



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

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March 29, 2010

To: The Honorable Marcus R. Oshiro, Chair  
and Members of the House Committee on Finance

Date: Monday, March 29, 2010  
Time: 4:00 p.m.  
Place: Conference Room 308, State Capitol

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

**Testimony in OPPOSITION**

to

**S.B. 2566 H.D. 1 – Relating to Medical and Rehabilitation Benefits**

**I. DEPARTMENT POSITION**

The Department opposes this bill because the current administrative rules that allow for consultations are fair and adequate. Currently, the attending physician usually refers the injured worker for diagnostic testing and consultations when they feel it is reasonable and necessary as the injury requires. And because not all workers' compensation injuries are so severe and complex to require diagnostic testing and consultations, the Department believes each consult should be done on a case by case basis as the current administrative rules provide. Allowing a "blanket approval" for diagnostic testing and a one-time consult without the employer whether they feel it is necessary may result in higher workers' compensation costs.

**II. OVERVIEW OF CURRENT PROPOSED LEGISLATION**

Senate Bill 2566 H.D. 1 proposes to amend Section 386-21(b), HRS, by clarifying that a physician or surgeon may conduct diagnostic testing or engage in a one-time consultation for a subspecialty diagnostic evaluation and treatment recommendations from a board certified or licensed specialist, without denial from the insurer or employer. This proposal also allows the one-time consultation to be made at a medical facility in which the physician or surgeon has a financial interest.

### III. CURRENT LAW

The current law allows an injured employee to select any physician or surgeon who is practicing on the island where the injury was incurred to render medical care. The current Workers' Compensation Medical Fee Schedule Administrative Rules (WCMFS) allows for Consultations under Section 12-15-42 when additional medical opinions and treatment are warranted.

Under Section 12-15-42, WCMFS, Consultations may be requested by the attending physician, the injured employee, the employer, or the director whenever another physician with expertise and experience on the subject may be required. Consultation referrals must be authorized by the employer/insurance carrier (hereafter "employer") or granted upon order of the director. The employer, upon receipt of a consultation request, shall respond within seven calendar days after postmark of such request, giving authorization or stating in writing the reason for refusal to the attending physician, the injured employee, and the director. If the employer denies the consult, the attending physician or the injured employee may request the director to review the employer's denial and a hearing will be held to approve or deny the request for consultation based on the evidence presented.

The current law does not address referrals to a medical facility in which the physician or surgeon has a financial interest.