

SB1190

Measure Title: RELATING TO AUTOMOBILE PERSONAL INJURY LIMITATIONS.

Report Title: Motor Vehicle Insurance

Description: Amends law to require the record reviewer to be of the same specialty as the provider whose treatment is being reviewed and makes the record review available upon request.

Companion:

Package: None

Current Referral: CPN



NEIL ABERCROMBIE
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TO THE SENATE COMMITTEE ON
COMMERCE AND CONSUMER PROTECTION

TWENTY-SIXTH LEGISLATURE
Regular Session of 2011

Thursday, February 24, 2011
9:00 a.m.

**TESTIMONY ON SENATE BILL NO. 1190 – RELATING TO AUTOMOBILE
PERSONAL INJURY LIMITATIONS.**

TO THE HONORABLE ROSALYN BAKER, 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 bill and offers the following
comments.

The purpose of this bill is to amend Hawaii Revised Statutes ("HRS") § 431:10C-
308.5(b) by requiring: (1) a record reviewer to be of the same specialty as the provider
whose treatment is being reviewed; and (2) 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). In *Gillan*, the Hawaii Supreme
Court 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).

Requiring insurers to use medical specialists to support any denial of personal
injury protection benefits will likely increase the cost to insurers, who in turn will increase
rates charged to consumers.

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



Testimony by: Patti Taira-Tokuuke, PT
SB 1190, Relating to Automobile Personal Injury Limitations
Sen CPN, Thurs. February 24, 2011
Room 229, 9:00 am Position: Support

Chair Baker and Members of the Sen CPN Committee:

I am Patti Taira-Tokuuke, P.T., Co-Chair of the Reimbursement Issues Committee and member of HAPTA's Legislative Committee. 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 support this measure because it recognizes that the knowledge base among specialists differs. 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.

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

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

February 24, 2011

To: Chair Rosalyn Baker and Members of the Senate Committee on Commerce and Consumer Protection:

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, 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. Thank you for this opportunity to testify.



- Government Employees Insurance Company
- GEICO General Insurance Company
- GEICO Indemnity Company
- GEICO Casualty Company

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Senate Committee on Commerce & Consumer Protection
Conference Room 229 State
Thursday, February 24, 2011, 9:00 a.m.
SB 1190 Related to Personal Injury Insurance

Chair Baker, Vice Chair Taniguchi and Members of the Committee:

My name is Timothy Dayton, General Manager for GEICO. GEICO is Hawaii's largest motor vehicle insurer. **GEICO opposes Senate Bill Number 1190.** The Bill would require that a record review of treatment under Motor Vehicle Personal Injury Protection benefits be done by a provider of the same specialty as the provider and also that a copy of the record review shall be made available to the claimant upon request.

Generally record reviews are done by a provider of the same specialty if the provider is a medical doctor. However to require a reviewer to be of the same specialty is problematic if the provider is not an MD. In addition, it is not uncommon for a claimant to treat with multiple providers and if this measure is enacted, it would seem to suggest that the insurer would need to have multiple reviewers. This does not make sense. The peer review is the insurance company's expert and insurers should have the right to decide what expertise is most appropriate.

The second part of the Bill that mandates sharing of the review with the claimant is also unnecessary as the claimant already has a right to this documentation.

GEICO respectfully requests the Committee to hold this bill.

Thank you for the opportunity to submit this testimony.


Timothy M. Dayton, CPCU