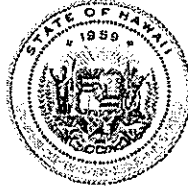


# TESTIMONY

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# HB2152, HD2

HTH/JDL  
Committee Hearing  
03-20-2012



NEIL ABERCROMBIE  
GOVERNOR

BRIAN SCHATZ  
LT. GOVERNOR

STATE OF HAWAII  
OFFICE OF THE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
335 MERCHANT STREET, ROOM 310  
P.O. Box 541  
HONOLULU, HAWAII 96809  
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[www.hawaii.gov/dcca](http://www.hawaii.gov/dcca)

KEALI'I S. LOPEZ  
DIRECTOR

TO THE SENATE COMMITTEES ON HEALTH AND JUDICIARY AND LABOR

TWENTY-SIXTH LEGISLATURE  
Regular Session of 2012

Tuesday, March 20, 2012  
10 a.m.

**WRITTEN TESTIMONY ONLY**

**TESTIMONY ON HOUSE BILL NO. 2152, H.D. 2 – RELATING TO WORKERS' COMPENSATION.**

TO THE HONORABLE JOSH GREEN, M.D., AND CLAYTON HEE, CHAIRS, AND MEMBERS OF THE JOINT COMMITTEE:

My name is Gordon Ito, State Insurance Commissioner ("Commissioner"), testifying on behalf of the Department of Commerce and Consumer Affairs ("Department").

The Department supports the intent of this bill.

The purpose of this version of the bill is to require the Office of the Auditor to conduct a study on the workers' compensation reimbursement system in Hawaii.

The Department supports this study because by examining the adequacy of workers' compensation reimbursements, the Office of the Auditor would be able to recommend ways to improve the workers' compensation reimbursement system. This would help ensure that healthcare providers are adequately compensated. At the same time, injured workers would have access to treatment for their injuries, which will start the recovery process and allow them to return to work.

We thank this Committee for the opportunity to present testimony on this matter.

**LATE**

BARBARA A. KRIEG  
INTERIM DIRECTOR

LEILA A. KAGAWA  
DEPUTY DIRECTOR

NEIL ABERCROMBIE  
GOVERNOR



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

March 19, 2012

**TESTIMONY TO THE  
SENATE COMMITTEES ON  
HEALTH  
AND  
JUDICIARY AND LABOR**

For Hearing on Tuesday, March 20, 2012  
10:00 a.m., Conference Room 016

BY

BARBARA A. KRIEG  
INTERIM DIRECTOR

**House Bill No. 2152, H.D. 2**  
**Relating to Workers' Compensation**

**WRITTEN TESTIMONY ONLY**

TO CHAIRPERSONS JOSH GREEN AND CLAYTON HEE AND MEMBERS OF THE  
COMMITTEES:

Thank you for the opportunity to provide testimony on H.B. 2152, H.D. 2.

The purpose of H.B. 2152, H.D. 2, is to require the Office of the Auditor to conduct a study that analyzes the concerns within the healthcare community about the difficulty in providing healthcare in workers' compensation cases due to their low reimbursement rates.

The Department of Human Resources Development (DHRD) has a fiduciary duty to administer the State's self-insured workers' compensation program and its expenditure of public funds. In that regard, DHRD appreciates the intent of this bill, but recommends that any study regarding the reimbursement rates of workers'

compensation health providers be conducted by the Department of Labor and Industrial Relations (DLIR).

We note that Section 386-21, HRS, authorizes the DLIR to update the supplemental fee schedule applicable to Hawaii if the director determines that an allowance for a specific service under the Medicare fee schedule is not reasonable. The statute requires that the update be based, in part, on “a statistically valid survey by the director of prevalent charges for fees for services actually received by providers of health care services[.]”

In that the DLIR is well-versed on the background and subtleties of the reimbursement issue, we submit that the study be done pursuant to DLIR’s existing statutory authority. This would have the added benefit of allowing all interested workers’ compensation stakeholders to provide their input on this important issue.

Thank you for the opportunity to testify on this measure.



**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: [dlir.director@hawaii.gov](mailto:dlir.director@hawaii.gov)

March 20, 2012

To: The Honorable Josh Green, Chair, Clarence Nishihara, Vice Chair, and  
Members of the Senate Committee on Health

The Honorable Clayton Hee, Chair, Maile S.L. Shimabukuro, Vice Chair, and  
Members of the Senate Committee on Judiciary and Labor

Date: Tuesday, March 20, 2012  
Time: 10:00 a.m.  
Place: Conference Room 016, State Capitol

From: Dwight Y. Takamine, Director  
Department of Labor and Industrial Relations (DLIR)

**Re: H.B. No. 2152, H. D. 2 Relating to Workers' Compensation** - SUPPORT w/ AMENDM

**I. OVERVIEW OF PROPOSED LEGISLATION**

House Bill 2152, H. D. 2 proposes the Office of the Auditor conduct a study to analyze the concerns within the healthcare community about the difficulty in providing healthcare in workers' compensation cases due to their low reimbursement rates. The department notes that there have been times when the department has undertaken the required surveys with the intention to go through the administrative process to increase the fees in the Workers' Compensation Medical Schedule, but was not able to move forward on those proposals. For example, in 2008, DLIR requested permission to update the Schedule through the administrative rules process, but the Governor failed to act on that request.

The department supports immediate relief in the form of a percentage increase over the Medicare Resource Based Relative Value Scale system and recommends that the scope of the study be changed to:

- Analyze the long-term fiscal impact this relief would have on the overall medical costs of the workers' compensation system.

**II. CURRENT LAW**

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

Section 386-21, HRS, also allows the director to increase fees for specific services if the fees provided under Medicare are not reasonable. The department may adjust reimbursement rates through Exhibit A of the Workers' Compensation Medical Fee Schedule Administrative Rules when surveys indicate that Medicare plus 10% is not sufficient reimbursement for healthcare treatment.

**III. COMMENTS ON THE HOUSE BILL**

- The department supports immediate relief in the form of a percentage increase over the Medicare Resource Based Relative Value Scale system and recommends that the scope of the study proposed in the current draft of the measure be changed to analyze the long-term fiscal impact this relief would have on the overall medical costs of the workers' compensation system.

The Department offers these additional comments pertaining to the proposal:

1. ACT 234, effective June 29, 1995 amended Section 386-21 to provide that charges for services shall not exceed 110% of Medicare Resource Based Relative Value Scale system. Act 234 was implemented in response to concerns that reimbursement rates for workers' compensation medical services were too high. Over time, the reimbursement rates of providers have failed to keep pace with the higher costs of medical care, leading some physicians to opt out of providing treatment to injured workers in the workers' compensation system.

**Hawaii Medical Fee Supplemental Schedule Average & Change in CPT<sup>1</sup> 1995-2012<sup>2</sup>**

CPT Sections	1995 Medicare Average	2012 Medicare Average	Percentage Change	CPI-U <sup>3</sup> Change 1995-2011	CPI-U Medical Costs <sup>4</sup> 1995-2011
Surgery	\$522.38	\$548.17	5%	<b>45%</b>	<b>55%</b>
Radiology	\$208.60	\$171.00	-18%		
Medicine	\$178.89	\$133.62	-25%		
Eval & Mgmt	\$50.07	\$51.92	4%		
All CPT	\$355.25	\$347.36	-2%		

<sup>1</sup> Current Procedural Terminology

<sup>2</sup> Data by DLIR's Research and Statistics Office

<sup>3</sup> Consumer Price Index, Bureau of Labor Statistics (BLS), U.S. Department of Labor (USDOL)

<sup>4</sup> Consumer Price Index, Medical Care Costs Only, BLS, U.S. DOL

2. The department is aware that any increase in reimbursement to medical providers may result in additional cost and higher insurance fee premiums for employers. The department notes that from 2005 - 2010, Workers' Compensation premium levels have cumulatively **decreased by 63%**. This trend of decreasing premiums may be reversing, however, as evidenced by the leveling of premium costs last year.
  
3. The department believes a reimbursement of 110% of Medicare to medical providers who treat injured workers is inadequate. The department, however, has some concerns healthcare providers who are already adequately compensated for their services would receive an increase in allowable charges if the ceiling for charges were raised to 130% of Medicare. Thus, the department suggests that some relief be provided, but studying the impact of that relief.
  
4. The department can and has adjusted reimbursement rates based upon surveys of prevalent charges when the surveys indicated reimbursement rates were higher than Medicare. Changes to reimbursement rates are made to the Department's Supplemental Fee Schedule known as Exhibit A of the Medical Fee Schedule Administrative rules.



**HAWAII MEDICAL ASSOCIATION**

1360 S. Beretania Street, Suite 200, Honolulu, Hawaii 96814  
Phone (808) 536-7702 Fax (808) 528-2376 www.hmaonline.net

TO: COMMITTEE ON HEALTH  
Senator Josh Green, M.D., Chair  
Senator Clarence K. Nishihara, Vice Chair  
COMMITTEE ON JUDICIARY AND LABOR  
Senator Clayton Hee, Chair  
Senator Maile S.L. Shimabukuro, Vice Chair

DATE: Tuesday, March 20, 2012.  
TIME: 10:00 a.m.  
PLACE: Conference Room 016  
State Capitol  
415 South Beretania Street

From: Hawaii Medical Association  
Dr. Roger Kimura, MD, President  
Linda Rasmussen, MD, Legislative Co-Chair  
Dr. Joseph Zobian, MD, Legislative Co-Chair  
Dr. Christopher Flanders, DO, Executive Director  
Lauren Zirbel, Community and Government Relations

Re: HB 2152 RELATING TO WORKERS' COMPENSATION.

In Support

Chairs & Committee Members:

Hawaii Medical Association supports this measure. We are convinced that this study will demonstrate that physicians are not participating in Workers' Compensation due to overwhelming paperwork requirements and low reimbursements.

In 1995, a comprehensive package of legislative proposals was made to reform workers' compensation in response to rising insurance premiums. The Legislature couldn't agree on fair and meaningful reforms, so the medical fee schedule was arbitrarily slashed by 54%, basing reimbursement on Medicare plus 10%. Hawaii's medical fee schedule fell to fifth lowest in the nation, 18% below the national median. Counter-intuitively, costs per case continued to rise and soon exceeded pre-1995 levels.

The probable reason for this is the impact that inadequate reimbursement had on restricting access to care. A critical element in treating workers' compensation cases is immediate access to comprehensive medical care and management. Any delays tend to make the injury more costly,

**OFFICERS**

**PRESIDENT - ROGER KIMURA, MD, PRESIDENT ELECT - STEVE KEMBLE, MD**  
**IMMEDIATE PAST PRESIDENT - MORRIS MITSUNAGA, MD, SECRETARY - THOMAS KOSASA, MD, TREASURER -**  
**WALTON SHIM, MD, EXECUTIVE DIRECTOR - CHRISTOPHER FLANDERS, DO**



even to the extent of permanent impairments and disabilities. This also affects the time period the employee is off work, creating greater costs to employers for temporary disability payments.

The legislature must recognize that the practice of medicine is also a business and therefore follows the same economic rules under which any business operates. In short, no business or profession can exist if they are forced to take a loss on sales or services. In addition to taking a loss on services physicians taking workers compensation are forced to deal with an increasingly unmanageable level of administrative burdens. Predictably, there has been a steady exodus of physicians willing to treat injured workers. Because no-fault automobile injuries are reimbursed according to the workers' compensation fee schedule, these patients also have been having an increasingly difficult time receiving care for their injuries. The situation has finally reached crisis proportion as demonstrated by a Hawaii Medical Association survey indicating that over 65% of doctors that had previously taken these cases now refuse to do so. It is now extremely common that physicians refuse care of these injuries even to their established patients. Straub Hospital and Clinic is perhaps the largest example of this.

We have come to the legislature regularly to correct this problem since Act 234 was passed in 1995 asking for recognition that injured workers and their families are suffering as a result of low reimbursements impeding access to medical care. We hope that now the legislature finally understands this to be true and takes action to correct the situation.

Thank you for the opportunity to provide this testimony.

THE SENATE  
THE TWENTY-SIXTH LEGISLATURE  
REGULAR SESSION OF 2012

TESTIFIER POSITION: OPPOSE  
SUBMITTED BY: LOWELL CHUN-HOON  
SUBMITTED ON: 3/17/12 @ 10:04PM

COMMITTEE ON HEALTH

Sen. Josh Green, Chair  
Sen. Clarence Nishihara, Vice Chair

COMMITTEE ON JUDICIARY AND LABOR

Sen. Clayton Hee, Chair  
Sen. Maile S.L. Shimabukuro, Vice Chair

Hearing: Tuesday, March 20, 2012

Time: 10:00 a.m.

Place: Conference Room 016, State Capitol

TESTIMONY OF ILWU LOCAL 142

RE: HB 2152, HD 2, RELATING TO WORKERS' COMPENSATION

Chair Green, Chair Hee, Vice Chair Nishihara, Vice Chair Shimabukuro, Members of the Committees:

Thank you for the opportunity to present testimony regarding HB 2152, HD 2. We support this bill in its original form but oppose the idea of a study by the Office of the Auditor into the difficulties of furnishing workers' compensation medical care because of low reimbursement rates.

Access to quality medical care is perhaps the single most important factor in the successful functioning of our workers' compensation system. Effective medical care enables injured workers to resume productive lives or to make the necessary adaptations to transition to other occupations. Sound medical treatment also permits employers and insurers to minimize their expenses in paying for lengthy temporary or permanent disability.

At present, effective medical care is not available to all injured workers because the level of compensation received by those physicians willing to take workers' compensation is below that paid for regular prepaid health insurance. When the lower rate of reimbursement is coupled with administrative requirements for claims documentation and the added time this entails, many medical providers are simply refusing to accept workers' compensation patients. The result is that injured workers then can go untreated or cannot access quality medical care. Our best and busiest physicians can build successful practices without workers' compensation patients, and thus they are often the least available to care for injured workers.

Earlier versions of HB 2152, HD 2 would have gone far to correct the inadequate compensation of medical providers in the workers' compensation arena by increasing the

base for compensation from 110 percent to 130 percent of the Medicare Resource Based Relative Value Scale. No significant adjustments in this compensation have been made for an extended time period, and thus, enhancement is justified merely to keep pace with inflation, if for no other reason.

However, HD 2 would merely authorize a study of difficulties in accessing workers' compensation medical care due to low reimbursement in the forthcoming year. This is wholly unsatisfactory because there is no serious dispute that low reimbursement is a critical root cause of the shortage and inadequacy of medical care. Approving a study by the Auditor under these circumstances would merely exacerbate the existing problem and the delay a true resolution. Without access to quality medical care, periods of temporary total disability will be prolonged, the extent of permanent disability will be increased, and ancillary psychological impairments will develop as a consequence of this delay. The procrastination inherent in an additional year of study thus will have harsh and counterproductive economic consequences that will ultimately be detrimental to employers and insurers as a whole, while injured workers as a group continue to have inadequate access to effective health care.

Accordingly, we urge that your committees reject the unnecessary idea of a study by the Auditor's Office, enact HB 2152, HD 1, not HD 2, with an amended effective date of January 1, 2013. By taking this action, the legislature will not only increase the availability of quality medical care, but in the long run will ensure a more stable and economical system of workers' compensation medical coverage.

Testimony of Glenn Ida  
Representing,  
The Plumbers and Fitters Union, Local 675  
1109 Bethel St., Lower Level  
Honolulu, Hi. 96813

**In Support of HB 2152, HD2**

Before the Senate:  
Committees on Health and Judiciary and Labor  
Tuesday, Mar. 20, 2012  
10 AM, Conference Room 016

Aloha Chairs Green and Hee, Vice-Chairs Nishihara and Shimabukuro and Members of the Committees,

My name is Glenn Ida; I represent the 1300 plus active members and about 600 retirees of the Plumbers and Fitters Union, Local 675.

Local 675, is in **Support of HB 2152, HD2**, which requires the Office of the Auditor to conduct a study that analyzes the concerns within the healthcare community about the difficulty in providing healthcare in workers' compensation cases due to their low reimbursement rates.

The medical service providers are entitled to fair and timely compensation for the treatment of patients on workers' compensation. The availability of Doctors willing to take workers' comp. patients may be adversely affected if their payments did not keep up with covering their costs of services and supplies thus making it difficult for the injured worker to get the proper treatment needed to heal and return to the work force.

Therefore, Local **675 Supports HB 2152, HD2.**

Thank you for this opportunity to testify.

Glenn Ida

## Green4 - Mailene

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Saturday, March 17, 2012 12:56 PM  
**To:** HTHTestimony  
**Cc:** tlccostas@msn.com  
**Subject:** Testimony for HB2152 on 3/20/2012 10:00:00 AM

Testimony for HTH/JDL 3/20/2012 10:00:00 AM HB2152

Conference room: 016  
Testifier position: Support  
Testifier will be present: No  
Submitted by: tyerry costa  
Organization: Individual  
E-mail: [tlccostas@msn.com](mailto:tlccostas@msn.com)  
Submitted on: 3/17/2012

### Comments:

I support this bill, it should be clear that most providers do not want to deal with the system because the Insurance/Carriers denies Treatment causing the injured worker to wait 5 to 6 months for a hearing and another 2 months for a Decision and Order. 8 months without Treatment how are providers suppose to make a living. Everyone suffers except the well financed Insurance Companies who have successfully made there money denying benefits forcing injured workers to settle. This been going on for decades. The question is what happens next after the auditor discovers why no one wants to deal with the work comp system.

## Green4 - Mailene

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Sunday, March 18, 2012 11:58 AM  
**To:** HTHTestimony  
**Cc:** bolger55@gmail.com  
**Subject:** Testimony for HB2152 on 3/20/2012 10:00:00 AM

Testimony for HTH/JDL 3/20/2012 10:00:00 AM HB2152

Conference room: 016  
Testifier position: Support  
Testifier will be present: No  
Submitted by: Douglas Thomas Moore  
Organization: Individual  
E-mail: [bolger55@gmail.com](mailto:bolger55@gmail.com)  
Submitted on: 3/18/2012

Comments:

To: The Honorable Josh Green, Chair of the Senate Committee on Health  
The Honorable Clayton Hee, Chair of the Senate Committee on Judiciary and Labor

Date: Tuesday, March 20, 2012

Time: 10:00 a.m.

Place : Conference Room 016  
State Capitol

From: Derrick Ishihara

**Re: HB 2152 HD 2 Related to Worker's Compensation**

**Position: Oppose with recommendations**

Dear Co-Chairs Green, Hee, and Committee Members,

HB 2152 HD 1 originally proposed to raise the reimbursement rate to medical providers for care rendered to patient's injured at work from the current 110% to 130% of the Medicare Resource Based Relative Value Scale adjusted for Hawaii.

The House Finance Committee amended this measure by replacing the fee schedule language with a request for the State Auditor to conduct "a study that analyzes the concerns within the healthcare community about the difficulty in providing healthcare in workers' compensation cases due to their low reimbursement rates..."

With all due respect, the concerns of the healthcare community are well known and have been expressed at many venues including legislative hearings over the years.

For the past 17 years, we have witnessed a real life study of what happens when fees to medical providers are cut by an average of 54%.

Unofficial estimates are that nearly 80% of doctors no longer accept Worker's Compensation cases. This access to care problem has caused needless delays in care as injured workers have to first find a doctor willing to treat them.

Patients who over the years have built trust and familiarity with their family physicians have to look for another doctor if they are injured at work. Patients have had to wait weeks to find and schedule appointments with a physician willing to treat them. This delay in care can create complications that lead to increased medical costs, indemnity costs, and lengthen the need for care. At very least, injured workers needlessly suffer while waiting to obtain care.

A few patients, not knowing their employment rights are encouraged to file claims for injuries sustained on the job onto their pre-paid health insurance policies. Although they can receive care sooner, they are out-of-pocket for deductibles and co-pays. In cases where lost work time is incurred, they are not reimbursed for lost wages. While this practice may stem the tide of increasing Work Comp premiums, it only shifts the cost of care to the pre-paid health insurance, resulting in higher premiums there.

When Act 234 was signed into law in 1995, a reduction in medical fees was appropriate. Although the Director at the time was allowed by statute to monitor and adjust fees, this was not done for many years. As a result, the reimbursement at that time was approximately 200% of the Medicare RBRVS. The reduction in fees to 110% as we now realize was too deep of a cut. I believe that the proposed 130% level in H.B. 2152 HD 1 is a good middle ground.

**I recommend immediate relief for injured workers by re-inserting the HD 1 language.**

Respectfully submitted,

Derrick Ishihara, PT

1314 S. King Street, #1451

Honolulu, HI 96814



# DENNIS W. S. CHANG

ATTORNEY-AT-LAW

WORKER'S RIGHTS - LABOR LAW  
WORKER'S COMPENSATION  
SOCIAL SECURITY DISABILITY  
LABOR UNION REPRESENTATION  
EMPLOYEES RETIREMENT SYSTEM  
BODILY INJURIES

March 19, 2012

VIA ELECTRONIC MAIL

To: The Honorable Josh Green, Chair, Clarence Nishihara, Vice Chair, and  
Members of the Senate Committee on Health

The Honorable Clayton Hee, Chair, Maile S.L. Shimabukuro, Vice Chair, and  
Members of the Senate Committee on Judiciary and Labor

Date: Tuesday, March 20, 2012

Time: 10:00 a.m.

Place: Conference Room 016, State Capitol

From: Dennis W. S. Chang  
Labor and Workers' Compensation Attorney

**Re: H.B. No. 2152, H. D. 2 Relating to Workers' Compensation**

## **I. OVERVIEW OF PROPOSED LEGISLATION**

House Bill 2152, H. D. 2 as now worded proposes that the Office of the Auditor conduct a study to analyze the concerns within the healthcare community about the difficulty in providing healthcare in workers' compensation (WC) cases due to their low reimbursement rates. When it was originally introduced, HB 2152 called for an immediate increase in allowable charges for medical care, services and supplies to increase from its current one hundred ten percent (110%) to one hundred thirty percent (130%) of fees prescribed in the Medicare Resource Based Relative Value Scale (Medicare) system applicable to Hawaii.

## **II. UNTOWARD RESULTS**

The undeniable fact is that we have a crisis in the WC process by having insufficient access to quality medical care for injured workers as a direct result of low reimbursement rates. Your attention is called to the previous testimonials submitted (I also incorporate my most recent testimony attached as an enclosure here as well) to underscore this point. Since the greatest overhaul in recent times, however well intentioned, in an attempt to curb increasing costs and to reduce premiums, medical care, services and supplies were limited to an allowable charge of one hundred ten

*DILLINGHAM TRANSPORTATION BUILDING*

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percent (110%) of Medicare by the Legislature in 1995. This has inevitably led to untoward consequences.

Objectively viewed, no one, even those on the defense industry, disagrees that this unprecedented change went too far resulting in a slow but sure mass exodus of quality medical providers. In turn, this has deprived injured workers not only access to quality medical providers, but some injured workers are now unable to engage any medical provider to provide crucial medical services, in particular, on the outer islands. See attached enclosure.

That said, we now need immediate relief as an incentive to retain the limited number of dedicated medical providers in the WC system, attract quality medical providers to consider re-entering the system, and attract new quality medical providers to treat injured workers. Nevertheless, by choice, there are still some dedicated medical providers who have endured financial sacrifices as a calling in treating injured workers in the WC process. However, these physicians can only take a limited amount of injured workers as patients. As I previously discussed, I mentioned one prominent physician who spends a long morning schedule treating injured workers and a whole late afternoon complying with the burdensome administrative work mandated by the WC statute and regulations. Aggravating the whole situation is having some mediocre physicians, who refuse to follow the WC statute and regulations, remaining in the practice, thus, causing delay after delay to the delivery of critical medical care to injured workers. This was obviously not the overarching policy underlying the enactment of the WC statute in 1915 and those seeking overzealous reform in 1995. Or, consider the corollary for the sake of discussion. Would employers and insurance carriers be all over the Legislature if their profits and/or savings had been precipitously reduced by 69% in recent years?

### **III. DISCUSSION**

Aside from being a small businessman with five (5) employees, I have been practicing for nearly thirty-five (35) years and have represented both employers and injured workers alike in my career. I can speak with candor. Both sides recognize that there is a crisis since injured workers are increasingly unable to secure access to quality medical providers, much less any medical provider. Opponents argue that there may be a speculative three point four percent (3.4%) increase in premiums by increasing the allowable rates from one hundred ten percent (110%) up to one hundred thirty percent (130%). Even assuming that to be true, we need to account for the sixty-nine percent (69%) reduction in premiums in recent years contained in statistical data at the Department of Labor and Industrial Relations.

The current crisis far outweighs any possible nominal increase in WC premiums. How do you justify such a deplorable broken system by ignoring that employers and insurance carriers have made savings and/or profits at the expense of workers for eighteen (18) years if the Legislature fails to act this session by stripping the initial bill

and calling for a study only? Worse, when workers are injured, they have no minimal safety net securing access to quality medical services and receiving only a highly reduced wage loss replacement benefit (temporary total disability). In this regard, we should be mindful that the provision for WC benefits, as our Hawai'i Supreme Court has articulated in a long line of unwavering of cases, is the cost of doing business. Ironically, the burden of the costs of WC have been shifted to medical providers and injured workers.

I, too, am a small businessman even though I have practiced in the WC field throughout my career as a labor lawyer. Having the experience of working on both sides, my testimony is submitted with the utmost candor. Another study is unnecessary. Injured workers are constituents of every legislator. They could be your family members and close friends who are denied access to quality medical care after sustaining work accidents. We have a crisis, which, if not addressed, will exacerbate limited access to medical providers, shortcutting by medical providers to meet overhead, encouragement of possible manipulation of the billing system, and, clearly, perhaps a monopoly by a few remaining medical providers in the system. This does not bode well for the injured worker and will only exacerbate the current crisis. Hopefully, once this is passed, some House members will reconsider their initial position on HB 2152.

#### **IV. CONCLUSION**

I wholeheartedly support immediate relief in the form of a percentage increase over the Medicare Resource Based Relative Value Scale system. Alternatively, simultaneously, if a study is conducted, the scope of the study should be amended to analyze the long-term fiscal impact this relief would have on the overall medical costs of the WC system. But, more importantly, the bill should be amended with its original language to increase allowable charges to address our indisputable crisis.

DWSC:ty

Enclosure: 2/15/12 Testimony

# DENNIS W. S. CHANG

ATTORNEY-AT-LAW

WORKER'S RIGHTS - LABOR LAW  
WORKER'S COMPENSATION  
SOCIAL SECURITY DISABILITY  
LABOR UNION REPRESENTATION  
EMPLOYEES RETIREMENT SYSTEM  
BODILY INJURIES

February 15, 2012

VIA ELECTRONIC MAIL

TO: COMMITTEE ON LABOR & PUBLIC EMPLOYMENT  
Representative Angus L.K. McKelvey, Chair  
Rep. Issac W. Choy, Vice-Chair  
Hawaii State Capitol, Room 312

FROM: Dennis W.S. Chang  
Labor and Workers' Compensation Attorney

RE: Testimony In Support to HB 2152  
(Hearing: 02/16/12 at 10:30 a.m.)

Dear Honorable Chair MCKelvey and Vice-Chair Choy and Members of Committee:

## POSITION

I wholeheartedly support the passage of HB No. 2152 increasing payment of medical services from 110% to 130% of Medicare. The passage of the bill is step in the right direction, but there is more that needs to be done to justly compensate the minority of currently devoted medical providers who deliver medical services to injured workers. I also submit that the arbitrarily limit of the rate of increase to only 130% is merely a temporary fix to an already broken workers' compensation system. For the extent of arduous work of all medical providers including physical therapists currently struggling with the unreasonable reimbursement rates, and those who may want to but will not get engaged in the system, the Legislature should increase the amount to 140% of Medicare. The Legislature also must find a solution of removing payment for medical services without any link to Medicare. An increase of the percentage of the Medicare Value Scale may disappear come January 1, 2013, if not sooner. A simple Google search on "decreasing Medicare Reimbursement rates" documents this.<sup>1</sup> There must

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<sup>1</sup> Consider the following excerpt taken fro Wikipedia:

"The **Medicare Sustainable Growth Rate (SGR)** is a method currently used by the **Centers for Medicare and Medicaid Services (CMS)** in the United States to control spending by **Medicare** on physician services.[1] Enacted by the **Balanced Budget Act of 1997** to amend Section 1848(f) of the **Social Security Act**, the SGR replaced the *Medicare Volume Performance Standard (MVPS)*, which was the previous method that CMS used in an attempt to control costs.[2] Generally, this is a method to ensure that the yearly increase in the expense per Medicare beneficiary does not exceed the growth in GDP.[3] Every year, the CMS sends a report

be a clean and total breakage from any linkage to Medicare.

### **CRISES**

After practicing as a labor attorney for nearly 35 years with a heavy concentration in handling complex workers' compensation claims, I believe that I can speak from experience. I echo the testimony and endless complaints of physicians who are excessively taxed with the onerous administrative burdens under the workers' compensation statute and Medical Fee Schedule. See previous testimonials submitted in support of increasing the cap by Hawaii Medical Association, Kaiser and, in particular Ronald L. Barozzi, Dr. Linda Rowan, Orthopedic Associates and cogent submission by Dr. Joseph Morelli, Jr. (limitations of Medicare Fee Schedule including a national perspective).

To properly deliver services they must unwittingly walk into the treatment of injured workers not knowing whether or they will be paid. There is a waiting period for the submission of the WC-1 "Employer's Report of Industrial Injury" to determine whether claims are compensable. Then, they must eventually submit treatment plans which are routinely ignored. This places medical providers in the unenviable position of either proceeding with treatment or loss of income for the delivery of medical services. They are also often hampered by other recording and reporting requirements. Even more despicable is the fact that their fees are oftentimes unduly delayed and/or compromised. At other times, they go totally unpaid for critical work *albeit* merely administrative or in advocating the need for treatment on behalf of injured workers. Understandably, they are reluctant to treat injured workers without first having an adjudication of approval or written approval from self-insured employers and insurance carriers before the delivery of any services. Countless physicians I have worked with over the years have shared their candid concerns relating to the inadequate reimbursement system.

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to the **Medicare Payment Advisory Commission**, which advises the **U.S. Congress** on the previous year's total expenditures and the target expenditures. The report also includes a conversion factor that will change the payments for physician services for the next year in order to match the target SGR. If the expenditures for the previous year exceeded the target expenditures, then the conversion factor will decrease payments for the next year. If the expenditures were less than expected, the conversion factor would increase the payments to physicians for the next year. On March 1 of each year, the physician fee schedule is updated accordingly. The implementation of the physician fee schedule update to meet the target SGR can be suspended or adjusted by Congress, as has been done regularly in the past (a **doc fix**).<sup>[4]</sup> The estimated SGR for 2010 is -8.8%, and the conversion factor for the physician fee schedule is -21.3%.<sup>[2]</sup> On December 16, 2010, President Obama signed the **Medicare and Medicaid Extenders Act of 2010** into law, delaying the implementation of the SGR until January 1, 2012.<sup>[5]</sup> The implementation of the conversion factor had previously been delayed until December 1, 2010.<sup>[6]</sup> Physician groups, including the **American Medical Association**, lobby for a permanent reform to the SGR so that physician payment rates are not subject to annual cuts (a **permanent doc fix**)." (Footnotes omitted)

It is ironic that the Hawai'i Supreme Court has repeatedly stated that providing workers' compensation is a cost of doing business in the State of Hawai'i but medical providers are currently shouldering the onerous burden of the costs. Even the most devoted medical providers are reluctant to remain in the workers' compensation system in light of increasing overhead and costs of living, unreasonable administrative burdens associated with treating injured workers and shrinkage or unpredictable payments for their vital medical services. Prominent physicians who have devoted their careers to caring for injured workers have reached the point of leaving or about to leave the workers' compensation system. It is no surprise that few, if any, new medical providers are willing to venture into the workers' compensation field.

### **APT ILLUSTRATION OF REAL LIFE CONSEQUENCES IN SUPPORT OF PASSAGE OF HB 2152 AND CHANGE**

The shortage is acutely aggravated in the neighbor islands. A tragic illustration aptly demonstrates the compelling need to support HB 2152 immediately and the ultimately remove fees of medical providers which are linked to Medicare.

One of my clients, who is clearly totally disabled, has been unable to locate a treating physician. Without access to a medical provider, she has been unable to get any certification of her ongoing disability and, consequently, has not received her rightful legal entitlement to wage loss benefits in the form of temporary total disability benefits and vital medical care. The clinic where she was going will not treat her since she has been disabled and has been unable to pay for a private health care plan. Even if she had a private health care plan, there should be no reason to shift payment for medical care from the employer and insurance carrier under a legitimate workers' compensation claim which is not disputed. After contacting more than fifteen (15) doctors and being rejected (told workers' compensation claims involve cumbersome administrative and intense paperwork), she got so frustrated and depressed that she gave up trying. In turn, this placed the onus on me to help her find a doctor, which has additionally aggravated the situation since she is now incurring increasing attorney's fees. We have been unable to locate a physician to date on the Big Island. We are also now attempting to get her shifted to public assistance and become a ward of the State of Hawai'i. Legislators should be upset at this tragic situation and shifting of costs to the State since the obvious avoidable and needless suffering and economic ruin could have been avoided by simply increasing the reasonable fees for medical providers rather than slashing their fees in the mid 1990's (that was the beginning of the mass exodus of medical providers in the workers' compensation field).

Since I provided this illustration, I was finally able to locate a physician who is easily accessible from the airport in Honolulu. He agreed to assume care for my client who essentially begged him to help with the understanding that I would be litigating her right to change physicians. I exercised her one time right statutory right to a change physician but this was denied on the premise that there must be some physician on the Big Island who should be able to treat her. We attended a hearing this week to get the needed change in physicians approved just this week Monday, February 13, 2012. We must now wait another 60 days for a decision before a determination addressing the reinstatement of her wage loss and order for a change in physician. My client is not unique in her inability to access a medical provider which is absurd.

## **CONCLUSION**

Opponents to this bill assert there is another mechanism to change the rates, if they are inadequate. Sadly, the prior administration has done nothing to address easing access to medical providers of all facets of medical services.

I fully endorse HB 2152. This is wholly consistent with an unwavering line of appellate rulings by the Hawai'i Supreme Court which has stated that workers' compensation is a cost of doing business. Hopefully, increasing the current cap will keep the remaining dedicated medical providers in the workers' compensation system even though they are not getting paid adequately. Increasing it to 130% of Medicare is insufficient a step in the right direction to ameliorate the hardship of medical providers and hopefully keep them in the system. More must be done, especially if we want access for all injured workers into accepting worthy patients like some of my current clients and many other untreated injured workers. We have a unique outrageous crisis in the shortage of physicians participating as medical providers, which can only be remedied by increasing the cap more and have a total breakage in the linkage to Medicare rates.



Property Casualty Insurers  
Association of America

Shaping the Future of American Insurance  
1415 L Street, Suite 670, Sacramento, CA 95814-3972

To: The Honorable Josh Green, M.D., Chair  
Senate Committee on Health  
  
The Honorable Clayton Hee, Chair  
Senate Committee on Judiciary and Labor

From: Mark Sektnan, Vice President

Re: **HB 2152 HD2 – Workers’ Compensation**  
**PCI Position: Comments**

Date: Tuesday, March 20, 2012  
10:00 A.M., Conference Room 016

Aloha Chair Green, Chair Hee and Members of the Committees:

The Property Casualty Insurers Association of American (PCI) is opposed to HB 2152 HD2 which would require the Office of the Auditor to conduct a study that analyzes the concerns within the healthcare community about the difficulty in providing healthcare in workers' compensation cases due to their low reimbursement rates.

In earlier versions of this bill, the State’s Department of Human Resources Development (DHRD) has noted concerns in previous hearings about the significant cost implications on State funds appropriated for workers’ compensation if this bill were to pass.

As pointed out in DHRD’s prior testimony, PCI believes the earlier versions this bill are unnecessary. Title 21, Chapter 386 – 21 (c) of the Hawaii Revised Statutes already gives the Director of the Labor and Industrial Relations Department the authority to increase the allowance under the Medicare fee schedule to ensure “rates or fees provided for in this section shall be adequate to ensure at all times the standard of services and care intended by this chapter to injured employees.” The director has exercised this authority and has increased reimbursement rates when those who are asking for the increase are able to justify the need. PCI believes it is appropriate to continue to allow the Director to assess the reimbursement needs and the cost implications of changes to the medical fee schedule to ensure that injured workers are protected and the costs to employers are kept reasonable. It is also important to note that the 110 percent is effectively the floor and not the ceiling for charges.



As originally introduced, this bill would have also applied the increase from 110 percent to 130 percent to medical care provided under a personal auto policy and for medical care provided under a commercial personal injury policy. Amendments were made in the House Committee on Economic Revitalization and Business to ensure the increase applied only to workers' compensation and not to auto or commercial policies. Concerns have been raised that the amendment was not as clear as it could be.

Because the impact of increased costs to medical care in the workers' compensation system would drive up the cost of workers' compensation, and consequently auto or commercial policies, in Hawaii and because the current system allows the director to weigh the need for additional reimbursement with the potential cost implications and should be maintained, we believe there's a balance in place to address escalating costs while studying proposed increased costs impacts to the system. PCI supports the state auditor's study as a prudent step to analyzing the overall condition of the state's workers' compensation system.

For these reasons, PCI respectfully requests that the committee to advance the current version of this bill.

## Green4 - Mailene

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, March 19, 2012 5:53 PM  
**To:** HTHTestimony  
**Cc:** bolger55@gmail.com  
**Subject:** Testimony for HB2152 on 3/20/2012 10:00:00 AM

Testimony for HTH/JDL 3/20/2012 10:00:00 AM HB2152

Conference room: 016  
Testifier position: Support  
Testifier will be present: No  
Submitted by: Douglas Thomas Moore  
Organization: Individual  
E-mail: [bolger55@gmail.com](mailto:bolger55@gmail.com)  
Submitted on: 3/19/2012

Comments:

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March 20, 2012

Committee on Health

Committee on Judiciary and Labor

HB 2152 HD 2 Relating to Worker's Compensation

I am here to testify on HB 2152 HD 2. This bill suggest the Office of the Auditor conduct a study regarding participation of healthcare provider in the area of workers' compensation. The bill would look into the minimal amount healthcare providers that participate in workers' compensation injuries.

My opinion for the LOW participation is the LOW reimbursement rates.

The former administration has NOT updated the Medical Fee Schedule which has caused more healthcare providers to remove themselves from participating in workers' compensation injuries. On many of the neighbor islands we have just a handful if any healthcare providers participating in workers' compensation injuries.

HB 2152 HD 2 needs to be amended to provide immediate help to healthcare providers who participate in workers' compensation injuries and at the same time it would improve the amount of healthcare providers that participate in workers' compensation injuries.

Your immediate action is greatly appreciated.

George Waialeale