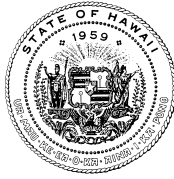


SB 2845



NEIL ABERCROMBIE
GOVERNOR

DWIGHT Y. TAKAMINE
DIRECTOR

AUDREY HIDANO
DEPUTY DIRECTOR

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

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February 17, 2012

To: The Honorable Clayton Hee, Chair, Maile S.L. Shimabukuro, Vice Chair, and Members of the Senate Committee on Judiciary and Labor

Date: Friday, February 17, 2012
Time: 10:00 a.m.
Place: Conference Room 016, State Capitol

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

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

I. OVERVIEW OF PROPOSED LEGISLATION

S.B. 2845 amends Section 386-21(c), HRS, by requiring 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 will give the director a greater ability to meet the thirty-day deadline in issuing treatment plan and medical decisions. However, the department recommends the proposed wording in H.B. 2583 H.D. 1 that allows rather than requires the Director to make a decision without a hearing.

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

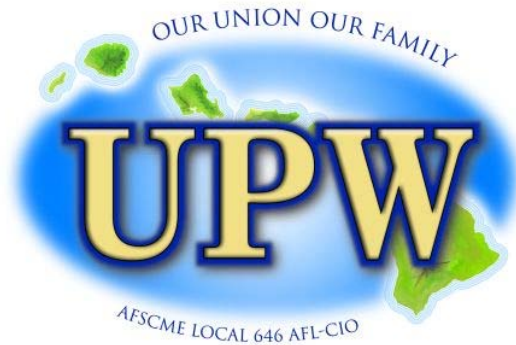
decision.

The proposal will give the director a 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 will allow 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 will also reduce the number of hearings scheduled, allowing other hearings to be scheduled more quickly.

The department strongly supports this measure, but recommends amending the bill to reflect the wording in H.B. 2583 H.D. 1 that allows rather than requires the Director to make a decision on disputes regarding treatment plans and continued medical services without a hearing.



THE HAWAII STATE SENATE
The Twenty-Sixth Legislature
Regular Session of 2012

COMMITTEE ON JUDICIARY AND LABOR

The Honorable Sen. Clayton Hee, Chair
The Honorable Sen. Maile S. L. Shimabukuro, Vice Chair

DATE OF HEARING: Friday, February 17, 2012

TIME OF HEARING: 10:00 a.m.

PLACE OF HEARING: Conference Room 016

**TESTIMONY ON SB 2845 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 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 SENATE
THE TWENTY-SIXTH LEGISLATURE
REGULAR SESSION OF 2012

COMMITTEE ON JUDICIARY & LABOR

Sen. Clayton Hee, Chair
Sen. Maile S.L. Shimabukuro, Vice Chair

Hearing: Friday, February 17, 2012
Time: 10:00 a.m.
Place Conference Room 016

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

Chair Hee, Vice Chair Shimabukuro, Members of the Committee:

Thank you for the opportunity to present testimony regarding SB 2845.

We are sympathetic to the Department of Labor and Industrial Relation's concerns 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.

However, SB 2845 may be too sweeping in requiring that all medical disputes be resolved without a hearing, as there are legitimately some cases which require more explanation and factual disputes which are not best suited to resolution through written presentations. 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.

We therefore suggest that the following underscored language be considered, adding the phrase "provided all parties consent" so that the amended sentence in Section 1 of HB 2845 will read:

Notwithstanding section 386-86, the director shall make a decision without a hearing **provided all parties consent** within thirty days of the filing of the dispute. (new material in bold face, underscoring in original draft of HB 2583)

In this fashion, parties who wish to have an actual hearing may do so, yet the department will be able to eliminate all those hearings where the parties consent to have a decision without a hearing. In suggesting this amendment, we are also aware that

unscrupulous employers or insurance carriers may delay care by insisting on a hearing, and that the department will not be able to eliminate medical care hearings entirely. However, there are also legitimate questions under the Hawaii Administrative Procedures Act and general principles of constitutional law whether due process is afforded if the department proceeds to award or deny medical care without a hearing and one has been requested by a party.

The issues and choices raised by SB 2845 are difficult ones. SB 2845 as drafted and as we have proposed amending it present specific advantages and disadvantages. Ideally, if the department were furnished additional funds, it would be able to meet the demand for medical hearings. However, we are hopeful that commentary and debate amongst all interested parties will help achieve a solution to the department's concerns that is consistent with both its own needs and the needs all its constituents.

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

February 15, 2012

To: The Honorable Clayton Hee, Chair, Maile S.L. Shimabukuro,
Vice Chair, and Members of the Senate Committee on Judiciary
and Labor

Date: Friday, February 17, 2012
Time: 10:00 a.m.
Place: Conference Room 016, State Capitol

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

Re: Strong Support for S.B. 2845 Relating to Medical Benefits

Dear Chair Hee and Vice Chair Shimabukuro:

I strongly support the Director of Labor and Industrial Relations' ("Director") suggested change since it would be consistent with HB 2583, HD 1. As a long time practitioner in the workers' compensation field, I have witnessed the outrageous hardship on the Disability Compensation Division ("DCD") in complying with the existing law created by Act 695 requiring hearings over disputed treatment plans and having a decision rendered in thirty days. This has added to the backlog of scheduling hearing on more vital disputes such as compensability of a claim, wage loss benefits and awards for permanent partial or total disability benefits. The exemplary staff at the DCD are overwhelmed due to cutbacks and budget shortfalls. Allowing the Director to render decisions on disputed treatment plans would go a long way in helping all stakeholders in the workers' compensation system.

Thank you for allowing me to testify on this critically needed change.

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc: Lardizabal@local368.org
Subject: Testimony for SB2845 on 2/17/2012 10:00:00 AM
Date: Thursday, February 16, 2012 9:08:11 AM

Testimony for JDL 2/17/2012 10:00:00 AM SB2845

Conference room: 016
Testifier position: Support
Testifier will be present: No
Submitted by: Al Lardizabal
Organization: Hawaii Laborers' Union
E-mail: Lardizabal@local368.org
Submitted on: 2/16/2012

Comments:

Senator Hee,Chair; Senator Shimabukuro, Vice Chair and members of the Committee:

The Hawaii Laborers' Union supports SB2845 but requests an amendment that gives the Director of DLIR flexibility in his decision making process. We recommend that the Director be allowed to make a decision without a hearing if the situation is conducive to that flexibility.

Thank you for the opportunity to submit this testimony.