

HOUSE OF REPRESENTATIVES  
THE TWENTY-SIXTH LEGISLATURE  
REGULAR SESSION OF 2012

COMMITTEE ON ECONOMIC REVITALIZATION & BUSINESS

Rep. Angus L.K. McKelvey, Chair  
Rep. Issac W. Choy, Vice Chair

Hearing: Tuesday, March 20, 2012  
Time: 8:30 a.m.  
Place Conference Room 312

TESTIMONY OF ILWU LOCAL 142 RE: SB 2845, SD 1, HD 1, RELATING TO  
MEDICAL BENEFITS UNDER THE WORKERS' COMPENSATION LAW

Chair McElvey, Vice Chair Choy, Members of the Committee:

Thank you for the opportunity to present testimony regarding SB 2845, SD 1, HD 1.  
1. We support this measure.

We are sympathetic to the Department of Labor and Industrial Relation's concern regarding reduced staffing and its difficulties in keeping pace with its significant volume of claims with fewer administrative resources. In many instances, deciding disputes over medical care without a hearing is an efficient and appropriate method of proceeding. When SB 2845 was first proposed, our union had concerns that mandating a decision on a medical treatment dispute might not be appropriate in all instances given the complexity of certain disputes or the inability of some pro se claimants to articulate their positions in writing. SB 2845, SD 1, HD 1, however, has thoughtfully addressed and resolved those concerns.

SB 2845, SD 1, HD 1 now provides that the Director "may," not "shall," resolve workers' compensation medical disputes without a hearing. The discretionary rather than mandatory nature of this practice is the critical factor which makes this bill worthy of passage. The denial of medical care in some instances legitimately requires more explanation and factual investigation that is not well suited to summary resolution without a hearing. Pro se Claimants also may not be able to express in writing the full range of their concerns, especially if they are non-English speaking or lack adequate education in written forms of communication. Direct interaction with these individuals at a face to face hearing may be the best and only way to comprehend their true situation and to protect their interest. As insurers and human resources professionals have noted in testimony before the earlier Senate Committee on Judiciary and Labor, there may be instances when they should be entitled to obtain additional medical evidence to support a denial of requested treatment.

On balance the interest of both employers and injured workers can best be accommodated by giving the Department of Labor and Industrial Relations the option to

decide a medical care issue without a hearing whether or not both parties consent. Both parties can and will have the opportunity to state that they wish to have a hearing and to convince the Director why such a hearing is necessary. Because of the imperfections inherent in any adjudicatory system, it is also true that in individual cases the Director may exercise administrative discretion incorrectly. However, due process will properly be served because SB 2845, SD 1, HD 1 allows a party to seek a hearing before the Director, and in the event either party is dissatisfied with the outcome, there will remain the added procedural safeguard of an appeal to the Labor and Industrial Relations Appeals Board where a full trial de novo is afforded by Section 386-87(b) HRS. A non-prevailing employer has the further protection of filing a Motion for Stay of the department's decision and order pursuant to LIRAB Rule 12-47-34 where it is probable that the decision is wrong on its merits or will cause irreparable harm to the employer.

As HB 2845, SD 1, HD 1 possesses the flexibility to allow or deny a hearing after the parties are heard on the need for such a hearing, it will permit the Department of Labor and Industrial Relations to utilize its discretion to protect the interest of all parties in the varying circumstances where medical treatment is denied and such denials are challenged. In this fashion, the bill promotes the overall goals of achieving timely adjudication of medical care disputes, while respecting the rights of all parties to be heard fairly and in a fashion consistent with due process. We therefore support this useful and constructive measure.

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

In Support of SB 2845, SD1, HD1

Before the House:  
Committee on Economic Revitalization and Business  
Tuesday, Mar. 20, 2012  
8:30 AM, Conference Room 312

Aloha Chair Rep. Angus McKelvey, Vice-Chair Rep. Isaac Choy and Members of the Committee,

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, supports SB 2845, SD1, HD1, which allows the Director of Labor and Industrial Relations to make a decision on disputes regarding treatment plans and continued medical services without a hearing, but requires a decision within thirty days of the filing.

This measure will allow all parties in a workers compensation dispute to receive timely decisions as to whether medical services will continue or whether a treatment plan will be approved or denied, by the Director of DILR without a hearing. This measure will also reduce the number of hearings scheduled, allowing other hearings to be scheduled more quickly.

Therefore, Local 675 supports SB 2845, SD1, HD1.

Thank you for this opportunity to testify.

Glenn Ida  
808-295-1280



**Testimony to the House Committee on Economic Revitalization & Business**  
**Tuesday, March 20, 2012**  
**8:30 a.m.**  
**State Capitol - Conference Room 312**

**RE: SENATE BILL 2845 SD1 HD1 RELATING TO MEDICAL BENEFITS UNDER THE WORKERS' COMPENSATION LAW**

Chair McKelvey, Vice Chair Choy, 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 respectfully requests that the committee does not pass this measure. As written, this measure is expected to increase cost of medical care, services, and supplies under workers' compensation and drive up premiums. However, if it does intend to pass the measure, we ask that you exclude surgery from the categories.

The Chamber is the largest business organization in Hawaii, representing more than 1,000 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.

Currently, when a treatment plan is submitted, the employer/carrier has just 7 days from postmark to approve or deny the proposed treatment. If the 7 day deadline is not met, the treatment plan is automatically approved. If the treatment plan is disputed, current law requires continuation of treatment which the attending physician deems needed so as not to allow the injured worker's condition to deteriorate.

Employers recognize and appreciate the need for the Director, Department of Labor and Industrial Relations (Director) to prioritize issues and operate efficiently. Allowing the Director to render decisions on disputes regarding treatment plans and continued medical services for general office visits, chiropractic treatment, physician therapy, massage therapy, acupuncture, diagnostic tests, one time consultations, etc. within 30 days without a hearing may alleviate some of the backlog.

However, in the small number of cases in which surgery is contemplated, employers should be afforded the the right to review the treatment plan and the time to obtain medical records review or evaluation to determine whether the proposed surgery is reasonable and necessary for the work injury, whether other treatment methods should first be exhausted, or whether alternate surgery is more appropriate. Such review is almost impossible under the time line proposed as the Director has 30 days

to make a decision, but could sconceivably render such decision immediately. Where surgery is contemplated, the Director should have the opportunity to review all evidence from injured worker/attending physician AND employer/medical expert prior to rendering a decision. Hearing should be permitted as needed. The decisions made need to be informed decisions particularly where surgery is concerned.

Thank you for the opportunity to provide comments.



**STATE OF HAWAII  
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**

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March 20, 2012

To: The Honorable Angus L.K. McKelvey, Chair, Isaac W. Choy, Vice Chair, and Members of the House Committee on Economic Revitalization & Business

Date: Tuesday, March 20, 2012  
Time: 8:30 a.m.  
Place: Conference Room 312, State Capitol

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

**Re: SB2845 SD1HD1 Relating to Medical Benefits Under  
The Workers' Compensation Law**

**I. OVERVIEW OF PROPOSED LEGISLATION**

SB2845 SD1HD1 amends Section 386-21(c), Hawaii Revised Statutes (HRS), by allowing the Director to make a decision on disputes regarding treatment plans and continued medical services without a hearing within thirty days of the filing of a dispute between an employee and the employer or the employer's insurer. The department strongly supports this administration proposal as it gives the director greater ability to meet the thirty-day deadline in issuing treatment plan and medical decisions.

**II. CURRENT LAW**

When a party files a dispute regarding a proposed treatment plan or whether medical services should be continued, the director is required to make a decision within thirty days of the filing of the dispute. Section 386-86, HRS, requires a hearing be held for all decisions issued. Due to the reduction of staff as a result of budget cuts, it currently takes three to four months to schedule a treatment plan or medical services hearing, notice the parties, conduct the hearing, and render a decision.

The proposal gives the director greater ability to meet the thirty-day deadline to issue a decision with or without a hearing for treatment plans and discontinuance of medical services.

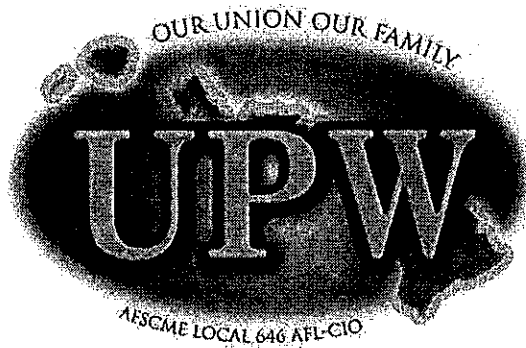
**III. COMMENTS ON THE SENATE BILL**

This measure allows injured workers, insurance carriers, and employers to receive prompter decisions as to whether medical services will continue or whether a treatment plan will be approved or denied.

The department intends to institute administrative safeguards to protect the interest of the parties in medically complex cases and in disputes involving pro se claimants if the measure becomes law.

Deep budget cuts, freezes and staff reductions have impeded the department's ability to conduct timely hearings and created significant backlogs in the various types of workers' compensation hearings. If enacted, this measure will reduce the number of hearings scheduled, which permits quicker scheduling of other hearings.

The department strongly supports this administration measure.



THE HAWAII STATE HOUSE OF REPRESENTATIVES  
The Twenty-Sixth Legislature  
Regular Session of 2012

**COMMITTEE ON ECONOMIC REVITALIZATION & BUSINESS**

The Honorable Rep. Angus L. K. McKelvey, Chair  
The Honorable Rep. Isaac W. Choy, Vice Chair

DATE OF HEARING: Tuesday, March 20, 2012  
TIME OF HEARING: 8:30 a.m.  
PLACE OF HEARING: Conference Room 312

**TESTIMONY ON SB 2845 SD1 HD1 RELATING TO MEDICAL BENEFITS UNDER  
THE WORKERS' COMPENSATION LAW**

By DAYTON M. NAKANELUA,  
State Director of the United Public Workers,  
AFSCME Local 646, AFL-CIO ("UPW")

My name is Dayton M. Nakanelua and I am the State Director of the United Public Workers, AFSCME, Local 646, AFL-CIO (UPW). The UPW is the exclusive representative for approximately 11,000 public employees, which include blue collar, non-supervisory employees in Bargaining Unit 1 and institutional, health and correctional employees in Bargaining Unit 10, in the State of Hawaii and various counties. The UPW also represents about 1,500 members of the private sector.

UPW supports the intent of SB 2845 SD1 HD1, which allows the director of labor and industrial relations to make a decision on disputes regarding treatment plans and continued medical services without a hearing but requires a decision within thirty days of the filing of a dispute.

Allowing the Director of Labor and Industrial Relations to render a decision without a hearing improves the process currently in place. Presently, it can take months before the parties get a hearing and come to some resolution of their dispute. What's more, requiring the Director to render his decision within 30 days helps ensure timely decision will help employees receive needed medical services and return more quickly to the workforce.

Thank you for the opportunity to testify on this measure.





Testimony to the House Committee on Economic Revitalization and Business  
February 20, 2012  
8:30 a.m.  
State Capitol – Conference Room 312

Aloha Chair McKelvey, Vice Chair Choy, and members of the committee. We are Ryan Kusumoto and Lisa Kracher, the Legislative Committee co-chairs for the Society for Human Resource Management – Hawaii Chapter (SHRM Hawaii). SHRM Hawaii represents nearly 1,000 human resource professionals in the State of Hawaii.

We are writing to oppose to SB 2845 which amends section 386-21(c), Hawaii Revised Statutes, by requiring the Director of Labor and Industrial Relations to make a decision on disputes regarding treatment plans and continued medical services without a hearing.

Human resource professionals are keenly attuned to the needs of both employers and employees. We are the frontline professionals responsible for businesses' most valuable asset: people. We truly have our employers' and employees' best interests at heart. We oppose this measure for significantly altering the manner in which workers' compensation claims are handled and resolved to the satisfaction of all parties and the likely unintended consequences and costs associated with it.

Our most significant concerns are:

1. Most treatment plans resulting from a workers' compensation claim are approved. In cases where the treatment plan is denied, it is due to whether the treatment plan is reasonable and necessary. Employers should be given the opportunity to review the proposed treatment by using a physician of its choosing to determine if it is reasonable and necessary. This medical examination is a critical component of the employer's discovery process and to ensure that the injury was work related. If it is not reasonable and necessary, the employer should be given the opportunity to present such evidence at a hearing. By not having a hearing, the Director will not have all the necessary evidence and stated facts to make an informed decision on the case.
2. Existing law requires continuation of medical treatment while the attending physician deems necessary so as not to allow the injured worker's condition to deteriorate. This is sufficient to ensure the injured worker is still receiving appropriate medical treatment while the issue of a denied treatment plan is reviewed and resolved. This will ensure that medical needs of the employee are attended to whether or not this is later deemed work related.
3. Allowing the Director to issue a decision within 30 days without a hearing does not allow the employer time to seek review by a physician of its choosing. The Director could issue such decisions within hours or days. The intent is not to extend the determination period unnecessarily, but to insure that sufficient review has taken place to determine if the treatment is reasonable and necessary.

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This bill will encourage the submission and approval of unreasonable and unnecessary treatment plans to maximize the revenue of attending physicians and related providers/entities. The cost of medical care, services, and supplies will rise dramatically thereby driving up premium costs. This will ultimately adversely impact all businesses especially in a challenging economy and thereby impacting business who are struggling to stay afloat. Also, the treatment rendered, including surgeries and significant narcotic drugs, to the injured worker may be harmful and result in greater disability/addiction.

We continue to review this bill and its serious consequences. We request the bill not be advanced and, if it is advanced, the opportunity to discuss these issues further. Thank you for the opportunity to testify.