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TO THE HOUSE COMMITTEE ON TRANSPORTATION

TWENTY-SIXTH LEGISLATURE
Regular Session of 2011

Wednesday, March 16, 2011
9 a.m.

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

TO THE HONORABLE JOSEPH SOUKI, CHAIR, AND MEMBERS OF THE
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 TRN, Weds. March 16, 2011
Room 309, 9:00 am



Position: Oppose, Amendment Offered

Chair Souki and Members of the Hse TRN Committee:

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.

We oppose SB 1190sd1 as written. 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.

Living on Hawaii Island, I can well appreciate the intent of the bill 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.

Suggested Amendment:

However, 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 4 – 7: "...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 an examiner of equal qualifications as the provider rendering care. When such an examiner 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.

LATE TESTIMONY

TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII ASSOCIATION FOR JUSTICE (HAJ) IN SUPPORT OF S.B. NO. 1190, SD 1

March 16, 2011

To: Chairman Joseph Souki and Members of the House Committee on Transportation:

My name is Bob Toyofuku and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) in support of S.B. No. 1190, SD 1, Relating to Automobile Personal Injury Limitations.

The Hawaii Motor Vehicle Law gives insurance companies the right to ascertain that medical treatment is reasonable by requiring that patients submit to independent medical examinations by doctors of the same specialty as the treating doctor. The independent examiner is selected by mutual agreement or appointed by the court, insurance commissioner or arbitrator. The requirement that the examiner be selected by mutual agreement or appointed by a neutral judge, commissioner or arbitrator was to end the prior practice where insurance companies employed doctors who had a financial incentive to find in favor of the insurance company to maintain steady and profitable employment. The requirement that the reviewing doctor be of the same specialty was to assure the reviewing doctor was knowledgeable of the appropriate treatment protocols and qualified to review the treating doctor.

In order to evade these statutory safeguards, some insurers now utilize "records reviewers" who do not examine patients, but only examine medical records and are therefore not considered independent medical examiners. These insurers are not required to abide by the statutory requirements because record reviewers do not examine the patient. Yet, there is no logical basis not to apply the statutory requirements to records

reviews since the same inherent problems exist with both patient examinations and records reviews. The insurers have offered no justification for treating these differently. It is simply a loophole since records reviewers are not considered independent medical examiners because they do not actually examine the patient. Requirements applicable to independent medical examinations should be made applicable to record reviewers as well.

Subsequent to the hearing in the Senate Committee on Commerce and Consumer Protection, at the urging of the Senate Committee chair, the Insurance Commissioner convened a meeting among several persons representing HAJ, GEICO, the Hawaii Insurers Council, Island Insurance and the Insurance Commissioner's office. State Farm Insurance was not able to attend but was contacted and informed of the substance of the meeting. All those present at this meeting and the representative of State Farm all agreed to the amendment made to the original bill and as set forth in the SD 1 which adds the words "treating or prescribing" on page 2, line 5 of the Senate Draft 1 HAJ has no objection to the additional changes added by the Senate Committee. .

We urge this committee to pass this bill. Thank you for this opportunity to testify.