	63,706,668	59,067,148	54,967,864	56,919,048	TTD
TPD	2,651,756	3,043,394	2,900,452	3,241,339	3,184,548	3,109,906	2,625,563	2,705,692	TPD
PTD	15,507,928	15,118,576	18,395,265	17,626,114	18,093,822	15,955,797	18,599,904	16,765,532	PTD
PPD	57,260,955	57,875,459	65,159,217	68,803,178	69,515,306	66,399,667	64,195,980	63,054,843	PPD
Death	1,962,684	2,735,802	2,360,809	2,325,041	2,148,014	2,010,782	2,182,528	3,052,391	Death
Disfigurement	1,309,482	1,357,202	1,562,803	1,625,475	1,524,271	1,314,094	1,480,269	1,263,750	Disf
Voc Rehab	5,629,397	5,802,764	6,325,020	6,432,282	6,114,837	5,063,253	4,868,366	4,561,823	VR
Medical	91,184,757	103,303,676	105,926,606	106,912,209	106,766,183	97,638,645	93,394,364	98,513,146	Med
Attendant Services	539,633	217,365	140,180	301,787	236,375	219,851	370,655	457,629	AS
Total	231,359,180	252,041,152	267,827,255	274,922,232	271,290,024	250,779,143	242,685,493	247,293,854	Total

Workers' Compensation Reform began July 1, 1995. Major changes were Medical Fee Schedule (Medicare plus 10%), treatment limits, second injury limits on PPD and part-time workers.

Type of Payment	1992	1993	1994	1995	1996	1997	1998	1999	Type
TTD	75,124,541	83,443,021	80,281,234	70,875,583	61,054,623	57,366,809	53,356,078	51,550,709	TTD
TPD	2,335,548	2,769,212	3,072,057	2,774,293	2,829,674	2,825,736	2,878,552	2,743,336	TPD
PTD	13,600,845	11,232,499	19,763,997	15,497,510	17,618,587	16,716,542	15,714,253	15,830,200	PTD
PPD	69,506,346	76,270,234	81,865,987	95,125,484	93,619,941	72,453,667	64,909,092	57,124,045	PPD
Death	2,765,124	2,392,562	2,632,183	2,789,579	2,814,023	2,899,119	2,238,102	2,395,396	Death
Disfigurement	1,763,162	1,869,215	1,681,428	1,759,164	1,942,172	1,808,428	1,384,551	1,341,929	Disf
Voc Rehab	6,639,072	7,866,683	7,892,705	7,871,615	6,574,004	6,179,012	5,534,403	5,359,001	VR
Medical	115,960,185	137,740,829	145,500,111	129,125,665	101,664,903	94,424,669	87,019,208	85,513,448	Med
Attendant Services	307,956	178,355	390,071	303,969	376,739	241,389	190,286	198,250	AS
Total	288,002,779	323,762,610	343,079,773	326,122,862	288,494,666	254,915,371	233,224,525	222,056,314	Total

Source: Workers' Compensation Data Book, State of Hawaii, Department of Industrial Relations, Research and Statistics Office (1992 – 2007)

**Testimony by:
Derrick Ishihara, PT**



**SB 695, Relating to Workers' Compensation
Sen LBR, February 10, 2009
Room 224, 2:45 pm**

Position: Support Intent, With Recommendation

Chair Takamine and Members of the Sen LBR 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 and Department of Health systems, and private practice. Our members represent Hawaii at the national American Physical Therapy Association and are delegates for Pediatrics, Women's Health, Parkinson's Disease and other issue sections. 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 function from neuromusculoskeletal injuries and impairments.

HAPTA agrees with the intent of this measure that seeks 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.

We are concerned that 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, SB 695 does not provide 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.

IRON WORKERS STABILIZATION FUND

February 9, 2009

Hon. Dwight Y. Takamine, Chair
Senate Committee on Labor
State Capitol – Room 204
Honolulu, Hawaii 96813

Iron Workers Stabilization Fund – T. George Paris, Managing Director

Hearing Date – February 10, 2009, 2:45 p.m.

Support of SB 695, Relating to Workers' Compensation

The purpose of this bill is to require an employer to continue medical services to an injured employee despite disputes over whether the treatment should be continued. The disputes are to be resolved by the Director of Labor and Industrial Relations.

Under this measure, the director must make a decision as to whether said services are to be continued within 30 days of the filing of the dispute. If the director determines that said services should have been denied as of a certain date, the employer or its insurer may recover from the employee's personal health provider. The bill further provides that that under no circumstances shall the employee be charged for the disallowed services, unless said services were obtained in violation of section 386-98.

The Iron Workers Stabilization Fund supports this measure.

94-497 UKEE STREET ■ WAIPAHU, HAWAII 96797 ■ (808) 671-4344



THE SENATE
THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2009

COMMITTEE ON LABOR
Sen. Dwight Y. Takamine, Chair
Sen. Brian T. Taniguchi Vice Chair

Date: Tuesday, February 10, 2009
Time: 2:45 p.m.
Place: Conference Room 224, State Capitol

TESTIMONY OF ILWU LOCAL 142

RE: SB 695, RELATING TO WORKERS' COMPENSATION

Thank you for the opportunity to present testimony regarding SB 695. We support this modest but constructive bill.

Where disputes arise about the approval of medical care, S.B. 695 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 SB 695 addresses this problem in a balanced and equitable fashion.

In conjunction with these protections for the injured worker, SB 695 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.

SB 695 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.

February 8, 2009

Chairman Sen. Dwight Y. Takamine
Vice Chairman Sen. Brian T. Taniguchi
Committee on Labor

RE: Testimony in Support of the intent of SB695, Relating to Workers'
Compensation
Hearing, Tuesday, February 10, 2009 2:45 PM
Conference Room 224

FROM: James A. Pleiss, DC
2045 Main Street, Wailuku, Maui, Hawaii 96793
808-244-0312

Dear Chairman Takamine, Vice Chair Taniguchi, and Members of the Committee:

Thank you for the opportunity to testify in support of the intent of SB695 which 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 bill goes a long way in protecting the injured workers right to continued treatment during the process of a denial by the insurance company. Once a denial of treatment is received by the provider and patient, it often takes in excess of 6 months or longer to resolve with. During this time, providers are hesitant to continue to treat the patient as they do not know if they will be paid for their services. These patients often worsen due to lack of treatment, referrals to specialists, and diagnostic tests. Furthermore, if there is no treatment rendered during the period in question, then the patient does not have any basis for their fight to overturn the denial. This is a "catch-22" of the workers' compensation system that SB695 will rectify.

I can not support the language of SB695 that states the director will pick a date that treatment should be cut off. Furthermore, I can not support the language that states the provider of services pay back the insurance company. This language will only further discourage the healthcare providers from participating in the workers' compensation system.

SB695 should be amended to remove this language and instead insert language that states: "If the treatment is to be denied, the effective date of the denial will be the date of the decision by the director." Monies paid to the providers of service during the denial period and up to the date of the decision do not get paid back.

I also support the testimony of the Hawaii State Chiropractic Association.

Thank you for the opportunity to testify before your committee in support of the intent of SB695.

Sincerely

James A. Pleiss, DC

GOODSILL ANDERSON QUINN & STIFEL

A LIMITED LIABILITY LAW PARTNERSHIP LLP

GOVERNMENT RELATIONS TEAM:
GARY M. SLOVIN
CHRISTOPHER G. PABLO
ANNE T. HORIUCHI
MIHOKO E. ITO

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meito@goodsill.com

MEMORANDUM

TO: Senator Dwight Takamine
Chair, Senate Committee on Labor
Via e-mail: LBRTestimony@Capitol.hawaii.gov

FROM: Anne Horiuchi

DATE: February 9, 2009

RE: **S.B. 695 Relating to Workers' Compensation**
Hearing: Tuesday, February 10, 2009 at 2:45 p.m., Room 224

Dear Chair Takamine and Members of the Committee on 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. All AIA news releases are available at www.aiadc.org.

S.B. 695 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 & 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 S.B. 695 and respectfully requests that the measure be held in committee.

Thank you very much for the opportunity to submit testimony on this measure.



HIIA

Hawaii Independent Insurance Agents Association

February 9, 2009

To: Senator Dwight Y. Takamine, Chair
Senator Brian T. Taniguchi, Vice- Chair
Committee on Labor

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

Re: SB695 – Relating to Workers Compensation
Hearing: Tuesday, February 10, 2009 2:45 p.m. Conference Room 224

The Hawaii Independent Insurance Agents Association (HIIA) **opposes** SB695 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 economy is extremely fragile 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 LABOR
Senator Dwight Y. Takamine, Chair
Senator Brian T. Taniguchi, Vice Chair

Tuesday, February 10, 2009
2:45 p.m.

SB 695

Chair Takamine, Vice Chair Taniguchi, 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** S.B. 695, which would require employees to receive medical benefits when the need for such treatment is being controverted.

Currently, under Hawaii Administrative Rules 12-12-45, Controverted Workers' Compensation Claims, the rule states that in a controverted claim, the prepaid health provider shall pay. S.B. 695 automatically shifts the payment to the workers' compensation insurer while the Director makes a decision, regardless of whether the injury is work related or not. The employer/insurer must also pay for benefits regardless if fraud is suspected. Currently, at the time an insurer denies a treatment request, there is evidence, usually in the form of an independent medical examination, which justifies termination. Under S.B. 695, the employer/insurer must continue to pay without reimbursement until a decision and notification is made. The employer should be allowed to deny a treatment request when there is medical evidence to substantiate the

denial. The current procedure ensures due process by allowing the employee or the provider to request a hearing.

S.B. 695 prohibits any recovery by the employer/insurer until after the Director issues a decision and notification. The Director has 30 days to make a decision, therefore, this bill merely guarantees another 30 days of treatment to the employee and payment to the provider. It provides an incentive to the employee and provider to continue treatment, whether necessary or not. S.B. 695 will encourage treatment abuse by providers that have a tendency to utilize treatment modalities not reimbursable under workers' compensation or other medical benefit plans. Such treatment that is challenged by the employer or the employer's insurer may include unconventional, experimental, or non-FDA approved pharmaceutical regimes. This is not beneficial to the injured worker and would also expand the degree of risk the employer has to bear in the event there are adverse consequences as a result of the controverted treatment. Furthermore, the bill 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.

Although the bill allows the employer or the employer's insurer to recover from the employee's personal health care provider for medical services rendered after the date designated by the Director, the treatment rendered may not be reimbursable. If reimbursable, it may be at a different rate. This provision places an unfair financial burden on employers by requiring them to bear the cost for treatment that is outside the scope of workers' compensation benefits. If the treatment is deemed unnecessary by the health insurer, the workers' compensation insurer must bear the cost of treatment that is *outside even health insurance benefits*. This provision will also add cost to the adjudication of the claim when the employer/insurer has to subrogate other entities for payment.

Finally, there will be an increase in medical expenses under workers' compensation insurance because of the automatic 30-day extension of benefits. These costs will be passed on to businesses and consumers in the form of rate increases. In their analysis dated February 29, 2008 of the same bill from last year (HB 2388), The National Council on Compensation Insurance (NCCI) stated in part:

“...Specifically, the Hawaii Department of Labor and Industrial Relations WC Data Book for 2005 reports 39,889 WC cases with some payment, and a total of 10,135 decisions issued. Of these, 5,947 involve a dispute that could impact medical compensation. If 30% to 50% of the decisions include a medical component, then 3,000 to 5,000 cases with disputes over medical care could have a month of additional covered treatment while waiting for a decision. The treatment would likely be of a palliative nature, to comply with the charge to prevent deterioration. **Assuming the cost for a month of treatment, including medication for pain, inflammation or other injury related problems, could range between \$290 and \$1790, the additional medical costs might be \$0.9 Million to \$9.1 Million. This is a range of 0.5% to 3.9% of Hawaii’s WC medical costs. Medical costs represent 43.8% of Hawaii’s total WC costs, resulting in a possible impact from between 0.2% and 1.7% of overall WC system costs.**”

We respectfully request that S.B. 695 be held.

Thank you for the opportunity to testify.



Testimony to the Senate Committee on Labor
Tuesday, February 10, 2009 at 2:45 p.m.
Conference Room 224

RE: SENATE BILL 695 RELATING TO WORKERS' COMPENSATION

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

On behalf of the Maui Chamber of Commerce, I write this testimony in opposition to Senate Bill No. 695, relating to Workers Compensation.

The Maui Chamber of Commerce, a business organization with who mission it is to advance and promote a healthy economic environment for business, advocating for responsive government and quality education, while preserving Maui's unique community characteristics, strongly opposes this bill and asks that you do the same.

We are a membership driven organization comprised of over 900 members, 88% of which are small businesses with fewer than 25 employees, representing nearly 21,000 employees. We oppose this bill which 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 businesses recognize that an employee suffering from work-related injuries deserves proper and necessary treatment. It's important that these benefits be utilized as intended and not in such a way that benefits are activated simply because they exist.

However, passage of this bill may lead to abuse and cause unreasonable and unnecessary treatment for non-related work injuries, and prolong time off the job, even if the employee is deemed able to return to his or her work.

Because of the bill's mandate to require continued medical treatment, this measure may hurt employers including small businesses. 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. Furthermore, businesses will have to expend additional resources, money, and time to effectuate the reimbursement rights contained in this bill as well as on other issues that may result out of this situation. As a result, the negative consequences of this measure may hinder than promote progress.

Many of our local establishments operate on limited resources, and struggle on a daily basis to keep up with costly regulations. We ask that in these difficult economic times further costs not be imposed on

Hawaii's businesses, particularly those affected by the proposed legislation. Implementing laws that will inflict further regulatory requirements will undermine efforts to keep businesses viable or even open during this volatile economic period. We should be promoting incentives rather than mandates so that jobs can be retained and the economy revitalized.

In summary, SB 695, while well-intended, will have a negative impact and may lead to a rise in workers' compensation insurance costs and the overall cost of doing business. We believe further evaluation should be conducted on some of the concerns arising out of this bill versus the purpose before passing legislation that could lead to significant unintended consequences.

Therefore, the Maui Chamber of Commerce asks that this measure be held.

Sincerely,

Pamela Tumpap
President



Senator Dwight Takamine, Chair
Senator Brian Taniguchi, Vice Chair
Committee on Labor
State Capitol, Honolulu, Hawaii 96813

HEARING Tuesday, February 10, 2009
 2:45 pm
 Conference Room 224

RE: SB695, Relating to Workers' Compensation

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

Retail Merchants of Hawaii (RMH) is a not-for-profit trade organization representing 200 members and over 2,000 storefronts, and is committed to support the retail industry and business in general in Hawaii.

RMH opposes SB695, which 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.

We do not dispute that an injured worker should receive quality and appropriate medical care as long as required. However, this measure could lead to unnecessary abuse and unwarranted extension of time away from the workplace.

More importantly, there is no 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 SB695. Thank you for your consideration and for the opportunity to comment on this measure.

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

President



**Testimony to the Senate Committee on Labor
Tuesday, February 10, 2009; 2:45 p.m.
Conference Room 224**

RE: SENATE BILL 695 RELATING TO WORKERS' COMPENSATION

Chair Takamine, Vice Chair Taniguchi 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 SB 695, relating to Workers' Compensation.

The Chamber is the largest business organization in Hawaii, representing more than 1,100 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 its members, which employ more than 200,000 individuals, 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 businesses recognize that an employee suffering from work-related injuries deservedly warrant proper and necessary treatment. It's important that these benefits be utilized as intended and not in such a way that benefits are activated simply because they exist.

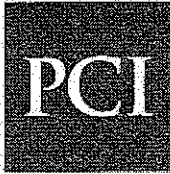
However, passage of this bill may lead to abuse and cause unreasonable and unnecessary treatment for non-related work injuries, and prolong time off the job, even if the employee is deemed able to return to his or her work.

Because of the bill's mandate to require continued medical treatment, this measure may hurt employers including small businesses. 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. Furthermore, businesses will have to expend additional resources, money, and time to effectuate the reimbursement rights contained in this bill as well as on other issues that may result out of this situation. As a result, the negative consequences of this measure may hinder than promote progress.

Many of our local establishments operate on limited resources, and struggle on a daily basis to keep up with costly regulations. We ask that in these difficult economic times further costs not be imposed on Hawaii's businesses, particularly those affected by the proposed legislation. Implementing laws that will inflict further regulatory requirements will undermine efforts to keep businesses viable or even open during this volatile economic period. We should be promoting incentives rather than mandates so that jobs can be retained and the economy revitalized.

In summary, SB 695, while well-intended, will have a negative impact and may lead to a rise in workers' compensation insurance costs and the overall cost of doing business. We believe further evaluation should be conducted on some of the concerns arising out of this bill versus the purpose before passing legislation that could lead to significant unintended consequences.

Thus, The Chamber respectfully requests this measure be held. 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 Dwight Y. Takamine, Chair
Senate Labor Committee

From: Samuel Sorich, Vice President

RE: **SB 695 – Relating to Workers' Compensation**
PCI Position: Oppose

Date: Tuesday, February 10, 2009
2:45 p.m. Conference Room 224

The Property Casualty Insurers Association of America (PCI) is opposed to SB 695 because the bill is unnecessary and unfair and would result in administrative delays.

SB 695 would establish a new, complex system for obtaining independent medical examinations. Instead of the simple existing system that allows an employer to obtain an independent medical examination, SB 695 would require the employer and the employee to reach a mutual agreement on the physician who conducts the examination. If mutual agreement is not reached, the director of the department of labor and industry would have to appoint a physician, who may or may not be willing to undertake the examination. The purported reason for the bill is to provide safeguards for injured employees, but existing law already provides strong safeguards. The report of the independent medical examination must be given to the employee. The employee has the right to challenge the report and to offer evidence that disputes the report's findings.

The independent medical review gives the employer valuable information to evaluate the employee's condition. The employer pays for the examination. SB 695 would unfairly force employers to pay for examinations that may not allow employers to discover information that enables them to make a reasoned evaluation of the employee's condition and treatment.

Existing law allows independent examinations to be undertaken quickly. In contrast, examinations under SB 695 would be stalled by built-in delays in the bill. The employer would have to first try to reach a mutual agreement. If that does not work, the employer would have to petition the director for the appointment of a physician. The appointed physician would have seven days to decide whether to take the case. If the physician decides not to take the case,

the director restarts the process. Once a physician decides to take the case, the examination is supposed to take place within 30 days. No doubt, that is optimistic. All this means that examinations would be burdened by administrative delays

PCI requests that the Committee vote No on the bill.