NEIL ABERCROMBIE
GOVERNOR

DWIGHT Y. TAKAMINE
DIRECTOR

AUDREY HIDANO
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
830 PUNCHBOWL STREET, ROOM 321
HONOLULU, HAWAII 96813
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Phone: (808) 586-8842 / Fax: (808) 586-9099
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March 13, 2012

To: The Honorable Karl Rhoads, Chair, Kyle T. Yamashita, Vice Chair, and Members of the House Committee on Labor & Public Employment

Date: Tuesday, March 13, 2012
Time: 9:30 a.m.
Place: Conference Room 309, State Capitol

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

Re: S.B. 2845 S.D. 1 Relating to Medical Benefits Under the Workers' Compensation Law

I. OVERVIEW OF PROPOSED LEGISLATION

S.B. 2845 S.D. 1 amends Section 386-21(c), 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 supports this 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 dispute is filed 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 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. This measure also reduces the number of hearings scheduled and allows other hearings to be scheduled more quickly.

The department strongly supports this measure.

AFSCME
LOCAL 152, AFL-CIO

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The Twenty-Sixth Legislature, State of Hawaii
House of Representatives
Committee on Labor and Public Employment

Testimony by
Hawaii Government Employees Association
March 13, 2012

S.B. 2845, S.D. 1 - RELATING TO MEDICAL BENEFITS UNDER THE WORKERS' COMPENSATION LAW

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO supports the purpose and intent of S.B. 2845, S.D. 1, which amends section 386-21(c), Hawaii Revised Statutes, by allowing the Director of Labor and Industrial Relations to make a decision on disputes regarding treatment plans and continued medical services without a hearing.

The HGEA represents more than 25,000 public employees statewide and is intimately familiar with the negative impacts of staff reductions on vital public services. Staffing shortages as a result of budget cuts have delayed workers compensation hearings for disputed treatment plans or continuation of medical services process well beyond the 30-day deadline. An injured employee's medical care in workers' compensation-related cases is vital to help the injured worker return to work. The proposal fairly addresses the requirement for prompt medical care decisions for injured workers, insurance carriers and employers.

Thank you for the opportunity to testify in support of the intent of S.B. 2845, S.D. 1.

Respectfully submitted,

Leiomalama E. Desha
Deputy Executive Director

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

COMMITTEE ON LABOR & PUBLIC EMPLOYMENT
Rep. Karl Rhoads, Chair
Rep. Kyle T. Yamashita, Vice Chair

Hearing: Tuesday, March 13, 2012
Time: 9:30 a.m.
Place Conference Room 309

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

Chair Rhoads, Vice Chair Yamashita, Members of the Committee:

Thank you for the opportunity to present testimony regarding SB 2845, SD 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, however, has thoughtfully addressed and resolved those concerns.

SB 2845, SD 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 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 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 note that the effective date of the bill was deferred until July 1, 2050 to promote discussion, but we urge that the bill be passed with an earlier effective date of July 1, 2012.

yamashita2 ----Aulii

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, March 11, 2012 4:28 PM
To: LABtestimony
Cc: Lardizabal@local368.org
Subject: Testimony for SB2845 on 3/13/2012 9:30:00 AM

Testimony for LAB 3/13/2012 9:30:00 AM SB2845

Conference room: 309
Testifier position: Support
Testifier will be present: No
Submitted by: Al Lardizabal
Organization: Hawaii Laborers' Union
E-mail: Lardizabal@local368.org
Submitted on: 3/11/2012

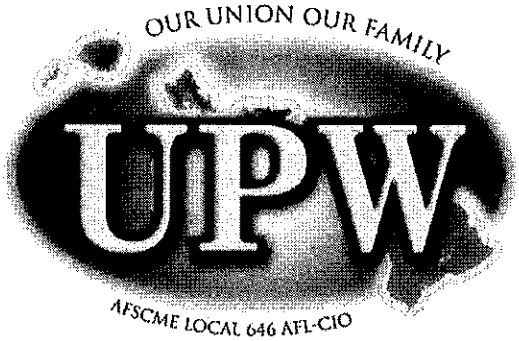
Comments:
Mardh 11, 2012

Chair Rhoads; Vice Chair Yamashita and Members of the Committee:

The Hawaii Laborers' Union supports SB2845, HD1 that allows the director of DLIR to make a decsion without a hearing on disputes regarding treatment plans and continued medical services. This provision however, should not be the basis upon which the full and normal staffing of the DCD is denied in future budget requests. Once normal staffing is reached, this amendment should be revisited.

Mahalo for the opportunity to submit this testimony.

Al Lardizabal
Government Relations



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

COMMITTEE ON LABOR & PUBLIC EMPLOYMENT
The Honorable Rep. Karl Rhoads, Chair
The Honorable Rep. Kyle T. Yamashita, Vice Chair

DATE OF HEARING: Tuesday, March 13, 2012
TIME OF HEARING: 9:30 a.m.
PLACE OF HEARING: Conference Room 309

TESTIMONY ON SB 2845 SD1 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.

SB 2845 SD1 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 the decision to be rendered within thirty days. UPW supports the intent of this measure.

Allowing the Director of Labor and Industrial Relations to render a decision within 30 days 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. This measure will help employees receive needed medical services and return more quickly to the workforce.

Thank you for the opportunity to testify on this measure.

The Chamber of Commerce of Hawaii
The Voice of Business in Hawaii

Testimony to the House Committee on Labor & Public Employment
Tuesday, January 31, 2012
9:00 a.m.
State Capitol - Conference Room 309

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

Chair Rhoads, Vice Chair Yamashita, 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 conceivably 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.

Property Casualty Insurers
Association of America
Shaping the Future of American Insurance
1415 L Street, Suite 670, Sacramento, CA 95814-3972

To: The Honorable Representative Karl Rhoads, Chair
House Committee on Labor and Public Employment

From: Mark Sektnan, Vice President

Re: **SB 2845 SD1 –Medical Benefits Under the Workers' Compensation Law**
PCI Position: Oppose Unless Amended

Date: Tuesday, March 13, 2012
9:30 a.m., Conference Room 309

Aloha Chair Rhoads and Members of the Committee:

The Property Casualty Insurers Association of America (PCI) is opposed to SB 2845 SD1 as currently drafted. Existing law grants to the director of Director of the Labor and Industrial Relations Department the authority to resolve disputes between an employee and the employer or the employer's insurer regarding the proposed treatment plan or whether medical services should be continued. SB 2845 SD1 would eliminate the requirement that the director hold a hearing to settle medical disputes pending before the director.

This bill would also present barriers to employers since there will not be sufficient time to solicit a supporting medical opinion to counter unreasonable and unnecessary medial treatment requests. Employers are often forced to rebut unproven medical treatments commonly found on the internet. While it would be beneficial to have standard guidelines that require the use of evidence based medicine, often times the treatment suggested is not appropriate, and is in fact sometimes dangerous for injured workers. Employers should have the right, and adequate time, to challenge these unproven medical treatments to ensure the safety of injured workers.

The hearing process allows both parties the opportunity to share additional information with the director to ensure the director's decision is based on the most comprehensive information available. Elimination of the hearing would deprive the director of a complete record on which to make the decision on the whether a proposed treatment plan or medical service is both appropriate and effective for the injured worker. We do, however, understand there may be situations where neither party feels a hearing is necessary and the director may proceed with the decision making process. We would suggest that SB 2845 SD1 be **amended** to allow the hearing to be waived "upon mutual consent of both parties." With this amendment, the process can be made more efficient without sacrificing the benefit of complete information.

For these reasons, PCI asks the committee to amend this bill.

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

VIA ELECTRONIC MAIL

March 13, 2012

To: The Honorable Karl Rhoads, Chair; Kyle T. Yamashita, Vice Chair; and Members of the House Committee on Labor & Public Employment

Date: Tuesday, March 13, 2012
Time: 9:30 a.m.
Place: Conference Room 309, State Capitol

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

Re: Strong Support of S.B. 2845 S.D. 1 Relating to Medical Benefits Under the Workers' Compensation Law

Purpose:

S.B. 2845 S.D. 1 amends Section 386-21(c), HRS, and allows the Director of Labor and Industrial Relations (Director) to make a prompt decision on disputes regarding treatment plans and continued medical services without a hearing. The decision currently must be rendered within thirty (30) days of the filing of a dispute between an employee and the employer or the employer's insurer. This bill slightly changes the process by allowing the Director to issue a decision without a hearing when appropriate to meet the thirty (30) day deadline in resolving disputes over treatment plans.

Justification for Bill:

This bill is intended to address Act 695 requiring hearings as a priority over the denial of treatment plans while medical providers in certain instances continued to provide medical services and get paid. However, budget shortfall and vacancies have made it impossible for the Director to comply with the law by holding hearings promptly and rendering decisions within thirty (30) days. Allowing him to render administrative decisions would help enormously and hopefully, free him to hold hearings on other just as notable disputed issues such as the compensability of a claim, refusal to pay or termination of wage loss benefits and an injured workers' permanent partial disability award.

Suggestion:

Treatment plans are required every 120 days after initial treatment. The defense industry, in particular, attorneys, have developed a cottage industry in going over each section of the treatment plan to look for technical errors in justifying a denial of the plan. A resounding

message should be sent to everyone that medical providers must complete the treatment plans to the fullest extent possible and the defense industry can no longer go through the checklist of what must be completed in the Medical Fee Schedule to justify a denial. I would urge the Director to consider amending the current bill to state that "substantial compliance" in preparing a treatment plan is sufficient.

For example, the defense does not accept four (4) months as indicative of compliance with a treatment plan but instead insists on requiring medical providers to identify precisely 120 days as the start and ending dates for a plan. Or, even when it is clear that treatment plan should be approved, the defense would deny the plan by stating there is no justification. As an apt illustration, consider an injured worker who has just had surgery in the form of a fusion and routine monitoring is required or physical therapy is essential for a second round. Nevertheless, the defense industry, usually through their attorneys, examine each element of a treatment plan and state it is deficient for failing to point out the obvious that physical therapy is still required during the start of the fifth month of recovery. The list goes on. In this regard, I have attached a sample of a treatment plan, which I prepared back in 2006 to assist physicians from the laborious work in the submission of treatment plans. If any one section is not completed, there is an excellent likelihood to expect a denial prompting a request for a hearing and endless needless litigation. For yet another illustration, consider an injured worker who has been in a full leg cast for over six (6) months. He/she will have clear loss of mobility and adhesions which would prevent a proper gait following the removal of the cast. In this situation, the failure to complete all elements contained in the treatment plan would result in a denial.

It should be no surprise to everyone that prioritizing hearings for the denial of treatment plans has resulted in causing a major backlog at the Disability Compensation Division since certain attorneys working for the defense have fine tuned justifications for the denying of treatment plans even though privately they admit that medical services are critically needed. Thus, a test of "substantial compliance" or, more appropriately, common sense in the review of denials should be seriously considered as an amendment in the bill.

Conclusion:

I wholeheartedly the passage of SB 2845 SD 1.

DWSC:ty

Enclosure: Sample short version
of treatment plan

, M.D.
The Queen's Physician's Office Building II
1329 Lusitana Street, Suite
Honolulu, Hawai'i 96813
Phone: (808) 522
Facsimile: (808) 536

Worker's Compensation Treatment Plan

Pursuant to Section 12-15-32 of the Administrative Rules relating to Worker's Compensation Medical Fee Schedule, I hereby request authorization for medical treatment and/or continued medical treatment for the named claimant/injured party.

TO: _____ Carrier &/or Adjuster
_____ Street Address
_____ City State Zip

Date of Request: _____
Transmitted: [ ] Mail **and** [ ] Fax #_____
Start date: _____

Patient	Last	First	M.I.	SSN(optional)

Name of Employer	Insurance Co:	Date of Accident	Carrier #.	Labor Department #.

1. **Projected start and end date(s) of treatment(s):** **FROM:** Mo. ____ Day ____ Yr ____ **TO:** Mo ____ Day ____ Yr ____

2. **Treatment Modality(ies)/ Procedure(s) Requested:**
[ ] Office Visit ___ Initial visit ____Follow up appointment date(s): _____
[ ] Diagnostic Procedure: ___ X-Ray ___ MRI ___ CAT Scan ___ Myelogram ___ Bone Scan ___ EMG ___ NCV
[ ] Laboratory_____ [ ] Other _____
[ ] Surgical Procedure(s):_____
[ ] Physician referral for [ ] Consultation [ ] Concurrent care [ ] Assistant/Co-Surgeon Name: _____
Specialty/Reason: _____ Address: _____
[ ] Aquatic Therapy Frequency _____ per week for _____ weeks
[ ] Occupational Therapy Frequency _____ per week for _____ weeks
[ ] Physical [ ] Massage Therapy Frequency _____ per week for _____ weeks
[ ] Acupuncture Frequency _____ per week for _____ weeks
[ ] Recondition/ Work hardening Frequency _____ per week for _____ weeks
[ ] Other: (specify)_____

3. **Cost(s):** [ ] PURSUANT TO MEDICAL FEE SCHEDULE [ ] Other $

4. **Diagnosis:** _____

5. **Prognosis:** _____

6. **Subjective findings** (client states):

7. **Objective findings which indicate need for treatment or further treatment:**

8. **Specific time schedule of measurable objectives:**
1. Baseline at start of treatment plan:
Pain (Least>Most) 0 1 2 3 4 5 6 7 8 9 10
Work tolerance Sedentary (0-10) Sedentary-Light (11-15) Light (16-20) Light-Medium (21-35)
(Type/lbs.) Medium (36-50) Medium-Heavy (51-75) Heavy (76-100) Very Heavy (>100)
2. Projection at end of treatment plan:
Pain (Least>Most) 0 1 2 3 4 5 6 7 8 9 10
Work tolerance Sedentary (0-10) Sedentary-Light (11-15) Light (16-20) Light-Medium (21-35)
(Type/lbs.) Medium (36-50) Medium-Heavy (51-75) Heavy (76-100) Very Heavy (>100)

IF THE TERMINATION DATE FOR ANY PRIOR TREATMENT PLAN HAS ELAPSED, IT IS REQUESTED THAT SHOULD THE PLAN BE ACCEPTED THAT THE DATE OF ONSET OF THE PLAN BE MADE RETROACTIVE TO THE ELAPSED DATE OF THE PREVIOUS PLAN.

Respectfully submitted by,	[ ] Approved Written Oral [ ] Written to follow oral approval [ ] Denied Written Reason: ____
, M.D.	Name Date

Internal use only:
[ ] ALL treatment plans provided with less than 7 calendar days notice is not authorized. Treatment plans shall be submitted every 120 calendar days for 15 or less treatments 60 days after first visit.
Date of first visit _____ Treatment plan is not required for first 15 or less office visits within 60 days from this date
Dates for future submissions (120 cal days): [] [] [] []
[ ] FAILURE to request a review of the denial w/ the Director within 14 calendar days after postmark shall be deemed acceptance of the denial. (DCD Cost Review Branch 586-9181)
Postmark date _____ 14th calendar day deadline _____ Date request to Director _____ Date of hearing _____@_____ Paid ___

George M. Waialeale
910 Kapahulu Avenue #703
Honolulu, Hawaii 96816
Email: geedubbyou@aol.com
Phone: (808) 383-0436

March 13, 2012

Committee on Labor and Public Employment

SB 2845 SD1 Relating to Medical Benefits Under the Workers' Compensation Law

I am here to testify in support of SB 2845 SD 1. This bill 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 the decision to be rendered within thirty days.

I believe by allowing the Director of Labor and Industrial Relations to make a decision without a hearing will give the Director the ability to meet the thirty day deadline in issuing treatment plan and medical decisions.

I ask for your passage of this legislation.

George Waialeale