



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  
Phone Number: 586-2850  
Fax Number: 586-2856  
www.hawaii.gov/dcca

KEALI'I S. LOPEZ  
DIRECTOR

EVERETT KANESHIGE  
DEPUTY DIRECTOR

TO THE HOUSE COMMITTEES ON CONSUMER PROTECTION  
& COMMERCE AND JUDICIARY

TWENTY-SIXTH LEGISLATURE  
Regular Session of 2011

Wednesday, March 30, 2011  
2 p.m.

**TESTIMONY ON SENATE BILL NO. 1190, S.D. 1 – RELATING TO AUTOMOBILE  
PERSONAL INJURY LIMITATIONS.**

TO THE HONORABLE ROBERT HERKES AND GILBERT KEITH-AGARAN, 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 takes no position on this version of the bill and offers  
the following comments.

The purpose of this version of the bill is to amend Hawaii Revised Statutes  
("HRS") § 431:10C-308.5(b) by requiring: (1) an independent medical examiner to be of  
the same specialty as the treating or prescribing provider; (2) a record reviewer to have  
sufficient professional training, credentials, and experience in treating the type of injury  
at issue to evaluate the treatment that is being reviewed; and (3) all records and  
charges relating to a record review be made available at the claimant's request.

This bill may be related to the Hawaii Supreme Court's decision in *Gillan v.  
Government Employees Ins. Co.*, 119 Haw. 109 (2008), which held that a record review  
performed by a physician retained by an insurer did not constitute an independent  
medical examination under HRS § 431:10C-308.5(b).

Given the cost of an independent medical examination (“IME”) in relation to the extent of the claimant's injury or the treatment in question, it may not be cost effective for insurers to request an IME. Ensuring that record reviewers are competent to evaluate the treatment in question appears to be a reasonable requirement that will not unduly burden insurers.

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

Testimony by: Patti Taira-Tokuuke, PT  
SB 1190sd1, Relating to Automobile Personal Injury Limitations  
Hse CPC/JUD, Weds. March 30, 2011  
Room 325, 2:00 pm



**Position:** Oppose, Amendment Offered

Chairs Herkes and Keith-Agaran, and Members of the Hse CPC/JUD Committees:

I am Patti Taira-Tokuuke, P.T., Co-Chair of the Reimbursement Issues Committee and member of HAPTA's Legislative Committee. I live on the Big Island and regret that I am not able to be present to testify on this important issue.

HAPTA represents 250-300 physical therapists and physical therapist assistants employed in hospitals, nursing homes, the Armed Forces, the Department of Education and Department of Health (DOH) systems, and private clinics throughout our community. Physical therapists work with everyone, from infants to the elderly, to restore and improve function and quality of life. 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.

Living on Hawaii Island, I can well appreciate the intent of the SD1 amendment that eliminated the requirement that the record reviewer shall be of the same specialty as the treatment provider. It is true that there is a shortage of medical specialists in Hawaii, and particularly on the Neighbor Islands.

However, we oppose SB1190sd1 as written because we believe that the language, "The record reviewer shall have sufficient professional training, credentials and experience and training..." is still vague. The record reviewer should be someone who has credentials equal to the treating provider. It makes sense that the record reviewer and the independent medical examiner have the same specialty as the provider whose treatment is being reviewed. For example, we believe it would not be a fair review when a general practice MD critiques an orthopedic surgeon's procedure. To that point, it would not be a fair review when an orthopedic surgeon reviews a neurosurgeon's records—the basic medical school training may be similar, however, the advanced training for surgical skills differs.

This is reminiscent of the days of Peer Review Organizations prior to the motor vehicle law changes in 1997. It raises questions such as:

- 1) Will the patient and insurance get to select the record reviewer as they do with the IME?
- 2) Will the records review be done post-payment and treatment since currently there is no pre-authorization process for motor vehicle claims?
- 3) Is the intent to withhold payment for treatment already rendered?

**Suggested Amendment:**

We suggest the following language for consideration that places priority on selection of the same specialty reviewer as the medical practitioner whenever possible.

Page 2, lines 7 – 10: "...The independent medical examiner shall be of the same specialty as the treating or prescribing provider whose treatment is being reviewed, unless otherwise agreed by the insurer and claimant. The payor shall make good faith effort to find a record reviewer of equal qualifications as the provider rendering care. When such a record reviewer is not found, the record reviewer shall have sufficient professional training, credentials, and experience in treating the type of injury at issue to competently evaluate the specific treatment that is the subject of the record review..."

I can be reached at 808-969-3811 if you have any questions. Thank you for the opportunity to testify.