



**STATE OF HAWAII**  
**DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**  
830 PUNCHBOWL STREET, ROOM 321  
HONOLULU, HAWAII 96813  
[www.hawaii.gov/labor](http://www.hawaii.gov/labor)  
Phone: (808) 586-8842 / Fax: (808) 586-9099  
Email: [dllr.director@hawaii.gov](mailto:dllr.director@hawaii.gov)

February 9, 2009

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

Date: Tuesday, February 10, 2009  
Time: 9:00 a.m.  
Place: Conference Room 309, State Capitol

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

**Testimony in Opposition**  
**to**  
**H.B. 1279 – Relating to Workers’ Compensation**

**I. OVERVIEW OF CURRENT PROPOSED LEGISLATION**

House Bill 1279 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

000084

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 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 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 \$495,440 initially and \$461,340 in salaries annually thereafter.

4. This proposal will increase the cost of doing business in Hawaii at a time when it may not be prudent to do so
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. INOUYE  
DEPUTY DIRECTOR

STATE OF HAWAII  
DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT  
235 S. BERETANIA STREET  
HONOLULU, HAWAII 96813-2437

February 5, 2009

TESTIMONY TO THE  
HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT  
For Hearing on Tuesday, February 10, 2009  
9:00 a.m., Conference Room 309

BY

MARIE C. LADERTA, DIRECTOR

**House Bill No. 1279**  
**Relating to Workers' Compensation**

TO CHAIR KARL RHOADS AND MEMBERS OF THE COMMITTEE:

The purpose of H.B. No. 1279, 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,

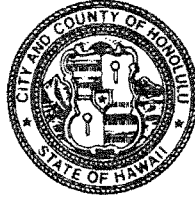
*Cindy S. Inouye*  
for MARIE C. LADERTA

000087

DEPARTMENT OF HUMAN RESOURCES  
**CITY AND COUNTY OF HONOLULU**

650 SOUTH KING STREET, 10<sup>TH</sup> FLOOR  
HONOLULU, HAWAII 96813

MUFI HANNEMANN  
MAYOR



KENNETH Y. NAKAMATSU  
DIRECTOR

February 10, 2009

The Honorable Karl Rhoads, Chair  
and Members of the Committee on Labor & Public Relations  
State House of Representatives  
Hawaii State Capitol  
Honolulu, Hawaii 96813

Dear Chair Rhoads and Members:

RE: HOUSE BILL NO. 1279 RELATING TO WORKERS' COMPENSATION

The City and County of Honolulu strongly opposes House Bill No. 1279, 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.

000088

The Honorable Karl Rhoads  
February 10, 2009  
Page 2

We respectfully urge your committee to file House Bill No. 1279 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 work to an already overburdened Department of Labor and Industrial Relations.

Sincerely,

  
Ken KEN Y. NAKAMATSU  
Director of Human Resources

000089

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)

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HOUSE OF REPRESENTATIVES  
THE TWENTY-FIFTH LEGISLATURE  
REGULAR SESSION OF 2009

COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT

Rep. Karl Rhoads, Chair  
Rep. Kyle T. Yamashita, Vice Chair

Date: Tuesday, February 10, 2009

Time: 9:00 a.m.

Place: Conference Room 309, State Capitol

**TESTIMONY OF ILWU LOCAL 142**

**RE: HB 1279, RELATING TO WORKERS' COMPENSATION**

Thank you for the opportunity to present testimony regarding HB 1279. We support this modest but constructive bill.

Where disputes arise about the approval of medical care, H.B. 1279 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 HB 1279 addresses this problem in a balanced and equitable fashion.

In conjunction with these protections for the injured worker, HB 1279 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.

HB 1279 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.

000091





OFFICERS

Gary Okamoto, MD  
President

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Immediate Past President

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Secretary

Jonathan Cho, MD  
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April Donahue  
Executive Director

To: House Committee on Labor & Public  
Employment  
Rep. Karl Rhoads, Chair  
Rep. Kyle T. Yamashita, Vice Chair

From: Hawaii Medical Association  
Gary A. Okamoto, MD, President  
Philip Hellreich, MD, Legislative Co-Chair  
Ron Kienitz, MD, Workers' Compensation Chair  
April Donahue, Executive Director  
Richard C. Botti, Government Affairs  
Lauren Zirbel, Government Affairs

Re: HB1279 RELATING TO WORKERS' COMPENSATION

PLEASE DELIVER TO:

LAB Committee

2/10/2009

9:00 a.m.

Room 309

Chairs & Committee Members:

Hawaii Medical Association supports the intent of this bill to ensure that injured workers receive timely and ongoing medical care. To ensure that there is no interruption of vital medical care when there is a question about whether or not the patient's condition is work related, the treating physician should be reimbursed by the employee's health plan until a final determination is made. If the patient's injury or illness is subsequently judged to be work related, the health plan should then be reimbursed by the WC insurance carrier.

We feel that it is unfair to deny the patient needed treatment, and that it is unreasonable to expect the physician not to be reimbursed for the services rendered.

When an injured worker comes to a medical facility for care, the doctor is not going to turn down the injured worker, since their goal is to treat the injured. This measure must create some protection for the professional.

Thank you for the opportunity to provide this testimony.

Hawaii Medical Association  
1360 S. Beretania St.  
Suite 200  
Honolulu, HI 96814  
(808) 536-7702  
(808) 528-2376 fax  
www.hmaonline.net

000092



Representative Karl Rhoads, Chair  
Representative Kyle Yamashita, Vice Chair  
Committee on Labor & Public Employment

State Capitol, Honolulu, Hawaii 96813

HEARING Tuesday, February 10, 2009  
9:00 am  
Conference Room 309

**RE: HB1279 Relating to Workers' Compensation**

Chair Rhoads, Vice Yamashita, 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. The retail industry is the one of the largest single employer in the state, employing 20% of the labor force.

**RMH opposes HB1279**, 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 HB1279. Thank you for your consideration and for the opportunity to comment on this measure.

A handwritten signature in cursive script, appearing to read 'Carol Regille'.

President

RETAIL MERCHANTS OF HAWAII  
1240 Ala Moana Boulevard, Suite 215  
Honolulu, HI 96814  
ph: 808-592-4200 / fax: 808-592-4202

000093



# Hawaii State Chiropractic Association

P.O. Box 22668 Honolulu, HI 96823-2668

ph: (808) 926-8883 fx: (808) 926-8884

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February 5, 2009

The House of Representatives  
Committee on Labor & Public Employment  
Chair Rep. Karl Rhoads  
Vice Chair Kyle Yamashita

For Hearing on  
Date: Tuesday, February 10  
Time: 9:00 am  
Place: Conference Room 309

Chair Rhoads, Vice Chair Yamashita, and members of the committee:

My name is Gary Saito. I am the President and Executive Director of the Hawaii State Chiropractic Association. Our organization **supports the intent of HB 1279.**

Time and time again, injured workers are denied their workers' compensation benefits because of denials of medical treatments by the employer and insurance carrier. Insurance carriers often don't even give a valid or reasonable explanation for denying care. Employer/carrier claim denials are responsible for some of the adversarial outcomes in work comp cases.

What happens when injured workers are denied benefits?

1. Weeks and months go by without reasonable and appropriate medical care. Conventional medical wisdom advises that, the longer an injury is allow to persist untreated, the more likely the original injury can become chronic, more difficult treat. and more complex.
2. Injured workers don't get the proper diagnostic tests performed in a timely manner to properly diagnose their conditions. This lack of diagnostic confirmation can be the cause of delays in treatment, incorrect treatment, and worsening of injury conditions in workers.
3. Even though the injured worker can request a DCD hearing to determine compensability, hearings are not scheduled in a timely manner (usually 6 months to a year). Even thought the DCD professes that hearings are schedule within 80 days, I have yet to see it happen.

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4. When compensability and liability are denied by the employer of a legitimately injured worker, the worker is the one who suffers lack of appropriate and reasonable treatment, TTD income, and resolution of the injury. Many legitimately injured employees face financial difficulties and ruin when employers deny them statutorily guaranteed rights to treatments.

For years, carriers have denied benefits "pending investigation". They don't even explain:

1. what is being investigated
2. how the investigation is being conducted
3. when it will be concluded, or
4. what the basis of the investigation is.

The system right now fails miserably to protect the injured worker's right to reasonable and appropriate medical treatment. Denials and delays often have nothing to do with the employee's injury. They have more to do with preserving bottom line profits by cutting off access to care and restricting reimbursements to providers.

Every employer in the state should insist that their premium dollars go toward the treatment of their injured workers. Workers are their business life blood. They should do everything to help an injured worker recover as quickly as possible and return to gainful employment for the company. Too many injured workers, however, are not so reasonably and respectfully treated.

We ask for legislators to uphold the statutes by requiring the proper treatment of injured workers. This bill is one attempt to protect and preserve injured workers' rights to benefits.

**We urge your support of HB 1279.** Thank you for your consideration of our position on this issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary Saito". The signature is fluid and cursive, with a large loop at the beginning and a long tail.

Gary Saito, DC  
President and Exec Director, HSCA

000095

1065 Ahua Street  
Honolulu, HI 96819  
Phone: 808-833-1681 FAX: 839-4167  
Email: [info@gcahawaii.org](mailto:info@gcahawaii.org)  
Website: [www.gcahawaii.org](http://www.gcahawaii.org)



**GCA of Hawaii**

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

February 9, 2009

TO: THE HONORABLE REPRESENTATIVE KARL RHOADS, CHAIR AND  
MEMBERS OF COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

SUBJECT: H.B. 1279, RELATING TO WORKERS' COMPENSATION

NOTICE OF HEARING

DATE: Tuesday, February 10, 2009  
TIME: 9:00 A.M.  
PLACE: Conference Room 309

Dear Chair Rhoads and Committee Members:

The General Contractors Association of Hawaii (GCA), an organization comprised of over five hundred and forty (560) general contractors, subcontractors, and construction related firms, strongly opposes the passage of H.B. 1279, Relating to Workers Compensation.

H.B. 1279 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 and Industrial Relations decides whether treatment should be continued. The provisions of this bill would give undue advantage to an employee who wishes to prolong the time off the job, even if the employee was deemed able to return to work. The DLIR may not be sufficiently staffed to provide a decision in a timely fashion.

This bill also erodes employers' rights and increases their costs of conducting their businesses because they must pay for treatments that subsequently are deemed unnecessary.

For these reasons, the GCA strongly opposed H.B. 1279.

Thank you for the opportunity to provide our views on this issue.

000096

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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cpablo@goodsill.com  
ahoriuchi@goodsill.com  
meito@goodsill.com

**MEMORANDUM**

**TO:** Representative Karl Rhoads  
Chair, House Committee on Labor & Public Employment  
Via e-mail: LABtestimony@Capitol.hawaii.gov

**FROM:** Anne Horiuchi

**DATE:** February 9, 2009

**RE:** **H.B. 1279 Relating to Workers' Compensation**  
**Hearing on Tuesday, February 10, 2009 at 9:00 a.m., Room 309**

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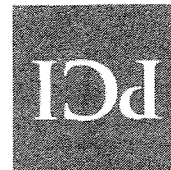
Dear Chair Rhoads and Members of the Committee on Labor & Public Employment:

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](http://www.aiadc.org).

H.B. 1279 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 H.B. 1279 and respectfully requests that the measure be held in committee.

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



Property Casualty Insurers  
Association of America

Shaping the Future of American Insurance

1415 L Street, Suite 670, Sacramento, CA 95814-3972

To: The Honorable Karl Rhoads, Chair  
House Labor & Public Employment Committee

From: Samuel Sorch, Vice President

RE: HB 1279 – Relating to Workers' Compensation  
PCI Position: Oppose

Date: Tuesday, February 10, 2009  
9:00 a.m. Conference Room 309

The Property Casualty Insurers Association of America (PCI) is opposed to HB 1279 because the bill is unnecessary, costly and impractical.

HB 1279 would require an employer who disputes an employee's medical treatment to continue to pay for the treatment until the director of the department of labor and industrial relations makes a decision that the treatment should be discontinued. The bill would displace the existing system which gives the employee's attending physician the right to administrative review of an employer's dispute of medical treatment. In place of the existing system, HB 1279 would establish a system that would require an employer to continue to pay for disputed treatment and seek an administrative ruling in order to terminate payments. There is no evidence to justify the bill's proposed change.

HB 1279 would increase workers compensation costs for Hawaii employers. The bill would require an employer to pay for treatments that may not be related to workplace injuries and may not be effective in helping an employee to return to work. The reimbursement rights that the bill provides to employers are inadequate and costly to effectuate. The resulting unreimbursed costs would unjustly burden employers.

HB 1279 calls for the director to make decision within 30 days. However, the 30-day time frame appears to be impractical, and the bill provides no consequences for missing the 30-day deadline. The reality is that HB 1279 would require the payment for disputed medical treatment for extended periods of time.

PCI requests that the Committee vote No on the bill.

000098



## **Before the House Committee on Labor & Public Employment**

DATE: February 10, 2009  
TIME: 9:00 a.m.  
PLACE: Conference Room 309  
Deliver Please deliver 30 copies to room 309

### **Re: HB 1279 Relating to Workers' Compensation Testimony of Melissa Pavlicek for NFIB Hawaii**

Thank you for the opportunity to testify. On behalf of the business owners who make up the membership of the National Federation of Independent Businesses in Hawaii, we ask that you reject HB 1279. NFIB opposes this measure in its current form.

The National Federation of Independent Business is the largest advocacy organization representing small and independent businesses in Washington, D.C., and all 50 state capitals. In Hawaii, NFIB represents more than 1,000 members. NFIB's purpose is to impact public policy at the state and federal level and be a key business resource for small and independent business in America. NFIB also provides timely information designed to help small businesses succeed.

We are concerned about the possible unintended consequences of mandating employers to continue medical services to an injured employee despite disputes over whether treatment is necessary, especially during such challenging economic times. We believe that such legislation will add costs to business which ultimately hurts employees and the economy as a whole.

841 Bishop Street, Suite 2100, Honolulu, Hawaii 96813 (808) 447-1840

000099



# **BIA-HAWAII**

**BUILDING INDUSTRY ASSOCIATION**

February 10, 2009

Honorable Karl Rhoads, Chair  
Committee on Labor & Public Employment  
State Capitol, Room 309  
Honolulu, Hawaii 96813

RE: HB 1279 "Relating to Workers Compensation" (continued medical benefits)

Chair Rhoads and Members of the Committee on Labor & Public Employment:

I am Karen Nakamura, Executive Vice President & Chief Executive Officer of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii.

BIA-Hawaii strongly opposes HB 1279, "Relating to Workers' Compensation" because we believe that this bill will encourage abuse and over-treatment of medical care in the workers' compensation system and that will unnecessarily increase costs. HB1279 requires 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.

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. Medical costs represent 43.8% of Hawaii's total workers compensation costs according to the National Council on Compensation Insurance (NCCI) in their analysis dated February 29, 2008. Any increases in medical costs will increase total workers compensation costs.

We ask that this bill be held.



Executive Vice President & Chief Executive Officer  
BIA-Hawaii

000100



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**Alison Powers**  
Executive Director

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**TESTIMONY OF ALISON POWERS**

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HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT  
Representative Karl Rhoads, Chair  
Representative Kyle T. Yamashita, Vice Chair

Tuesday, February 10, 2009  
9:00 a.m.

**HB 1279**

Chair Rhoads, Vice Chair Yamashita, 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 1279, 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. HB 1279 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 HB 1279, 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.

H.B. 1279 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. H.B. 1279 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 \$1,790, 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 H.B. 1279 be held.

Thank you for the opportunity to testify.

000103

Testimony by:  
Derrick Ishihara, PT



HB 1279, Relating to Workers' Compensation  
House LAB, February 10, 2009  
Room 309, 9:00 am

**Position: Support Intent, With Recommendation**

Chair Rhoads and Members of the House LAB 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, HB 1279 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.

February 8, 2009

Chairman Rep. Karl Rhoads  
Vice Chairman Rep. Kyle Yamashita  
Committee on Labor and Public Employment

RE: Testimony in Support of the intent of HB1279, Relating to Workers' Compensation  
Hearing, Tuesday, February 10, 2009 9:00 AM  
Conference Room 309

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

Dear Chairman Rhoads, Vice Chair Yamashita, and Members of the Committee:

Thank you for the opportunity to testify in support of the intent of HB1279 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 HB1279 will rectify.

I can not support the language of HB1279 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.

HB1279 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 HB1279.

Sincerely

James A. Pleiss, DC

000105



**Testimony to the House Committee on Labor & Public Employment  
Tuesday, February 10, 2009; 9:00 a.m.  
Conference Room 309**

**RE: HOUSE BILL 1279 RELATING TO WORKERS' COMPENSATION**

Chair Rhoads, Vice Chair Yamashita 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 HB 1279, 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.

In summary, HB 1279, 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.





# HIIA

## **Hawaii Independent Insurance Agents Association**

February 9, 2009

LATE

To: Representative Karl Rhoads, Chair  
Representative Kyle Yamashita, Vice- Chair  
Committee on Labor & Public Employment

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

Re: HB1279 – Relating to Workers Compensation  
Hearing: Tuesday, February 10, 2009 9:00 am Conference Room 309

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The Hawaii Independent Insurance Agents Association (HIIA) **opposes** HB1279 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.